REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHEVRON PHILIPPINES, INC.
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 965
(CTA Case No. 8022)

Present:

Del Rosario, PJ,
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

OCT 14 2013 11:20 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Chevron Philippines, Inc., assailing the *Decision*[1] dated August 30, 2012, and the *Resolution*[2] dated November 20, 2012, of the former First Division of the Court denying petitioner's claim for the issuance of a tax credit certificate or tax refund in the aggregate amount of P11,092,500.00, allegedly representing excise taxes paid by petitioner on its importation of petroleum products sold to Clark Development Corporation (CDC).

The Facts

The facts, as narrated in the *Decision*, are as follows:

[1] *Rollo*, C.T.A. EB Case No. 965, pp. 57-79.
[2] *Rollo*, pp. 81-87.

"Petitioner is a duly organized and existing domestic corporation, with address at 6th Floor, 6750 Building, Ayala Avenue, Makati City. It is engaged primarily in the importation, distribution, marketing and sale of petroleum products in the Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a value-added and excise taxpayer with Tax Identification No. 000-349-759-000, as evidenced by its Certificate of Registration No. OCN8RC000017557.

On the other hand, respondent, as the Commissioner of the Bureau of Internal Revenue, is vested with authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it sold and delivered to CDC the following gasoline products for the period between February to September 2008:

Product	Volume	Price
Gold 95-ron ("Gold")	1,078,000 liters	P45,920,043.40
Silver 93-ron ("Silver")	1,472,000 liters	P59,001,148.20

The petroleum products sold to CDC, which were taken from petitioner's Batangas Terminal, were imported between January and July 2008 and the excise taxes due thereon were paid xxx:

xxx

Since CDC enjoys exemption from payment of direct and indirect taxes under Section 135(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Republic Act (R.A.) Nos. 9400 and 7916, petitioner did not pass on or shifted(*sic*) to CDC the excise taxes it paid on the imported petroleum products.

On January 6, 2010, petitioner filed with respondent an application for the issuance of tax credit certificate or tax refund of excise taxes paid on its importation of petroleum products that it subsequently sold to CDC in the amount of P11,092,500.00.

Some five (5) days thereafter or January 11, 2010, petitioner filed the instant *Petition for Review* alleging inaction on the part of the respondent." [3] (*Citations omitted*)

After trial, the former First Division in its *Decision* dated August 30, 2012, denied petitioner's claim for refund or issuance of tax credit certificate. The Court in Division held that there is nothing in Section 135(c) of the NIRC of 1997, as amended, that explicitly grants petitioner, as seller of imported petroleum products to legally exempt entities, exemption from the payment of excise taxes thereon.

The Court in Division denied petitioner's Motion for Reconsideration in the *Resolution* dated November 20, 2012.

Aggrieved, petitioner filed the instant *Petition for Review*[4] on December 28, 2012.

Respondent was ordered to file her comment within ten (10) days from receipt of the Resolution[5] dated January 28, 2013. Respondent filed her Comment/Opposition (Re: Petition for Review)[6] on February 21, 2013.

Considering the issues raised by both parties in their respective pleadings, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda.[7]

Respondent filed her Manifestation[8] that she is adopting the Comment/Opposition to the Petition for Review as her Memorandum, while petitioner failed to file its Memorandum despite due notice. Thus, the above-captioned case was submitted for decision on July 24, 2013.

Issues[9]

Petitioner raises the following issues:

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[3] *Rollo*, pp. 58-61.
[4] *Rollo*, pp. 15-50.
[5] *Rollo*, pp. 118-119.
[6] *Rollo*, pp. 120-125.
[7] *Rollo*, pp. 128-129.
[8] *Rollo*, pp. 130-131.
[9] *Rollo*, pp. 25-26.

I. The First Division of this Honorable Court erred in ruling that Petitioner was not entitled to a refund of excise taxes paid on importation of fuel sold to CDC amounting to PhP11,092,500.

II. The First Division of this Honorable Court erred in ruling that Section 135(c) of the Tax Code does not apply to fuel sales made by Petitioner to CDC.

III. The reliance of the First Division of this Honorable Court on Philippine Acetylene Co., Inc. vs. CIR is misplaced.

IV. The Decision and Resolution of the First Division of this Honorable Court render Section 135 of the Tax Code inoperable.

V. The First Division of this Honorable Court erred in applying the principles laid down in Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation to the case at bar.

VI. The Decision and Resolution of the First Division of this Honorable Court is a departure from well settled jurisprudence and administrative rulings/practices.

Ruling of the Court

The Petition for Review has no merit.

It should be noted that the arguments raised by the petitioner are a mere rehash of the arguments already discussed, resolved, and settled by the Court in Division in its assailed *Decision* and *Resolution*. Nevertheless, the Court *En Banc* will discuss the same.

Excise taxes apply to certain specified goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines.[10]

[10] Section 129, NIRC of 1997, as amended.

Section 131 of the NIRC of 1997, as amended, identifies the person liable to pay excise taxes on imported articles, *to wit*:

> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
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> (A) *Persons Liable.* – **Excise taxes on imported articles shall be paid by the owner or importer 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**. xxx xxx" (*Emphasis supplied*)

Clearly, from the foregoing, petitioner, being the importer of the petroleum products, is liable to pay the excise taxes due on such importation. However, petitioner contends that it is entitled to a refund or issuance of tax credit certificate for excise taxes paid on its importation of petroleum products subsequently sold to CDC pursuant to Section 135(c) of the NIRC of 1997, as amended, *to wit*:

> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – **Petroleum products sold to the following are exempt from excise tax:**
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> (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;
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> (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 entity or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
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> (c) **Entities which are by law exempt from direct and indirect taxes**." (*Emphasis supplied*)

Petitioner argues that since its sales to CDC fall squarely within the ambit of Section 135(c) of the NIRC of 1997, as amended, the petroleum products subject of the transaction are exempt from excise tax. The Court does not agree.

Contrary to petitioner's argument, there is nothing in the foregoing provision that explicitly grants it, as seller of imported petroleum products to tax-exempt entities, exemption from payment of excise taxes thereon. The exemption in the provision is explicit and petitioner does not fall in any of the categories enumerated therein.

Hence, as the importer of the petroleum products sold to tax-exempt entities, petitioner is liable to pay the excise tax due on the said importation.

In the case of *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[11], the Supreme Court held that petitioner, the manufacturer and seller of oxygen and acetylene gases, who sold its products to National Power Corporation (NPC), a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its purchaser, NPC, is exempt from taxation. The Court explained that the percentage tax on sales of articles imposed by the old Tax Code is due from the manufacturer or producer and not from the purchaser.

Applying the foregoing, the excise tax imposed on the importation of petroleum products under Section 131 of the NIRC of 1997, as amended, is the direct liability of the importer who cannot thus invoke the excise tax exemption granted to its buyers who are entities which are by law exempt from direct and indirect taxes.

Considering that an excise tax is in the nature of an indirect tax where the tax burden can be shifted, Section 135(c) of the NIRC of 1997, as amended, should be construed as prohibiting the shifting of the burden of the excise tax to tax-exempt entities who buy petroleum products from the manufacturer/seller by incorporating the excise tax component as an added cost in the price fixed by the manufacturer/seller.

[11] G.R. No. L-19707, August 17, 1967 (20 SCRA 1056).

As pointed out by respondent, the only claim for refund of excise taxes authorized by the NIRC is the payment of excise tax on exported goods, as explicitly provided in Sec. 130(D) thereof, *to wit*:

> "(D) *Credit for Excise Tax on Goods Actually Exported.* – When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported."

Since the petroleum products sold to CDC were not locally produced or manufactured but were rather imported, petitioner cannot claim a refund or a credit based on the above provision.

The above discussion is in line with the pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[12] (*Shell* case), involving Shell's claim for excise tax refund for petroleum products sold to international carriers. The Supreme Court held that the exemption from excise tax payment on petroleum products under Section 135(a) of the NIRC of 1997, as amended, is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the petroleum products sold. The pertinent portion of the ruling reads:

> "Under Chapter II 'Exemption or Conditional Tax-Free Removal of Certain Goods' of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, **Sec. 135 deals with the tax treatment**

[12] G.R. No. 188497, April 25, 2012.

of a specified article (petroleum products) in relation to its buyer or consumer. Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135(a) 'attaches to the goods themselves' such that the excise tax should not have been paid in the first place.

xxx

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[,] this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and not a specific provision of law exempting the goods sold from the excise tax. But as already stated, **the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products)**. Unlike Sec. 134 which explicitly exempted the articles or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

...**Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller**. The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

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An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance,

> from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.
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> xxx
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> **Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buy petroleum products from the local manufacturers. Said provision merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.**" (*Emphasis supplied and citations omitted*)

Accordingly, petitioner is not entitled to any refund or issuance of tax credit certificate on excise taxes paid on its importation of petroleum products sold to CDC pursuant to the doctrine laid down by the Supreme Court in the *Shell* case.

Petitioner argues that the *Shell* case is not yet final and executory. The said case is still pending with the Supreme Court by way of a Motion for Reconsideration.

Let it be stressed that in the determination of the instant case, the Court principally relied on the provision of Section 135(c) of the NIRC of 1997, as amended.

Time and again, We have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[13]

Finding no reversible error, We affirm the assailed *Decision* dated August 30, 2012 and *Resolution* dated November 20, 2012 of the former First Division.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[13] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010 citing *Commissioner of Internal Revenue v. Solidbank Corporation,* 462 Phil. 9, 131-132 (2003).

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice