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Excise tax on petrol sold to international carriers

AS most of us know, we, the consumers, bear the burden of value-added taxes on almost all products and services we consume. Being in the form of an indirect tax, value-added tax (VAT) is collected by the government from the sellers in the distribution chain but these are accumulated and shifted to the consumers.

Aside from the VAT, there are other types of taxes cascaded from the producer to the distributor and finally to the consumer. Excise tax is another type of indirect tax imposed on the producer but passed on to the consumer. The only difference between an excise tax and the VAT is that the former is imposed only on limited and specific type of goods, while VAT is imposed on every product, except those that are specifically exempted. Both taxes can be passed on to the buyer.

Recently, we heard that there is a move to increase the excise taxes on sin products. And being an indirect tax, it will have the effect of increasing consumer prices. That is the real essence of passed-on tax. And not only the so-called sin products are subject to excise taxes. There are other goods that we directly or indirectly consume every day that are subject to excise taxes. I am referring to petroleum products.

And like all other taxes, there are exemptions from excise taxes. One of this is the provision under Section 135(a) of the Tax Code, which exempts from excise tax petroleum products sold to international carriers of Philippine or foreign registry on their use or consumption outside the Philippines.

Since excise taxes on petroleum products are required to be paid upon the removal of the goods from the place of production, taxes are already paid by the producers prior to the sale to customers. Thus, upon sale to the customers, including those sold to international carriers, the excise taxes paid are passed on to the customer. It is on this basis, in relation to Section 135(a) of the Tax Code, that some airline companies and producers of petroleum products had attempted to apply for the refund of the said excise taxes paid on petroleum products that are sold to international carriers.

On the entitlement to refund by airline companies, the Supreme Court had denied the claims on the ground that the airline company is not the proper party to claim the refund. (e.g., GR 166482, January 25, 2012). The proper party to question or seek refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if the burden is shifted to another. The purchaser and end-consumer, ultimately bears the tax burden, but does not transform its status into a statutory taxpayer. Thus, airline companies that purchase petroleum products for use in its international flights cannot claim for tax refund or tax credit previously paid by the local manufacturer even if the tax is passed to the buyer. Since it is the manufacturer of the petroleum products who is the statutory taxpayer and the one directly liable for the payment of excise tax on the said goods, it is the proper party to seek a tax refund.

Impliedly, the producer of the petroleum who had paid the tax can recover the same through refund. However, this is not how the Supreme Court interpreted the rule in a subsequent case. In GR 188497 dated April 25, 2012, the SC held that the manufacturer of petroleum products who paid the excise taxes on the petroleum products sold to international airline companies are not likewise entitled to a refund of said taxes.

Among the reasons stated by the Court is that the tax is required to be paid upon withdrawal from the place of production. Thus, a taxpayer cannot predicate its claim under Section 229 of the Tax Code allowing the refund of erroneously paid taxes. In essence, there is no erroneous payment of tax when it was paid upon withdrawal. What the law merely says is that the manufacturer is prohibited from passing on the tax to the international carrier.

These cases may have shed light on the issues regarding the taxability of the sale of petroleum products to international carriers. And it is also clear that no taxes should be passed on to the international carriers for petroleum products used outside the Philippines. But it is also a rule that if taxes had been collected without the right to receive it, by natural obligation, the same should be refunded. If neither the taxpayer nor the customer is entitled to refund, then the manufacturer bears the burden of the tax. Should we still call it indirect tax or passed on tax?

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