REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINE ASSOCIATED SMELTING AND REFINING (PASAR) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF CUSTOMS AND THE BUREAU OF CUSTOMS,
Respondent.

CTA Case Nos. 9579 & 9580

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:

JUN 24 2019

1:30 p.m.

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DECISION

MANAHAN, *J.*:

These consolidated cases are appeal, under Section 11[1] of Republic Act (RA) No. 1125[2], as amended by RA No. 9282[3], of the Decisions both dated March 13, 2017 rendered by the

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[1] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc.*
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[2] An Act Creating the Court of Tax Appeals, June 16, 1954.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

Commissioner of Customs denying Philippine Associated Smelting And Refining Corporation's claims for refund in the respective amounts of ₱2,962,897.83[4] and ₱3,273,168.39[5], representing the proportionate amount of customs duties and taxes initially paid by Petron Corporation on the importation of Kikeh Crude Oil/Sakhalin Vityaz Blend Crude Oil, Arab Light and/or Arab Superlight.

THE PARTIES

Petitioner Philippine Associated Smelting And Refining (PASAR) Corporation is a domestic corporation engaged in the production of copper and other metals for domestic and international distribution. It is registered as an Ecozone Export Enterprise with the Philippine Economic Zone Authority (PEZA).[6] Petitioner can be served judicial processes through its counsel Atty. Gil A. Valera, CPA-LCB, at 24 Tindalo Street, Brgy. Quirino 3A, Project 3, Quezon City.[7]

On the other hand, respondents Commissioner of Customs (COC) and the Bureau of Customs (BOC) hold office at Port Area, Manila where they can be served with court processes. They are represented by their counsel, the Office of the Solicitor General (OSG), with office address at 134 Amorsolo Street, Legaspi Village, Makati City.

THE FACTS

In November 2008, December 2008, January 2009 to March 2009,[8] and October 2009 to December 2009,[9] petitioner purchased fuel and petroleum products from Petron Corporation to run its machineries and equipment for the production of copper and other metals. For the said purchases, petitioner allegedly paid the amounts of ₱2,962,897.83 (for the November to December 2008 and January to March 2009 purchases) and ₱3,273,168.39 (for the October to December 2009 purchases) for the customs duties initially paid by Petron Corporation in its importation of Kikeh

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[4] Docket, CTA Case No. 9579.
[5] *Id.,* CTA Case No. 9580.
[6] *Id.,* CTA Case No. 9579, Vol. I, Par. 1, Brief Statement of the Case, Joint Stipulation of Facts and Issues (JSFI), p. 246.
[7] *Id.,* CTA Case No. 9579, Vol. I, Par. 2, The Parties, Petition for Review, p. 11.
[8] *Id.,* CTA Case No. 9579, Vol. I, Par. 2, Decision dated March 13, 2017, Annex "A" of the Petition for Review, p. 25.
[9] *Id.,* CTA Case No. 9580, Par. 2, Decision dated March 13, 2017, Annex "A" of the Petition for Review, p. 25.

Crude Oil/Sakhalin Vityaz Blend Crude Oil, Arab Light and/or Arab Superlight. The said imported crude oils were used as raw materials in order to manufacture petroleum products to be sold in the domestic market. Notably, what Petron Corporation delivered to petitioner were Diesel/Bunker Fuel Oils which is a by-product of the imported crude oils.

In two letters dated October 30, 2009 and April 19, 2010, petitioner respectively filed claims for tax refund of ₱2,962,897.83 and ₱3,273,168.39 before the District Collector of the Port of Manila, representing the duties paid on the liters of diesel/bunker fuel oil it purchased from Petron Corporation, which were both denied. On appeal, respondent COC separately affirmed the denial of both claims via the assailed March 13, 2017 Decisions.[10]

Without seeking reconsideration of the said Decisions, petitioner, on April 20, 2017, simultaneously filed with this Court a claim for refund in the amount of ₱2,962,897.83 via Petition for Review[11] docketed as CTA Case No. 9579, and another claim for refund in the amount of ₱3,273,168.39 through a Petition for Review[12] docketed as CTA Case No. 9580. In the said Petitions, petitioner argues that the amounts claimed for tax refund represent a proportionate amount of the duties paid by Petron Corporation for the importation of its petroleum products. Moreover, it contends that the endorsement of respondent BOC's Chief Accountant, who declared that such amounts are "correct", should be given the greatest weight and respect.[13]

