REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10368

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

JUL 15 2024 2:00 p.m.

x - x

DECISION

MANAHAN, *J.:*

THE CASE

In this *Petition for Review*, petitioner SL Harbor Bulk Terminal Corporation prays that the Court grant its claim for tax credit of erroneously paid excise tax in the amount of ₱6,550,000.00.[1]

THE PARTIES

Petitioner SL Harbor Bulk Terminal Corporation is a domestic corporation organized and existing under and by virtue of Philippine laws, duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 29, and with principal office at Block 4 Lots 10 and 11, Manila Harbor Center, North Harbor, Barangay 128, Zone 10, Tondo, Manila.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry

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[1] Statement of the Case, Pre-Trial Order dated July 22, 2021, Docket – Vol. II, p. 911.

[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 642; Exhibits "P-28" and "P-29".

out the functions, duties, and responsibilities of his office, including the authority to refund and/or credit taxes under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended.[3]

THE FACTS

On September 18, 2020, petitioner filed an administrative claim for tax credit with Revenue District Officer Teresita R. Lumayag of RDO No. 29, Manila,[4] in the aggregate amount of ₱6,550,000.00, allegedly representing excise taxes paid on the importation of petroleum products subsequently sold from October 2018 to December 2018 to customers registered with the Subic May Metropolitan Authority (SBMA) and Philippine Economic Zone Authority (PEZA).[5]

On October 5, 2020, petitioner filed the present *Petition for Review*.[6] The case was initially raffled to this Court's former Third Division.

Respondent then posted his *Answer* on December 23, 2020,[7] interposing their special and affirmative defenses that: (1) the Honorable Court has no jurisdiction over the instant petition; and (2) the petitioner is not entitled to its claim for refund.

On February 9, 2021, respondent transmitted to this Court the *BIR Records* of the case,[8] consisting of 398 pages, in one (1) folder.

The Pre-Trial Conference was set and held on March 2, 2021.[9] Prior thereto, *Respondent's Pre-Trial Brief* was posted on February 22, 2021,[10] while petitioner's *Pre-Trial Brief* was posted on February 26, 2021.[11]

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[3] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 642.
[4] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 643.
[5] Exhibits "P-10" and "P-11" (but not marked), BIR Records, pp. 378 to 381 and 188, respectively.
[6] Docket – Vol. I, pp. 6 to 32.
[7] Docket – Vol. I, pp. 391 to 398.
[8] *Compliance* dated February 8, 2021, Docket – Vol. I, pp. 406 to 407.
[9] *Notice of Pre-Trial Conference* dated January 8, 2021, Docket – Vol. I, pp. 400 to 401; Minutes of the hearing held on, and Order dated, March 2, 2021, Docket – Vol. I, p. 497 and Docket – Vol. II, pp. 501 to 503, respectively.
[10] Docket – Vol. II, pp. 522 to 525.
[11] Docket – Vol. II, pp. 546 to 561.

On March 22, 2021, the parties posted their *Joint Stipulation of Facts and Issues*,[12] which the Court admitted and approved in the Resolution dated June 3, 2021,[13] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 22, 2021 was then issued by the Court.[14]

Trial then ensued, with the parties presenting their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Shiela Mary A. Ahing,[15] petitioner's Finance Manager; (2) Mr. Christian Ivan R. Requinta,[16] petitioner's Trading Head; (3) Ms. Jenny V. Catriz,[17] petitioner's Billing Head; and (4) Ms. Ma. Alma C. Sese,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The *Report* of the said ICPA was posted on November 8, 2021.[20]

In the meantime, in the Order dated June 30, 2022,[21] the present case was transferred to the Second Division of this Court.

