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SECOND DIVISION

[G.R. No. 173594, February 06, 2008]

SILKAIR (SINGAPORE) PTE, LTD., Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner, Silkair (Singapore) Pte. Ltd. (Silkair), a corporation organized under the laws of Singapore which has a Philippine representative office, is an online international air carrier operating the Singapore-Cebu-Davao-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Singapore routes.

On December 19, 2001, Silkair filed with the Bureau of Internal Revenue (BIR) a written application for the refund of P4,567,450.79 excise taxes it claimed to have paid on its purchases of jet fuel from Petron Corporation from January to June 2000.[1]

As the BIR had not yet acted on the application as of December 26, 2001, Silkair filed a Petition for Review[2] before the CTA following *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*[3]

Opposing the petition, respondent Commissioner on Internal Revenue (CIR) alleged in his Answer that, among other things,

> Petitioner failed to prove that the sale of the petroleum products was directly made from a domestic oil company to the international carrier. 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.[4] (Emphasis and underscoring supplied)

By Decision of May 27, 2005, the Second Division of the CTA denied Silkair's petition on the ground that as the excise tax was imposed on Petron Corporation as the manufacturer of petroleum products, any claim for refund should be filed by the latter; and where the burden of tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost of the goods purchased. Thus the CTA discoursed:

> The liability for excise tax on petroleum products that are being removed

from its refinery is imposed on the manufacturer/producer *(Section 130 of the NIRC of 1997)*. x x x

x x x x

While it is true that in the case of excise tax imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the latter is the proper party to claim for the refund in the case of exemption from excise tax. **Since the excise tax was imposed upon Petron Corporation as the manufacturer of petroleum products**, pursuant to Section 130(A)(2), and that the corresponding excise taxes were indeed, paid by it, . . . **any claim for refund of the subject excise taxes should be filed by Petron Corporation** as the taxpayer contemplated under the law. Petitioner cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself.

Therefore, the right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR. Respondent, on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden shifted to the former by the latter. The excise tax partaking the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. **Where the burden of the tax is shifted to the [purchaser], the amount passed on to it is no longer a tax** but becomes an **added cost on the goods purchased** which constitutes a part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on Petron Corporation though the impact of taxation or the burden of taxation falls on another person, which in this case is petitioner Silkair.[5] (Italics in the original; emphasis and underscoring supplied)

Silkair filed a Motion for Reconsideration[6] during the pendency of which or on September 12, 2005 the Bengzon Law Firm entered its appearance as counsel,[7] without Silkair's then-counsel of record (Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez or "JGLaw") having withdrawn as such.

By Resolution[8] of September 22, 2005, the CTA Second Division denied Silkair's motion for reconsideration. A copy of the Resolution was furnished Silkair's counsel JGLaw which received it on October 3, 2005.[9]

On October 13, 2005, JGLaw, with the conformity of Silkair, filed its Notice of Withdrawal of Appearance.[10] On even date, Silkair, through the Bengzon Law Firm, filed a Manifestation/Motion[11] stating:

Petitioner was formerly represented xxx by JIMENEZ GONZALES LIWANAG BELLO VALDEZ CALUYA & FERNANDEZ (JGLaw).

1. On 24 August 2005, petitioner served notice to JGLaw of its decision to cease all legal representation handled by the latter on behalf of the petitioner. Petitioner also requested JGLaw to make arrangements for the transfer of all files relating to its legal representation on behalf of petitioner to the undersigned counsel. x x x

2. The undersigned counsel was engaged to act as counsel for the petitioner in the above-entitled case; and thus, filed its entry of appearance on 12 September 2005. x x x

3. The undersigned counsel, through petitioner, has received information that the Honorable Court promulgated a Resolution on petitioner's Motion for Reconsideration. To date, the undersigned counsel has yet to receive an official copy of the above-mentioned Resolution. In light of the foregoing, undersigned counsel hereby respectfully requests for an official copy of the Honorable Court's Resolution on petitioner's Motion for Reconsideration x x x.[12] (Underscoring supplied)

On October 14, 2005, the Bengzon Law Firm received its requested copy of the September 22, 2005[13] CTA Second Division Resolution. Thirty-seven days later or on October 28, 2005, Silkair, through said counsel, filed a Motion for Extension of Time to File Petition for Review[14] before the CTA En Banc which gave it until November 14, 2005 to file a petition for review.