Within the extended period granted by the Court, respondents filed their Answers for CTA Case No. 9579[14] and CTA Case No. 9580[15] on June 15, 2017. Except for the amounts involved and some details about the imported items, the two Answers interposed substantially the same special and affirmative defenses, to wit:

> "6. Respondents replead and incorporate by way of reference all the foregoing averments and further states:

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[10] Docket, CTA Case No. 9579, Vol. I, Par. 2, Brief Statement of the Case, JSFI, pp. 246-247.
[11] *Id.*, CTA Case No. 9579, Vol. I, pp. 10-23.
[12] *Id.*, CTA Case No. 9580, pp. 10-23.
[13] *Id.*, CTA Case No. 9579, Vol. I, Par. 3, Brief Statement of the Case, JSFI, p. 247.
[14] *Id.*, CTA Case No. 9579, Vol. I, pp. 157-165.
[15] *Id.*, CTA Case No. 9580, pp. 194-202.

I. RESPONDENT DID NOT ERR IN DENYING PETITIONER'S CLAIM FOR REFUND AS IT FAILED TO SHOW THE PROPORTIONATE AMOUNT OF KIKEH CRUDE OIL *[SAKHALIN VITYAZ BLEND CRUDE OIL]*, ARAB LIGHT AND/OR ARAB SUPERLIGHT USED IN THE MANUFACTURE OF THE DIESEL/BUNKER FUEL OIL IT PURCHASED FROM PETRON CORPORATION.

7. Petitioner argues that respondents erred in denying its claim for refund of Two Million Nine Hundred Sixty-Two Thousand Eight Hundred Ninety-Seven Pesos and 83/100 (Php2,962,897.83) *[Three Million Two Hundred Seventy-Three Thousand One Hundred Sixty-Eight and 39/100 (₱3,273,168.39) Pesos]*, which represents Eight Million Six Hundred Twenty Thousand and Thirty-Three (8,620,033) liters *[Five Million Three Hundred Ninety-Two Thousand and Fifty-Seven (5,392,057) liters]* of Bunker Fuel Oil, allegedly proportionate to the duties paid by Petron Corporation (Petron) totaling Four Hundred Two Million Seventeen Thousand Seven Hundred Thirty-Nine (₱402,017,739.00) Pesos *[Four Hundred Seventy-Eight Million Three Hundred Sixty-Nine Thousand Eight Hundred Fifty-Five (₱478,369,855.00) Pesos]* for Seven Million Four Hundred Seventy Thousand Seven Hundred Forty-Two (7,470,742) barrels *[Four Million Eight Hundred Nineteen Thousand Eight Hundred Eighty-One (4,819,881) barrels]* of Crude Oil. The claimed amount was purportedly arrived by converting the purchased liters of Diesel/Bunker Fuel Oil into barrels and multiplying the product thereof to the rate per barrel.

8. Such is tenuous.

9. While petitioner's eligibility for a tax refund is undisputed, its claim, however, must undergo the rigors of applicable laws. Section 17 (1) of Presidential Decree No. 66, also known as 'Creating the Export Processing Zone Authority and Revising Republic Act No. 5490,' states:

> **Section 17**. *Tax Treatment of Merchandise in the Zone.* (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not

> be subject to Customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

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10. In the instant *Petition*, petitioner admits that the Diesel/Bunker Fuel Oil it purchased from Petron for the period of November 2008, December 2008 and January 2009 to March 2009 are manufactured from the imported Kikeh Crude Oil, Arab Light and/or Arab Superlight.

11. However, its alleged computation is inaccurate as it failed to reflect the specific amount of Kikeh Crude Oil *[Sakhalin Vityaz Blend Crude Oil]*, Arab Light and/or Arab Superlight used in the manufacture of the Eight Million Six Hundred Twenty Thousand and Thirty-Three (8,620,033) liters *[Five Million Three Hundred Ninety-Two Thousand and Fifty-Seven (5,392,057) liters]* of Diesel/Bunker Fuel Oil, most specially when it did not allege or prove that such were one hundred percent (100%) made from the imported materials.

12. Since Diesel/Bunker Fuel Oil is a mere by-product of the oil imported by Petron, the amount claimed is not an accurate presentation of the proportionate amount paid as customs duties and taxes. Respondents ratiocinated:

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> It must be stressed that on the basis of the Import Entries submitted, Petron imports Kikeh Crude Oil, Arab Light and/or Arab Superlight and pays the corresponding duties and taxes thereon on a per barrel basis. These Kikeh Crude Oil, Arab Light and/or Arab Superlight in turn are being used as raw material in order to manufacture petroleum products to be sold in the domestic market. **In the instant case, what was being delivered to the claimant are Diesel/Bunker Fuel Oil (BFO) which is a mere by-product of the imported Kikeh Crude Oil and Arab Light**. xxx

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> Records further show that the total claims for refund was delivered by Petron on the basis of the rate imposed per barrel on the imported Kikeh Crude Oil, Arab Light and/or Arab Superlight. Since Diesel/Bunker Fuel Oil is a mere by-product which does not comprise the total volume of the imported Kikeh Crude, Arab Light and/or Arab Superlight, Petron could not charge PASAR for taxes and duties equivalent to the rate per barrel of the Arab Light is paid as

indicated in the computation. **Thus, the refundable amount of duties and taxes for the Bunker Oil Fuel delivered to the claimant PASAR should only be PROPORTIONATE to the duties and taxes for the importation of Arab Light and/or Arab Superlight depending on the actual fraction of Diesel/Bunker Fuel Oil extracted from the imported Arab Light and/or Arab Superlight**.

xxx. In the instant case, **what was billed to PASAR was duties and taxes for the Kikeh Crude Oil, Arab Light and/or Arab Superlight, but what was actually delivered to PASAR was Diesel/Bunkler Fuel Oil derived from the subject importation**. Since the subject importation are mere components for the manufacture of the petroleum products, **the amount of refund should only be limited to the duties and taxes proportionate to the fraction of the Kikeh Crude Oil, Arab Light and/or Arab Superlight used in the production thereof**. While the claimant may have substantially established these petroleum products were actually delivered, purchased and used in their manufacture, **the claimant miserably failed to etablsih the actual amount sought to be refunded corresponds to the duties and taxes for the Kikeh Crude Oil, Arab Light and/or Arab Superlight that were actually used in the production of the petroleum products**.

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[As aptly observed by the Hearing Officer, Port a quo, these Sakhalin Vityaz Blend, Arab Light and/or Arab Superlight in turn are being used as raw material in order to manufacture petroleum products to be sold in the domestic market. In the instant case, what was being delivered to the claimant as Diesel Fuel Oil (ADO) and/or Bunker Fuel Oil (BFO) which is a mere by-product of the imported Sakhalin Vityaz Blend *(and) Arab Light*. xxx

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It can be observed that the Certification signed by Dennis S. Janson, Manager, Finance Planning, Analysis and Risk Management, Petron does not indicate the quantity of barrels of Sakhalin Vityaz Blend used to manufacture the 10,560.33 Barrels ADO/IDO/BFO; xxx or the 1,924,809 Barrels of Arabian Super Light Crude Oil and 154,913 Barrels Arabian Extra Light

Crude Oil in relation to the 11,406,903 Barrels ADO/IDO/BFO/UNLEADED Fuel Oil delivered to PASAR.

From the foregoing premises, it is safe to assume then that Diesel/Bunker Fuel Oil as a mere by-product does not compromise the total volume of the Imported Sakhalin Vityaz Blend Crude Oil, Arab Light and/or Arab Superlight, and Petron cannot charge PASAR for taxes and duties equivalent to the rate per barrel of the Sakhalin Vityaz Blend Crude Oil, Arab Light, Arab Extra Light and/or Arab Super Light it paid as indicated in the specific entries/computation.

There is a very low degree of certainty that the actual imported Sakhalin Vityaz Blend, Arab Light, Arab Extra Light and/or Arab Super Light are the same as those used in the manufacture of *ADO/IDO/BFO/UNLEADED Fuel Oil.*

Thus, the refundable amount of duties and taxes for the ADO/IDO/BFO/UNLEADED Fuel Oil delivered to claimant PASAR ***should only be PROPORTIONATE*** *to the duties and taxes paid for the importation of Arab Light and/or Arab Super Light depending on the actual fraction of ADO/IDO/BFO/UNLEADED Fuel Oil extracted from the imported Arab Light, Arab Extra Light and/or Arab Super Light.*

From the foregoing facts, it would seem that what was 'collected' or billed to PASAR were the duties and taxes for the Sakhalin Vityaz Blend Crude Oil, Arab Light and/or Arab Super Light, but what was actually delivers to PASAR was Diesel/Bunker Fuel Oil derived from the subject importation. Being mere components for the manufacture of the petroleum products, the amount to be refunded should only be limited to the duties and taxes proportionate to the fraction of Sakhalin Vityaz Blend Crude Oil, Arab Light, Arab Extra Light and/or Arab Super Light used in the production therof.