On September 5, 2022, petitioner filed its *Formal Offer of Evidence (with Motion to Re-Mark Exhibits)*,[22] to which respondent filed his *Ex Parte Manifestation and Submission* on October 3, 2022, attaching thereto copies of his *Comment/Opposition [Re: Petitioner's Formal Offer of Evidence dated 05 September 2022]*.[23] In the Resolution dated November 7, 2022,[24] the Court admitted petitioner's offered exhibits, *except* for Exhibits "P-1," "P-1-1," "P-12," "P-12-1,"

[12] Docket – Vol. II, pp. 642 to 646.
[13] Docket – Vol. II, pp. 749 to 750.
[14] Docket – Vol. II, pp. 911 to 921.
[15] Exhibit "P-19", Docket – Vol. II, pp. 760 to 774; Minutes of the hearing held on, and Order dated, July 6, 2021, Docket – Vol. II, pp. 882 to 884.
[16] Exhibit "P-20", Docket – Vol. II, pp. 830 to 842; Minutes of the hearing held on, and Order dated, October 7, 2021, Docket – Vol. II, pp. 933 to 935.
[17] Exhibit "P-21", Docket – Vol. II, pp. 817 to 827; Minutes of the hearing held on, and Order dated, October 7, 2021, Docket – Vol. II, pp. 933 to 935.
[18] Exhibit "P-39", Docket – Vol. II, pp. 974 to 988; Minutes of the hearing held on, and Order dated, August 15, 2022, Docket – Vol. III, pp. 1026 to 1028.
[19] *Oath of Commission*, Docket – Vol. II, p. 906; Minutes of the hearing held on, and Order dated, July 6, 2021, Docket – Vol. II, pp. 882 to 884.
[20] *Compliance* dated November 8, 2021, with attached ICPA Report dated August 23, 2021, Docket – Vol. II, pp. 950 to 960; Exhibit "P-27" (previously marked as Exhibit "P-28"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632), Docket – Vol. II, pp. 939 to 946.
[21] Docket – Vol. III, p. 1024.
[22] Docket – Vol. III, pp. 1029 to 1052.
[23] Docket – Vol. III, pp. 1614 to 1618.
[24] Docket – Vol. III, pp. 1629 to 1632.

"P-16," "P-16-1," "P-16-2," "P-17," and "P-17-1," for failure to present the originals for comparison; and Exhibit "P-36-2," for failure to correspond.

Upon petitioner's *Omnibus Motion (Re: Resolution dated 07 November 2022)*, filed on December 6, 2022,[25] and respondent having failed to file a comment,[26] the Court admitted Exhibit "P-36-2," but still denied the admission of Exhibits "P-1," "P-1-1," "P-12," "P-12-1," "P-16," "P-16-1," "P-16-2," "P-17," and "P-17-1," for failure to present the originals for comparison.[27]

For his part, respondent presented the testimony of Revenue Officer Kim Edmar M. Lintag.[28]

On April 18, 2023, respondent filed his *Formal Offer of Evidence*.[29] Petitioner then filed its *Comment/Objection (Re: Formal Offer of Evidence dated 17 April 2023)* on April 25, 2023.[30] In the Resolution dated May 19, 2023,[31] the Court admitted respondent's offered exhibits, *except* for Exhibit "R-1", for failure to present the original for comparison.

In the Notice dated May 29, 2023,[32] the present case was transferred to the Third Division of this Court.

Respondent then filed his *Memorandum* on June 13, 2023,[33] while petitioner submitted its *Memorandum* on July 10, 2023.[34]

On July 14, 2023, the present case was deemed submitted for decision.[35]

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[25] Docket – Vol. III, pp. 1633 to 1638.
[26] *Records Verification* dated January 11, 2023, issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1663.
[27] Resolution dated January 31, 2023, Docket – Vol. III, pp. 1669 to 1673.
[28] Exhibit "R-6", Docket – Vol. II, pp. 507 to 511; Minutes of the hearing held on, and Order dated, April 13, 2023, Docket – Vol. III, pp. 1674 to 1676.
[29] Docket – Vol. III, pp. 1677 to 1680.
[30] Docket – Vol. III, pp. 1681 to 1684.
[31] Docket – Vol. III, pp. 1690 to 1691.
[32] Docket – Vol. III, p. 1692.
[33] Docket – Vol. III, pp. 1693 to 1705.
[34] Docket – Vol. III, pp. 1707 to 1736.
[35] Minute Resolution dated July 14, 2023, Docket – Vol. III, p. 1738.

THE ISSUE

> "Whether or not petitioner is entitled to a refund of the alleged wrongfully collected Excise Tax in the aggregate amount of Php6,550,000.00."[36]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the instant petition; and that it is entitled to a refund or tax credit for the erroneously paid excise tax in the aggregate amount of ₱6,550,000.00, covering the period from October 1, 2018 to December 31, 2018.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over the instant petition; that assuming *arguendo* that this Court has jurisdiction over the instant petition, the excise tax paid by petitioner is not erroneously/illegally collected; that petitioner is not entitled to its claim for refund; and that petitioner is not the proper party to claim for tax refund.

THE COURT'S RULING

The *Petition for Review* must be denied.

Governing provisions for claims for tax refund or credit.

Sections 204(C) and 229 of the NIRC of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal

[36] Issue, JSFI, Docket – Vol. II, p. 635.

revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund."*(Emphasis supplied)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."*(Emphasis supplied)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for tax credit filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[37]

[37] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.,* G.R. Nos. 180740 and 180910, November 11, 2019.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[38] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[39]

Thus, for the present claim for tax credit to prosper, petitioner must not only establish that it has timely filed its claim for tax credit, it must likewise prove that the subject excise taxes paid are "erroneous or illegal."

Portion of the present claim for refund may not be taken cognizance of by this Court.

Petitioner argues that it timely filed its administrative and judicial claims for tax credit.

We partly agree with petitioner.

In this case, the amount of ₱6,550,000.00 being claimed for tax credit allegedly came from excise taxes on importation of bunker fuel and diesel paid on October 3 and 10, 2018, November 8 and 14, 2018, and December 17 and 18, 2018. Thus, the following are the pertinent dates relative to petitioner's claim for tax credit, *viz.*:

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[38] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[39] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Date of Payment	Amount of Excise Tax Paid	Two (2)-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
October 3, 2018[40]	₱ 54,676,957.00	October 5, 2020[41]	September 18, 2020[42]	October 5, 2020[43]
October 10, 2018	59,904,000.00	October 10, 2020		
November 8, 2018[44]	59,548,070.00	November 8, 2020		
November 14, 2018[45]	54,369,977.00	November 14, 2020		
December 17, 2018[46]	56,752,147.00	December 17, 2020		
December 18, 2018[47]	56,761,502.00	December 18, 2020		
Total	**₱342,012,653.00**			

However, the Court cannot take cognizance of the claim for tax credit for excise tax payment allegedly made on October 10, 2018 since no evidence was offered to prove the said importation, including the date of the excise tax payment for the said importation. Although the ICPA made reference in Exhibit "P-33" [*i.e.*, Importation Schedule 2018 (4th Quarter)] and in her Judicial Affidavit[48] that the corresponding Statement of Settlement of Duties and Taxes thereof was marked as Exhibit "P-33-2.5", said exhibit is not found in the records, specifically in the USBs containing the scanned copies of the ICPA Exhibits submitted to the Court.[49] Hence, the Court cannot ascertain whether the administrative and judicial claims pertaining to the said excise tax payment was indeed filed within the two (2)-year prescriptive period. Thus, this Court's jurisdiction to entertain the present judicial claim pertains only to the portion relative to the excise tax payments made on October 3, 2018, November 8 and 14, 2018, December 17 and 18, 2018, respectively, since the administrative and judicial claims were both filed within the two (2)-year prescriptive period.

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[40] Exhibit "P-33-1.5", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[41] The 2-year prescriptive period ended on October 3, 2020, a Saturday, hence, petitioner had until the next working day – October 5, 2020, the following Monday, to file the administrative and judicial claims.
[42] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 643; Exhibits "P-10" and "P-11" (but not marked), BIR Records, pp. 378 to 381 and 188, respectively.
[43] Docket – Vol. I, pp. 6 to 32.
[44] Exhibit "P-33-3.5", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[45] Exhibit "P-33-4.5", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[46] Exhibit "P-33-5.5", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[47] Exhibit "P-33-6.5", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[48] Exhibit "P-39" (Q&A No. 10), Docket – Vol. II, pp. 976 to 979.
[49] Refer to USB submitted on November 10, 2021 (considered remarked to Exhibit "P-27-2", previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632), and USB submitted on December 6, 2022.

