Supreme Court E-Library

SECOND DIVISION

[G.R. No. 198759. July 1, 2013]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; GOODS SUBJECT TO EXCISE TAXES; PERSONS LIABLE.— Under Section 129 of the National Internal Revenue Code (NIRC), as amended, excise taxes are imposed on two (2) kinds of goods, namely: (*a*) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (*b*) things imported. With respect to the first kind of goods, Section 130 of the NIRC states that, unless otherwise specifically allowed, the taxpayer obligated to file the return and pay the excise taxes due thereon is the manufacturer/producer. On the other hand, with respect to the second kind of goods, Section 131 of the NIRC states that the taxpayer obligated to file the return and pay the excise taxes due thereon is the owner or importer, unless the imported articles are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption. While the NIRC mandates the foregoing persons to pay the applicable excise taxes directly to the government, they may, however, shift the economic burden of such payments to someone else – usually the purchaser of the goods – since excise taxes are considered as a kind of indirect tax.

2. ID.; ID.; ID.; INDIRECT TAXES ARE THOSE WHICH ARE DEMANDED IN THE FIRST INSTANCE FROM ONE PERSON WITH THE EXPECTATION AND INTENTION THAT HE CAN SHIFT THE ECONOMIC BURDEN TO SOMEONE ELSE; EVEN IF THE PURCHASER EFFECTIVELY PAYS THE VALUE OF THE TAX, THE MANUFACTURER/PRODUCER OR THE OWNER OR IMPORTER ARE STILL REGARDED AS THE STATUTORY TAXPAYERS UNDER THE LAW.—

Jurisprudence states that indirect taxes are those which are demanded in the first instance from one person with the expectation and intention that he can shift the economic burden to someone else. In this regard, the statutory taxpayer can transfer to its customers the value of the excise taxes it paid or would be liable to pay to the government by treating it as part of the cost of the goods and tacking it on to the selling price. Notably, this shifting process, otherwise known as "passing on," is largely a contractual affair between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer/producer (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) are still regarded as the statutory taxpayers under the law. To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.

3. ID.; ID.; ID.; TAX REFUND; WHILE IT IS A SETTLED RULE THAT THE STATUTORY TAXPAYER IS THE PROPER PARTY TO SEEK OR CLAIM A REFUND, THE RULE SHOULD NOT APPLY TO INSTANCES WHERE THE LAW CLEARLY GRANTS THE PARTY TO WHICH THE ECONOMIC BURDEN OF THE TAX IS SHIFTED AS EXEMPTION FROM BOTH DIRECT AND INDIRECT TAXES.— In this relation, Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135 of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden. For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as 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. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke

Supreme Court E-Library

the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*: **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**. x x x However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted as exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

4. ID.; ID.; ID.; ID.; SINCE PETITIONER PHILIPPINE AIRLINES' (PAL) FRANCHISE GRANTS IT EXEMPTION FROM BOTH DIRECT AND INDIRECT TAXES ON ITS PETROLEUM PRODUCTS, IT IS ENDOWED WITH LEGAL STANDING TO FILE THE SUBJECT TAX REFUND CLAIM, NOTWITHSTANDING THE FACT THAT IT IS NOT THE STATUTORY TAXPAYER AS CONTEMPLATED BY LAW.— In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. x x x Based on Section 13 of its franchise, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement." In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (*a*) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (*b*) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under

Supreme Court E-Library

its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.

5. ID.; ID.; ID.; ID.; THE PHRASE "PURCHASE OF DOMESTIC PETROLEUM PRODUCTS FOR USE IN ITS DOMESTIC OPERATIONS" WHICH CHARACTERIZES THE TAX PRIVILEGE LETTER OF INSTRUCTION (LOI) 1483 WITHDREW REFERS ONLY TO PAL'S TAX EXEMPTIONS ON PASSED ON EXCISE TAX COSTS DUE FROM THE SELLER, MANUFACTURER/PRODUCER OF LOCALLY MANUFACTURED/PRODUCED GOODS FOR DOMESTIC SALE AND DOES NOT, IN ANY WAY, PERTAIN TO ANY OF PAL'S TAX PRIVILEGES CONCERNING IMPORTED GOODS.— LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. x x x On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL. The Court disagrees. Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (*a*) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (*b*) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (*c*), all taxes due on all importations by PAL of aviation gas, fuel, and oil. Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, *i.e.*, the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (*a*) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic

Supreme Court E-Library

sale (first tax exemption under the second kind of tax privilege); and (*b*) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same. In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" – **which characterizes the tax privilege LOI 1483 withdrew** – ***refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale*** and ***does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***, may it be (*a*) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (*b*) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege).