On November 11, 2005, Silkair filed another Motion for Extension of Time.[15] On even date, the Bengzon Law Firm informed the CTA of its withdrawal of appearance as counsel for Silkair with the information, that Silkair would continue to be represented by Atty. Teodoro A. Pastrana, who used to be with the firm but who had become a partner of the Pastrana and Fallar Law Offices.[16]

The CTA En Banc granted Silkair's second Motion for Extension of Time, giving Silkair until November 24, 2005 to file its petition for review. On November 17, 2005, Silkair filed its Petition for Review[17] before the CTA En Banc.

By Resolution of May 19,2006, the CTA En Banc dismissed[18] Silkair's petition for review for having been filed out of time in this wise:

> A petitioner is given a period of fifteen (15) days from notice of award, judgment, final order or resolution, or denial of motion for new trial or reconsideration to appeal to the proper forum, in this case, the CTA En Banc. This is clear from both **Section 11 and Section 9 of Republic Act No. 9282** x x x.

x x x x

> The petitioner, through its counsel of record Jimenez, Gonzalez, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices, received the Resolution dated September 22, 2005 on October 3, 2005. At that time, the petitioner had two counsels of record, namely, Jimenez, Gonzales, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices and The Bengzon Law Firm which filed its Entry of Appearance on September 12, 2005. However, as of said date, Atty. Mary Jane B. Austria-Delgado of Jimenez, Gonzales, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices was still the counsel of record considering that the Notice of Withdrawal of Appearance signed by Atty. Mary Jane B. Austria-Delgado was filed only on October 13, 2005 or ten (10) days after receipt of the September 22, 2005 Resolution of the Court's Second Division. This notwithstanding, **Section 2 of Rule 13 of the Rules of Court** provides that if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court. Where a party is represented by more than one counsel of record, "notice to any one of the several counsel on record is equivalent to notice to all the counsel (**Damasco vs. Arrieta, et. al.,** *7 SCRA 224*)." Considering that petitioner, through its counsel of record, had received the September 22, 2005 Resolution as early as October 3, 2005, it had only until October 18, 2005 within which to file its Petition for Review. Petitioner only managed to file the Petition for Review with the Court *En Banc* on November 17, 2005 or [after] thirty (30) days had lapsed from the final date of October 18, 2005 to appeal.
>
> The argument that it requested Motions for Extension of Time on October 28, 2005 or ten (10) days from the appeal period and the second Motion for Extension of Time to file its Petition for Review on November 11, 2005 and its allowance by the CTA *En Banc* notwithstanding, the questioned Decision is no longer appealable for failure to timely file the necessary Petition for Review.[19] (Emphasis in the original)

In a Separate Concurring Opinion,[20] CTA Associate Justice Juanito C. Castañeda, Jr. posited that Silkair is not the proper party to claim the tax refund.

Silkair filed a Motion for Reconsideration[21] which the CTA En Banc denied.[22] Hence, the present Petition for Review[23] which raises the following issues:

> I. WHETHER OR NOT THE PETITION FOR REVIEW FILED WITH THE HONORABLE COURT OF TAX APPEALS EN BANC WAS TIMELY FILED.
>
> II. APPEAL BEING AN ESSENTIAL PART OF OUR JUDICIAL SYSTEM, WHETHER OR NOT PETITIONER SHOULD BE DEPRIVED OF ITS RIGHT

TO APPEAL ON THE BASIS OF TECHNICALITY.