As for respondent's contention that the petition should be dismissed for failure on the part of petitioner to exhaust administrative remedies considering that it filed its administrative claim on September 18, 2020, and barely seventeen (17) days thereafter filed the instant petition, the same deserves scant consideration.

It is well-settled that a claimant is allowed to file its judicial claim even without waiting for the resolution of its administrative claim to prevent the forfeiture of its claim through prescription. As held by the Supreme Court in *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue,*[50] *viz.*:

> "As may be gleaned from the foregoing provisions, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. Notably, **both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription**. In this regard, case law states that 'the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. **To clarify, Section 229 of the Tax Code —** then Section 306 of the old Tax Code — however **does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed**." *(Emphases supplied)*

Petitioner is the proper party to claim the refund of excise taxes erroneously or illegally paid or collected on imported fuel sold to tax exempt entities, if any.

Respondent argues that the excise tax paid by petitioner is not erroneously/illegally collected, and that petitioner is not the proper party to claim for tax refund.

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[50] G.R. No. 182582, April 17, 2017.

The Court disagrees.

Petitioner's claim for issuance of a tax credit certificate is anchored on the following provisions of the NIRC of 1997, as amended, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported**. The excise tax imposed herein shall be in addition to the value-supplied tax imposed under Title IV.
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (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 customhouse**, 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 xxx." *(Emphasis and underscoring supplied)*
>
> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **Petroleum products sold to the following are exempt from excise tax**:
>
> (a) xxx
>
> (b) xxx
>
> (c) **Entities which are by law exempt from direct and indirect taxes**." *(Emphasis and underscoring supplied)*

As can be gleaned from the above provisions, and subject to the earlier discussion on prescription, the following are the basic requirements for the entitlement to the claim for refund or issuance of tax credit certificate: *cm*

1. That petitioner's claim was filed within the two-year prescriptive period as provided for under Sections 204(C) and 229 of the NIRC of 1997;

2. That the entity to which the petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes;

3. That petitioner is the statutory taxpayer and actually paid the claimed excise taxes on the same petroleum products sold to the exempt entity.

In *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue (Chevron)*,[51] the Supreme Court held that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC as exempt from excise tax is deemed illegal or erroneous, to wit:

> "Excise tax on petroleum products is essentially a tax on property, the **direct liability for which pertains to the statutory taxpayer** (*i.e.*, manufacturer, producer or **importer**). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous; and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products**." *(Emphasis supplied)*

Also, as clarified by the Supreme Court in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[52] "[c]onsidering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, any excise taxes which were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund." Moreover, "the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the

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[51] G.R. No. 210836, September 1, 2015.
[52] G.R. No. 211303, June 15, 2021.

economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers)."

Considering that petitioner is the importer, and thus, is the statutory taxpayer of the product subject to excise tax, any excise tax it paid on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC which are exempt from excise tax is deemed illegal or erroneous. Hence, petitioner is the proper party to claim a tax refund or credit therefor.

Notably, the *first* requirement has already been established. Thus, *We* shall proceed to resolve petitioner's compliance with the *second* requisite. Relative thereto, the pertinent portion of Section 12(c) of Republic Act (RA) No. 7227,[53] as amended by RA No. 9400[54] provides as follows:

> "SEC. 12. *Subic Special Economic Zone.* — xxx
>
> xxx xxx xxx
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone xxx"

Moreover, Sections 3(h) and 21 of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority Under Republic Act No. 7227 provide:

> "Sec. 3. *Definitions.* For purposes of these Rules these terms shall be understood to have the following meanings:
>
> xxx xxx xxx

[53] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE.