6. ID.; ID.; ID.; ID.; THE SUBJECT PETROLEUM PRODUCTS ARE IN THE NATURE OF "THINGS IMPORTED" AND THUS, BEYOND THE COVERAGE OF LOI 1483.— Both textual and contextual analyses lead to this conclusion: ***First***, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported. ***Second***, examining its context, certain "whereas clauses" in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are

manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist. In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon.

7. ID.; ID.; ID.; ID.; RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED; PETITIONER HAS SUFFICIENTLY PROVED ITS ENTITLEMENT TO A TAX REFUND OF THE EXCISE TAXES SUBJECT OF THE PRESENT CASE.— Section 229 of the NIRC provides that the claim for refund should be filed within two (2) years from the date of payment of the tax. x x x PAL filed its administrative claim for refund on October 29, 2004 and its judicial claim with the CTA on July 25, 2006. In this regard, PAL's claims for refund were filed on time in accordance with the 2-year prescriptive period. ***Second***, PAL paid the lower of the basic corporate income tax or the franchise tax as provided for in the afore-quoted Section 13 of its franchise. In its income tax return for FY 2004-2005, PAL reported no net taxable income for the period resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period. ***Third***, the subject excise taxes were duly declared and remitted to the BIR. Contrary to

Supreme Court E-Library

the findings of the CTA that the excise taxes sought to be refunded were not the very same taxes that were declared in the Excise Tax Returns filed by Caltex (underscoring the discrepancy of ₱23,855.00 between the amount of ₱2,975,892.90 declared in the said returns and the amount of ₱2,952.037.90 sought to be refunded), an examination of the records shows a sufficient explanation for the difference. In the Certification of Caltex on the volume of aviation fuel sold to PAL and its Summary of Local Sales (see table below), Caltex sold 810,870 liters during the subject period out of which 804,370 liters were sold to PAL, while the difference of 6,500 liters were sold to its other client, LBOrendain. x x x Per Summary of Removals and Excise Tax Due on Mineral Products Chargeable Against Payments attached to the Excise Tax Returns, the excise tax rate is ₱3.67 per liter, which, if multiplied with 6,500 liters sold by Caltex to LBOrendain, would equal the discrepancy amount of ₱23,855.00. Further examination of the records also reveals that the amount reflected in Caltex's Certification is consistent with the amount indicated in Caltex's Aviation Receipts and Invoices and Aviation Billing Invoice. Thus, finding that PAL has sufficiently proved its entitlement to a tax refund of the excise taxes subject of this case, the Court hereby grants its petition and consequently, annuls the assailed CTA resolutions.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the May 9, 2011 Decision[2] and September 16, 2011

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[1] *Rollo,* pp. 13-50.

[2] *Id*. at 64-85. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Ernesto D. Acosta (on wellness leave), and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar

Supreme Court E-Library

Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 588 which denied petitioner Philippine Airlines, Inc.'s (PAL) claim for refund of the excise taxes imposed on its purchase of petroleum products from Caltex Philippines, Inc. (Caltex).

The Facts

For the period July 24 to 28, 2004, Caltex sold 804,370 liters of imported Jet A-1 fuel to PAL for the latter's domestic operations.[4] Consequently, on July 26, 27, 28 and 29, 2004, Caltex electronically filed with the Bureau of Internal Revenue (BIR) its Excise Tax Returns for Petroleum Products, declaring the amounts of ₱1,232,798.80, ₱686,767.10, ₱623,422.90 and ₱433,904.10, respectively, or a total amount of ₱2,975,892.90, as excise taxes due thereon.[5]

On August 3, 2004, PAL received from Caltex an Aviation Billing Invoice for the purchased aviation fuel in the amount of US$313,949.54, reflecting the amount of US$52,669.33 as the related excise taxes on the transaction. This was confirmed by Caltex in a Certification dated August 20, 2004 where it indicated that: (*a*) the excise taxes it paid on the imported petroleum products amounted to ₱2,952,037.90, *i.e.*, the peso equivalent of the abovementioned dollar amount; (*b*) the foregoing excise tax payment was passed on by it to PAL; and (*c*) it did not file any claim for the refund of the said excise tax with the BIR.[6]

On October 29, 2004, PAL, through a letter-request dated October 15, 2004 addressed to respondent Commissioner of

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A. Casanova (on wellness leave), Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring.

[3] *Id*. at 55-63. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring.

[4] *Id*. at 68.

[5] *Id*. at 68-69.

[6] *Id*.

Supreme Court E-Library

Internal Revenue (CIR), sought a refund of the excise taxes passed on to it by Caltex. It hinged its tax refund claim on its operating franchise, *i.e.*, Presidential Decree No. 1590[7] issued on June 11, 1978 (PAL's franchise), which conferred upon it certain tax exemption privileges on its purchase and/or importation of aviation gas, fuel and oil, including those which are passed on to it by the seller and/or importer thereof. Further, PAL asserted that it had the legal personality to file the aforesaid tax refund claim.[8]

Due to the CIR's inaction, PAL filed a Petition for Review with the CTA on July 25, 2006.[9] In its Answer, the CIR averred that since the excise taxes were paid by Caltex, PAL had no cause of action.[10]

The CTA Division Ruling

Relying on *Silkair (Singapore) Pte. Ltd. v. CIR*[11] (*Silkair*), the CTA Second Division denied PAL's petition on the ground that only a statutory taxpayer (referring to Caltex in this case) may seek a refund of the excise taxes it paid.[12] It added that even if the tax burden was shifted to PAL, the latter cannot be deemed a statutory taxpayer.

It further ruled that PAL's claim for refund should be denied altogether on account of Letter of Instruction No. 1483 (LOI 1483) which already withdrew the tax exemption privileges previously granted to PAL on its purchase of domestic petroleum products, of which the transaction between PAL and Caltex was characterized. [13]

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[7] "AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES."

[8] *Rollo*, pp. 69-70.

[9] *Id.* at 70.

[10] *Id*.

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

[12] *Rollo*, pp. 112-113.

[13] *Id*. at 116-124.

Supreme Court E-Library

PAL moved for reconsideration, but the same was denied in a Resolution[14] dated January 14, 2010, prompting it to elevate the matter to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision dated May 9, 2011,[15] the CTA *En Banc* affirmed the ruling of the CTA Second Division, reiterating that it was Caltex, the statutory taxpayer, which had the personality to file the subject refund claim. It explained that the payment of the subject excise taxes, being in the nature of indirect taxes, remained to be the direct liability of Caltex. While the tax burden may have been shifted to PAL, the liability passed on to it should not be treated as a tax but a part of the purchase price which PAL had to pay to obtain the goods.[16] Further, it held that PAL's exemption privileges on the said excise taxes, which it claimed through its franchise, had already been withdrawn by LOI 1483.[17]

Aggrieved, PAL filed a motion for reconsideration which was, however, denied in a Resolution dated September 16, 2011.[18]

Hence, the instant petition.

The Issues Before the Court

The following issues have been presented for the Court's resolution: (*a*) whether PAL has the legal personality to file a claim for refund of the passed on excise taxes; (*b*) whether the sale of imported aviation fuel by Caltex to PAL is covered by LOI 1483 which withdrew the tax exemption privileges of PAL on its purchases of domestic petroleum products for use in its domestic operations; and (*c*) whether PAL has sufficiently proved its entitlement to refund.

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[14] *Id*. at 87-102. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

[15] *Id*. at 64-85.

[16] *Id*. at 80.

[17] *Id*. at 81-82.

[18] *Id*. at 55-63.

Supreme Court E-Library

The Ruling of the Court

The petition is meritorious.

A. PAL's legal personality to file a claim for refund of excise taxes.

The CIR argues that PAL has no personality to file the subject tax refund claim because it is not the statutory taxpayer. As basis, it relies on the *Silkair* ruling which enunciates 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 the burden to pay such was shifted to another.[19]

PAL counters that the doctrine laid down in *Silkair* is inapplicable, asserting that it has the legal personality to file the subject tax refund claim on account of its tax exemption privileges under its legislative franchise which covers both direct and indirect taxes. In support thereof, it cites the case of *Maceda v. Macaraig, Jr.*[20] (*Maceda*).

The Court agrees with PAL.

Under Section 129 of the National Internal Revenue Code (NIRC),[21] as amended, excise taxes are imposed on two (2) kinds of goods, namely: (*a*) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (*b*) things imported.[22]

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[19] *Id.* at 153-161.

[20] G.R. No. 88291, June 8, 1993, 223 SCRA 217. This is the resolution denying the petitioner's motion for reconsideration of the Court's May 31, 1991 Decision in the same case and in effect, upholding the tax refund claim of the National Power Corporation.

[21] Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997."

[22] 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**.

Supreme Court E-Library

With respect to the first kind of goods, Section 130 of the NIRC states that, unless otherwise specifically allowed, the taxpayer obligated to file the return and pay the excise taxes due thereon is the manufacturer/producer.[23]

On the other hand, with respect to the second kind of goods, Section 131 of the NIRC states that the taxpayer obligated to file the return and pay the excise taxes due thereon is the owner or importer, unless the imported articles are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption.[24]

While the NIRC mandates the foregoing persons to pay the applicable excise taxes directly to the government, they may, however, shift the economic burden of such payments to someone else – usually the purchaser of the goods – since excise taxes are considered as a kind of indirect tax.

The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV. (Emphasis and underscoring supplied)

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[23] 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 <u>manufacturer or producer</u>** before removal of domestic products form place of production x x x. (Emphasis and underscoring supplied)

x x x x x x x x x

[24] SEC. 131. *Payment of Excise Taxes on Imported Articles*.–

(A) Persons Liable.– **Excise taxes on imported articles shall be paid by the <u>owner or importer</u>** to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. (Emphasis and underscoring supplied)

Supreme Court E-Library

Jurisprudence states that indirect taxes are those which are demanded in the first instance from one person with the expectation and intention that he can shift the economic burden to someone else.[25] In this regard, the statutory taxpayer can transfer to its customers the value of the excise taxes it paid or would be liable to pay to the government by treating it as part of the cost of the goods and tacking it on to the selling price.[26] Notably, this shifting process, otherwise known as "passing on," is largely a contractual affair between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer/producer (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) are still regarded as the statutory taxpayers under the law. To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.[27]

In this relation, Section 204(c)[28] of the NIRC states that it is the statutory taxpayer which has the legal personality to file

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[25] *CIR v. John Gotamco & Sons, Inc.*, G.R. No. L- 31092, February 27, 1987, 148 SCRA 36, 40.

[26] See *Silkair Singapore Pte. Ltd. v. CIR*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141, 156.

[27] *Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. CIR*, G.R. No. 180909, January 19, 2011, 640 SCRA 203, 222, citing Justice Oliver Wendell Holmes' opinion in *Lash's Products v. United States*,278 U.S. 175 (1928).

[28] 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

Supreme Court E-Library

a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135[29] of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden.[30]

For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2)[31] of the Air

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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 and underscoring supplied)

[29] 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.

[30] See the three (3) subsequent *Silkair* cases namely: (*a*) *Silkair Singapore Pte. Ltd. v. CIR*, *supra* note 26; (*b*) *Silkair Singapore Pte. Ltd. v. CIR*, G.R. No. 184398, February 25, 2010, 613 SCRA 638; and *(c) Silkair Singapore Pte. Ltd. v. CIR*, G.R. No. 166482, January 25, 2012, 664 SCRA 33. See also *Exxonmobil Petroleum and Chemical Holdings, Inc. v. CIR*, *supra* note 27.

[31] 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 territories of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over

Supreme Court E-Library

Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*:

> **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.[32] (Emphasis supplied)

However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted as exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

To elucidate, in *Maceda*, the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter

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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.

[32] *Supra* note 11, at 112.

Supreme Court E-Library

specifically granted it an exemption from both direct and indirect taxes, *viz*:

> x x x [T]he Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation**. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR**.[33] (Emphasis and underscoring supplied)

Notably, the Court even discussed the *Maceda* ruling in *Silkair*, highlighting the relevance of the exemptions in NPC's charter to its claim for tax refund:

> Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." **It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes**.
>
> Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone*

[33] *Supra* note 20, at 256.

Supreme Court E-Library

Company, this Court clarified the ruling in *Maceda v. Macaraig, Jr., viz*:

> It may be so that in *Maceda vs. Macaraig, Jr.*, the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "*all taxes*" excludes indirect taxes, **unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption**. Wrote the Court:
>
> > x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, ***both direct and indirect taxes*** on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees…"
> >
> > The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before. . .
> >
> > x x x x x x x x x
> >
> > It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals.

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.[34] (Emphasis and underscoring supplied)

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[34] *Supra* note 11, at 112-114.

Supreme Court E-Library

Based on these rulings, it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.

In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:

SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited** to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are **directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement**; provided, that all such purchases by, sales or deliveries

Supreme Court E-Library

of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Emphasis and underscoring supplied)

x x x x x x x x x

Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.[35] The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement."[36] In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (*a*) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (*b*) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.

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[35] SEC. 13 of PAL's franchise. See also *CIR v. PAL*, G.R. No. 180066, July 7, 2009, 592 SCRA 237, 250.

[36] SEC. 13(b)(1) of PAL's franchise.

Supreme Court E-Library

B. Coverage of LOI 1483.

LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. It pertinently provides:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the **tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn**. (Emphasis and underscoring supplied)

On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL.

The Court disagrees.

Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (*a*) all taxes due on PAL's local purchase of aviation gas, fuel and oil;[37] (*b*) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL;[38] and (*c*),

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[37] The pertinent portion of PAL's franchise reads:

> 1. All taxes, duties, charges, royalties, or fees due on **local purchases by the grantee** of aviation gas, fuel, and oil, whether refined or in crude form x x x. (Emphasis and underscoring supplied)

[38] The pertinent portion of PAL's franchise reads:

> x x x and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products **but are billed or passed on the grantee** either as part of the price or cost thereof or by mutual agreement or other arrangement; (Emphasis and underscoring supplied)
>
> x x x x x x x x x

Supreme Court E-Library

all taxes due on all importations by PAL of aviation gas, fuel, and oil.[39]

Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/ produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, *i.e.*, the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (*a*) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (*b*) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.[40]

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[39] The pertinent portion of PAL's franchise reads:

> 2. All taxes, including compensating taxes, duties, charges, royalties, or fees due **on all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Emphasis and underscoring supplied)
>
> x x x x x x x x x

[40] See SEC. 129 in relation to SEC. 131 of the NIRC.

Supreme Court E-Library

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" – **which characterizes the tax privilege LOI 1483 withdrew** – ***refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale***[41] and ***does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***,[42] may it be (*a*) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (*b*) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:

First, examining its phraseology, the word "domestic," which means "of or relating to one's own country"[43] or "an article of domestic manufacture,"[44] clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition[45] as opposed to things imported.[46] In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.

Second, examining its context, certain "whereas clauses"[47] in LOI 1483 disclose that the said law was intended to lift the

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[41] The first tax exemption under the second kind of tax privilege, relating to the first type of excisable articles under SEC. 129 of the NIRC.

[42] The second type of excisable articles under SEC. 129 of the NIRC.

[43] *BLACK'S LAW DICTIONARY*, 9th Ed. (2009), p. 557.

[44] <http://www.merriam-webster.com/dictionary/domestic?show=0&t=1372905302> (visited January 25, 2013).

[45] The first type of excisable articles under SEC. 129 of the NIRC.

[46] The second type of excisable articles under SEC. 129 of the NIRC.

[47] WHEREAS, **by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969**, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;

Supreme Court E-Library

tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported).[48] In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term

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WHEREAS, **this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment** of similarly situated enterprises; (Emphasis and underscoring supplied)

x x x x x x x x x

[48] By way of background, the Subject DOF Ruling was issued in response to a letter seeking for the DOF's opinion regarding the scope of the "imposition of the specific tax on aviation gasoline and other fuels **purchased locally** by airline companies **direct from local sources** of production for use in domestic flight operations." The conflict stemmed from the import of BIR Ruling No. 65-116, issued on October 5, 1965, which "exempted from the specific tax aviation fuel and other fuel oils imported by [PAL], and similar franchise grantees ***but not those locally purchased by them for use in domestic flight operations***." Through the Subject DOF Ruling, the DOF eventually overturned BIR Ruling No. 65-116, clarifying that PAL's franchise also conferred upon it tax exemption privileges concerning aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales and not only to those imported. The DOF stated:

> In view thereof, and considering that Ruling No. 65-116 of the [BIR] is not in harmony with the established doctrine laid down by the Supreme Court on the matter, this Department hereby modifies the same and rules that aviation gasoline and other fuel oils directly purchased for domestic consumption by airline companies which are exempt from the payment of specific tax pursuant to their franchise are **also exempt from the payment of specific tax on their domestic purchases of the same articles** provided such airline companies are already owners and possessors of such products prior to or at the time of their removal from the place of production or bonded warehouses of the local refineries. x x x (See Subject DOF Ruling, pp. 3-4; emphasis and underscoring supplied)

Supreme Court E-Library

"purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.

In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon.

C. PAL's entitlement to refund.

It is hornbook principle that the Court is not a trier of facts and often, remands cases to the lower courts for the determination of questions of such character. However, when the trial court had already received all the evidence of the parties, the Court may resolve the case on the merits instead of remanding them in the interest of expediency and to better serve the ends of justice.[49]

Applying these principles, the Court finds that the evidence on record shows that PAL was able to sufficiently prove its entitlement to the subject tax refund. The following incidents attest to the same:

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[49] "x x x On many occasions, the Court, in the public interest and expeditious administration of justice, has resolved action on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be subserved by the remand of the case or where the trial court had already received all the evidence of the parties." (*Apo Fruits Corporation v. CA*, G.R. No. 164195, February 6, 2007, 514 SCRA 537).

Supreme Court E-Library

First, PAL timely filed its claim for refund.

Section 229[50] of the NIRC provides that the claim for refund should be filed within two (2) years from the date of payment of the tax.

Shortly after imported aviation fuel was delivered to PAL, Caltex electronically filed the requisite excise tax returns and paid the corresponding amount of excise taxes, as follows:

DATE OF FILING AND PAYMENT	FILING REFERENCE NO.
July 26, 2004	074400000178825
July 27, 2004	070400000179115
July 28, 2004	070400000179294
July 29, 2004	070400000179586

PAL filed its administrative claim for refund on October 29, 2004[51] and its judicial claim with the CTA on July 25, 2006.[52] In this regard, PAL's claims for refund were filed on time in accordance with the 2-year prescriptive period.

Second, PAL paid the lower of the basic corporate income tax or the franchise tax as provided for in the afore-quoted Section 13 of its franchise.

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[50] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*–

x x x x x x x x x

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.

[51] *Rollo*, p. 69.

[52] *Id*. at 70.

Supreme Court E-Library

In its income tax return for FY 2004-2005,[53] PAL reported no net taxable income for the period resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period.

Third, the subject excise taxes were duly declared and remitted to the BIR.

Contrary to the findings of the CTA that the excise taxes sought to be refunded were not the very same taxes that were declared in the Excise Tax Returns filed by Caltex[54] (underscoring the discrepancy of ₱23,855.00 between the amount of ₱2,975,892.90 declared in the said returns and the amount of ₱2,952.037.90[55] sought to be refunded), an examination of the records shows a sufficient explanation for the difference.

In the Certification[56] of Caltex on the volume of aviation fuel sold to PAL and its Summary of Local Sales[57] (see table below), Caltex sold 810,870 liters during the subject period out of which 804,370 liters were sold to PAL, while the difference of 6,500 liters[58] were sold to its other client, LBOrendain.

	DATE OF SALE					
DOCUMENT	July 24, 2004	July 25, 2004	July 26, 2004	July 27, 2004	July 28, 2004	TOTAL
Certification	174,070	158,570	187,130	166,370	118,230	804,370
Summary of Local Sales	177,070	158,570	187,130	166,370	121,730	810,870
DIFFERENCE	3,000	0	0	0	3,500	6,500

[53] Exhibits "VVV"- "BBBB", CTA *rollo*, pp. 573-596.

[54] Exhibits "PPP"- "SSS", CTA *rollo*, pp. 339-357.

[55] *Rollo*, p. 126.

[56] Exhibit "GGG", CTA *rollo*, p. 321.

[57] Exhibit "DDD", CTA *rollo*, pp. 314-315.

[58] 810,870 liters minus 804,370 liters.

Supreme Court E-Library

Per Summary of Removals and Excise Tax Due on Mineral Products Chargeable Against Payments attached to the Excise Tax Returns,[59] the excise tax rate is ₱3.67 per liter, which, if multiplied with 6,500 liters sold by Caltex to LBOrendain, would equal the discrepancy amount of ₱23,855.00.

Further examination of the records also reveals that the amount reflected in Caltex's Certification is consistent with the amount indicated in Caltex's Aviation Receipts and Invoices[60] and Aviation Billing Invoice.[61]

Thus, finding that PAL has sufficiently proved its entitlement to a tax refund of the excise taxes subject of this case, the Court hereby grants its petition and consequently, annuls the assailed CTA resolutions.

WHEREFORE, the petition is hereby **GRANTED.** The May 9, 2011 Decision and September 16, 2011 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case No. 588 are **ANNULLED** and **SET ASIDE.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of the petitioner Philippine Airlines, Inc. in the amount of ₱2,952,037.90.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

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[59] CTA *rollo*, pp. 48-49, 53-54, 58-59, and 63-64.

[60] Exhibits "G" to "BBB", CTA *rollo*, pp. 264-311.

[61] Exhibit "CCC", CTA *rollo*, pp. 312-313.