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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:
>
> (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

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.

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:

'A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.'

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the "person subject to tax." In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the "person liable for tax." Petitioner is neither a "person liable for tax" nor "a person subject to tax." There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts and invoices issued to its customers, **Petron remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron, as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.**[17] (Emphasis supplied.)

Petitioner's contention that the CTA and CA rulings would put to naught the exemption

granted under Section 135 (b) of the 1997 Tax Code and Article 4 of the Air Transport Agreement is not well-taken. Since the supplier herein involved is also Petron, our pronouncement in the second *Silkair* case, relative to the contractual undertaking of petitioner to submit a valid exemption certificate for the purpose, is relevant. We thus noted:

> The General Terms & Conditions for Aviation Fuel Supply (Supply Contract) signed between petitioner (buyer) and Petron (seller) provide:
>
> > "**11.3** If Buyer is entitled to purchase any Fuel sold pursuant to the Agreement free of any taxes, duties or charges, **Buyer shall timely deliver to Seller a valid exemption certificate for such purchase**." (Emphasis supplied)
>
> This provision instructs petitioner to timely submit a valid exemption certificate to Petron in order that Petron will not pass on the excise tax to petitioner. As correctly suggested by the CTA, petitioner should invoke its tax exemption to Petron before buying the aviation jet fuel. Petron, however, remains the statutory taxpayer on those excise taxes.
>
> Revenue Regulations No. 3-2008 (RR 3-2008) provides that "subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies." The Department of Finance and the BIR recognize the tax exemption granted to international carriers but they consistently adhere to the view that manufacturers of articles subject to excise tax are the statutory taxpayers that are liable to pay the tax, thus, the proper party to claim any tax refunds.[18]

The above observation remains pertinent to this case because the very same provision in the General Terms and Conditions for Aviation Fuel Supply Contract also appears in the documentary evidence submitted by petitioner before the CTA.[19] Except for its bare allegation of being "placed in a very complicated situation" because Petron, "for fear of being assessed by Respondent, will not allow the withdrawal and delivery of the petroleum products without Petitioner's pre-payment of the excise taxes," petitioner has not demonstrated that it dutifully complied with its contractual undertaking to timely submit to Petron a valid certificate of exemption so that Petron may subsequently file a claim for excise tax credit/refund pursuant to Revenue Regulations No. 3-2008 (RR 3-2008). It was

indeed premature for petitioner to assert that the denial of its claim for tax refund nullifies the tax exemption granted to it under Section 135 (b) of the 1997 Tax Code and Article 4 of the Air Transport Agreement.

In the third *Silkair* case[20] decided last year, the Court called the attention to the consistent rulings in the previous two *Silkair* cases that petitioner as the purchaser and end-consumer of the aviation fuel is not the proper party to claim for refund of excise taxes paid thereon. The situation clearly called for the application of the doctrine, *stare decisis et non quieta movere*. Follow past precedents and do not disturb what has been settled. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[21] The Court thus finds no cogent reason to deviate from those previous rulings on the same issues herein raised.

WHEREFORE, the petition for review on certiorari is **DENIED**. The Decision dated September 13, 2004 and Resolution dated December 21, 2004 of the Court of Appeals in CA-G.R. SP No. 82902 are **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and *Del Castillo, JJ*., concur.

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[1] *Rollo*, pp. 71-81. Penned by Associate Justice Remedios A. Salazar-Fernando with Presiding Justice Cancio C. Garcia (now a retired member of this Court) and Associate Justice Hakim S. Abdulwahid concurring.

[2] Id. at 101-102. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Hakim S. Abdulwahid and Noel G. Tijam concurring.

[3] Exhibit "T", CTA records, pp. 172-177.

[4] Id. at 174.

[5] CA *rollo*, pp. 61-71. Penned by Associate Justice Lovell R. Bautista with Associate Justice Juanito C. Castañeda, Jr. concurring. Presiding Justice Ernesto D. Acosta dissented (see Dissenting Opinion, id. at 72-74).

[6] G.R. No. 93901, February 11, 1992 (Unsigned Resolution) cited in the Petition for Review, rollo, p. 58.

[7] G.R. No. 151135, July 2, 2004, 433 SCRA 376.

[8] CTA Records, pp. 23, 45, 222-223.

[9] Sec. 129, National Internal Revenue Code, as amended.

[10] H. S. De Leon and H. M. De Leon, Jr., The National Revenue Internal Revenue Code Annotated, 2003 Ed., Vol. 2, p. 199, citing BIR Ruling No. 201-99, December 16, 1999.

[11] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005, 465 SCRA 308, 317-318, citing *Cebu Portland Cement Co. v. Collector of Internal Revenue*, No. L-20563, October 29, 1968, 25 SCRA 789, 797 and *Commissioner of Internal Revenue v. American Rubber Co.,* No. L-19667, November 29, 1966, 18 SCRA 842, 853.

[12] *Supra* note 7.

[13] Id. at 387, 388.

[14] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 173594, February 6, 2008, 544 SCRA 100.

[15] Id. at 112.

[16] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141.

[17] Id. at 157-158.

[18] Id. at 158-159.

[19] CTA records, p. 127.

[20] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 184398, February 25, 2010, 613 SCRA 638.

[21] Id. at 660, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, May 2, 2006, 488 SCRA 538, 545.