

## SECOND DIVISION

[ G.R. No. 198759, July 01, 2013 ]

### PHILIPPINE AIRLINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

##### PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the May 9, 2011 Decision<sup>[2]</sup> and September 16, 2011 Resolution<sup>[3]</sup> 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.<sup>[4]</sup> 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 P1,232,798.80, P686,767.10, P623,422.90 and P433,904.10, respectively, or a total amount of P2,975,892.90, as excise taxes due thereon.<sup>[5]</sup>

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 P2,952,037.90, *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.<sup>[6]</sup>

On October 29, 2004, PAL, through a letter-request dated October 15, 2004 addressed to respondent Commissioner of 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<sup>[7]</sup> 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.<sup>[8]</sup>

Due to the CIR's inaction, PAL filed a Petition for Review with the CTA on July 25, 2006.<sup>[9]</sup> In its Answer, the CIR averred that since the excise taxes were paid by

Caltex, PAL had no cause of action.<sup>[10]</sup>

### **The CTA Division Ruling**

Relying on *Silkair (Singapore) Pte. Ltd. v. CIR*<sup>[11]</sup> (*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.<sup>[12]</sup> 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.<sup>[13]</sup>

PAL moved for reconsideration, but the same was denied in a Resolution<sup>[14]</sup> 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,<sup>[15]</sup> 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.<sup>[16]</sup> 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.<sup>[17]</sup>

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

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.

### **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.<sup>[19]</sup>

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.*<sup>[20]</sup> (*Maceda*).

The Court agrees with PAL.

Under Section 129 of the National Internal Revenue Code (NIRC),<sup>[21]</sup> 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.<sup>[22]</sup>

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.<sup>[23]</sup>

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.<sup>[24]</sup>

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.

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.<sup>[25]</sup> 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.<sup>[26]</sup> 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.<sup>[27]</sup>

In this relation, Section 204(c)<sup>[28]</sup> 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<sup>[29]</sup> 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.<sup>[30]</sup>

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)<sup>[31]</sup> 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 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.

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.<sup>[32]</sup> (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 an 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 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.**<sup>[33]</sup> (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 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