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FIRST DIVISION

[G.R. No. 184398, February 25, 2010]

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

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review on *Certiorari*, assailing the May 27, 2008 Decision[1] and the subsequent September 5, 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 267. The decision dated May 27, 2008 denied the petition for review filed by petitioner Silkair (Singapore) Pte. Ltd., on the ground, among others, of failure to prove that it was authorized to operate in the Philippines for the period June to December 2000, while the Resolution dated September 5, 2008 denied petitioner's motion for reconsideration for lack of merit.

The antecedent facts are as follows:

Petitioner, a foreign corporation organized under the laws of Singapore with a Philippine representative office in Cebu City, is an online international carrier plying the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes.

Respondent Commissioner of Internal Revenue is impleaded herein in his official capacity as head of the Bureau of Internal Revenue (BIR), an attached agency of the Department of Finance which is duly authorized to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes.[3]

On June 24, 2002, petitioner filed with the BIR an administrative claim for the refund of Three Million Nine Hundred Eighty-Three Thousand Five Hundred Ninety Pesos and Forty-Nine Centavos (P3,983,590.49) in excise taxes which it allegedly erroneously paid on its purchases of aviation jet fuel from Petron Corporation (Petron) from June to December 2000. Petitioner used as basis therefor BIR Ruling No. 339-92 dated December 1, 1992, which declared that the petitioner's Singapore-Cebu-Singapore route is an international flight by an international carrier and that the petroleum products purchased by the petitioner should not be subject to excise taxes under Section 135 of Republic Act No. 8424 or the 1997 National Internal Revenue Code (NIRC).

Since the BIR took no action on petitioner's claim for refund, petitioner sought judicial recourse and filed on June 27, 2002, a petition for review with the CTA (docketed as CTA Case No. 6491), to prevent the lapse of the two-year prescriptive period within which to judicially claim a refund under Section 229[4] of the NIRC. Petitioner invoked its exemption from payment of excise taxes in accordance with the provisions of Section 135(b) of the NIRC, which exempts from excise taxes the entities covered by tax treaties, conventions and other international agreements; provided that the country of said carrier or exempt entity likewise exempts from similar taxes the petroleum products sold to Philippine carriers or entities. In this regard, petitioner relied on the reciprocity clause under Article 4(2) of the Air Transport Agreement entered between the Republic of the Philippines and the Republic of Singapore.

Section 135(b) 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:
>
> x x x x
>
> (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; x x x.

Article 4(2) of the Air Transport Agreement between the Philippines and Singapore, in turn, provides:

> ART. 4. x x x.
>
> 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.

In a Decision[5] dated July 27, 2006, the CTA First Division found that petitioner was qualified for tax exemption under Section 135(b) of the NIRC, as long as the Republic of Singapore exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies under Article 4(2) of the Air Transport Agreement quoted above. However, it ruled that petitioner was not entitled to the excise tax exemption for failure to present proof that it was authorized to operate in the Philippines during the period material to the case due to the non-admission of some of its exhibits, which were merely photocopies, including Exhibit "A" which was petitioner's Certificate of Registration with the Securities and Exchange Commission (SEC) and Exhibits "P," "Q" and "R" which were its operating permits issued by the Civil Aeronautics Board (CAB) to fly the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes for the period October 1999 to October 2000.

Petitioner filed a motion for reconsideration but the CTA First Division denied the same in a Resolution[6] dated January 17, 2007.

Thereafter, petitioner elevated the case before the CTA *En Banc via* a petition for review, which was initially denied in a Resolution[7] dated May 17, 2007 for failure of petitioner to establish its legal authority to appeal the Decision dated July 27, 2006 and the Resolution dated January 17, 2007 of the CTA First Division.

Undaunted, petitioner moved for reconsideration. In the Resolution[8] dated September 19, 2007, the CTA *En Banc* set aside its earlier resolution dismissing the petition for review and reinstated the same. It also required respondent to file his comment thereon.

On May 27, 2008, the CTA *En Banc* promulgated the assailed Decision and denied the petition for review, thus:

> **WHEREFORE**, premises considered, the instant petition is hereby **DENIED** for lack of merit. The assailed Decision dated July 27, 2006 dismissing the instant petition on ground of failure of petitioner to prove that it was authorized to operate in the Philippines for the period from June to December 2000, is hereby **AFFIRMED WITH MODIFICATION** that petitioner is further not found to be the proper party to file the instant claim for refund.[9]

In a separate Concurring and Dissenting Opinion,[10] CTA Presiding Justice Ernesto D. Acosta opined that petitioner was exempt from the payment of excise taxes based on Section 135 of the NIRC and Article 4 of the Air Transport Agreement between the Philippines and Singapore. However, despite said exemption, petitioner's claim for refund

cannot be granted since it failed to establish its authority to operate in the Philippines during the period subject of the claim. In other words, Presiding Justice Acosta voted to uphold *in toto* the Decision of the CTA First Division.

Petitioner again filed a motion for reconsideration which was denied in the Resolution dated September 5, 2008. Hence, the instant petition for review on *certiorari*, which raises the following issues:

I

> Whether or not petitioner has substantially proven its authority to operate in the Philippines.

II

> Whether or not petitioner is the proper party to claim for the refund/tax credit of excise taxes paid on aviation fuel.

Petitioner maintains that it has proven its authority to operate in the Philippines with the admission of its Foreign Air Carrier's Permit (FACP) as Exhibit "B" before the CTA, which, in part, reads:

> [T]his Board RESOLVED, as it hereby resolves to APPROVE the petition of SILKAIR (SINGAPORE) PTE LTD., for issuance of a regular operating permit (Foreign Air Carrier's Permit), subject to the approval of the President, pursuant to Sec. 10 of R.A. 776, as amended by P.D. 1462.[11]

Moreover, petitioner argues that Exhibits "P," "Q" and "R," which it previously filed with the CTA, were merely flight schedules submitted to the CAB, and were not its operating permits. Petitioner adds that it was through inadvertence that only photocopies of these exhibits were introduced during the hearing.

Petitioner also asserts that despite its failure to present the original copy of its SEC Registration during the hearings, the CTA should take judicial notice of its SEC Registration since the same was already offered and admitted in evidence in similar cases pending before the CTA.

Petitioner further claims that the instant case involves a clear grant of tax exemption to it by law and by virtue of an international agreement between two governments. Consequently, being the entity which was granted the tax exemption and which made the erroneous tax payment of the excise tax, it is the proper party to file the claim for refund.

In his Comment[12] dated March 26, 2009, respondent states that the admission in evidence of petitioner's FACP does not change the fact that petitioner failed to formally offer in evidence the original copies or certified true copies of Exhibit "A," its SEC Registration; and Exhibits "P," "Q" and "R," its operating permits issued by the CAB to fly its Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes for the period October 1999 to October 2000. Respondent emphasizes that petitioner's failure to present these pieces of evidence amounts to its failure to prove its authority to operate in the Philippines.

Likewise, respondent maintains that an excise tax, being an indirect tax, is the direct liability of the manufacturer or producer. Respondent reiterates that when an excise tax on petroleum products is added to the cost of goods sold to the buyer, it is no longer a tax but becomes part of the price which the buyer has to pay to obtain the article. According to respondent, petitioner cannot seek reimbursement for its alleged erroneous payment of the excise tax since it is neither the entity required by law nor the entity statutorily liable to pay the said tax.

After careful examination of the records, we resolve to deny the petition.

Petitioner's assertion that the CTA may take judicial notice of its SEC Registration, previously offered and admitted in evidence in similar cases before the CTA, is untenable.

We quote with approval the disquisition of the CTA *En Banc* in its Decision dated May 27, 2008 on the non-admission of petitioner's Exhibits "A," "P," "Q" and "R," to wit:

> Anent petitioner's argument that the Court in Division should have taken judicial notice of the existence of Exhibit "A" (petitioner's SEC Certificate of Registration), although not properly identified during trial as this has previously been offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court, We are in agreement with the ruling of the Court in Division, as discussed in its Resolution dated April 12, 2005 resolving petitioner's Motion for Reconsideration on the court's non-admission of Exhibits "A", "P", "Q" and "R", wherein it said that:
>
> > "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. **Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.**

The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. **A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.**

Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:

> Sec. 3. *Judicial notice, when hearing necessary.* - During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
>
> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

Furthermore, petitioner admitted that Exhibit `A' have *(sic)* been offered and admitted in evidence in similar cases involving the same subject matter filed before this Court. Thus, petitioner is and should have been aware of the rules regarding the offering of any documentary evidence before the same can be admitted in court.

As regards Exhibit[s] `P', `Q' and `R', the original copies of these documents were not presented for comparison and verification in violation of Section 3 of Rule 130 of the 1997 Revised Rules of Court. The said section specifically provides that `when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x'. **It is an elementary rule in law that documents shall not be admissible in evidence unless and until the original copies itself are offered or presented for verification in cases where mere copies are offered, save for the exceptions provided for by law. Petitioner thus cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. For failure of herein petitioner to compare the subject documents with its originals, the same may not be admitted."**

(*Emphasis Ours*)

Likewise, in the Resolution dated July 15, 2005 of the Court in Division denying petitioner's Omnibus Motion seeking allowance to compare the denied exhibits with their certified true copies, the court *a quo* explained that:

> "Petitioner was already given enough time and opportunity to present the originals or certified true copies of the denied documents for comparison. When petitioner received the resolution denying admission of the provisionally marked exhibits, it should have submitted the originals or certified true copies for comparison, considering that these documents were accordingly available. But instead of presenting these documents, petitioner, in its Motion for Reconsideration, tried to hide behind the veil of judicial notice so as to evade its responsibility of properly applying the rules on evidence. It was even submitted by petitioner that these documents should be admitted for they were previously offered and admitted in similar cases involving the same subject matter and parties. If this was the case, then, there should have been no reason for petitioner to seasonably present the originals or certified true copies for comparison, or even, marking. x x x."

In view of the foregoing discussion, the Court *en banc* finds that indeed, petitioner indubitably failed to establish its authority to operate in the Philippines for the period beginning June to December 2000.[13]

This Court finds no reason to depart from the foregoing findings of the CTA *En Banc* as petitioner itself admitted on page 9[14] of its petition for review that "[i]t was through inadvertence that only photocopies of Exhibits `P', `Q' and `R' were introduced during the hearing" and that it was "rather unfortunate that petitioner failed to produce the original copy of its SEC Registration (Exhibit `A') for purposes of comparison with the photocopy that was originally presented."

Evidently, said documents cannot be admitted in evidence by the court as the original copies were neither offered nor presented for comparison and verification during the trial. Mere identification of the documents and the markings thereof as exhibits do not confer any evidentiary weight on them as said documents have not been formally offered by petitioner and have been denied admission in evidence by the CTA.

Furthermore, the documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner

would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:

> SECTION 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Neither could it be said that petitioner's SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents.[15]

Moreover, Section 3 of the same Rule[16] provides that a hearing is necessary before judicial notice of any matter may be taken by the court. This requirement of a hearing is needed so that the parties can be heard thereon if such matter is decisive of a material issue in the case.

Given the above rules, it is clear that the CTA *En Banc* correctly did not admit petitioner's SEC Registration and operating permits from the CAB which were merely photocopies, without the presentation of the original copies for comparison and verification. As aptly held by the CTA *En Banc*, petitioner cannot rely on the principle of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. Indeed, petitioner's contention that the said documents were previously marked in other cases before the CTA tended to confirm that the originals of these documents were readily available and their non-presentation in these proceedings was unjustified. Consequently, petitioner's failure to compare the photocopied documents with their original renders the subject exhibits inadmissible in evidence.

Going to the second issue, petitioner maintains that it is the proper party to claim for refund or tax credit of excise taxes since it is the entity which was granted the tax exemption and which made the erroneous tax payment. Petitioner anchors its claim on Section 135(b) of the NIRC and Article 4(2) of the Air Transport Agreement between the Philippines and Singapore. Petitioner also asserts that the tax exemption, granted to it as a buyer of a certain product, is a personal privilege which may not be claimed or availed of by the seller. Petitioner submits that since it is the entity which actually paid the excise taxes, then it should be allowed to claim for refund or tax credit.

At the outset, it is important to note that on two separate occasions, this Court has already put to rest the issue of whether or not petitioner is the proper party to claim for the refund

or tax credit of excise taxes it allegedly paid on its aviation fuel purchases.[17] In the earlier case of *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*,[18] involving the same parties and the same cause of action but pertaining to different periods of taxation, we have categorically held that Petron, not petitioner, is the proper party to question, or seek a refund of, an indirect tax, to wit:

> 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.
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> 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.

In the second *Silkair*[19] case, the Court explained that an excise tax is an indirect tax where the burden can be shifted or passed on to the consumer but the tax liability remains with the manufacturer or seller. Thus, the manufacturer or seller has the option of shifting or passing on the burden of the tax to the buyer. However, where the burden of the tax is shifted, the amount passed on to the buyer is no longer a tax but a part of the purchase price of the goods sold.

Petitioner contends that the clear intent of the provisions of the NIRC and the Air Transport Agreement is to exempt aviation fuel purchased by petitioner as an exempt entity from the payment of excise tax, whether such is a direct or an indirect tax. According to petitioner, the excise tax on aviation fuel, though initially payable by the manufacturer or producer, attaches to the goods and becomes the liability of the person having possession thereof.

We do not agree. The distinction between a direct tax and an indirect tax is relevant to this issue. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[20] this Court explained:

> Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax.
>
> In context, direct taxes are those that are exacted from the very person who, it is

> intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.
>
> On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. 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 purchase price of goods sold or services rendered.

Title VI of the NIRC deals with excise taxes on certain goods. Section 129 reads as follows:

> SEC. 129. *Goods Subject to Excise Taxes.* - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. x x x.

As used in the NIRC, therefore, excise taxes refer to taxes applicable to certain specified or selected goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. These excise taxes may be considered taxes on production as they are collected only from manufacturers and producers. Basically an indirect tax, excise taxes are directly levied upon the manufacturer or importer upon removal of the taxable goods from its place of production or from the customs custody. These taxes, however, may be actually passed on to the end consumer as part of the transfer value or selling price of the goods sold, bartered or exchanged.[21]

In *Maceda v. Macaraig, Jr.*,[22] this Court declared:

> "[I]ndirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that 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."

And as noted by us in the second *Silkair*[23] case mentioned above:

When Petron removes its petroleum products from its refinery in Limay, Bataan, it pays the excise tax due on the petroleum products thus removed. Petron, as manufacturer or producer, is the person liable for the payment of the excise tax as shown in the Excise Tax Returns filed with the BIR. Stated otherwise, Petron is the taxpayer that is primarily, directly and legally liable for the payment of the excise taxes. However, since an excise tax is an indirect tax, Petron can transfer to its customers the amount of the excise tax paid by treating it as part of the cost of the goods and tacking it on the selling price.

As correctly observed by the CTA, this Court held in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*:

> "It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes part of the price which the purchaser must pay."

Even if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that Petron, on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent.

Petitioner, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform petitioner's status into a statutory taxpayer.

Thus, under Section 130(A)(2) of the NIRC, it is Petron, the taxpayer, which has the legal personality to claim the refund or tax credit of any erroneous payment of excise taxes. Section 130(A)(2) states:

> 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*. - x x x
>
> (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**: x x x. (Emphasis supplied.)

Furthermore, Section 204(C) of the NIRC provides a two-year prescriptive period within which a taxpayer may file an administrative claim for refund or tax credit, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes*. - The Commissioner may -
>
> x x x x
>
> (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 refund 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.)

From the foregoing discussion, it is clear that the proper party to question, or claim a refund or tax credit of an indirect tax is the statutory taxpayer, which is Petron in this case, as it is the company on which the tax is imposed by law and which paid the same even if the burden thereof was shifted or passed on to another. It bears stressing that even if Petron shifted or passed on to petitioner the burden of the tax, the additional amount which petitioner paid is not a tax but a part of the purchase price which it had to pay to obtain the goods.

Time and again, we have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[24] Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

In fine, we quote from our ruling in the earlier *Silkair*[25] case:

> The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

This calls 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.[26]

WHEREFORE, the instant petition for review is **DENIED**. We **affirm** the assailed Decision dated May 27, 2008 and the Resolution dated September 5, 2008 of the Court of Tax Appeals *En Banc* in C.T.A. E.B. No. 267. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[1] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta (with a Concurring and Dissenting Opinion), Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova (concurred with the Concurring and Dissenting Opinion) and Olga Palanca-Enriquez, concurring; *rollo*, pp. 33-50.

[2] Id. at 54-60.

[3] Pursuant to Section 4 of the National Internal Revenue Code of 1997 which states:

SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[4] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided*, *however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which

payment was made, such payment appears clearly to have been erroneously paid.

[5] *Rollo*, pp. 61-71.

[6] Id. at 78-81.

[7] Id. at 82-84.

[8] Id. at 85-89.

[9] Id. at 50.

[10] With the concurrence of Associate Justice Caesar A. Casanova; *rollo*, pp. 51-53.

[11] *Rollo,* p. 16.

[12] Id. at 236-262.

[13] Id. at 42-44.

[14] Id. at 17.

[15] SEC. 2. *Judicial notice, when discretionary.* - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[16] SEC. 3. *Judicial notice, when hearing necessary.* - During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[17] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141; and G.R. No. 173594, February 6, 2008, 544 SCRA 100.

[18] G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112.

[19] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue* (G.R. Nos. 171383

and 172379), supra note 17 at 154-155.

[20] G.R. No. 140230, December 15, 2005, 478 SCRA 61, 71-72.

[21] De Leon and De Leon, Jr., THE NATIONAL INTERNAL REVENUE CODE ANNOTATED, Volume 2 (2003 Edition), pp. 198-199.

[22] 274 Phil. 1060, 1092 (1991).

[23] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue* (G.R. Nos. 171383 and 172379), supra note 17 at 156.

[24] *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 131-132 (2003).

[25] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue* (G.R. No. 173594), supra note 17 at 113-114.

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