[54] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

> h. ***Certificate of Registration* – refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> xxx xxx xxx." *(Emphases supplied)*
>
> "Sec. 21. *Effect of Issuance of Certificates.* – **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, **shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules**, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.
>
> xxx xxx xxx." *(Emphases and underscoring supplied)*

Thus, Section 12(c) of RA No. 7227 recognizes the national and local tax exemption within the Subic Special Economic Zone (SSEZ) of business enterprises located therein. Furthermore, the local and national tax exemption in Section 12(c) of RA No. 7227 takes effect only upon the SBMA's issuance of a Certificate of Registration or Certificate of Registration and Tax Exemption (CRTE) to a business enterprise within the SSEZ. In other words, it is only from the date of issuance of the *Certificate of Registration* or CRTE, which represents the registration of the concerned business enterprise, will the latter be entitled to the tax exemption granted under RA No. 7227, as amended.

On the other hand, Section 24 of RA No. 7916,[55] as amended by RA No. 8748,[56] provides as follows:

> "SEC. 24. *Exemption from National and Local Taxes.* – Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by

[55] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.
[56] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995."

the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Pursuant to the aforequoted provision, business establishments operating within the ECOZONE are exempt from national and local taxes. In lieu thereof, the said enterprises shall pay 5% of its gross income to the national government and the municipality or city where it is located.

In this case, petitioner presented the Certifications issued by the SBMA and PEZA to prove that its customers, as enumerated below, are SBMA and PEZA-registered entities, to wit:

Customer Name	**SBMA/PEZA Certification**	**Exhibit No.**
Johnson Controls–Hitachi Air Conditioning Philippines, Inc.	SBMA CRTE No. 1997-0022	"P-36-1"
JX Nippon Mining & Metals Philippines, Inc.	PEZA Amended Certificate of Registration No. 96-080 and PEZA Certification No. 2018-0596	"P-36-2"
Philippine Sinter Corporation	PEZA Certificate of Registration No. 11-04 and PEZA Certification No. 2018-0841	"P-36-3"
Del Monte Philippines., Inc.	PEZA Certification No. 2018-2139	"P-36-4"

A scrutiny of the above certifications shows that Exhibit "P-36-1" was valid from June 18, 2018 to June 17, 2021, while Exhibits "P-36-2" and "P-36-4" were valid for 2018.

Hence, the excise taxes paid by petitioner on petroleum products sold to these tax-exempt entities, if any, are considered as erroneously or illegally collected and subject to refund.

However, the alleged erroneous or illegal excise tax payments were not proven by petitioner.

As to the *third* requirement, petitioner also presented the following sales invoices to prove that it sold 2,620,000 liters of bunker fuel oil (BFO) and special fuel oil (SFO) to the following tax-exempt entities in the months of October to December 2018, thus:[57]

Exhibit	Date	Invoice No	Registered Name	Quantity (Liters)
"P-35-1.1"	05 October 2018	25483	DEL MONTE PHILS. INC.	40,000.00
"P-35-2.1"	09 October 2018	32590	JOHNSON CONTROLS	20,000.00
"P-35-3.1"	20 October 2018	25484	DEL MONTE PHILS. INC.	40,000.00
"P-35-4.1"	24 October 2018	25485	DEL MONTE PHILS. INC.	20,000.00
"P-35-5.1"	25 October 2018	25486	DEL MONTE PHILS. INC.	20,000.00
"P-35-6.1"	31 October 2018	25213	JX NIPPON	460,000.00
"P-35-7.1"	31 October 2018	25502	PHILIPPINE SINTER CORPORATION	1,000,000.00
"P-35-8.1"	31 October 2018	32760	JX NIPPON	20,000.00
"P-35-9.1"	06 November 2018	32978	JOHNSON CONTROLS	20,000.00
"P-35-10.1"	20 November 2018	33498	DEL MONTE PHILS. INC.	20,000.00
"P-35-11.1"	22 November 2018	33272	JOHNSON CONTROLS	20,000.00
"P-35-12.1"	29 November 2018	33596	DEL MONTE PHILS. INC.	20,000.00
"P-35-13.1"	29 November 2018	33597	DEL MONTE PHILS. INC.	20,000.00
"P-35-14.1"	30 November 2018	33617	JX NIPPON	440,000.00
"P-35-15.1"	10 December 2018	33902	JOHNSON CONTROLS	20,000.00
"P-35-16.1"	13 December 2018	34422	DEL MONTE PHILS. INC.	40,000.00
"P-35-17.1"	31 December 2018	34247	JX NIPPON	400,000.00
	Total			**2,620,000.00**

Petitioner's claim of ₱6,550,000.00 is computed as 2,620,000 liters of fuel oil sold to tax-exempt entities multiplied by the excise tax rate paid amounting to ₱2.50 per liter.[58]

Petitioner's importation of petroleum products for the 4th Quarter of 2018 covering October 1, 2018 to December 31, 2018 (excluding the alleged importation on October 10, 2018) in volume totaling 112,843,462 liters, and the corresponding excise taxes paid in the aggregate amount of ₱282,108,655.00, are broken down as follows:[59]

Importation Date	Quantity (Liters)	Excise Tax	Importation documents	Exhibit
3 October 2018	21,870,783	₱ 54,676,957.50[60]	Commercial Invoices	"P-33-1.1"
			Bill Of Lading	"P-33-1.2"

[57] Exhibit "P-35", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[58] Section 148(i) of the NIRC of 1997, as amended.
[59] Exhibit "P-33", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[60] However, excise tax paid per Exhibit "P-33-1.5" is actually ₱54,676,957.00.

			Assessment Notice	"P-33-1.3"
			Import Entry Declaration	"P-33-1.4"
			Statement Of Settlement Of Duties And Taxes	"P-33-1.5"
8 November 2018	23,819,228	59,548,070.50[61]	Commercial Invoices	"P-33-3.1"
			Bill Of Lading	"P-33-3.2"
			Assessment Notice	"P-33-3.3"
			Import Entry Declaration	"P-33-3.4"
			Statement Of Settlement Of Duties And Taxes	"P-33-3.5"
14 November 2018	21,747,991	54,369,977.50[62]	Commercial Invoices	"P-33-4.1"
			Bill Of Lading	"P-33-4.2"
			Assessment Notice	"P-33-4.3"
			Import Entry Declaration	"P-33-4.4"
			Statement Of Settlement Of Duties And Taxes	"P-33-4.5"
14 December 2018	22,700,859	56,752,147.50[63]	Commercial Invoices	"P-33-5.1"
			Bill Of Lading	"P-33-5.2"
			Assessment Notice	"P-33-5.3"
			Import Entry Declaration	"P-33-5.4"
			Statement Of Settlement Of Duties And Taxes	"P-33-5.5"
18 December 2018	22,704,601	56,761,502.00	Commercial Invoices	"P-33-6.1"
			Bill Of Lading	"P-33-6.2"
			Assessment Notice	"P-33-6.3"
			Import Entry Declaration	"P-33-6.4"
			Statement Of Settlement Of Duties And Taxes	"P-33-6.5"
	112,843,462	**₱282,108,655.00**		

Thus, petitioner has proven that it paid excise taxes on its importations of fuel oil in the 4th Quarter of 2018.

Nevertheless, for the excise tax on the sales of fuel oil to tax-exempt entities of 2,620,000 liters amounting to ₱6,550,000.00 to be refundable, it must be determined that the subject sales came from the importations with excise tax paid on October 3, 2018, November 8 and 14, 2018, and December 17 and 18, 2018. Relative thereto, petitioner submitted the following documents, among others, *viz.*:[64]

Exhibit	Documentary Evidence
"P-31-1" to "P-31-17"	Schedule of Receipts and Removals in the Official Register Book of petitioner's storage locations for the month of September 2018
"P-33"	Importation Schedule 2018 (4th Quarter)
"P-33-1.1" to	Commercial Invoices, Bills of Lading, Assessment Notices issued by the

[61] However, excise tax paid per Exhibit "P-33-3.5" is actually ₱59,548,070.00.
[62] However, excise tax paid per Exhibit "P-33-4.5" is actually ₱54,369,977.00.
[63] However, excise tax paid per Exhibit "P-33-5.5" is actually ₱56,752,147.00.
[64] *Formal Offer of Evidence (with Motion to Re-Mark Exhibits)*, Docket – Vol. III, pp. 1029 to 1052.

"P-33-1.5"; "P-33-3.1" to "P-33-6.5"	Bureau of Customs, Import Entry Declarations, Authority to Release Imported Goods, and Statements of Settlement of Duties and Taxes for October to December 2018
"P-33-7"	Summary of Local Purchases (4th Quarter 2018)
"P-34"	Summary of Monthly Sales per product for the 4th Quarter 2018
"P-34-1"	Summary of Missing Invoices (4th Quarter)
"P-34-2"	Summary of Fourth (4th) Quarter Sales Per Compliance
"P-35"	Schedule of Sales to Excise Tax Exempt Entities for the period October to December 2018
"P-35-1.1" to "P-35-17.1"	Sales Invoices for the period 05 October 2018 to 31 December 2018
"P-35-1.2" to "P-35-17.2"	Withdrawal Certificates for the period 05 October 2018 to 31 December 2018
"P-35-1.3" to "P-35-17.3"	Delivery Notes for the period 05 October 2018 to 31 December 2018
"P-35-1.4" to "P-35-18.4"	Proof of Collection for sales made to tax exempt entities for the period of 05 October 2018 to 31 December 2018
"P-37"	Ending Inventory as of 31 December 2018
"P-37-1" to "P-37-16"	Schedule of Receipts and Removals in the Official Register Book of petitioner's storage locations for the month of December 2018

As can be seen from the list, petitioner only submitted the schedule of receipts and removals for the month of December 2018. The ICPA summarized petitioner's fuel oil additions and withdrawals (in liters) for the month as follows:[65]

Exhibit	Additions	Withdrawals
"P-37-1"	6,174,977.00	6,526,330.00
"P-37-2"	2,549,266.00	1,747,475.00
"P-37-3"	3,073,541.00	3,082,000.00
"P-37-4"	22,645,461.00	12,708,360.00
"P-37-5"	25,394,572.00	18,746,241.00
"P-37-6"	-	-
"P-37-7"	-	-
"P-37-8"	1,494,945.00	1,602,091.00
"P-37-9"	1,404,068.00	1,310,240.00
"P-37-10"	4,761,542.00	4,408,920.00
"P-37-11"	-	-
"P-37-12"	-	32,000.00
"P-37-13"	-	-
"P-37-14"	-	195,060.00
"P-37-15"	22,720,002.00	14,756,168.00
"P-37-16"	8,396,133.00[66]	5,954,380.00[67]
TOTAL	**98,614,507.00**	**71,069,265.00**

65 Exhibit "P-37", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
66 However, total receipts per Exhibit "P-37-16" is actually 4,890,000 liters.
67 However, total withdrawals per Exhibit "P-37-16" is actually 4,890,000 liters.

Per petitioner's importation schedule, petitioner imported 45,405,460 liters of petroleum products in December 2018, broken down as follows:

Exhibit	Date of Payment	Quantity (Liters)	Excise Tax
"P-33-5.1" to "P-33-5.5"	17 December 2018	22,700,859	₱ 56,752,147.50[68]
"P-33-6.1" to "P-33-6.5"	18 December 2018	22,704,601	56,761,502.00
	TOTAL	**45,405,460**	**₱ 113,513,649.50**

On the other hand, the Court summarized the volume of fuel oil received on December 17 and 18, 2018 in the total of 47,476,214 liters, shown as follows:

Exhibit	Date	Quantity (Liters)	Supplier	Batch Voyage No./Carrier	ATRIG/WC No./ Delivery Note
"P-37-1"	17 December 2018	615,806	SLHBTC - LIMAY	MT OYELLE 1537	-
"P-37-4"	18 December 2018	22,645,461	MT ST JACOBI	V.55	VM-STJSGPPHL-2
"P-37-8"	17 December 2018	1,494,945	SLHBTC -PHIVIDEC	MT TERRANOVA 784	-
"P-37-15"	17 December 2018	8,974,468	MT ST JACOBI	V.55	VM-STJSGPPHL-1
"P-37-15"	18 December 2018	13,745,534	MT ST JACOBI	V.55	VM-STJSGPPHL-1
	TOTAL	**47,476,214**			

Based on the foregoing information, the volume of petroleum products imported differ from the actual volume received (additions) in petitioner's storage locations. The Court also notes that petitioner has local purchases of petroleum products for the subject period covering the 4th quarter of 2018.[69]

To recall, petitioner sold 460,000 liters of fuel oil to the following tax-exempt entities in December 2018, to wit:

Exhibit	Date	Invoice No.	Registered Name	Quantity (Liters)
"P-35-15.1"	10 December 2018	33902	JOHNSON CONTROLS – HITACHI AIR CONDITIONING PHILIPPINES, INC	20,000.00
"P-35-16.1"	13 December 2018	34422	DEL MONTE PHILIPPINES, INC.	40,000.00
"P-35-17.1"	31 December 2018	34247	JX NIPPON MINING & METALS PHILIPPINES, INC.	400,000.00
	Total			**460,000.00**

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[68] However, excise tax paid per Exhibit "P-33-5.5" is actually ₱56,752,147.00.
[69] Exhibit "P-33-7", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).

From the submitted documents, it cannot be determined with certainty that the 460,000 liters of petroleum products sold to Johnson Controls–Hitachi Air Conditioning Philippines, Inc., Del Monte Philippines, Inc., and JX Nippon Mining & Metals Philippines, Inc. in December 2018 were the same as the imported fuel oil on which petitioner paid the claimed excise taxes. To be sure, the Summary of Monthly Sales per product for the 4th Quarter of 2018, Schedule of Sales to Tax-Exempt Entities for October to December 2018, sales invoices, withdrawal certificates, delivery notes, and collection receipts presented by petitioner, are insufficient to establish that petitioner sold the imported petroleum products to these entities.

It is noted that the withdrawal certificates submitted by petitioner do not show the amount of excise tax paid by petitioner on the withdrawn petroleum products and whether the same were imported or locally purchased.[70]

Furthermore, the documentary evidence submitted is not enough to allow the Court to trace the movement of petitioner's fuel oil inventory using the first-in, first-out (FIFO) method.[71] Petitioner should have provided its properly supported fuel oil inventory record and submitted the sales invoices and pertinent sales documents of <u>all</u> its sales for the 4th quarter of 2018 for the Court to properly determine that the fuel oil sold to tax-exempt entities came from the imported lot that petitioner paid excise tax on October 3, 2018, November 8 and 14, 2018, and December 17 and 18, 2018.

Thus, for petitioner's failure to sufficiently prove that the excise taxes allegedly paid on the petroleum products sold to Johnson Controls–Hitachi Air Conditioning Philippines, Inc., JX Nippon Mining & Metals Philippines, Inc., Philippine Sinter Corporation, and Del Monte Philippines Corporation, were paid on October 3, 2018, November 8 and 14, 2018, and December 17 and 18, 2018, the present claim must fail. No one-to-one correspondence and matching between the imported and the sold petroleum products was established accurately by petitioner.

In *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court said:[72]

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[70] Exhibits "P-35-1.2" to "P-35-17.2", USB considered remarked to Exhibit "P-27-2" (previously marked as Exhibit "P-28-2"; Refer to Resolution dated November 7, 2022, Docket – Vol. III, pp. 1629 to 1632).
[71] Pursuant to Section 8(b) of Revenue Regulations No. 2-2018.
[72] G.R. No. 222428, February 19, 2018.

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and 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. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. xxx" *(Emphasis supplied)*

Accordingly, it is incumbent upon petitioner to clearly show the factual basis for claiming that it is entitled to a tax credit which, as discussed above, it failed to do in the present case.

Considering the foregoing, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice