



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

DIAGEO PHILIPPINES, INC.,  
Petitioner,

G.R. No. 183553

- versus -

COMMISSIONER OF INTERNAL  
REVENUE,  
Respondent.

Present:  
CARPIO, *Chairperson*,  
BRION,  
DEL CASTILLO,  
PEREZ, *and*  
PERLAS-BERNABE, *JJ.*

Promulgated:

NOV 12 2012

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision<sup>1</sup> of the Court of Tax Appeals (CTA) *En Banc* dated July 2, 2008 in CTA EB No. 260.

<sup>1</sup> *Rollo*, pp. 13-27. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda I. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta, dissenting.

The petition seeks the proper interpretation of Section 130(D)<sup>2</sup> of the National Internal Revenue Code of 1997 (Tax Code), particularly, on the question of who may claim the refund or tax credit of excise taxes paid on goods actually exported.

### **The Factual Antecedents**

Petitioner Diageo Philippines, Inc. (Diageo) is a domestic corporation organized and existing under the laws of the Republic of Philippines and is primarily engaged in the business of importing, exporting, manufacturing, marketing, distributing, buying and selling, by wholesale, all kinds of beverages and liquors and in dealing in any material, article, or thing required in connection with or incidental to its principal business.<sup>3</sup> It is registered with the Bureau of Internal Revenue (BIR) as an excise tax taxpayer, with Tax Identification No. 000-161-879-000.<sup>4</sup>

For the period November 1, 2003 to December 31, 2004, Diageo purchased raw alcohol from its supplier for use in the manufacture of its beverage and liquor products. The supplier imported the raw alcohol and paid the related excise taxes thereon before the same were sold to the petitioner.<sup>5</sup> The purchase price for the raw alcohol included, among others, the excise taxes paid by the supplier in the total amount of ₱12,007,528.83.<sup>6</sup>

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<sup>2</sup> Sec. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* -  
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(D) *Credit for Excise tax on Goods Actually Exported.*- When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

<sup>3</sup> *Rollo*, p. 14.

<sup>4</sup> *Id.* at 15.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 49.

Subsequently, Diageo exported its locally manufactured liquor products to Japan, Taiwan, Turkey and Thailand and received the corresponding foreign currency proceeds of such export sales.<sup>7</sup>

Within two (2) years from the time the supplier paid the subject excise taxes, Diageo filed with the BIR Large Taxpayer's Audit and Investigation Division II applications for tax refund/issuance of tax credit certificates corresponding to the excise taxes which its supplier paid but passed on to it as part of the purchase price of the subject raw alcohol invoking Section 130(D) of the Tax Code.

However, due to the failure of the respondent Commissioner of Internal Revenue (CIR) to act upon Diageo's claims, the latter was constrained to timely file a petition for review before the CTA.<sup>8</sup>

On December 27, 2005, the CIR filed its Answer assailing Diageo's lack of legal personality to institute the claim for refund because it was not the one that paid the alleged excise taxes but its supplier.<sup>9</sup> Subsequently, the CIR filed a motion to dismiss reiterating the same issue.<sup>10</sup>

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<sup>7</sup> Id. at 48.

<sup>8</sup> Id. at 16.

<sup>9</sup> Id.

<sup>10</sup> Id.

### The Ruling of the Court of Tax Appeals

On July 20, 2006, the CTA Second Division issued a Resolution<sup>11</sup> dismissing the petition on the ground that Diageo is not the real party in interest to file the claim for refund. Citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,<sup>12</sup> the CTA Second Division ruled that although an excise tax is an indirect tax which can be passed on to the purchaser of goods, the liability therefor still remains with the manufacturer or seller, hence, the right to claim refund is only available to it.<sup>13</sup> Diageo filed a motion for reconsideration which was subsequently denied in the Resolution dated January 8, 2007.<sup>14</sup>

On February 13, 2007, Diageo filed a petition for review<sup>15</sup> which the CTA *En Banc* in its Decision dated July 2, 2008 dismissed, thereby affirming the ruling of the CTA Second Division.<sup>16</sup>

Citing Rule 3, Section 2,<sup>17</sup> of the Rules of Court, the CTA *En Banc* held that the right to a refund or tax credit of the excise taxes under Section 130(D) of the Tax Code is available only to persons enumerated in Sections 130(A)(1)<sup>18</sup> and (2)<sup>19</sup> of the same Code because they are the ones primarily

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<sup>11</sup> Id. at 145-149. Signed by Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy and Olga Palanca-Enriquez.

<sup>12</sup> G.R. No. 19707, August 17, 1967, 10 SCRA 1056.

<sup>13</sup> Supra note 11, at 148.

<sup>14</sup> *Rollo*, pp. 166-167.

<sup>15</sup> Id. at 168-194.

<sup>16</sup> Id. at 13-27.

<sup>17</sup> Sec. 2. *Parties in interest*. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

<sup>18</sup> Sec. 130. *Filing of Return and Payment of Excise Tax on Domestic Products*. -

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax*. -

(1) *Persons Liable to File a Return*. - Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural

and legally liable to pay such taxes. As Diageo failed to prove that it had actually paid the claimed excise taxes as manufacturer-exporter, the CTA *En Banc* likewise did not find it as the proper party to claim a refund. Hence, the instant petition.

Diageo claims to be a real party in interest entitled to recover the subject refund or tax credit because it stands to be benefited or injured by the judgment in this suit.<sup>20</sup> It contends that the tax privilege under Section 130(D) applies to every exporter provided the conditions therein set forth are complied with, namely, (1) the goods are exported either in their original state or as ingredients or part of any manufactured goods or products; (2) the exporter submits proof of exportation; and (3) the exporter likewise submits proof of receipt of the corresponding foreign exchange payment.<sup>21</sup> It argues that Section 130(D) does not limit the grant of the tax privilege to manufacturers/producers-exporters only but to every exporter of locally

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gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

<sup>19</sup> Sec. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* -

(2) *Time for Filing of Return and Payment of the Tax.* - Unless 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: Provided, That the tax excise on locally manufactured petroleum products and indigenous petroleum/levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

<sup>20</sup> *Rollo* at p. 54-55.

<sup>21</sup> *Id.* at 57.

manufactured/produced goods subject only to the conditions  
aforementioned.<sup>22</sup>

### **The Issue**

The sole issue to be resolved is whether Diageo has the legal personality to file a claim for refund or tax credit for the excise taxes paid by its supplier on the raw alcohol it purchased and used in the manufacture of its exported goods.

### **Ruling of the Court**

The petition is without merit.

***Excise taxes partake of the nature of indirect taxes.***

Diageo bases its claim for refund on Section 130 of the Tax Code which reads:

Section 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* – xxx

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.*–

(1) *Persons Liable to File a Return.* – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon; Provided however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall

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<sup>22</sup> Id. at 60.

be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

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(D) *Credit for Excise tax on Goods Actually Exported.*- When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

A reading of the foregoing provision, however, reveals that contrary to the position of Diageo, the right to claim a refund or be credited with the excise taxes belongs to its supplier. The phrase “any excise tax paid thereon shall be credited or refunded” requires that the claimant be the same person who paid the excise tax. In *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, the Court has categorically declared that “[t]he 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>23</sup>

Excise taxes imposed under Title VI of the Tax Code are taxes on property<sup>24</sup> which are imposed on “goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported.”<sup>25</sup> Though excise taxes are paid by the manufacturer or producer before removal of domestic products from the place of production<sup>26</sup> or by the owner or importer before the release of imported

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<sup>23</sup> G.R. 173594, February 6, 2008, 544 SCRA 100, 112.

<sup>24</sup> *Petron Corporation v. Tiangco*, G.R. No. 158881, April 16, 2008, 551 SCRA 484, 493-494.

<sup>25</sup> TAX CODE, Sec. 129.

<sup>26</sup> TAX CODE, Sec. 130(A)(2).

articles from the customhouse,<sup>27</sup> the same partake of the nature of indirect taxes when it is passed on to the subsequent purchaser.

Indirect taxes are defined as those wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted to another person. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.<sup>28</sup>

Accordingly, when the excise taxes paid by the supplier were passed on to Diageo, what was shifted is not the tax *per se* but an additional cost of the goods sold. Thus, the supplier remains the statutory taxpayer even if Diageo, the purchaser, actually shoulders the burden of tax.

***The statutory taxpayer is the proper party to claim refund of indirect taxes.***

As defined in Section 22(N) of the Tax Code, a taxpayer means any person subject to tax. He is, therefore, the person legally liable to file a return and pay the tax as provided for in Section 130(A). As such, he is the person entitled to claim a refund.

Relevant is Section 204(C) of the Tax Code which provides:

Section 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*- The Commissioner may -  
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<sup>27</sup> TAX CODE, Sec. 131(A).

<sup>28</sup> *CIR v. PLDT Co.*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72.



(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refined their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed **unless the taxpayer** files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

Pursuant to the foregoing, the person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax.<sup>29</sup> In the present case, it is not disputed that the supplier of Diageo imported the subject raw alcohol, hence, it was the one directly liable and obligated to file a return and pay the excise taxes under the Tax Code before the goods or products are removed from the customhouse. It is, therefore, the statutory taxpayer as contemplated by law and remains to be so, even if it shifts the burden of tax to Diageo. Consequently, the right to claim a refund, if legally allowed, belongs to it and cannot be transferred to another, in this case Diageo, without any clear provision of law allowing the same.

Unlike the law on Value Added Tax which allows the subsequent purchaser under the tax credit method to refund or credit input taxes passed on to it by a supplier,<sup>30</sup> no provision for excise taxes exists granting non-statutory taxpayer like Diageo to claim a refund or credit. It should also be stressed that when the excise taxes were included in the purchase price of the goods sold to Diageo, the same was no longer in the nature of a tax but already formed part of the cost of the goods.

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<sup>29</sup> See TAX CODE, Sec.22(N).


<sup>30</sup> See *Commissioner of Internal Revenue v. Seagate Technology (Phil.)*, G.R. No. 153866, February 11, 2005, 451 SCRA 132, 141-143; TAX CODE, Sec.110(B).

Finally, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken.<sup>31</sup> Unfortunately, Diageo failed to meet the burden of proof that it is covered by the exemption granted under Section 130(D) of the Tax Code.

In sum, Diageo, not being the party statutorily liable to pay excise taxes and having failed to prove that it is covered by the exemption granted under Section 130(D) of the Tax Code, is not the proper party to claim a refund or credit of the excise taxes paid on the ingredients of its exported locally produced liquor.

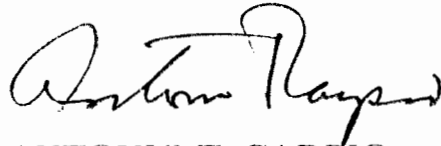
**WHEREFORE**, the petition is **DENIED** and the assailed CTA *En Banc* Decision in CTA EB No. 260 dated July 2, 2008 is **AFFIRMED**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>31</sup> *Quezon City v. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008, 568 SCRA 496, 515.

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ARTURO D. BRION**  
Associate Justice



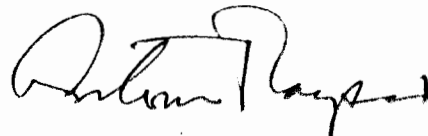
**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice

**ATTESTATION**

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



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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