III. ASSUMING THE HONORABLE SUPREME COURT WOULD HOLD THAT THE FILING OF THE PETITITON FOR REVIEW WITH THE HONORABLE COURT OF TAX APPEALS EN BANC WAS TIMELY, WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY TO CLAIM FOR REFUND OR TAX CREDIT.[24] (Underscoring supplied)

Silkair posits that "the instant case does not involve a situation where the petitioner was represented by two (2) counsels on record, such that notice to the former counsel would be held binding on the petitioner, as in the case of *Damasco v. Arrieta, etc., et al.*[25] x x x heavily relied upon by the respondent";[26] and that "the case of *Dolores De Mesa Abad v. Court of Appeals*[27] has more appropriate application to the present case."[28]

In *Dolores De Mesa Abad*, the trial court issued an order of November 19, 1974 granting the therein private respondents' Motion for Annulment of documents and titles. The order was received by the therein petitioner's counsel of record, Atty. Escolastico R. Viola, on November 22, 1974 prior to which or on July 17, 1974, Atty. Vicente Millora of the Millora, Tobias and Calimlim Law Office had filed an "Appearance and Manifestation." Atty. Millora received a copy of the trial court's order on December 9, 1974. On January 4, 1975, the therein petitioners, through Atty. Ernesto D. Tobias also of the Millora, Tobias and Calimlim Law Office, filed their Notice of Appeal and Cash Appeal Bond as well as a Motion for Extension of the period to file a Record on Appeal. They filed the Record on Appeal on January 24, 1975. The trial court dismissed the appeal for having been filed out of time, which was upheld by the Court of Appeals on the ground that the period within which to appeal should be counted from November 22, 1974, the date Atty. Viola received a copy of the November 19, 1974 order. The appellate court held that Atty. Viola was still the counsel of record, he not having yet withdrawn his appearance as counsel for the therein petitioners. On petition for certiorari,[29] this Court held

> x x x [R]espondent Court reckoned the period of appeal from the time petitioners' original counsel, Atty. Escolastico R. Viola, received the Order granting the Motion for Annulment of documents and titles on November 22, 1974. But as petitioners stress, Atty. Vicente Millora of the Millora, Tobias and Calimlim Law Office had filed an "Appearance and Manifestation" on July 16, 1974. Where there may have been no specific withdrawal by Atty. Escolastico R. Viola, for which he should be admonished, by the appearance of a new counsel, it can be said that Atty. Viola had ceased as counsel for petitioners. In fact, Orders subsequent to the aforesaid date were already sent by the trial Court to the Millora, Tobias and Calimlim Law Office and not to Atty. Viola.
>
> Under the circumstances, December 9, 1974 is the controlling date of

> receipt by petitioners' counsel and from which the period of appeal from the Order of November 19, 1974 should be reckoned. That being the case, petitioner's x x x appeal filed on January 4, 1975 was timely filed.[30] (Underscoring supplied)

The facts of *Dolores De Mesa Abad* are not on all fours with those of the present case. In any event, more recent jurisprudence holds that in case of failure to comply with the procedure established by Section 26, Rule 138[31] of the Rules of Court re the withdrawal of a lawyer as a counsel in a case, the attorney of record is regarded as the counsel who should be served with copies of the judgments, orders and pleadings.[32] Thus, where no notice of withdrawal or substitution of counsel has been shown, notice to counsel of record is, for all purposes, notice to the client.[33] The court cannot be expected to itself ascertain whether the counsel of record has been changed.[34]

In the case at bar, JGLaw filed its Notice of Withdrawal of Appearance on October 13, 2005[35] after the Bengzon Law Firm had entered its appearance. While Silkair claims it dismissed JGLaw as its counsel as early as August 24, 2005, the same was communicated to the CTA only on October 13, 2005.[36] Thus, JGLaw was still Silkair's counsel of record as of October 3, 2005 when a copy of the September 22, 2005 resolution of the CTA Second Division was served on it. The service upon JGLaw on October 3, 2005 of the September 22, 2005 resolution of CTA Second Division was, therefore, for all legal intents and purposes, service to Silkair, and the CTA correctly reckoned the period of appeal from such date.

TECHNICALITY ASIDE, on the merits, the petition just the same fails.

Silkair bases its claim for refund or tax credit on Section 135 (b) of the NIRC of 1997 which reads

> Sec. 135. **Petroleum Products sold to International Carriers and Exempt Entities of 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 and 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
>
> x x x x,

and 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 (Air Transport Agreement between RP and Singapore) which reads

> 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 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.

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.[37] 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.[38]

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."[39] It invokes *Maceda v. Macaraig, Jr.*[40] 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.

Silkairs's argument does not persuade. In Commissioner of *Internal Revenue v. Philippine Long Distance Telephone Company,*[41] 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
>
> 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. (Italics in the original; emphasis supplied)[42]

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, [43] and if an exemption is found to exist, it must not be enlarged by construction.[44]

WHEREFORE, the petition is **DENIED**.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

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[1] CTA 2nd Division records, pp. 12-16.

[2] Id. at 1-6.

[3] 130 Phil. 12, 16 (1968).

x x x [T]he claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. "If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector."

[4] CTA 2nd Division records, p. 20. Citation omitted.

[5] Id. at 281-283.

[6] Id. at 286-293.

[7] Id. at 312-313.

[8] Penned by CTA Associate Justice Olga Palanca-Enriquez, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy. Id. at 314-315.

[9] Id. at 316.

[10] Id. at 318-319. The records do not show what action the CTA took on the notice.

[11] Id. at 320-322.

[12] Id. at 320-321.

[13] Id. at 317.

[14] CTA En Banc records, pp. 3-5.

[15] Id. at 8-9.

[16] Id. at 11.

[17] Id. at 14-24.

[18] Decision penned by CTA Presiding Justice Ernesto D. Acosta, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez. Id. at 63-72.

[19] Id. at 68-69.

[20] Id. at 73-83.

[21] Id. at 84-90.

[22] Id. at 99-100.

[23] *Rollo,* pp. 9-38.

[24] Id. at 18.

[25] 117 Phil. 246 (1963).

[26] *Rollo,* p. 103.

[27] G.R. No. L-42225, July 9, 1985, 137 SCRA 416.

[28] *Rollo,* p. 108.

[29] Supra note 27.

[30] Id. at 422.

[31] RULES OF COURT, Rule 138, Sec. 26:

Change of Attorneys – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from any action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in the place of the former one, and written notice of the change shall be given to the adverse party.

Vide Arambulo v. Court of Appeals, G.R. No. 105818, September 17, 1993, 226 SCRA 589, 597: "Under the first sentence of [Section 26 of Rule 138 of the Rules of Court], the retirement is complete once the withdrawal is filed in court."

[32] *Aquino v. Court of Appeals,* G.R. No. 109493, July 2, 1999, 309 SCRA 578, 584.

[33] *Vide Arambulo v. Court of Appeals,* G.R. No. 105818, September 17, 1993, 226

SCRA 589, 597; *Rinconada Telephone Company, Inc. v. Buenviaje,* G.R. Nos. 49241-42, April 27, 1990, 184 SCRA 701, 704-705; *UERM Employees Union-FFW v. Minister of Labor and Employment,* G.R. No. 75838, August 21, 1989, 177 SCRA 165, 177; *Tumbagahan v. Court of Appeals,* G.R. No. L-32684, September 20, 1988, 165 SCRA 485, 488-489; *Lee v. Romillo, Jr.,* G.R. No. L-60937, May 28, 1988, 161 SCRA 589, 599-600.

[34] *Vide Lee v. Romillo, Jr.,* G.R. No. L-60937, May 28, 1988, 161 SCRA 589, 600.

[35] CTA 2nd Division records, pp. 318-319.

[36] Id. at 320-322.

[37] *Vide Philippine Geothermal, Inc. v. Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005, 465 SCRA 308, 317-318.

[38] *Vide Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue,* 127 Phil. 461, 470 (1967).

[39] Air Transport Agreement between RP and Singapore, Article 4(2). *Vide Rollo,* p. 28.

[40] G.R. No. 88291, May 31, 1991, 197 SCRA 771.

[41] G.R. No. 140230, December 15, 2005, 478 SCRA 61.

[42] Id. at 76-77, citing *Maceda v. Macaraig, Jr.,* G.R. No. 88291, May 31, 1991, 197 SCRA 771, 798, 800-801.

[43] Id. at 74. Citation omitted.

[44] Id. at 77.