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13. Further, petitioner insists that the computations it used at arriving at the amount of refund were also used and indorsed by the Chief Accountant of respondent's Financial Management Office, thus, entitling it to great weight and respect, *vis-à-vis* the findings of the District Collector of the Port of Manila (POM), respondent's Law Division and the

Commissioner of Customs, who are not Certified Public Accountants (CPAs).

14. Inasmuch as the findings and endorsement as to the claim for refund of respondent's accountant are respected, it should also be noted that such are still subject to review and certification by the District Collector and later on, by the Collector of Customs, as mandated by the Tariff and Customs Code of the Philippines:

> **SEC. 1708**. *Claim for Refund of Duties and Taxes and Mode of Payment.* – All claims for refund of duties shall be made in writing, and **forwarded to the Collector to whom such duties are paid, who upon receipt of such claim shall verify the same by the records of his office, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct**.
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> If as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue.

15. In the end, it is still the Commissioner of Customs who approves the claim for refund. And corollary to this power to approve is the duty to review the claim. This review entails the determination if the requirements for the claim of refund are complied with and the verification if such are correct. While indeed the Law Division, the Collector of the POM and the Commissioner are not CPAs, they are still tasked to see if the claim for refund is in accord with the law to afford fairness both to the claimant and to the State.

16. Pointedly, the present case does not call for mathematical or accounting expertise, as the claim for refund must be based on accurate data to enable respondent to fully ascertain the correct amount to be credited, which petitioner failed to provide until now.

17. Tax refunds derogate the State's power of taxation. As they are in the nature of a claim for exemption, the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly

> proven. Considering that petitioner failed to support its claim for refund, respondents were correct in denying the same." *(Citations omitted)*

Thereafter, on June 21, 2017, Notices of Pre-Trial Conference were simultaneously issued for CTA Case No. 9579[16] and CTA Case No. 9580[17], setting both cases for pre-trial conference on July 6, 2017. The parties were further ordered to file their respective pre-trial briefs at least three (3) days before the date of the pre-trial and, also, the judicial affidavits of their witnesses not later than five (5) days before the said date.

Petitioner filed both its Pre-Trial Briefs for CTA Case No. 9579[18] and CTA Case No. 9580[19] on July 3, 2017.

Respondents filed an Ex-Parte Motion for Consolidation and Suspension of Pre-Trial[20] on July 3, 2017, praying for the consolidation of CTA Case No. 9580 with CTA Case No. 9579, since the parties in the said cases are similarly situated as they have raised the same claims, issues and arguments, and would involve the resolution of common questions of law. Respondents likewise prayed that the submission of pre-trial briefs and the scheduled pre-trial conferences for both cases be suspended.

Since petitioner interposed no objection, in an Order[21] dated July 6, 2017, this Court granted respondents' Ex-parte Motion for Consolidation and ordered that CTA Case No. 9580 be consolidated with CTA Case No. 9579, being the case with the lower docket number, pursuant to Section 1[22] of Rule 31 of the Revised Rules of Civil Procedure. More so, the pre-trial conference was reset to July 20, 2017.

On July 24, 2017, petitioner filed a Motion (for the Commissioning of an Independent CPA)[23] praying that Mr.

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[16] Docket, CTA Case No. 9579, Vol. I, pp. 166-167.
[17] *Id.*, CTA Case No. 9580, pp. 203-204.
[18] *Id.*, CTA Case No. 9579, Vol. I, pp. 175-177.
[19] *Id.*, CTA Case No. 9580, pp. 211-213.
[20] *Id.*, CTA Case No. 9579, Vol. I, pp. 178-183.
[21] *Id.*, CTA Case No. 9579, Vol. I, p. 185.
[22] SECTION 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
[23] Docket, CTA Case No. 9579, Vol. I, pp. 189-190.

