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FIRST DIVISION

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

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

D E C I S I O N

LEONARDO-DE CASTRO, J.:

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

The antecedent facts are as follows:

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

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

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

Since the BIR took no action on petitioner's claim for refund, petitioner sought judicial recourse and filed on June 27, 2002, a petition for review with the CTA (docketed as CTA Case No. 6491), to prevent the lapse of the two-year prescriptive period within which to judicially claim a refund under Section 229[4] of the NIRC. Petitioner invoked its exemption from payment of excise taxes in accordance with the provisions of Section 135(b) of the NIRC, which exempts from excise taxes the

entities covered by tax treaties, conventions and other international agreements; provided that the country of said carrier or exempt entity likewise exempts from similar taxes the petroleum products sold to Philippine carriers or entities. In this regard, petitioner relied on the reciprocity clause under Article 4(2) of the Air Transport Agreement entered between the Republic of the Philippines and the Republic of Singapore.

Section 135(b) of the NIRC provides:

> SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* - Petroleum products sold to the following are exempt from excise tax:
>
> x x x x
>
> > (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided*, *however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; x x x.

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

> ART. 4. x x x.
>
> x x x x
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> (2) Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.

In a Decision[5] dated July 27, 2006, the CTA First Division found that petitioner was qualified for tax exemption under Section 135(b) of the NIRC, as long as the Republic of Singapore exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies under Article 4(2) of the Air Transport Agreement quoted above. However, it ruled that petitioner was not entitled to the excise tax exemption for failure to present proof that it was authorized to operate in the Philippines during the period material to the case due to the non-admission of

some of its exhibits, which were merely photocopies, including Exhibit "A" which was petitioner's Certificate of Registration with the Securities and Exchange Commission (SEC) and Exhibits "P," "Q" and "R" which were its operating permits issued by the Civil Aeronautics Board (CAB) to fly the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes for the period October 1999 to October 2000.

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

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

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

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

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

In a separate Concurring and Dissenting Opinion,[10] CTA Presiding Justice Ernesto D. Acosta opined that petitioner was exempt from the payment of excise taxes based on Section 135 of the NIRC and Article 4 of the Air Transport Agreement between the Philippines and Singapore. However, despite said exemption, petitioner's claim for refund cannot be granted since it failed to establish its authority to operate in the Philippines during the period subject of the claim. In other words, Presiding Justice Acosta voted to uphold *in toto* the Decision of the CTA First Division.

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

I

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

II

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

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

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

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

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

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

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

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

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

Petitioner's assertion that the CTA may take judicial notice of its SEC Registration,

previously offered and admitted in evidence in similar cases before the CTA, is untenable.

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

> Anent petitioner's argument that the Court in Division should have taken judicial notice of the existence of Exhibit "A" (petitioner's SEC Certificate of Registration), although not properly identified during trial as this has previously been offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court, We are in agreement with the ruling of the Court in Division, as discussed in its Resolution dated April 12, 2005 resolving petitioner's Motion for Reconsideration on the court's non-admission of Exhibits "A", "P", "Q" and "R", wherein it said that:
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> > "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. **Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.**
> >
> > The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. **A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.**
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> > Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:
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> > > Sec. 3. *Judicial notice, when hearing necessary.* - During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
> > >
> > > After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter