Supreme Court E-Library

SECOND DIVISION

[G.R. No. 180909. January 19, 2011]

EXXONMOBIL PETROLEUM AND CHEMICAL HOLDINGS, INC. – PHILIPPINE BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON PLEADING THE GROUNDS FOR DISMISSAL AS AFFIRMATIVE DEFENSES, APPLIED.— This case is a clear cut application of [Rule 16, Section 6 of the 1997 Rules of Civil Procedure]. The CIR did not file a motion to dismiss. Thus, he pleaded the grounds for dismissal as affirmative defenses in its Answer and thereafter prayed for the conduct of a preliminary hearing to determine whether petitioner was the proper party to apply for the refund of excise taxes paid.

2. TAXATION; EXCISE TAXES; TWO CONDITIONS THAT MUST CONCUR FOR THESE TAXES TO BE IMPOSED.— Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and second, that said articles are for domestic sale or consumption, excluding those that are actually exported.

3. ID.; ID.; EXEMPTIONS FROM THE COVERAGE OF EXCISE TAXES.— There are, however, certain exemptions to the coverage of excise taxes, such as petroleum products sold to international carriers and exempt entities or agencies. x x x [U]nder Section 135, petroleum products sold to international carriers of foreign registry on their use or consumption outside the Philippines are exempt from excise tax, provided that the petroleum products sold to such international carriers shall be stored in a bonded storage tank and may be disposed of only

Supreme Court E-Library

in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

4. ID.; ID.; THE PARTY WHO IS NOT STATUTORILY LIABLE TO PAY EXCISE TAXES IS NOT THE PROPER PARTY TO CLAIM FOR A REFUND OF ANY TAXES ERRONEOUSLY PAID.— As early as the 1960's, this Court has ruled that the proper party to question, or to seek a refund of, an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if he shifts the burden thereof to another. x x x Therefore, as Exxon is not the party statutorily liable for payment of excise taxes under Section 130, in relation to Section 129 of the NIRC, it is not the proper party to claim a refund of any taxes erroneously paid.

APPEARANCES OF COUNSEL

Salvador and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 filed by petitioner Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch *(Exxon)* to set aside the September 7, 2007 Decision[1] of the Court of Tax Appeals *En Banc (CTA-En Banc)* in CTA E.B. No. 204, and its November 27, 2007 Resolution[2] denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 62-88. Penned by Associate Justice Juanito C. Castañeda Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta issued a separate dissenting opinion.

[2] *Id.* at 89-94.

Supreme Court E-Library

THE FACTS

Petitioner Exxon is a foreign corporation duly organized and existing under the laws of the State of Delaware, United States of America.[3] It is authorized to do business in the Philippines through its Philippine Branch, with principal office address at the 17/F The Orient Square, Emerald Avenue, Ortigas Center, Pasig City.[4]

Exxon is engaged in the business of selling petroleum products to domestic and international carriers.[5] In pursuit of its business, Exxon purchased from Caltex Philippines, Inc. (*Caltex*) and Petron Corporation (*Petron*) Jet A-1 fuel and other petroleum products, the excise taxes on which were paid for and remitted by both Caltex and Petron.[6] Said taxes, however, were passed on to Exxon which ultimately shouldered the excise taxes on the fuel and petroleum products.[7]

From November 2001 to June 2002, Exxon sold a total of 28,635,841 liters of Jet A-1 fuel to international carriers, free of excise taxes amounting to Php105,093,536.47.[8] On various dates, it filed administrative claims for refund with the Bureau of Internal Revenue (*BIR*) amounting to Php105,093,536.47.[9]

On October 30, 2003, Exxon filed a petition for review with the CTA[10] claiming a refund or tax credit in the amount of Php105,093,536.47, representing the amount of excise taxes

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[3] *Id.* at 73.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] Docketed as CTA Case No. 6809.

Supreme Court E-Library

paid on Jet A-1 fuel and other petroleum products it sold to international carriers from November 2001 to June 2002.[11]

Exxon and the Commissioner of Internal Revenue (*CIR*) filed their Joint Stipulation of Facts and Issues on June 24, 2004, presenting a total of fourteen (14) issues for resolution.[12]

During Exxon's preparation of evidence, the CIR filed a motion dated January 28, 2005 to first resolve the issue of whether or not Exxon was the proper party to ask for a refund.[13] Exxon filed its opposition to the motion on March 15, 2005.

On July 27, 2005, the CTA First Division issued a resolution[14] sustaining the CIR's position and dismissing Exxon's claim for refund. Exxon filed a motion for reconsideration, but this was denied on July 27, 2006.[15]

Exxon filed a petition for review[16] with the CTA *En Banc* assailing the July 27, 2005 Resolution of the CTA First Division which dismissed the petition for review, and the July 27, 2006 Resolution[17] which affirmed the said ruling.

RULING OF THE COURT OF TAX APPEALS *EN BANC*

In its Decision dated September 7, 2007, the CTA *En Banc* dismissed the petition for review and affirmed the two resolutions of the First Division dated July 27, 2005 and July 27, 2006. Exxon filed a motion for reconsideration, but it was denied on November 27, 2007.

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[11] *Rollo*, p. 63.

[12] *Id*.

[13] *Id.* at 64.

[14] *Id.* at 138. Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring. Presiding Justice Ernesto D. Acosta issued a separate dissenting opinion.

[15] *Id.* at 150.

[16] *Id.* at 95.

[17] *Id.* at 62-63.

Supreme Court E-Library

Citing Sections 130 (A)(2)[18] and 204 (C) in relation to Section 135 (a)[19] of the National Internal Revenue Code of 1997 (*NIRC*),

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[18] **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.* —

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(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.

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[19] **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;

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Supreme Court E-Library

the CTA ruled that in consonance with its ruling in several cases,[20] only the taxpayer or the manufacturer of the petroleum products sold has the legal personality to claim the refund of excise taxes paid on petroleum products sold to international carriers.[21]

The CTA stated that Section 130(A)(2) makes the manufacturer or producer of the petroleum products directly liable for the payment of excise taxes.[22] Therefore, it follows that the manufacturer or producer is the taxpayer.[23]

This determination of the identity of the taxpayer designated by law is pivotal as the NIRC provides that it is only the taxpayer who "has the legal personality to ask for a refund in case of erroneous payment of taxes."[24]

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[20] *Koyo Manufacturing (Philippines) Corp. v. Commissioner of Internal Revenue*. CTA E.B. No. 194, March 1, 2007; *Mobil Philippines, Inc. v. Commissioner of Internal Revenue*, CTA E.B. No. 110, July 26, 2006; *Dunlop Slazenger Phils., Inc. v. Commissioner of Internal Revenue*, CTA E.B. No. 102, May 18, 2006; *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd*., CTA E.B. No. 67, January 5, 2006; *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd*., CTA E.B. No. 56, October 20, 2005; and *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd*., CTA E.B. No. 25, May 20, 2005.

[21] *Rollo*, p. 74.

[22] *Id.* at 75.

[23] *Id*.

[24] *Id*, citing Section 204(C) of the NIRC of 1997, which reads:

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

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(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.

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Supreme Court E-Library

Further, the excise tax imposed on manufacturers upon the removal of petroleum products by oil companies is an indirect tax, or a tax which is primarily paid by persons who can shift the burden upon someone else.[25] The CTA cited the cases of *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[26] *Contex Corporation v. Commissioner of Internal Revenue*,[27] and *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[28] and explained that with indirect taxes, "although the burden of an indirect tax can be shifted or passed on to the purchaser of the goods, the liability for the indirect tax remains with the manufacturer."[29] Moreover, "the manufacturer has the option whether or not to shift the burden of the tax to the purchaser. When shifted, the amount added by the manufacturer becomes a part of the price, therefore, the purchaser does not really pay the tax *per se* but only the price of the commodity."[30]

Going by such logic, the CTA concluded that a refund of erroneously paid or illegally received tax can only be made in favor of the taxpayer, pursuant to Section 204(C) of the NIRC.[31] As categorically ruled in the *Cebu Portland Cement*[32] and *Contex*[33] cases, in the case of indirect taxes, it is the manufacturer

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[25] *Id.* at 77, citing *Maceda v. Macaraig, Jr., et al.*, 274 Phil. 1060 (1991).

[26] 127 Phil. 461 (1967).

[27] G.R. No. 151135, July 2, 2004, 433 SCRA 577.

[28] G.R. No. 140230, December 15, 2005, 478 SCRA 61, citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, *supra* note 27 at 470.

[29] *Rollo*, p. 77.

[30] *Id.* at 78.

[31] *Id.* at 80.

[32] *Cebu Portland Cement Company v. Commissioner of Internal Revenue*, 134 Phil. 735 (1968).

[33] *Contex Corporation v. Commissioner of Internal Revenue*, *supra* note 27.

Supreme Court E-Library

of the goods who is entitled to claim any refund thereof.[34] Therefore, it follows that the indirect taxes paid by the manufacturers or producers of the goods cannot be refunded to the purchasers of the goods because the purchasers are not the taxpayers.[35]

The CTA also emphasized that tax refunds are in the nature of tax exemptions and are, thus, regarded as in derogation of sovereign authority and construed *strictissimi juris* against the person or entity claiming the exemption.[36]

Finally, the CTA disregarded Exxon's argument that "in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the First Division of [the CTA] sanctioned a universal amendment of existing bilateral agreements which the Philippines have with other countries, in violation of the basic principle of '*pacta sunt servanda.*'"[37] The CTA explained that the findings of fact of the First Division (that when Exxon sold the Jet A-1 fuel to international carriers, it did so free of tax) negated any violation of the exemption from excise tax of the petroleum products sold to international carriers. Second, the right of international carriers to invoke the exemption granted under Section 135(a) of the NIRC was neither affected nor restricted in any way by the ruling of the First Division. At the point of sale, the international carriers were free to invoke the exemption from excise taxes of the petroleum products sold to them. Lastly, the lawmaking body was presumed to have enacted a later law with the knowledge of all other laws involving the same subject matter.[38]

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[34] *Rollo*, p. 79, citing Section 204(C) of the 1997 NIRC and *Cebu Portland Cement Company v. Collector of Internal Revenue*, 134 Phil. 735 (1968).

[35] *Id.* at 81.

[36] *Id*.

[37] *Id.* at 82.

[38] *Id*.

Supreme Court E-Library

THE ISSUES

Petitioner now raises the following issues in its petition for review:

I.

WHETHER THE ASSAILED DECISION AND RESOLUTION ERRONEOUSLY PROHIBITED PETITIONER, AS THE DISTRIBUTOR AND VENDOR OF PETROLEUM PRODUCTS TO INTERNATIONAL CARRIERS REGISTERED IN FOREIGN COUNTRIES WHICH HAVE EXISTING BILATERAL AGREEMENTS WITH THE PHILIPPINES, FROM CLAIMING A REFUND OF THE EXCISE TAXES PAID THEREON; AND

II.

WHETHER THE ASSAILED DECISIONS ERRED IN AFFIRMING THE DISMISSAL OF PETITIONER'S CLAIM FOR REFUND BASED ON RESPONDENT'S "MOTION TO RESOLVE FIRST THE ISSUE OF WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY THAT MAY ASK FOR A REFUND," SINCE SAID MOTION IS ESSENTIALLY A MOTION TO DISMISS, WHICH SHOULD HAVE BEEN DENIED OUTRIGHT BY THE COURT OF TAX APPEALS FOR HAVING BEEN FILED OUT OF TIME.

RULING OF THE COURT

I. On respondent's "motion to resolve first the issue of whether or not the petitioner is the proper party that may ask for a refund."

For a logical resolution of the issues, the court will tackle first the issue of whether or not the CTA erred in granting respondent's *Motion to Resolve First the Issue of Whether or Not the Petitioner is the Proper Party that may Ask for a Refund*.[39] In said motion, the CIR prayed that the CTA First Division resolve ahead of the other stipulated issues the sole issue of whether petitioner was the proper party to ask for a refund.[40]

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[39] *Id.* at 204.

[40] *Id.* at 205.

Supreme Court E-Library

Exxon opines that the CIR's motion is essentially a motion to dismiss filed out of time,[41] as it was filed *after* petitioner began presenting evidence[42] more than a year after the filing of the Answer.[43] By praying that Exxon be declared as not the proper party to ask for a refund, the CIR asked for the dismissal of the petition, as the grant of the Motion to Resolve would bring trial to a close.[44]

Moreover, Exxon states that the motion should have also complied with the three-day notice and ten-day hearing rules provided in Rule 15 of the Rules of Court.[45] Since the CIR failed to set its motion for any hearing before the filing of the Answer, the motion should have been considered a mere scrap of paper.[46]

Finally, citing *Maruhom v. Commission on Elections and Dimaporo*,[47] Exxon argues that a defendant who desires a preliminary hearing on special and affirmative defenses must file a motion to that effect at the time of filing of his answer.[48]

The CIR, on the other hand, counters that it did not file a motion to dismiss.[49] Instead, the grounds for dismissal of the case were pleaded as special and affirmative defenses in its Answer filed on December 15, 2003.[50] Therefore, the issue of "whether or not petitioner is the proper party to claim for a tax refund of the excise taxes allegedly passed on by Caltex and Petron" was included as one of the issues in the Joint Stipulation

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[41] *Id.* at 397.

[42] *Id.* at 396.

[43] *Id.* at 397.

[44] *Id.* at 396.

[45] *Id.* at 397.

[46] *Id*.

[47] 387 Phil. 491 (2000).

[48] *Rollo*, p. 399.

[49] *Id.* at 279.

[50] *Id*.

Supreme Court E-Library

of Facts and Issues dated June 24, 2004 signed by petitioner and respondent.[51]

The CIR now argues that nothing in the Rules requires the preliminary hearing to be held before the filing of an Answer.[52] However, a preliminary hearing cannot be held before the filing of the Answer precisely because any ground raised as an affirmative defense is pleaded in the Answer itself.[53]

Further, the CIR contends that the case cited by petitioner, *Maruhom v. Comelec*,[54] does not apply here. In the said case, a motion to dismiss was filed after the filing of the answer.[55] And, the said motion to dismiss was found to be a frivolous motion designed to prevent the early termination of the proceedings in the election case therein.[56] Here, the Motion to Resolve was filed not to delay the disposition of the case, but rather, to expedite proceedings.[57]

Rule 16, Section 6 of the 1997 Rules of Civil Procedure provides:

SEC. 6. ***Pleading grounds as affirmative defenses.*** - If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer, and in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (Underscoring supplied.)

This case is a clear cut application of the above provision. The CIR did not file a motion to dismiss. Thus, he pleaded the

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[51] *Id*.

[52] *Id*.

[53] *Id*.

[54] *Supra* note 47.

[55] *Rollo*, p. 280.

[56] *Id*.

[57] *Id*.

Supreme Court E-Library

grounds for dismissal as affirmative defenses in its Answer and thereafter prayed for the conduct of a preliminary hearing to determine whether petitioner was the proper party to apply for the refund of excise taxes paid.

The determination of this question was the keystone on which the entire case was leaning. If Exxon was not the proper party to apply for the refund of excise taxes paid, then it would be useless to proceed with the case. It would not make any sense to proceed to try a case when petitioner had no standing to pursue it.

In the case of *California and Hawaiian Sugar Company v. Pioneer Insurance and Surety Corporation*,[58] the Court held that:

> Considering that there was only one question, which may even be deemed to be the very touchstone of the whole case, the trial court had no cogent reason to deny the Motion for Preliminary Hearing. Indeed, it committed grave abuse of discretion when it denied a preliminary hearing on a simple issue of fact that could have possibly settled the entire case. Verily, where a preliminary hearing appears to suffice, there is no reason to go on to trial. One reason why dockets of trial courts are clogged is the unreasonable refusal to use a process or procedure, like a motion to dismiss, which is designed to abbreviate the resolution of a case.[59] (Underscoring supplied.)

II. On whether petitioner, as the distributor and vendor of petroleum products to international carriers registered in foreign countries which have existing bilateral agreements with the Philippines, can claim a refund of the excise taxes paid thereon

This brings us now to the substantive issue of whether Exxon, as the distributor and vendor of petroleum products to international carriers registered in foreign countries which have existing bilateral agreements with the Philippines, is the proper party to

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[58] 399 Phil. 795 (2000).

[59] *Id.* at 805.

Supreme Court E-Library

claim a tax refund for the excise taxes paid by the manufacturers, Caltex and Petron, and passed on to it as part of the purchase price.

Exxon argues that having paid the excise taxes on the petroleum products sold to international carriers, it is a real party in interest consistent with the rules and jurisprudence.[60]

It reasons out that the subject of the exemption is neither the seller nor the buyer of the petroleum products, but the products themselves, so long as they are sold to international carriers for use in international flight operations, or to exempt entities covered by tax treaties, conventions and other international agreements for their use or consumption, among other conditions.[61]

Thus, as the exemption granted under Section 135 attaches to the petroleum products and not to the seller, the exemption will apply regardless of whether the same were sold by its manufacturer or its distributor for two reasons.[62] *First*, Section 135 does not require that to be exempt from excise tax, the products should be sold by the manufacturer or producer.[63] *Second*, the legislative intent was precisely to make Section 135 independent from Sections 129 and 130 of the NIRC,[64] stemming from the fact that unlike other products subject to excise tax, petroleum products of this nature have become subject to preferential tax treatment by virtue of either specific international agreements or simply of international reciprocity.[65]

Respondent CIR, on the other hand, posits that Exxon is not the proper party to seek a refund of excise taxes paid on the petroleum products.[66] In so arguing, the CIR states that excise

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[60] *Rollo*, p. 39.

[61] *Id.* at 31.

[62] *Id.* at 32.

[63] *Id*.

[64] *Id.*, citing BIR Ruling DA-038-98.

[65] *Id.* at 34.

[66] *Id.* at 271.

Supreme Court E-Library

taxes are indirect taxes, the liability for payment of which falls on one person, but the burden of payment may be shifted to another.[67] Here, the sellers of the petroleum products or Jet A-1 fuel subject to excise tax are Petron and Caltex, while Exxon was the buyer to whom the burden of paying excise tax was shifted.[68] While the impact or burden of taxation falls on Exxon, as the tax is shifted to it as part of the purchase price, the persons statutorily liable to pay the tax are Petron and Caltex.[69] As Exxon is not the taxpayer primarily liable to pay, and not exempted from paying, excise tax, it is not the proper party to claim for the refund of excise taxes paid.[70]

The excise tax, when passed on to the purchaser, becomes part of the purchase price.

Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported.[71] In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and *second*, that said articles are for domestic sale or consumption, excluding those that are actually exported.[72]

There are, however, certain exemptions to the coverage of excise taxes, such as petroleum products sold to international carriers and exempt entities or agencies. Section 135 of the NIRC provides:

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[67] *Id*.

[68] *Id*.

[69] *Id.* at 273.

[70] *Id.* at 277.

[71] J.C. Vitug and E.D. Acosta, *Tax Law and Jurisprudence*, 271 (2006). See also Republic Act No. 8424 (1997), as amended, Sec. 129.

[72] *Id*.

Supreme Court E-Library

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 of 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. (Underscoring supplied.)

Thus, under Section 135, petroleum products sold to international carriers of foreign registry on their use or consumption outside the Philippines are exempt from excise tax, provided that the petroleum products sold to such 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.[73]

The confusion here stems from the fact that excise taxes are of the nature of indirect taxes, the liability for payment of which may fall on a person other than he who actually bears the burden of the tax.

In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[74] the Court discussed the nature of indirect taxes as follows:

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[73] *Id.* at 281.

[74] *Supra* note 28 at 72, citing *Commissioner of Internal Revenue v. Tours Specialists, Inc.*, 262 Phil. 437 (1990).

Supreme Court E-Library

[I]ndirect taxes are those that are demanded, in the first instance, from, or are paid by, one person 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 goods sold or services rendered.

Accordingly, the party liable for the tax can shift the burden to another, as part of the purchase price of the goods or services. Although the manufacturer/seller is the one who is statutorily liable for the tax, it is the buyer who actually shoulders or bears the burden of the tax, albeit not in the nature of a tax, but part of the purchase price or the cost of the goods or services sold.

As petitioner is not the statutory taxpayer, it is not entitled to claim a refund of excise taxes paid.

The question we are faced with now is, if the party statutorily liable for the tax is different from the party who bears the burden of such tax, who is entitled to claim a refund of the tax paid?

Sections 129 and 130 of the NIRC provide:

SEC. 129. Goods subject to Excise Taxes. - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —

Supreme Court E-Library

(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 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.

(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

Supreme Court E-Library

nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

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(Italics and underscoring supplied.)

As early as the 1960's, this Court has ruled that the proper party to question, or to seek a refund of, an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if he shifts the burden thereof to another.[75]

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[76] the Court held that the sales tax is imposed on the manufacturer or producer and not on the purchaser, "except probably in a very remote and inconsequential sense."[77] Discussing the "passing on" of the sales tax to the purchaser, the Court therein cited Justice Oliver Wendell Holmes' opinion in *Lash's Products v. United States*[78] wherein he said:

"The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. The purchaser does not really pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all. x x x The price is the sum total paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price x x x."[79]

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[75] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112; J.C. Vitug and E.D. Acosta, *Tax Law and Jurisprudence*, 317 (2006), citing *Commissioner of Internal Revenue v. American Rubber Company and Court of Tax Appeals*, 124 Phil. 1471 (1966); *Cebu Portland Cement Co. v. Collector of Internal Revenue*, 134 Phil. 735 (1968).

[76] *Supra* note 26.

[77] *Id.* at 470.

[78] 278 U.S. 175 (1928).

[79] *Supra* note 26 at 465-466.

Supreme Court E-Library

Proceeding from this discussion, the Court went on to state:

> It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. x x x The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.
>
> But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.[80]

The above case was cited in the later case of *Cebu Portland Cement Company v. Collector (now Commissioner) of Internal Revenue*,[81] where the Court ruled that as the sales tax is imposed upon the manufacturer or producer and not on the purchaser, "it is petitioner and not its customers, who may ask for a refund of whatever amount it is entitled for the percentage or sales taxes it paid before the amendment of Section 246 of the Tax Code."[82]

The *Philippine Acetylene* case was also cited in the first *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*[83] case, where the Court held that the proper party to question, or to 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.[84]

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[80] *Id.* at 470, citing 47 Harv. Ld. Rev. 860, 869 (1934).

[81] *Supra* note 32.

[82] *Id.* at 743.

[83] *Supra* note 75. See also *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141.

[84] *Id*.

Supreme Court E-Library

In the *Silkair* cases,[85] petitioner Silkair (Singapore) Pte, Ltd. (*Silkair*), filed with the BIR a written application for the refund of excise taxes it claimed to have paid on its purchase of jet fuel from Petron. As the BIR did not act on the application, Silkair filed a Petition for Review before the CTA.

In both cases, the CIR argued that the excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article.

In the first *Silkair* case, the Court ruled:

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.[86] (Emphasis and underscoring supplied.)

Citing the above case, the second *Silkair* case was promulgated a few months after the first, and stated:

The issue presented is not novel. In a similar case involving the same parties, this Court has categorically ruled that "the proper party

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

[86] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, *supra* note 75.

Supreme Court E-Library

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." 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."[87]

The CTA *En Banc,* thus, held that:

> The determination of who is the taxpayer plays a pivotal role in claims for refund because the same law provides that it is only the taxpayer who has the legal personality to ask for a refund in case of erroneous payment of taxes. Section 204 (C) of the 1997 NIRC, [provides] in part, as follows:
>
> SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may —
>
> x x x xxx xxx
>
> **(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 showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x xxx xxx
>
> (Emphasis shown supplied by the CTA.)[88]

Therefore, as Exxon is not the party statutorily liable for payment of excise taxes under Section 130, in relation to Section 129 of the NIRC, it is not the proper party to claim a refund of any taxes erroneously paid.

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[87] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141, 153-154.

[88] *Rollo*, pp. 75-76.

Supreme Court E-Library

There is no unilateral amendment of existing bilateral agreements of the Philippines with other countries.

Exxon also argues that in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the CTA *En Banc* sanctioned a unilateral amendment of existing bilateral agreements which the Philippines has with other countries, in violation of the basic international law principle of *pacta sunt servanda*.[89] The Court does not agree.

As correctly held by the CTA *En Banc*:

> One final point, petitioner's argument "that in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the First Division of this Court sanctioned a unilateral amendment of existing bilateral agreements which the Philippines have (sic) with other countries, in violation of the basic international principle of "*pacta sunt servanda*" is misplaced. First, the findings of fact of the First Division of this Court that "when petitioner sold the Jet A-1 fuel to international carriers, it did so free of tax" negates any violation of the exemption from excise tax of the petroleum products sold to international carriers insofar as this case is concerned. Secondly, the right of international carriers to invoke the exemption granted under Section 135 (a) of the 1997 NIRC has neither been affected nor restricted in any way by the ruling of the First Division of this Court. At the point of sale, the international carriers are free to invoke the exemption from excise taxes of the petroleum products sold to them. Lastly, the law-making body is presumed to have enacted a later law with the knowledge of all other laws involving the same subject matter."[90] (Underscoring supplied.)

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[89] *Id.* at 34.

[90] *Id.* at 82.