Rendon P. Gammag be commissioned as the Independent Certified Public Accountant (ICPA) for the consolidated cases. Accordingly, and without objection from respondents, this Court, in an Order[24] dated September 4, 2017, granted petitioner's motion, thereby, appointing Mr. Rendon P. Gammag as the ICPA for the present consolidated cases. Mr. Gammag was also ordered to submit his ICPA report within thirty (30) days or until October 4, 2017.

Meanwhile, respondents filed their Consolidated Pre-Trial Brief[25] on July 28, 2017.

On August 23, 2017, petitioner filed a Submission of Judicial Affidavit (of Witness Atty. Danilo Perolino for Hearing on September 4, 2017)[26], offering the testimony, by way of judicial affidavit, of **Atty. Danilo C. Perolino**, its Assistant Vice-President for Legal Affairs, to prove and establish that (1) petitioner, being a PEZA-registered enterprise, is entitled to a refund of indirectly paid customs duties of petroleum products purchased from Petron Corporation for the periods of November 2008 to March 2009 amounting to ₱2,962,897.83, and October 2009 to December 2009 amounting to ₱3,273,168.39; (2) petitioner was able to secure two separate endorsements from BOC Chief Accountant Alfredo A. Palma on December 21, 2011 that the correct amounts of claim are ₱2,962,897.83 and ₱3,273,168.39; (3) on July 15, 2011, then BOC Commissioner Angelito A. Alvarez issued a Decision granting refund of indirectly paid customs duties to another PEZA locator after the Commissioner pointed out that, "More importantly, per Certification of computation by Emilio L. Jacinto, Chief, RAD, using the ITDI rate of conversion, the said claim for refund of the claimant only amounts to Php4,466,403.79", which reinforces the argument that the Indorsements of the Chief Accountant of BOC supported by computations of Petron Corporation and petitioner PASAR are the basis for granting of refunds to PEZA locators because they are relied upon to be correct; and (4) the computations of the amount of indirectly paid customs duties by Petron Corporation, the Chief Accountant of BOC, and petitioner PASAR are all the same.

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[24] Docket, CTA Case No. 9579, Vol. I, p. 229.
[25] *Id.* at pp. 200-206.
[26] *Id.* at pp. 212-213.

Subsequently, the parties submitted their Joint Stipulation of Facts and Issue[27] on September 14, 2017. A Pre-Trial Order[28] was issued on November 21, 2017, approving the parties' joint stipulations and terminating the pre-trial conference.

On February 20, 2018, the Court-commissioned ICPA, **Mr. Rendon P. Gammag**, submitted his Judicial Affidavit[29] and the ICPA Report[30] recommending that the correct proportionate amounts of petitioner's claims for refund are ₱2,939,751.38 and ₱3,273,121.85 out of the total duties paid by Petron Corporation.

After completing the testimony of his two (2) witnesses, a Formal Offer of Evidence[31] was filed by petitioner on April 11, 2018, offering Exhibits "P-1" to "P-4a" and "P-6" to "P-14", inclusive of sub-markings, as its documentary evidence.

In a Resolution[32] dated May 17, 2018, the Court denied the admission of the respective Judicial Affidavits of Atty. Danilo C. Perolino and Mr. Rendon P. Gammag for failure to contain the statement required under Section 3(c)[33] of Administrative Matter (A.M.) No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule. As a result of the denial thereof, petitioner's formally offered Exhibits "P-1" to "P-4a" and "P-6" to "P-14", inclusive of sub-markings, were denied admission for failure to have the said exhibits identified. More so, considering respondents' previous manifestation that they will no longer present any evidence, the parties were given a period of thirty (30) days within which to file their respective memoranda.

Petitioner filed a Memorandum of Petitioner PASAR[34] on April 30, 2018, while respondents filed their Consolidated

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[27] Docket, CTA Case No. 9579, Vol. I, pp. 246-250.
[28] *Id.* at pp. 265-267.
[29] *Id.* at pp. 282-284.
[30] *Id.* at pp. 285-290.
[31] *Id.*, CTA Case No. 9579, Vol. II, pp. 569-572.
[32] *Id.* at pp. 582-584.
[33] SECTION 3. *Contents of Judicial Affidavit.* – A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:
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(c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
[34] Docket, CTA Case No. 9579, Vol. II, pp. 578-580.

Memorandum[35] on July 11, 2018. Accordingly, in the Resolution dated August 7, 2018, the Court declared the present consolidated cases deemed submitted for decision.

ISSUE

The parties submitted the following issue[36] for this Court's disposition:

> Whether the amounts sought to be refunded are proportionate to the duties and taxes paid by Petron on the importation of the crude oil, which were used to refine and manufacture the bunker/diesel oil it delivered to petitioner PASAR.

Petitioner's Arguments

Petitioner's main argument is that it is entitled to the amounts being claimed for refund since they correctly represent the proportionate amounts of customs duties and taxes initially paid by Petron Corporation on the importation of Kikeh Crude Oil/Sakhalin Vityaz Blend Crude Oil, Arab Light and/or Arab Superlight. Petitioner continues that even though what was delivered to it by Petron Corporation was diesel/bunker fuel – the by-product of the said crude oils, the proportionate amounts sought to be recovered were nonetheless arrived at by the ICPA using the formula below:

$$\textbf{A} = \text{Rate per Barrel} = \frac{\text{Total amount of duty paid by Petron for the importation}}{\text{Total volume of imported products (in Barrels)}}$$

B = Volume in Barrels (Delivered by Petron to PASAR) = Total deliveries of Petron to PASAR (in Liters) during the month x 0.006289811

Duty refund for the month = A x B

Moreover, petitioner contends that respondents continuously insist that the claimed amounts are not the correct computation of proportionate duties, however, when asked, respondents do not offer the "correct" formula to properly arrive at the indirectly paid customs duties other than the bare allegation that the formula is incorrect.

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[35] Docket, CTA Case No. 9579, Vol. II, pp. 590-605.
[36] *Id.*, CTA Case No. 9579, Vol. I, Stipulated Issues, JSFI, p. 248.

Respondent's Counter-Arguments

On the other hand, respondents claim that petitioner failed to precisely show the proportionate amount of crude oil used in the manufacture of diesel/bunker fuel oil it purchased from Petron Corporation, most especially when it did not prove that the purchased diesel/bunker fuel oils were one hundred percent (100%) made from the imported crude oil. Furthermore, respondents point out that petitioner also failed to present any evidence to prove its claim considering that all its exhibits were denied admission by the Court.

RULING OF THE COURT

The lone issue raised in the present consolidated cases involves a factual one, which is, what is the correct amount of indirect customs duties ought to be refunded to petitioner?

Section 8[37] of RA No. 1125, as amended, describes the Court of Tax Appeals as a court of record. In fact, it has been held in numerous cases,[38] that in claims for tax refund, "the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim."

This simply means that judicial claims with this Court are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial; that, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before this Court.[39] As such, this Court has the power to scrutinize every minute aspect of the taxpayer's claim, including the composition of the amount being claimed for refund.

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[37] SECTION 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[38] *Manila Peninsula Hotel, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 1408, January 17, 2017, citing *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009, citing *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[39] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, CTA EB Nos. 560 and 586, June 1, 2011.

Petitioner formally offered[40] the following documentary exhibits to support its claim for refund:

Exhibit No.	Description	Purpose
P-1	Claim Letter of PASAR dated October 30, 2009	To prove that as early as October 30, 2009, PASAR already filed its nth claim for the refund of indirectly paid customs duties attaching therewith all the original supporting documents otherwise, BOC would not even receive the refund claim letter at all.
P-2	Claim Letter of PASAR dated April 19, 2010	To prove that as early as April 19, 2010, PASAR already filed its nth claim for the refund of indirectly paid customs duties attaching therewith all the original supporting documents otherwise, BOC would not even receive the refund claim letter at all.
P-3	Memorandum of Law Div. dated December 20, 2010	To prove that the Law Division of the District Port of Manila recommended the denial of the claim of PASAR.
P-3a	2nd Indorsement of the DC dated December 28, 2010	To prove that the District Collector of the District of Port of Manila approved the endorsement of the Law Division of the Port of Manila.
P-4	Memorandum of Law Div. dated November 17, 2010	To prove that the Law Division of the District Port of Manila recommended the denial of the claim of PASAR.
P-4a	2nd Indorsement of the DC dated December 28, 2010	To prove that the District Collector of the District Port of Manila approved the endorsement of the Law Division of the Port of Manila.

[40] Docket, CTA Case No. 9579, Vol. II, Formal Offer of Evidence by Petitioner PASAR dated April 11, 2018, pp. 569-572.

P-6	4th Indorsement of Chief Accountant Alfredo Palma dated December 21, 2011 on ₱2.9M	To prove that BOC CHIEF ACCOUNTANT Alfredo Palma certified the correctness of the refund claim of PASAR amounting to ₱2,962,897.83.
P-7	4th Indorsement of Chief Accountant Alfredo Palma dated December 21, 2011 on ₱3.2M	To prove that BOC CHIEF ACCOUNTANT Alfredo Palma certified the correctness of the refund claim of PASAR amounting to ₱3,273,168.39.
P-8	Decision of Commissioner Faeldon dated March 13, 2017	To prove that AFTER 7 LONG YEARS, the then Commissioner Faeldon finally decided to deny the claim of PASAR amounting to ₱3,273,168.39.
P-9	Decision of Commissioner Faeldon dated March 13, 2017	To prove that AFTER 7 LONG YEARS, the then Commissioner Faeldon finally decided to deny the claim of PASAR amounting to ₱2,962,897.83.
P-10	Judicial Affidavit of PASAR Vice Pres. Atty. Danilo Perolino	To prove that PASAR has been receiving refund claims from BOC before based on the same supporting documents coming from PETRON Certifications and from the BOC CHIEF ACCOUNTANT certifications that the amounts being claimed are correct and that this present claim subject of this case is no different.
P-11A1 to P-11H51	Certified true copies of the Original Supporting Documents provided by PETRON	To prove that certified true copies had to be secured by ICPA Rendon Gammag from PETRON as the originals submitted by PASAR on October 30, 2009 and April 19, 2010 could no longer be completely elevated by BOC to the CTA.

P-12	Amended ICPA Report on CTA Case Nos. 9579 and 9580 dated March 14, 2018	To prove that the proper proportionate amount to be refunded in CTA Case No. 9579 is ₱2,939,751.38 and CTA Case No. 9580 is ₱3,273,121.85.
P-12-A	Signature of ICPA Rendon Gammag	To prove the signature of ICPA Rendon Gammag is genuine.
P-13	USB containing all the Supporting Documents previously identified as P-11A1 to P-11H51	To prove that the CTCs of the supporting documents were transferred to USB format and submitted to the Records Division of the CTA.
P-14	Amended Judicial Affidavit of ICPA Rendon Gammag	To prove that he audited the supporting documents Re: the claim of PASAR and that he found that the proportionate amount to be refunded to PASAR are: CTA Case No. 9579 - ₱2,939,751.38 CTA Case No. 9580 - ₱3,273,121.85

However, as earlier stated, this Court denied admission of the foregoing exhibits for not being identified and authenticated by a competent witness.[41] Surprisingly, despite having enough time and opportunity after receiving the resolution denying the admission of the said exhibits, no motion for reconsideration was filed thereafter. As such, by failing to do so, this Court cannot consider the foregoing documents as evidence, since basic is the rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments. This is explicitly stated under Section 34 of Rule 132 of the Rules of Court, in relation to Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals[42], which provides that:

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[41] Docket, CTA Case No. 9579, Vol. II, Resolution dated May 17, 2018, pp. 582-584.
[42] A.M. No. 05-11-07-CTA, November 22, 2005.

> "SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."
>
> "SEC. 3. *Applicability of the Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules."

From the above provision, it is clear that the court considers the evidence only when it is formally offered. The offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties. However, it does not stop there. A piece of document will remain a scrap of paper without probative value unless and until admitted by the court for the purpose or purposes for which it is offered and after due execution and authenticity of each exhibits have been duly proven.

In fact, in the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*[43], the High Court held that "unless any of the party formally offered in evidence said Memorandum, and accordingly, **admitted by the court *a quo***, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it." Hence, although the allegations in the present consolidated cases may show that petitioner indeed has a claim for refund, nonetheless, it failed to prove how much of the claimed amount it is really entitled to get.

While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Party litigants and their counsels are well advised to abide by, rather than flaunt, procedural rules.[44]

Again, it is worth reiterating that a judicial claim for tax refund or credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the claim, and to do so

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[43] G.R. No. 195876, December 5, 2016.
[44] *Fortune Tobacco Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 533, March 12, 2010.

the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.[45] Needless to say, a just and impartial decision fundamentally requires evidentiary facts from which the decision may be based.

On a final note, the present consolidated cases do not require mathematical or accounting proficiency. However, time and again, this Court held that claims for refunds herein are tried *de novo* requiring accurate and verifiable data.

WHEREFORE, premises considered, the instant consolidated Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[45] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice