**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***Special Third Division***

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| **PETRON CORPORATION,** *Petitioner,* | **CTA CASE NOS. 9738 & 9741** |
| *-versus-* | Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: AUG 01 2023 3:52 p.m. |

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## DECISION

***MODESTO-SAN PEDRO, J.:***

### The Case

The instant consolidated cases involve a claim for refund or issuance of Tax Credit Certificate ("TCC") of petitioner's alleged erroneously paid excise tax arising from the sale and delivery of its imported Jet A-1 fuel to various international carriers and tax-exempt entities for the taxable period from 23 December 2015 to 31 December 2016 in the amount of Three Hundred Sixty Five Million One Hundred Sixty Eight Thousand Eight Hundred Ninety Seven and 54/100 Pesos (Php365,168,897.54),[1] and from the sale and delivery of its locally manufactured Jet A-1 fuel and unleaded gasoline fuel to various international carriers and tax-exempt entities for the taxable period from 1 January 2016 to 31 December 2016 in the amount of Thirty Two Million One Hundred Twenty Seven Thousand Six Hundred Thirty Three and 6/100 Pesos (Php32,127,633.06),[2] or in the aggregate amount of Three Hundred Ninety Seven Million Two Hundred Ninety Six Thousand Five Hundred Thirty and 60/100 (Php397,296,530.60).

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[1] See Statement of the Case, Pre-Trial Order, Court of Tax Appeals ("CTA") Case No. 9738, Records, Vol. 3, p. 1476.

[2] See Statement of the Case, Pre-Trial Order, CTA Case No. 9741, Records, Vol. 2, p. 1040.

## The Parties

Petitioner is a corporation duly registered with the Securities and Exchange Commission with Company Registration No. 31171. It is also duly registered with the Bureau of Internal Revenue ("BIR") with BIR Certificate of Registration No. OCN 8RC0000559947 and Taxpayer's Identification Number 000-168-801-000.[3]

Respondent, Commissioner of Internal Revenue ("CIR"), is sued in his official capacity with the power to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or issuance of TCC, as provided by law, particularly the ***National Internal Revenue Code of 1997, as amended ("NIRC").***[4]

## The Facts

Petitioner's main business is to manufacture, import, and sell petroleum products which include Jet A-1 Fuel and unleaded gasoline fuel.[5] In light of this, petitioner operates the Petron Bataan Refinery ("PBR") where crude oil is processed into a full range of petroleum products, which include Jet A-1 fuel and unleaded gasoline fuel. In certain instances, petitioner imports Jet A-1 fuel when its local production is insufficient to supply the projected demand for the said fuel type.[6]

Petitioner pays excise taxes on the imported Jet A-1 fuel upon their importation and before removal or release from the custody of the Bureau of Customs ("BOC") at Port Limay, Bataan, at the rate of ₱3.67 per liter pursuant to ***Section 148(g) of the NIRC.***[7] After importation, the imported Jet A-1 fuel is then transferred to the PBR for storage, after which it is withdrawn and delivered to petitioner's various depots for eventual sale and delivery to various customers, including international carriers and tax-exempt entities.[8]

Petitioner also pays excise taxes on the locally produced Jet A-1 fuel and unleaded gasoline fuels before their removal from PBR, at the rate of ₱3.67 per liter for Jet A-1 fuel and ₱4.35 per liter for unleaded gasoline fuel,

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3 See Statement of Facts and Issue, Pre-Trial Order, CTA Case No. 9741, Records, Vol. 2, p. 1041.

4 See Statement of Facts and Issue, Pre-Trial Order, CTA Case No. 9741, Records, Vol. 2, p. 1041; See also Statement of Facts and Issue, Pre-Trial Order, CTA Case No. 9738, Records, Vol. 3, p. 1477.

5 See Amended Articles of Incorporation, Exhibits "P-2-Imported" and "P-2"; Commingling Permit No. (P)-028-01-15-12537, dated 12 January 2015, with validity until 31 December 2015, and Commingling Permit No. (P)-028-01-16-15847, dated 22 January 2016, with validity until 31 December 2016, Exhibits "P-5-Imported", "P-5", "P-202-Imported" to "P-202-2-Imported" and "P-383" to "P-383-2"; Bureau of Customs Certificate of Accreditation, valid until 11 July 2017, Exhibit "P-6-Imported".

6 See petitioner's Memorandum, Records, CTA Case No. 9738 consolidated with CTA Case No. 9741, Vol. 8, p. 2963.

7 *Ibid.*

8 *Ibid.*

pursuant to ***Sections 148(g) and 148(f) of the NIRC.***[9] The locally produced Jet A-1 fuel is transferred from the PBR to petitioner's various depots for eventual sale and delivery to various customers, including international carriers and tax-exempt entities. Similarly, the locally produced unleaded gasoline fuel are transferred from the PBR to petitioner's various depots for eventual sale and delivery to various tax-exempt entities.[10]

From 23 December 2015 to 31 December 2016, petitioner imported Jet A-1 fuel as a finished product. Pursuant to ***Section 131(A) in relation to Section 148(g) of the NIRC***, petitioner paid to the BOC the corresponding taxes and fees, including excise taxes. [11]

Also, from 1 January 2016 to 31 December 2016, petitioner locally produced Jet A-1 fuel and unleaded gasoline fuel as finished products. Hence, pursuant to ***Section 130(A)(2) in relation to Section 148(g) and Section 148(f) of the NIRC,*** petitioner paid to the BIR the corresponding excise taxes.[12]

A total of Ninety Nine Million Five Hundred One Thousand Sixty Two (99,501,062) liters of the above-mentioned imported Jet A-1 fuel, for which petitioner paid excise taxes in the amount of Three Hundred Sixty Five Million One Hundred Sixty Eight Thousand Eight Hundred Ninety Seven and 54/100 Pesos (Php365,168,897.54), were sold to various: (1) international carriers of both Philippine and foreign registry for their use and consumption outside the Philippines; (2) international carriers of foreign registry whose countries of registry exempt Philippine carriers from similar taxes; and (3) tax-exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use or consumption.[13]

Further, a total of Seven Million Seven Hundred Twenty Eight Thousand Seven Hundred Sixty Eight (7,728,768) liters of the above-mentioned locally produced Jet A-1 fuel for which petitioner paid excise taxes in the amount of Twenty Eight Million Three Hundred Sixty Four Thousand Five Hundred Seventy Eight and 56/100 Pesos (Php28, 364, 578.56) were sold to various: (1) international carriers of both Philippine and foreign registry for their use and consumption outside the Philippines; (2) international carriers of foreign registry whose countries of registry exempt Philippine carriers from similar taxes ; and (3) tax exempt entities or agencies covered by tax treaties, conventions and other international agreements.[14]

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[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Id.*, pp. 2963-2964.
[13] *Id.*, p. 2964.
[14] *Ibid.*

Finally, a total of Eight Hundred Sixty Five Thousand Seventy (865,070) liters of locally produced unleaded gasoline fuel, for which petitioner paid excise taxes in the amount of Three Million Seven Hundred Sixty Three Thousand Fifty Four and 50/100 Pesos (Php3,763,054.50) were sold to various tax exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption.[15]

Petitioner then filed its application for refund or issuance of TCC in the total amount of Three Hundred Sixty Five Million One Hundred Sixty Eight Thousand Eight Hundred Ninety Seven and 54/100 Pesos (₱365,168,897.54) representing erroneously paid excise tax on imported Jet A-1 fuel on 20 November 2017 with the Large Taxpayer Excise Audit Division II.[16]

On the other hand, petitioner filed its application for refund or issuance of TCC in the total amount of Thirty-Two Million One Hundred Twenty-Seven thousand Six Hundred Thirty-Three and 6/100 Pesos (₱32,127,633.06) representing erroneously paid excise tax on locally manufactured Jet A-1 fuel and unleaded gasoline fuel on 24 November 2017 with the Large Taxpayer Excise Audit Division II.[17]

Due to respondent's inaction on said administrative claims, petitioner filed Petitions for Review before the Court of Tax Appeals ("CTA"), as follows:[18]

a. The judicial claim for refund pertaining to the excise tax on imported Jet A-1 fuel was filed on 20 December 2017. The case was docketed as CTA Case No. 9738 and was raffled to this Court's Third Division.[19]

b. The judicial claim pertaining to the excise tax on locally manufactured Jet A-1 fuel and unleaded gasoline fuel was filed on 20 December 2017. The case was docketed as CTA Case No. 9741 and was raffled to the Court's First Division.[20]

*<u>Proceedings under CTA Case No. 9738</u>*

On 23 February 2018, respondent filed his Answer in CTA Case No. 9738.[21]

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15 *Ibid.*
16 *Id.*, p. 2965.
17 *Id.*, p. 2966.
18 *Ibid.*
19 *Ibid.*
20 *Id.*, p. 2967.
21 Records, CTA Case No. 9738, Vol. 1, pp. 128-137.

Pre-Trial then ensued on 16 October 2018.[22] A Pre-Trial Order was subsequently issued by the Court on 17 January 2019.[23]

During trial proper, petitioner presented the testimonies of the following witnesses:

a. Ma. Clarissa C. Arguelles – Tax Manager;[24]
b. Michael F. Manzano – Commercial Services Manager;[25]
c. Leon G. Pausing II – Industrial Trade Head, and previously, Selling Systems, Training and Development National Manager and National Account Sales Manager;[26]
d. Allan V. Peczon – Area Sales Manager – Mindanao, Industrial Trade, and previously, Area Sales Manager – Key Accounts, Industrial Trade;[27]
e. Allan James T. Tenorio – Terminal Manager, Joint Oil Companies Aviation Fuel Storage Plant ("JOCASP") / Ninoy Aquino International Airport ("NAIA");[28]
f. Richard L. Wong – Terminal Manager, Iloilo Depot;[29] and
g. Marissa U. Viray – Operations Finance Manager.[30]

Petitioner also engaged the services of a Court-commissioned Independent Certified Public Accountant ("ICPA"), Ms. Madonna Mia S. Dayego,[31] who submitted an ICPA Report summarizing her findings on the voluminous documents presented by petitioner for CTA Case No. 9738.[32]

On 27 November 2019, petitioner filed a Motion to Consolidate CTA Case No. 9738 with CTA Case No. 9741.[33] In a Resolution, dated 5 February 2020, the latter case, then pending before the Court's First Division, was consolidated with CTA Case No. 9738, which bears a lower docket number.[34]

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22 *Id.*, Vol. 2, pp. 563-568.
23 *Id.*, Vol. 3, pp. 1475-1484.
24 Exhibit "P-170", *Id.*, Vols. 2-3, pp.748-1366; Hearing, dated 15 October 2019, *Id.*, Vol. 4, pp. 1485-1488; Supplemental Judicial Affidavit, Exhibit "P-180", *Id.*, Vol. 4, pp. 1881-1920; Hearing, dated 15 September 2020, *Id.*, Vol. 4, pp. 1922-1926.
25 Exhibit "P-171", *Id.*, Vol. 2, pp. 515-562; Hearing, dated 15 October 2019, *Id.*, Vol. 4, pp. 1485-1488.
26 Exhibit "P-172", *Id.*, Vol. 1, pp. 223-494; Hearing, dated 15 October 2019, *Id.*, Vol. 4, pp. 1789-1791.
27 Exhibit "P-173", *Id.*, Vol. 2, pp. 666-717; Hearing, dated 11 April 2019, *Id.*, Vol. 4, pp. 1593-1595.
28 Exhibit "P-174", *Id.*, pp. 718-747; Hearing, dated 14 May 2019, *Id.*, Vol. 4, pp. 1686-1693.
29 Exhibit "P-176", *Id.*, Vol. 3, pp. 1367-1399; Hearing, dated 14 May 2019, *Id.*, Vol. 4, pp. 1686-1693.
30 Exhibit "P-175", *Id.*, Vol. 2, pp. 570-665; Supplemental Judicial Affidavit, Exhibit "P-179", *Id.*, Vol. 4, pp. 1573-1585; Hearing, dated 11 April 2019, *Id.*, Vol. 4, pp. 1593-1595.
31 *Id.*, Vol. 3, pp. 1486-1488.
32 Exhibit "P-200", *Id.*, Vol. 4, pp. 1506-1571; Exhibit "P-178", *Id.*, Vol. 4, pp. 1608-1679; Supplemental Judicial Affidavit, Exhibit "P-179", *Id.*, Vol. 4, pp. 1746-1762; Hearing, dated 15 October 2019, *Id.*, Vol. 4, pp. 1789-1791.
33 *Id.*, Vol. 4, pp. 1814-1823.
34 Records, CTA Case Nos. 9738 & 9741, Vol. 4, pp. 1833-1835.

*Proceedings under CTA Case No. 9741*

On 21 February 2018, respondent filed his Answer in CTA Case No. 9741.[35]

On 28 March 2019, Pre-Trial ensued for the instant case,[36] and a Pre-Trial Order was then issued by this Court's First Division on 17 May 2019.[37]

During trial proper, petitioner presented the testimonies of the following witnesses:

a. Ma. Clarissa C. Arguelles – Tax Manager;[38]
b. Leon G. Pausing II – Industrial Trade Head, and previously, Selling Systems, Training and Development National Manager and National Account Sales Manager;[39]
c. Allan V. Peczon – Area Sales Manager – Mindanao, Industrial Trade, and previously, Area Sales Manager – Key Accounts, Industrial Trade; [40]
d. Allan James T. Tenorio – Terminal Manager, JOCASP / NAIA; [41]
e. Richard L. Wong – Terminal Manager, Iloilo Depot;[42] and
f. Marissa U. Viray – Operations Finance Manager.[43]

Petitioner once again engaged the services of Court-commissioned ICPA Dayego,[44] who submitted an ICPA Report summarizing her findings on the voluminous documents presented by petitioner.[45]

On 27 November 2019, petitioner filed a Motion to Consolidate CTA Case No. 9741 CTA Case No. 9738,[46] which was granted in a Resolution, dated 3 December 2019.[47]

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35 Records, CTA Case No. 9741, Vol. 1, pp. 103-111.-137.
36 *Id.*, Vol. 2, pp. 1004-1009.
37 *Id.*, pp. 1039-1053.
38 Exhibit "P-201", *Id.*, Vol. 1, pp.270-887; Hearing, dated 30 July 2019, *Id.*, Vol. 2, pp. 1122-1129.
39 Exhibit "P-203", *Id.*, Vol. 1, pp.142-167; Hearing, dated 20 August 2019, *Id.*, Vol. 2, pp. 1132-1136.
40 Exhibit "P-202", *Id.*, Vol. 1, pp.239-269; Hearing, dated 20 August 2019, *Id.*, Vol. 2, pp. 1132-1136.
41 Exhibit "P-204", *Id.*, Vol. 1, pp.168-205; Hearing, dated 8 October 2019, *Id.*, Vol. 2, pp. 1180-1183.
42 Exhibit "P-206", *Id.*, Vol. 1, pp.206-238; Hearing, dated 5 November 2019, *Id.*, Vol. 2, pp. 1185-1186.
43 Exhibit "P-205", *Id.*, Vol. 2, pp. 889-986; Hearing, dated 8 October 2019, *Id.*, Vol. 2, pp. 1180-1183.
44 *Id.*, Vol. 2, pp. 1125-1129.
45 *Id.*, Vol. 2, pp. 1157-1172; Exhibit "P-207", *Id.*, Vol. 2, pp. 1197-1300.
46 *Id.*, Vol. 2, pp. 1301-1309.
47 *Id.*, Vol. 2, pp. 1310-1311.

*Proceedings after consolidation*

On 15 October 2020, petitioner submitted a consolidated ICPA Report to assist the Court in properly resolving the two (2) refund cases which had been consolidated.[48] Likewise, petitioner submitted a Judicial Affidavit of its witness, ICPA Dayego, summarizing her findings on the consolidated ICPA Report.[49] On 3 November 2020, the ICPA was placed on the witness stand for cross-examination in relation to her testimony on the consolidated ICPA Report.[50]

On 24 February 2021, petitioner filed its Formal Offer of Evidence,[51] to which respondent did not interpose any objection.[52] Thus, in a Resolution, dated 14 October 2021, this Court admitted all of petitioner's Exhibits.[53]

Respondent then manifested that he would no longer present any evidence for the instant consolidated case.[54]

On 23 June 2022, petitioner filed its Memorandum[55] while respondent filed none.[56]

With no memorandum filed by respondent, the case was submitted for Decision on 2 August 2022.[57]

Hence, this Decision.

## **The Issues**

The issues submitted for this Court's resolution are:

> Whether petitioner is entitled to the refund or issuance of TCC in the amount of Three Hundred Sixty Five Million One Hundred Sixty Eight Thousand Eight Hundred Ninety Seven and 54/100 Pesos (₱365,168,897.54) representing excise tax paid for its importation of Jet A-1 fuel which were subsequently sold and

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48 Exhibit "P-189-imported", Records, CTA Case Nos. 9738 & 9741, Vols. 4-5, pp. 1929-2085.
49 Exhibit "P-190-imported", *id.*, Vol. 5 pp. 2173-2346.
50 Hearing, dated 3 November 2020, *id.*, Vol. 5, pp. 2367-2369.
51 *Id.*, Vols. 6-8, pp. 2445-3814
52 *Id.*, Vol. 8, pp. 3816-3820.
53 *Id.*, pp. 2950-2951.
54 *Id.*, pp. 2954-2957.
55 *Id.*, pp. 2960-3035.
56 See Records Verification Report, dated 21 July 2022, *id.*, p. 3037.
57 *Id.*, p. 3039.

delivered to various international carriers and to tax-exempt entities;[58] and

Whether or not petitioner is entitled to the refund or issuance of TCC in the amount of Thirty-Two Million One Hundred Twenty-Seven thousand Six Hundred Thirty-Three and 6/100 Pesos (₱32,127,633.06) representing excise tax paid for its local production of Jet A-1 fuel and unleaded gasoline fuel during the period 1 January 2016 to 31 December 2016 which were sold and delivered to various international carriers and to tax-exempt entities.[59]

**Arguments of the Parties**

**Petitioner's Arguments**[60]

Petitioner raises the following major arguments to prove that it is entitled to a refund of erroneously paid excise tax on its imported Jet A-1 fuel, and locally manufactured Jet A-1 fuel and unleaded gasoline fuel:

*First*, both the administrative and judicial claims for refund or issuance of TCC were timely filed;

*Second*, the imported and locally produced tax-paid Jet A-1 fuel and unleaded gasoline fuel sold and delivered to various international carriers and to tax-exempt entities are exempt from excise tax under ***Section 135(a) and 135(b) of the NIRC***, and any excise tax paid on their removal was erroneously paid; and

*Third*, petitioner has satisfied the requirements, under ***Sections 204(c) and 229 of the NIRC***, to be entitled to a refund of erroneously or illegally collected taxes.

**Respondent's Arguments**[61]

In refutation, respondent alleged that petitioner is not entitled to the refund sought because ***Section 135 of the NIRC*** only provides a tax exemption in favor of the buyer of petroleum products named in said provision. What the said provision prohibits is the passing by the importer or

58 See Issues, Pre-Trial Order, Records, CTA Case No. 9738, Vol. 3, p. 1477.
59 See Issues, Pre-Trial Order, Records, CTA Case No. 9741, Vol. 2, p. 1041.
60 Memorandum, Records, CTA Case Nos. 9738 & 9741, Vol. 8., pp. 2984-3033.
61 Answer, Records, CTA Case No. 9738, Vol. 1, pp. 129-134; Answer, Records, CTA Case No. 9741, Vol. 1, pp. 104-109.

manufacturer of petroleum products of the burden of excise tax to the buyers of petroleum products specifically made exempt under said provision. Simply put, excise tax is still due from the importer or manufacturer of petroleum products but it cannot be passed on to the buyers and users specifically made exempt by ***Section 135 of the NIRC.*** Claims for refund of excise tax is authorized only under ***Section 130 (D) of the NIRC***, which pertain to exports of locally manufactured products, and not under ***Section 135 of the NIRC.***

## <u>The Ruling of the Court</u>

This Court **PARTIALLY GRANTS** the consolidated Petitions for Review.

### <u>Requisites for claiming refund of erroneously paid taxes.</u>

The provisions that govern the present claim for refund of erroneously paid excise tax are ***Sections 204 and 229 of the NIRC***, which read:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. –***
>
> The Commissioner may –
>
> (A) xxx xxx xxx
>
> (B) xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal 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. <u>**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:**</u> Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> (Emphasis and underscoring, Ours.)
>
> ***"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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, <u>**until a claim for refund or credit has been duly filed with the Commissioner;**</u>

> 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 and underscoring, Ours.)

Based on the foregoing provisions, a taxpayer-applicant must comply with the following requisites to successfully obtain a tax refund/credit for erroneously paid taxes from this Court:

1. There must be an erroneous or illegal collection of tax or penalty collected without authority, or sum excessively or wrongfully collected;

2. A prior administrative claim for refund had been filed before the CIR within two (2) years after the payment of tax or penalty; and

3. A suit or proceeding had been instituted before this Court within two (2) years from the date of payment of tax or penalty.

It must be emphasized that cases filed before this Court are litigated *de novo*;[62] parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the Court all evidence required for the successful prosecution of its claim.[63] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

**Petitioner timely filed both its administrative and judicial claims for refund.**

As the first requisite for claiming refund of erroneously paid taxes requires a lengthy discussion, this Court shall first determine whether petitioner complied with the second and third requisites.

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[62] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

[63] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

Excise tax on importation of goods are paid by the owner or importer before the release of such goods from the custody of the BOC. ***Section 131 (A) of the NIRC*** provides:

> "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 Custom Officers,** conformably with the regulations of the Department of Finance and **before the release of such articles from the customs house,** 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, Ours.)

On the other hand, the excise tax on locally manufactured products are paid by the manufacturer or producer before the removal of such products from the place of production. ***Section 130 (A) (2) of the NIRC*** provides, to wit:

> "SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –
>
> (A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. -
>
> xxx xxx xxx
>
> (2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, **the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: Provided, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, **before removal from the place of production of such products from January 1, 1999 and thereafter:** Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody."

(Emphasis, Ours.)

In the case at bar, for petitioner's importation of Jet A-1 fuel, its payment of duties and taxes for its imported petroleum products are done through the BOC's e2m system and are supported by importation documents consisting of Statement of Settlement Duties and Taxes, Single Administrative Documents,[64] Bill of Lading ("BL"), Commercial Invoices, Customs Payment Receipts ("CPR"), BOC Certifications for Entry / Certificate of Payment ("BOC Certifications"), Authority to Release Imported Goods ("ATRIG"), and Reports of Survey, among others.[65] The payment is done before the petroleum products are allowed leave the BOC's custody.

For the locally manufactured Jet A-1 fuel and unleaded gasoline fuel, petitioner uses two (2) modes for paying the excise tax due on each removal of said goods from the PBR. The first is through an application for payment made through the BIR's Electronic Filing and Payment System ("eFPS") as shown by the Excise Tax Returns or BIR Forms 2200-P ("ETR") with attached Summary of Removals.[66] The second is through the Product Replenishment Scheme as evidenced by Product Replenishment Certificates ("PRC"), Claims for Product Replenishment and Lists of Invoices.[67] In either case, the payment of the excise tax due on the locally manufactured Jet A-1 fuel is done before petroleum products are removed from the PBR.

The subject period of the claim for the refund of excise tax pertaining to the importation of Jet A-1 fuel is from 23 December 2015 to 31 December 2016. During this period, the earliest importation made by petitioner of Jet A-1 fuel was on 24 December 2015. The excise tax due for this importation was paid on 23 December 2015.[68] From said date, petitioner had until 23 December 2017 within which to file its administrative and judicial claim for refund.

Considering that petitioner filed its administrative claims for refund on 24 November 2017,[69] the administrative claim was timely filed. The same can similarly be said of the judicial claim, since the Petition for Review, docketed as CTA Case No. 9738, appealing the CIR's inaction on the administrative claim was filed on 20 December 2017.[70]

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64 Exhibits "P-8-imported", "P-9-imported", "P-11-imported", "P-12-imported", "P-13-imported", "P-14-imported", "P-15-imported", "P-16-imported", "P-17-imported" and "P-18-imported."

65 Exhibits "P-7-imported" to "P-18-7-1-imported" and "P-203-imported" to "P-204-70-imported".

66 Exhibits "P-6" to "P-7-1".

67 Exhibits "P-10" to "P-75-2".

68 Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-170-imported"; Consolidated ICPA Report, Exhibit "P-189-imported".

69 Exhibits "P-19-imported", "P-20-imported", "P-21-imported", "P-22-imported" and "P-201"; Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-170-imported"

70 CTA Case No. 9738, Records, Vol. 1, p. 10.

On the other hand, the subject period of the claim for the refund of excise tax pertaining to the local production of Jet A-1 fuel and unleaded gasoline fuel is from 1 January 2016 to 31 December 2016. During this period, the earliest removal of locally manufactured Jet A-1 fuel and unleaded gasoline fuel from the PBR to petitioner's depots was on 1 January 2016. The earliest payment of excise tax subject of said claim for refund was also made on this date.[71] Consequently, for this claim for refund, petitioner had until 1 January 2018 within which to file both the administrative and judicial claim for refund.

As petitioner filed its administrative claim for refund on 24 November 2017,[72] the same was timely filed. Likewise, when petitioner filed a Petition for Review, docketed as CTA Case No. 9741, on 22 December 2017[73] to appeal the CIR's inaction of such administrative claim, it timely filed its judicial claim for refund.

Both administrative claims were filed ahead of their corresponding judicial claims. Given the foregoing, petitioner complied with the second and third requisites for claiming refund of erroneously paid taxes as provided above.

Now, this Court shall tackle the issue of whether there was an erroneous payment of excise tax in the case at bar. This Court rules in the affirmative.

**Excise tax on imported and locally manufactured petroleum products is erroneously paid if the said products are sold to international carriers and tax-exempt entities.**

***Section 135 of the NIRC*** provides, as follows:

> "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) 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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71 Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-170-imported"; Consolidated ICPA Report, Exhibit "P-189-imported".
72 Exhibits "P-8" and "P-9"; Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-170-imported".
73 CTA Case No. 9741, Records, Vol. 1, p. 10.

> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
>
> (c) Entities which are by law exempt from direct and indirect taxes."

The exemption from excise tax provided by this provision arises if a petroleum product is sold to: a) an international carrier; or b) an exempt entity pursuant to law, treaty, convention, or other international agreement, provided that the country of a foreign international carrier or exempt entity or agency similarly exempts Philippine international carriers, entities, or agencies from similar taxes for petroleum products sold to the latter.

Further, this provision has been interpreted by the Supreme Court to extend in favor of manufacturers and importers of petroleum products if the same has been sold to international carriers and tax-exempt entities, as in ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation***:[74]

> "Indeed, the avowed purpose of a tax exemption is always 'some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption.' The exemption from excise tax of aviation fuel purchased by international carriers for consumption outside the Philippines fulfills a treaty obligation pursuant to which our Government supports the promotion and expansion of international travel through avoidance of multiple taxation and ensuring the viability and safety of international air travel. In recent years, developing economies such as ours focused more serious attention to significant gains for business and tourism sectors as well. Even without such recent incidental benefit, States had long accepted the need for international cooperation in maintaining a capital intensive, labor intensive and fuel intensive airline industry, and recognized the major role of international air transport in the development of international trade and travel.
>
> Under the basic international law principle of pacta sunt servanda, we have the duty to fulfill our treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. In this case, **<u>Sec. 135(a) of the NIRC embodies our compliance with our undertakings under the Chicago Convention and various bilateral air service agreements not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers.</u>** In our Decision in this case, we interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production, pursuant to Article 148 and pertinent BIR regulations. Ruling on respondent's claim for tax refund of such paid excise taxes on petroleum products sold to tax-exempt international carriers, we found no

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[74] G.R. No. 188497, 19 February 2014.

basis in the Tax Code and jurisprudence to grant the refund of an 'erroneously or illegally paid' tax.

Justice Bersamin argues that '(T)he shifting of the tax burden by manufacturers-sellers is a business prerogative resulting from the collective impact of market forces,' and that it is 'erroneous to construe Section 135(a) only as a prohibition against the shifting by the manufacturers-sellers of petroleum products of the tax burden to international carriers, for such construction will deprive the manufacturers-sellers of their business prerogative to determine the prices at which they can sell their products.'

We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, **we agree that there is a need to reexamine the effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.**

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.

With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices , the practice of 'tankering' would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give**

**primary consideration to its broad implications on our commitment under international agreements.**

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as **the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC**."
(Emphasis and underscoring, Ours,)

Additionally, in ***Chevron Philippines, Inc. v. Commissioner of Internal Revenue***,[75] the Supreme Court ruled, 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.**

xxx xxx xxx

Pilipinas Shell concerns the manufacturer's entitlement to refund or credit of the excise taxes paid on the petroleum products sold to international carriers exempt from excise taxes under Section 135(a) of the NIRC.

However, the issue raised here is whether the importer (i.e., Chevron) was entitled to the refund or credit of the excise taxes it paid on petroleum products sold to CDC, a tax-exempt entity under Section 135(c) of the NIRC.

Notwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC, **the basic tax principle applicable was the same in both cases – that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed. Accordingly, the excise taxes that Chevron paid on its importation of petroleum products subsequently sold to CDC were illegal and erroneous, and should be credited or refunded to Chevron in accordance with Section 204 of the NIRC.**

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[75] G.R. No. 210836, 1 September 2015.

> **Pursuant to Section 135(c), supra, petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase which are by law exempt from direct and indirect taxes describes the entities to whom the petroleum products must be sold in order to render the exemption operative. Section 135(c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers – that is, the entities that are by law exempt from direct and indirect taxes – because they are not under any legal duty to pay the excise tax.**
>
> CDC was created to be the implementing and operating arm of the Bases Conversion and Development Authority to manage the Clark Special Economic Zone (CSEZ). As a duly-registered enterprise in the CSEZ, CDC has been exempt from paying direct and indirect taxes pursuant to Section 24 of Republic Act No. 7916 (The Special Economic Zone Act of 1995), in relation to Section 15 of Republic Act No. 9400 (Amending Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992).
>
> **Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customshouse, Chevron was bound to pay, and actually paid such taxes. But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007 (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). Before then, Chevron did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products.**
>
> **Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC."**
> (Emphasis, Ours.)

Thus, for petitioner to successfully comply with the first requisite for claiming refund of erroneously paid excise tax under ***Section 135 of the NIRC***, it must prove that it actually paid excise tax on petroleum products which it locally manufactured or imported, and subsequently sold to international carriers or tax-exempt entities.

**Petitioner erroneously paid excise tax on its locally manufactured Jet A-1 fuel and unleaded gasoline fuel sold to international carriers and tax-exempt entities.**

A summary of the excise tax paid by petitioner on its locally manufactured Jet A-1 fuel and unleaded gasoline fuel sold to international carriers and tax-exempt entities, which is the subject matter of the present claim was provided in the consolidated ICPA Report, *viz.*:[76]

| | **Jet A-1 Fuel** | | **Unleaded Gasoline Fuel** | |
|---|---|---|---|---|
| Month of Sale/ Delivery | Volume (In Liters) | Amount (Excise Tax Rate [₱3.67] x Liters) | Volume (In Liters) | Amount (Excise Tax Rate [₱4.35] x Liters) |
| January 2016 | 859,804 | ₱3,155,480.68 | 68,000 | ₱295,800.00 |
| February 2016 | 876,590 | 3,217,085.30 | 63,500 | 276,225.00 |
| March 2016 | 751,502 | 2,758,012.34 | 90,570 | 393,979.50 |
| April 2016 | 186,904 | 685,937.68 | 98,100 | 426,735.00 |
| May 2016 | 3,389,788 | 12,440,521.96 | 54,300 | 236,205.00 |
| June 2016 | 1,235,949 | 4,535,932.83 | 91,800 | 399,330.00 |
| July 2016 | 29,313 | 107,578.71 | 46,300 | 201,405.00 |
| August 2016 | 58,892 | 216,133.64 | 74,100 | 322,335.00 |
| September 2016 | 18,706 | 68,651.02 | 76,000 | 330,600.00 |
| October 2016 | 51,851 | 190,293.17 | 64,000 | 278,400.00 |
| November 2016 | 82,678 | 303,428.26 | 62,100 | 270,135.00 |
| December 2016 | 100,156 | 367,572.52 | 76,300 | 331,905.00 |
| January 2017 | 52,116 | 191,265.72 | - | - |
| February 2017 | 19,816 | 72,724.72 | - | - |
| March 2017 | 14,703 | 53,960.01 | - | - |
| Total | 7,728,768 | ₱28,364,578.56(a) | 865,070 | ₱3,763,054.50(b) |
| | | **Total excise taxes paid (a) + (b)** | | **₱32,127,633.06** |

***The excise taxes due on locally manufactured Jet A-1 and unleaded gasoline fuels sold to international carriers and tax-exempt entities for the period 1 January 2016 to 31 December 2016 were duly paid.***

To reiterate, petitioner employs two (2) modes of payment in settling the excise tax due from each removal of locally manufactured products from the PBR: a) through an application for payment made through the BIR's eFPS as shown by the ETR;[77] and b) through the Product Replenishment Scheme.[78]

[76] Consolidated ICPA Report, Exhibit "P-189".
[77] Exhibits "P-6" to "P-7-1".
[78] Exhibits "P-10" to "P-75-2".

In either case, the payment of excise tax is made before removal of the petroleum products from the PBR.

Based on the requirements of various depots, petitioner's Distribution Group ("DG") sends a summary of estimated daily volume of fuel product requirements for the following two (2) to five (5) days to the Refinery Accounting Section ("RAS"). Based on the DG's figures, petitioner's RAS then calculates the estimated excise tax payable for finished petroleum products for the next two (2) to five (5) days or for the same period, which is then forwarded to petitioner's Stock Accounting Section ("SAS"). These fuel products, which include the Jet A-1 fuel and the unleaded gasoline fuel, are then scheduled for removal within the next two (2) to five (5) days.[79]

Based on the submitted estimated excise tax payable by the RAS, the SAS finalizes the amount of the excise tax due and provides an allowance in the computation of the excise tax due, which is normally around Five Million Pesos (Php5,000,000.00) per day. The SAS then files the application of payment of excise tax due through the eFPS in accordance with the actual product removals from the PBR. The SAS compares the submitted estimated computation versus the excess payments reported under "Balance Carried Over from Previous Return" (*i.e.*, Item 17 of the ETR) in the ETR and ensures sufficiency of the excess payments to cover the estimated excise tax due per computation for the next two (2) to five (5) days.[80]

In instances where the actual balance of excess payments reflected in the ETR is deemed insufficient to cover the amount of excise tax required to be maintained based on the computation made, petitioner, through its SAS, makes an advance deposit to the BIR through eFPS.[81]

Petitioner also applies the Tax Subsidy Availment Certificate ("TSAC")[82] obtained from its sales to the Armed Forces of the Philippines Commissary and Exchange Service ("AFPCES") as payment of excise tax in lieu of cash.[83]

With respect to the Product Replenishment Scheme, petitioner operates various depots which serve as storage of locally manufactured Jet A-1 fuel prior to sale and delivery to various customers. Some of these depots are registered as PRC locations, where majority of petitioner's sales and

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79 Consolidated ICPA Report, Exhibit "P-189-imported".
80 *Ibid.*
81 *Ibid.*
82 Exhibits "P-384" to "P-384-13".
83 Summary of TSAC for the period 18 September 2015 to 1 April 2016, Exhibit No. "P-384"; Consolidated ICPA Report, Exhibit "P-189-imported".

deliveries of locally manufactured Jet A-1 fuel are made to international air carriers.[84]

If Jet A-1 fuel is sourced from locally manufactured stocks from PRC locations, where majority of its sales and deliveries of locally manufactured Jet A-1 fuel are made to international air carriers, petitioner utilizes its PRC / BIR Form No. 2298, which is being amortized as payment through the Product Replenishment Debit Memo ("PRDM") / BIR Form No. 2331 as tax credits for payment of excise tax due on the removals of locally manufactured Jet A-1 fuel which are to be sold to international air carriers.[85]

As examined by the ICPA and as thoroughly verified by this Court, petitioner reported and paid the corresponding excise taxes on the removals from the PBR based on the ETRs, which include the subject matter of the instant claim,[86] as follows:

| Particulars | Jet A-1 Fuel | Unleaded Gasoline Fuel | Total |
|---|---|---|---|
| Total volume of removals per Withdrawal Certificate ("WC") (Kilo Liters ("KL") at air) | 187,075,340 | 70,655,918 | |
| Multiply by: Equivalent Excise Tax Rate per Liter | 3.67 | 4.35 | |
| Amount of Excise Tax that should have been paid | ₱686,566,497.80 | ₱307,353,243.30 | ₱993,919,741.10 |
| Actual amount of excise tax due and paid on PBR removals | | | 3,502,102,821.83 |
| Difference | | | (₱2,508,183,080.73) |

The difference is accounted for as follows:[87]

| Particulars | Volume in Liters | Equivalent Excise Tax | Remarks |
|---|---|---|---|
| 1. Removals of Jet A-1 fuel paid thru PRDM/PRC (**marked as Exhibit No. P-257**) | 177,311,211 | 650,732,144.37 | No effect on the claim. |
| 2. Payment of excise tax on unleaded gasoline fuel not related to the claim | (724,698,534) | (3,152,438,622.90) | No effect on the claim |
| 3. Payment of excise tax on other excisable petroleum products | (170,579,752) | (6,476,602.20) | No effect on the claim. |
| | (717,967,075) | (₱2,508,183,080.73) | |

This proves that the excise taxes due on locally manufactured Jet A-1 and unleaded gasoline fuels sold to international carriers and tax-exempt entities for the period 1 January 2016 to 31 December 2016 were duly paid.

84 Memorandum, Records, CTA Case Nos. 9738 & 9741, Vol. 8., p. 2990; Consolidated ICPA Report, Exhibit "P-189-imported".
85 *Ibid.*
86 Consolidated ICPA Report, Exhibit "P-189-imported."
87 *Ibid.*

***The volumes and amount of locally manufactured Jet A-1 fuel and unleaded gasoline fuel manufactured and removed from the PBR to petitioner's depots then subsequently transferred to another depot, into-plane facilities ("ITPs"), and refuellers are accurate and properly supported.***

From the PBR, the locally manufactured Jet A-1 fuel and the unleaded gasoline fuel are then transferred to petitioner's depots spread across the Philippines. The same is transferred from said depots to other depots, ITPs, and refuellers prior to the fuel being delivered and sold to end customers.[88] An ITP, to clarify, is a storage facility owned by petitioner from which petroleum products are withdrawn, while a refueller is a third party contractor engaged by petitioner owning refuelling trucks with a dispensing system for the delivery of petroleum products to customers.[89]

The ICPA's thorough tracing, as verified by this Court, shows that the locally manufactured Jet A-1 fuel removed from the PBR tallies with the volume received by the respective depots:[90]

| | | Per WC | Per Depot's Liquidation Statement ("LS") Receipts | | | Per Depots' Official Register Books ("ORB") | | |
|---|---|---|---|---|---|---|---|---|
| Depots | Exhibit No. | Withdrawals from PBR | Gross Volume Received | In-transit Gain (Loss) | Net Volume to be Received (a) | Exhibit No. | Volume Received by Depots (b) | Difference (a) – (b) |
| SL Harbor | **P-271** | 141,506,110 | 141,506,110 | (305,539) | 141,200,571 | **P-278** | 141,200,571 | – |
| Navotas | **P-272** | 1,440,301 | 1,440,301 | (3,661) | 1,436,640 | **P-279** | 1,436,640 | – |
| Palawan | **P-273** | 2,910,702 | 2,910,702 | 8,127 | 2,918,829 | **P-280** | 2,918,829 | – |
| Mactan | **P-274** | 28,045,341 | 28,045,341 | 89,588 | 28,134,929 | **P-281** | 28,134,929 | – |
| Iloilo | **P-275** | 7,788,149 | 7,788,149 | (284,668) | 7,503,481 | **P-282** | 7,503,481 | - |
| Davao | **P-276** | 2,393,997 | 2,393,997 | (17,686) | 2,376,311 | **P-283** | 2,376,311 | – |
| Zamboanga | **P-277** | 2,790,740 | 2,790,740 | (18,441) | 2,772,299 | **P-284** | 2,772,299 | – |
| DMIA/Clark | **P-380** | 200,000 | – | – | – | **P-380** | 200,000 | (200,000) |
| Total | | 187,075,340 | 186,875,340 | (532,280) | 186,343,060 | | 186,543,060 | (200,000) |

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88 *Ibid.*
89 *Ibid.*
90 *Ibid.*

Similarly, the locally manufactured unleaded base gasoline fuel removed from the PBR tallies with the volume received by the respective depots, *viz.*:[91]

| | | Per WC | Per Schedule of Receipts and Removals ("SRR") | | | Per SAP-Product Movements by Movement Type ("PMMT") | Difference | |
|---|---|---|---|---|---|---|---|---|
| Depot | Exhibit No. | Withdrawals from PBR (a) | Gross Volume Received (b) | In-transit Gain (Loss) (c) | Net Volume to be Received (d) = (b + c) | Volume Received (e) | (f) = (a – b) | (g) = (d – e) |
| SL Harbor Depot | | | | | | | | |
| Unleaded (Base) Gasoline Fuel | **P-366** | 46,421,637 | 46,421,637 | (108,724) | 46,312,833 | 46,312,833 | – | – |
| Unleaded (Blaze) Gasoline Fuel | **P-367** | 24,234,281 | 24,234,281 | (99,654) | 24,134,627 | 24,134,627 | – | – |
| Total | | 70,655,918 | 70,655,918 | (208,378) | 70,447,460 | 70,447,460 | – | – |

As duly noted by the ICPA, the "in-transit gain or loss" pertains to the effect of the variations of the volume of locally-manufactured petroleum products (such as Jet A-1 fuel and Unleaded Gasoline fuel) due to several factors such as temperature, density of the product at the time of soundings, sea condition (for vessel figures), equipment used for the measurements, and others.[92]

To reiterate, the petroleum products received by the depots from the PBR is then be transferred further to other depots, ITPs, and refuellers of petitioner. Locally manufactured Jet A-1 fuel undergoes this procedure before its eventual sale and delivery to international carriers and tax-exempt entities. On the other hand, the unleaded gasoline fuel volume received by SL Harbor depot from PBR is delivered directly to customers, including tax-exempt entities.[93]

To determine the actual movements for locally manufactured Jet A-1 fuel, the ICPA reviewed the relevant ORBs, LSs, and SAP-PMMTs from the depots, ITPs, and refuellers. As duly verified by this Court, the results of the comparison revealed the following:[94]

Comparison of depots LS – Issuances with ORB Issuances – Jet A-1 fuel:

| Depots | Exhibit No. | Per Depot LS – Issuances (Volume in Liters) | Per ORB – Issuances (Volume in Liters) |
|---|---|---|---|

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91 *Ibid.*
92 *Ibid.*
93 *Ibid.*
94 *Ibid.*

| | | Subject to Claim | Not Subject to Claim | Total | Related to Claim | Not Related to Claim |
|---|---|---|---|---|---|---|
| SL Harbor | **P-292** | 140,155,743 | 1,044,828 | 141,200,571 | 141,200,571 | 71,365,243 |
| Navotas | **P-293** | 1,436,640 | – | 1,436,640 | 1,436,640 | 2,603,360 |
| Palawan | **P-294** | 280,910 | 2,637,919 | 2,918,829 | 2,918,829 | 52,456 |
| Mactan | **P-295** | 22,214,913 | 5,920,016 | 28,134,929 | 28,134,929 | 2,140,840 |
| Iloilo | **P-296** | 7,255,150 | 248,331 | 7,503,481 | 7,503,481 | 1,066,519 |
| Davao | **P-297** | 2,157,074 | 219,237 | 2,376,311 | 2,376,311 | 277,689 |
| Zamboanga | **P-298** | 910,000 | 1,862,299 | 2,772,299 | 2,772,299 | 21,222 |
| DMIA/Clark | **P-381** | 166,949 | 32,961 | 200,000 | 200,000 | – |
| Total | | 174,577,379 | 11,965,591 | 186,543,060 | 186,543,060 | 77,527,329 |

Comparison of depots LS – Issuances with SAP-PMMT – Issuances and depot/ITP/Refueller LS – Receipts (Volume in Liters) – Jet A-1 fuel:

| Total Issuances – Depots to Depots/ ITPs/Refueller | Exhibit No. | Per Depot LS – Issuances Subject to Claim | Exhibit No. | Per SAP PMMT – Issuances Related to Claim | Details of Issuances per LS and SAP-PMMT: Per Depots/ITPs/ Refueller LS – Receipts | Direct Delivery to Customers | Not Related to Claim |
|---|---|---|---|---|---|---|---|
| SL Harbor depot to: | | | | | | | |
| Laoag ITP | **P-299** | 456,000 | | 456,000 | 456,000 | – | |
| JOCASP/NAIA depot | **P-300** | 139,699,743 | | 139,699,743 | 135,575,342 | – | |
| | | 140,155,743 | **P-262** | 140,155,743 | 136,031,342 | – | 4,124,401 |
| Navotas to JOCASP/NAIA depot | **P-301** | 1,436,640 | **P-263** | 1,436,640 | 1,436,640 | – | – |
| Palawan depot to Customers | **P-348** | 280,910 | **P-264** | 280,910 | – | 280,910 | – |
| Mactan depot to Customers | **P-349** | 22,214,913 | **P-265** | 22,214,913 | – | 22,214,913 | – |
| Iloilo depot to: | | | | | | | |
| Iloilo ITP | **P-302** | 580,000 | | 580,000 | 580,000 | – | |
| Kalibo ITP | **P-303** | 6,655,150 | | 6,655,150 | 6,655,150 | – | |
| Bacolod ITP | **P-304** | 20,000 | | 20,000 | 20,000 | – | |
| | | 7,255,150 | **P-266** | 7,255,150 | 7,255,150 | – | – |
| *(Forwarded)* | | | | | | | |
| *(Brought forward)* | | | | | | | |
| Davao depot to Davao ITP | **P-305** | 2,157,074 | **P-267** | 2,157,074 | 2,157,074 | – | – |
| Zamboanga depot to Zamboanga refueller | **P-306** | 910,000 | **P-268** | 910,000 | 910,000 | – | – |
| DMIA/Clark depot to Customers | **P-381** | 166,949 | **P-379** | 166,949 | – | 166,949 | – |
| | | 174,577,379 | | 174,577,379 | 147,790,206 | 22,662,772 | |

| Total Issuances – Depots to Depots/ ITPs/Refueller | Exhibit No. | Per Depot LS – Issuances Subject to Claim | Exhibit No. | Per SAP PMMT – Issuances Related to Claim | Details of Issuances per LS and SAP-PMMT: Per Depots/ITPs/ Refueller LS – Receipts | Direct Delivery to Customers | Not Related to Claim |
|---|---|---|---|---|---|---|---|
| | | | | | | | 4,124,401 |

The volumes which are not related to the claim pertain either to other shipments of locally produced Jet A-1 fuel that were not claimed by petitioner or to imported Jet A-1 fuel that was recorded in the PMMT.[95]

For the movements of locally manufactured unleaded gasoline fuel, the ICPA reviewed the relevant ORBs, SRRs, and SAP-PMMTs from SL Harbor depot. As duly verified by this Court, the result of such comparison revealed the following:[96]

Comparison of Depot's PMMT with SRR and ORBs – R92 Base Gasoline, R88 Gasoline and R87 Gasoline:

| | Volume (in Liters) | | | | | | |
|---|---|---|---|---|---|---|---|
| | Per PMMT | | | Per ORB (**Exhibit Nos. P-368 and P-368-1 to P-368-12**) | | | |
| Removals (Direct Deliveries) | Exhibit No. | Volume | Per SRR (**Exhibit Nos. P-366 and P-366-1 to P-366-12**) | E-98 (Fuel Bioethanol) | Unleaded (Base) Gasoline Without E-98 | E-10 (Unleaded Gasoline Fuel-Finished Goods) | Difference |
| R92 | **P-361** | 630,000 | 630,000 | 70,000 | 630,000 | 700,000 | – |
| R88 | **P-362** | 3,600 | 3,600 | 400 | 3,600 | 4,000 | – |
| R87 | **P-363** | 5,400 | 5,400 | 600 | 5,400 | 6,000 | – |
| Total | | 639,000 | 639,000 | 71,000 | 639,000 | 710,000 | – |

Comparison of Depot's PMMT with SRR and ORBs – Blaze 100 Euro:

| | Volume (in Liters) | | | | |
|---|---|---|---|---|---|
| | Per PMMT | | | | |
| Removals | Exhibit No. | Volume | Per SRR (**Exhibit Nos. P-367 and P-367-1 to P-367-12**) | Per ORB (**Exhibit Nos. P-369 and P-369-1 to P-369-12**) | Difference |
| X100 | **P-364** | 170,000 | 170,000 | 170,000 | – |
| D210 X100 | **P-365** | 56,070 | 56,070 | 56,070 | – |
| Total | | 226,070 | 226,070 | 226,070 | – |

This proves that the volumes and amounts of locally manufactured Jet A-1 fuel and unleaded gasoline fuel manufactured and removed from the PBR to petitioner's depots then subsequently transferred to other depots, ITPs, and

95 *Ibid.*
96 *Ibid;* Exhibits "P-370" and "P-371".

refuellers are accurate and properly supported except for the variances noted, which are summarized at the end of this Decision.

***The locally manufactured Jet A-1 fuel and unleaded gasoline fuel manufactured were sold and delivered to various air carriers of Philippine or foreign registry for the latter's use or consumption outside the Philippines and to alleged tax-exempt entities.***

As observed by the ICPA and verified by this Court, for the sales of locally manufactured Jet A-1 fuel to international carriers and tax-exempt entities, petitioner prepares and generates the sales invoices ("SIs") in its SAP-Computerized Accounting System, in accordance with the commercial terms and orders stated in the respective contracts executed between petitioner and the airline companies and the tax-exempt entities.[97]

All SIs involving sales of locally manufactured tax-paid Jet A-1 fuel to international air carriers, on their use or consumption outside the Philippines, and tax-exempt entities and sales of locally manufactured unleaded gasoline fuel to tax-exempt entities, shall carry a "No Excise Tax Billed" notation, while an invoice involving the sale of locally manufactured tax-paid Jet A-1 fuel to air carriers for domestic flights does not carry such notation. The summary of Aviation Delivery Receipts ("ADRs) and SAP-generated Delivery Notes ("DN") covering the period billable to the airline companies and tax-exempt entities form an integral part of the SI as proof that the volumes of locally manufactured Jet A-1 fuel and unleaded gasoline fuel were delivered to the international air carriers and tax-exempt entities, and the volumes of locally manufactured unleaded gasoline fuel were delivered to tax-exempt entities.[98]

For the JOCASP/NAIA depot, the DN generated by the SAP pertaining to the sale of locally manufactured Jet A-1 fuel by the JOCASP/NAIA depot to tax-exempt entities triggers the creation of the SI for such direct deliveries.[99]

Further, petitioner schedules deliveries of locally manufactured Jet A-1 fuel to air carriers based on its agreements with the respective airline companies and tax-exempt entities. Petitioner's representative prepares the ADR during the discharge of the locally manufactured Jet A-1 fuel from the tank trucks to the air carrier and tax-exempt entities. The ADR is then signed

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97 Consolidated ICPA Report, Exhibit "P-189-imported."
98 *Ibid.*
99 *Ibid.*

by the airline and tax-exempt representative to certify that the volume and correct grade of fuel has been delivered. The ADR also specifies the flight number, origin, and destination of the air carrier.[100]

Moreover, petitioner prepares the LS indicating the disposition of the Jet A-1 fuel received. The LS shows the source of the Jet A-1 fuel, whether it was sourced from importations or local production, and the actual locations where the Jet A-1 fuel were delivered, either international or domestic deliveries or to tax-exempt entities. The international deliveries pertain to Jet A-1 fuel that will be delivered to air carriers flying international flights (*i.e.* whether the air carrier is of Philippine registry or of foreign registry), while domestic deliveries pertain to Jet A-1 fuel that will be delivered to air carriers flying domestic flights.[101]

A review of the LS showed the following:[102]

LS Movements – Receipts and Issuances (Volume in Liters) – Jet A-1 Fuel:

| | | | Per LS – Receipts | | | Per LS – Issuances | | |
|---|---|---|---|---|---|---|---|---|
| Exhibit No. | Depots/ITPs/ Refueller | Exhibit No. | For Depots/ ITPs/ Refuellers | For Direct Delivery to Customers | Total | Related to Claim | Not Related to Claim | Total |
| P-308 | Laoag ITP | P-299-1 to P-299-24 | 456,000 | – | 456,000 | 289,401 | 166,599 | 456,000 |
| P-309 | JOCASP/NAIA Depot | P-300-1 to P-300-91 | 135,575,342 | – | 135,575,342 | 113,840,078 | 21,735,264 | 135,575,342 |
| P-310 | JOCASP/NAIA Depot | P-301-1 | 1,436,640 | – | 1,436,640 | 531,451 | 905,189 | 1,436,640 |
| P-287 | Palawan Depot | P-273-1 to P-273-6 | – | 2,918,829 | 2,918,829 | 280,910 | 2,637,919 | 2,918,829 |
| P-288 | Mactan Depot | P-274-1 to P-274-16 | – | 28,134,929 | 28,134,929 | 22,214,913 | 5,920,016 | 28,134,929 |
| P-311 | Iloilo ITP | P-302-1 to P-302-7 | 580,000 | – | 580,000 | 353,830 | 226,170 | 580,000 |
| P-312 | Kalibo ITP | P-303-1 to P-303-7 | 6,655,150 | – | 6,655,150 | 6,147,644 | 507,506 | 6,655,150 |
| P-313 | Bacolod ITP | P-304-1 | 20,000 | – | 20,000 | 754 | 19,246 | 20,000 |
| P-314 | Davao ITP | P-305-1 to P-305-2 | 2,157,074 | – | 2,157,074 | 482,009 | 1,675,065 | 2,157,074 |
| P-315 | Zamboanga Refueller | P-306-1 to P-306-3 | 910,000 | – | 910,000 | 168,079 | 741,921 | 910,000 |
| P-381 | DMIA/Clark Depot | P-380-1 | – | – | – | 5,521 | 161,428 | 166,949 |
| Total | | | 147,790,206 | 31,053,758 | 178,843,964 | 144,314,590 | 34,696,323 | 179,010,913 |

On the other hand, a comparison of the LS and the ADR of the depots, ITPs and refuellers revealed the following:[103]

[100] *Ibid.*
[101] *Ibid.*
[102] *Ibid.*
[103] *Ibid.*

Comparison of depots, ITPs and Refueller's LS – Issuances vs ADR (Volume in Liters) – Jet A-1 Fuel:

| Exhibit No. | Point of Sale | Per Depots/ITPs/ Refueller LS - Issuances | Deliveries of Locally Manufactured Jet A-1 Fuel Through LS Not Related to Claim | Per ADR (Related to Claim) | | | Total |
|---|---|---|---|---|---|---|---|
| | | | | Sold to International Air Carriers With International Destination/ Sold to Tax-Exempt Entities | Sold to International Air Carriers With Local Destination | Sold to International Air Carriers From Out-of-Period Claim | |
| **P-317** | Laoag ITP | 289,401 | – | 289,401 | – | 4,838 | 294,239 |
| **P-318** | JOCASP/NAIA Depot | 113,840,078 | 110,144,118 | 3,674,980 | 20,980 | 107,427 | 113,947,505 |
| **P-319** | JOCASP/NAIA Depot | 531,451 | – | 531,451 | – | – | 531,451 |
| **P-320** | Palawan Depot | 280,910 | 89,847 | 191,063 | – | – | 280,910 |
| **P-321** | Mactan Depot | 22,214,913 | 19,625,945 | 2,524,919 | 64,049 | 87,677 | 22,302,590 |
| **P-322** | Iloilo ITP | 353,830 | 334,806 | 19,024 | – | – | 353,830 |
| **P-323** | Kalibo ITP | 6,147,644 | 6,123,780 | 19,559 | 4,305 | – | 6,147,644 |
| **P-324** | Bacolod ITP | 754 | – | 754 | – | – | 754 |
| **P-325** | Davao ITP | 482,009 | 467,268 | 14,741 | – | – | 482,009 |
| **P-326** | Zamboanga Refueller | 168,079 | – | 168,079 | – | – | 168,079 |
| **P-382** | DMIA/Clark Depot | 5,521 | – | – | 5,521 | – | 5,521 |
| **Total** | | 144,314,590 | 136,785,764 | 7,433,971 | 94,855 | 199,942 | 144,514,532 |

Sales/Deliveries to International Air Carriers with Local Destinations and Out-of-Period Liftings from the Year 2015 – Jet A-1 Fuel:

| Item | Exhibit No. | Point of Sale | Volume in Liters | Equivalent Excise Tax at ₱3.67 per Liter |
|---|---|---|---|---|
| | Sales/Deliveries to International Air Carriers with Local Destination: | | | |
| | **P-318** | JOCASP/NAIA Depot | 20,980 | ₱76,996.60 |
| | **P-321** | Mactan Depot | 64,049 | 235,059.83 |
| | **P-323** | Kalibo Depot | 4,305 | 15,799.35 |
| | **P-382** | DMIA/Clark Depot | 5,521 | 20,262.07 |
| Table 12 | | | *94,855* | *348,117.85* |
| | Out-of-Period Liftings from the Year 2015: | | | |
| | **P-317** | Laoag ITP | 4,838 | 17,755.46 |
| | **P-318** | JOCASP/NAIA Depot | 107,427 | 394,257.09 |
| | **P-321** | Mactan Depot | 87,677 | 321,774.59 |
| Table 3/13 | | | *199,942* | *733,787.14* |
| | Total downward adjustments | | 294,797 | ₱1,081,904.99 |

For the sales of locally manufactured unleaded gasoline fuel delivered directly by the SL Harbor depot, the ICPA traced the deliveries of the same to tax-exempt entities using the supporting ORBs, SRRs, and DNs, as follows:

ORB Issuances vs. DN (Volume in Liters) – Unleaded Gasoline Fuel:

| Exhibit No. | Particulars | Exhibit Nos. | Per ORB | Exhibit Nos. | Per DN | Difference |
|---|---|---|---|---|---|---|
| **P-372** | Unleaded (Base) Gasoline Fuel | **P-370-1 to P-370-12** | 710,000 | **P-372-1 to P-372-12** | 710,000 | – |
| **P-373** | Unleaded (Blaze) Gasoline Fuel | **P-371-1 to P-371-12** | 226,070 | **P-372-1 to P-372-12** | 226,070 | – |
| Total | | | 936,070 | | 936,070 | – |

From the foregoing, locally manufactured Jet A-1 fuel and unleaded gasoline fuel manufactured were sold and delivered to various air carriers of Philippine or foreign registry for the latter's use or consumption outside the Philippines and to alleged tax-exempt entities except for certain variances noted by the ICPA, which are summarized at the end of this Decision.

***The locally manufactured petroleum products were billed and collected net of excise tax.***

The deliveries of locally manufactured Jet A-1 fuel and unleaded gasoline fuel were billed and collected without any excise tax.

In arriving at this conclusion, this Court compared the details per ADRs or DNs of the depots, ITPs, and refueller to the corresponding SIs billed to airline companies. The details of the SIs were then traced to the pricing conditions in petitioner's SAP. The tracing resulted in the following:[104]

| | Exhibit Nos. | | |
|---|---|---|---|
| Depot/ITPs/Refueller | ADRs | SIs | SAP-Pricing Conditions |
| Laoag ITP | **P-317-1 to P-317-74** | **P-327-1 to P-327-74** | **P-327-75 to P-327-148** |

[104] *Ibid.*

| Depot/ITPs/Refueller | Exhibit Nos. ADRs | SIs | SAP-Pricing Conditions |
|---|---|---|---|
| JOCASP/NAIA (SL Harbor) Depot | **P-318-1 to P-318-199** | **P-328-1 to P-328-44** | **P-328-45 to P-328-88** |
| JOCASP/NAIA (Navotas) Depot | **P-319-1 to P-319-42** | **P-329-1 to P-329-5** | **P-329-6 to P-329-10** |
| Palawan ITP | **P-320-1 to P-320-60** | **P-330-1 to P-330-60** | **P-330-61 to P-330-120** |
| Mactan ITP | **P-321-1 to P-321-207** | **P-331-1 to P-331-44** | **P-331-45 to P-331-88** |
| Iloilo ITP | **P-322-1 to P-322-2** | **P-332-1 to P-332-2** | **P-332-3 to P-332-4** |
| Kalibo ITP | **P-323-1 to P-323-5** | **P-333-1 to P-333-2** | **P-333-3 to P-333-4** |
| Bacolod ITP | **P-324-1 to P-324-2** | **P-334-1** | **P-334-2** |
| Davao ITP | **P-325-1 to P-325-3** | **P-335-1 to P-335-3** | **P-335-4 to P-335-6** |
| Zamboanga Refueller | **P-326-1 to P-326-88** | **P-336-1 to P-336-88** | **P-336-89 to P-336-176** |
| DMIA/Clark Depot* | **P-382-1** | - | - |

This Court then found that petitioner's SIs show the volume in liters, while the invoice amount is in US dollars (USD) for Jet A-1 fuel and Philippine peso (PHP) for unleaded gasoline fuel. The volume of locally manufactured Jet A-1 fuel in liters is converted into US barrels multiplied by the contract price per US barrel to arrive at the billable amount in US dollars.[105]

Furthermore, the face of the SIs for locally manufactured Jet A-1 fuel and unleaded gasoline fuel bears the note "No excise tax billed". Thus, petitioner's SIs tied up with the SAP pricing condition where no excise tax was charged to international carriers and tax-exempt entities are as follows:[106]

ADR vs. SI – Jet A-1 Fuel:

| Exhibit No. | Point of Sale | ADR Exhibit Nos. | ADR Volume (In Liters) | SI Exhibit Nos. | SI Volume (In Liters) Related to Claim | SI Volume (In Liters) Not Related to Claim | SI Volume (In Liters) Total | SI Equivalent USD Amount |
|---|---|---|---|---|---|---|---|---|
| **P-327** | Laoag ITP | **P-317-1 to P-317-74** | 289,401 | **P-327-1 to P-327-74** | 289,401 | 10,003 | 299,404 | US$171,204.13 |
| **P-328** | JOCASP/NAIA Depot | **P-318-1 to P-318-199** | 3,674,980 | **P-328-1 to P-328-44** | 3,674,980 | 28,293,163 | 31,968,143 | 11,844,965.10 |
| **P-329** | JOCASP/NAIA Depot | **P-319-1 to P-319-42** | 531,451 | **P-329-1 to P-329-5** | 531,451 | 4,682,022 | 5,213,473 | 1,891,680.11 |
| **P-330** | Palawan Depot | **P-320-1 to P-320-60** | 191,063 | **P-330-1 to P-330-60** | 191,063 | – | 191,063 | 68,573.42 |
| **P-331** | Mactan Depot | **P-321-1 to P-321-207** | 2,524,919 | **P-331-1 to P-331-44** | 2,524,919 | 7,679,666 | 10,204,585 | 4,450,984.66 |
| **P-332** | Iloilo ITP | **P-322-1 to P-322-2** | 19,024 | **P-332-1 to P-332-2** | 19,024 | – | 19,024 | 12,532.10 |

105 *Ibid.*
106 *Ibid.*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **P-333** | Kalibo ITP | **P-323-1 to P-323-5** | 19,559 | **P-333-1 to P-333-5** | 19,559 | – | 19,559 | 10,147.66 |
| **P-334** | Bacolod ITP | **P-324-1 to P-324-2** | 754 | **P-334-1** | 754 | 12,592 | 13,346 | 6,637.02 |
| **P-335** | Davao ITP | **P-325-1 to P-325-3** | 14,741 | **P-335-1 to P-335-3** | 14,741 | – | 14,741 | 7,243.09 |
| **P-336** | Zamboanga Refueller | **P-326-1 to P-326-88** | 168,079 | **P-336-1 to P-336-88** | 168,079 | – | 168,079 | 66,560.76 |
| Total | | | 7,433,971 | | 7,433,971 | 40,677,446 | 48,111,417 | US$18,530,528.05 |

DN vs. SI – Unleaded Gasoline Fuel:

| | | DN | | SI | | |
|---|---|---|---|---|---|---|
| Exhibit No. | Particulars | Exhibit No. | Volume (In Liters) | Exhibit No. | Volume (In Liters) | Equivalent PHP Amount |
| **P-374** | Base Gasoline | **P-372-1 to P-372-41** | 710,000 | **P-374-1 to P-374-41** | 710,000 | ₱24,478,187.60 |
| **P-375** | Blaze Gasoline | **P-373-1 to P-373-34** | 226,070 | **P-375-1 to P-375-34** | 226,070 | 7,468,324.25 |
| Total | | | 936,070 | | 936,070 | ₱31,946,511.85 |

SI vs. SAP Pricing Condition – Jet A-1 Fuel:

| | | SI | | SAP Pricing Condition | | | | |
|---|---|---|---|---|---|---|---|---|
| Exhibit No. | Point of Sale | Exhibit No. | USD Amount | Exhibit No. | US$ Amount | Duty Rate* | Total USD Amount | Equivalent PHP Amount |
| **P-327** | Laoag ITP | **P-327-1 to P-327-74** | 171,204.13 | **P-327-75 to P-327-148** | 171,204.13 | US$– | US$171,204.13 | ₱8,174,444.05 |
| **P-328** | JOCASP/NAIA Depot | **P-328-1 to P-328-44** | 11,844,965.10 | **P-328-45 to P-328-88** | 11,844,965.10 | – | 11,844,965.10 | 549,664,737.42 |
| **P-329** | JOCASP/NAIA Depot | **P-329-1 to P-329-5** | 1,891,680.11 | **P-329-6 to P-329-10** | 1,891,680.11 | – | 1,891,680.11 | 87,635,864.45 |
| **P-330** | Palawan Depot | **P-330-1 to P-330-60** | 68,573.42 | **P-330-61 to P-330-120** | 68,573.42 | – | 68,573.42 | 3,206,499.47 |
| **P-331** | Mactan Depot | **P-331-1 to P-331-44** | 4,450,984.66 | **P-331-45 to P-331-88** | 4,450,984.66 | – | 4,450,984.66 | 207,729,010.25 |
| **P-332** | Iloilo ITP | **P-332-1 to P-332-2** | 12,532.10 | **P-332-3 to P-332-4** | 12,532.10 | – | 12,532.10 | 588,626.44 |
| **P-333** | Kalibo ITP | **P-333-1 to P-333-5** | 10,147.66 | **P-333-6 to P-333-10** | 10,147.66 | – | 10,147.66 | 485,748.34 |
| **P-334** | Bacolod ITP | **P-334-1** | 6,637.02 | **P-334-2** | 6,637.02 | – | 6,637.02 | 315,517.29 |
| **P-335** | Davao ITP | **P-335-1 to P-335-3** | 7,243.09 | **P-335-4 to P-335-6** | 7,243.09 | – | 7,243.09 | 350,286.02 |
| **P-336** | Zamboanga Refueller | **P-336-1 to P-336-88** | 66,560.76 | **P-336-89 to P-336-176** | 66,560.76 | – | 66,560.76 | 3,237,241.39 |
| Total | | | 18,530,528.05 | | 18,530,528.05 | US$– | US$18,530,528.05 | ₱861,387,975.12 |

** Duty rate pertains to excise tax billed to customers.*

SI vs. SAP Pricing Condition – Unleaded Gasoline Fuel

| | | SI | | SAP Pricing Condition | | | |
|---|---|---|---|---|---|---|---|
| Exhibit No. | Particulars | Exhibit No. | PHP Amount | Exhibit No. | PHP Amount | Duty Rate* | Total PHP Amount |
| **P-374** | Unleaded (Base) Gasoline Fuel | **P-374-1 to P-374-41** | ₱24,478,187.60 | **P-374-42 to P-374-82** | ₱24,478,187.60 | ₱– | ₱24,478,187.60 |
| **P-375** | Unleaded (Blaze) Gasoline Fuel | **P-375-1 to P-375-34** | 7,468,324.25 | **P-375-35 to P-375-68** | 7,468,324.25 | – | 7,468,324.25 |
| Total | | | ₱31,946,511.85 | | ₱31,946,511.85 | ₱– | ₱31,946,511.85 |

** Duty rate pertains to excise tax billed to customers.*

Collections of SAP-generated SIs are made through inward remittances by petitioner's customers. An inward remittance of a customer normally covers payment of several invoices. However, the airline company and tax-exempt entities do not provide details of the invoices against which the collection would be applied. As such, petitioner applies the collection on the outstanding invoices on a first-in, first-out basis.[107]

The amount of collections as per SAP clearing, inward remittances/bank advices, Official Receipts ("ORs"), and bank certifications reconciles with the amount billed to international carriers and tax-exempt entities. This proves that petitioner has not collected any excise tax from its customers, as shown below:[108]

SI vs. SAP Clearing and Inward Remittance/Bank Certification/OR – Jet A-1 Fuel:

| Particulars | Exhibit No. | Amount (in USD) | Amount (in PHP) |
|---|---|---|---|
| Per SI: | **P-327 to P-336** | US$18,530,528.05 | ₱861,387,975.12 |
| Per Books (General Ledger") ("GL"): | | | |
| Per SAP Clearing | **P-347-1 to P-347-112** | US$18,530,528.05 | ₱861,387,975.12 |
| Per Collection documents: | | | |
| Inward Remittance/ Bank Certifications | **P-347-113 to P-347-227** | 12,003,208.57 | 558,728,005.60 |
| Official Receipts | **P-347-228 to P-347-246** | 6,527,319.48 | 302,659,969.52 |
| | | US$18,530,528.05 | ₱861,387,975.12 |

SI vs. SAP Clearing and Inward Remittance/Bank Certification/OR – Unleaded Gasoline Fuel:

| Particulars | Exhibit No. | Amount (in PHP) |
|---|---|---|
| Per SI: | **P-374 to P-375** | ₱31,946,511.85 |
| Per Books (GL): | | |
| Per SAP Clearing | **P-378-1 to P-378-22** | ₱31,946,511.85 |
| Per Collection documents: | | |
| Per Official Receipts | **P-378-23 to P-378-53** | ₱31,946,511.85 |

[107] *Ibid.*
[108] *Ibid.*

**<u>Petitioner erroneously paid excise tax on its imported Jet A-1 fuel sold to international carriers and tax-exempt entities.</u>**

***Importations of Jet A-1 fuel were made during the period 23 December 2015 to 31 December 2016.***

Petitioner imported Jet-A-1 fuels, as evidenced by a Import Entry and Internal Revenue Declaration ("IEIRD"),[109] and submitted a Loadport Survey Report ("LSR")[110] to the BOC within the period from 23 December 2015 to 31 December 2016. Petitioner paid the initial taxes and duties based on a tentative liquidation at the time of arrival. The tentative liquidation for purposes of paying the said taxes and duties is based on the product and quantity reported in the BL[111] and the estimated price of the commodity at the time of payment.[112] The paid taxes and duties are supported by CPR,[113] which is acknowledged and signed by the head of the BOC office in the Port of Limay.[114] After payment of taxes and duties based on the tentative liquidation, the Jet A-1 fuel was released from the BOC's custody and delivered for storage at the PBR.[115]

After release from the BOC, petitioner hired an independent surveyor to determine the volume of imported Jet A-1 fuels on board the vessel, which was compared with the volume of imported Jet A-1 fuels received and stored at the storage tanks in the PBR. The surveyor's Certificate of Independent Survey ("CIS")[116] certifies the completion of the arrival of the vessel carrying the imported Jet A-1 fuels at Limay, Bataan and the discharge or withdrawals of said fuels from the vessel to the PBR's storage tanks.[117]

Volumes varied depending on when the fuel was gauged are indicated in the CIS. Petitioner explained that the variations of volumes from the BL versus the actual volume per CIS are due to several factors such as temperature, density of the product at the time of soundings, sea condition (for cargo vessel's figures), equipment used for the measurements, and others. The volume per CIS as the actual volume of imported Jet A-1 fuels was used as

[109] Exhibits. "P-204-1-imported" to "P-204-12-imported".
[110] Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
[111] Exhibits. "P-203-11-imported" to "P-203-22-imported".
[112] Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
[113] Exhibits. "P-204-13-imported" to "P-204-36-imported".
[114] Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
[115] *Ibid.*
[116] Exhibits. "P-203-1-imported" to "P-203-10-imported".
[117] Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".

the basis for recording in the petitioner's PBR - Official Register Book (PBR - ORB)[118] signed by the Revenue Officer on Premise (ROOP) and in the GL[119] of the petitioner's SAP-Computerized Accounting System (SAP) and in computing the final tax assessments by the BOC.[120]

As soon as the price has been finalized and the vendor's Commercial Invoice ("CI")[121] becomes available, petitioner files an application for ATRIG[122] with the BIR.[123] When the BL, CI, ATRIG, CIS, and marine risk insurance policy are available, petitioner submits these to the BOC for final assessment.[124]

Due to various factors affecting the volume of the imported Jet A-1 fuels, the actual volume of imported Jet A-1 fuels per CIS may be higher or lower than the volume per the BL that was used for the tentative liquidation and the initial payment of taxes and duties. For instances when the actual volume of imported Jet A-1 fuels per CIS is higher than the volume per BL, petitioner pays the additional duties and taxes as supported by the CPR,[125] which is acknowledged and signed by the head of BOC's office in Port of Limay.[126] After the date of final payment, petitioner requests for the BOC Certification[127] to summarize all payments made to the BOC in relation to the importation.[128]

On the other hand, where the volume per the CIS is lower than the volume per the BL, petitioner absorbed the equivalent losses for the overpaid taxes because this will not be reflected in the IEIRD nor refunded by the BOC to the petitioner.[129]

After release from the BOC, the imported Jet A-1 fuels at the PBR are stored and commingled with locally manufactured Jet A-1 fuels as allowed by the Commingling Permit Nos. ELTRD (P)-028-01-15-12537[130] and ELTRD

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118 Exhibits. "P-205-11-imported" to "P-205-15-imported".
119 Exhibits. "P-211-1-imported", "P-211-1-1-imported" to "P-211-1-102-imported".
120 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
121 Exhibits. "P-203-1-imported" to "P-203-10-imported".
122 Exhibits. "P-204-49-imported" to "P-204-60-imported".
123 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
124 *Ibid.*
125 Exhibits. "P-204-13-imported" to "P-204-36-imported".
126 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
127 Exhibits. "P-204-37-imported" to "P-204-48-imported".
128 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
129 *Ibid.*
130 Exhibit "P-202-1-imported".

(P)-028-01-16-15847[131] which are valid from 1 January 2015 until 31 December 2015 and 1 January 2016 until 31 December 2016, respectively.[132]

The movement of imported Jet A-1 fuels is documented by a Cargo Intake Certificate ("CIC"),[133] which is based on the volume shown in the CIS as KL at air.[134] The CIC is a SAP-generated internal control document prepared at the PBR and supports the recording of the transaction in the PBR-ORB and in the GL.

Per the ICPA Report, petitioner's importations for the period 23 December 23, 2015 to 31 December 2016 are as follows:

Summary of Importations for the period 23 December 2015 to 31 December 2016:

| Vessel Name | Importation[1]/ Arrival Date[2] | Date of Payment | Volume (In Liters) | Amount of Excise Tax Paid |
|---|---|---|---|---|
| Intan Glory | December 24-27, 2015 | December 23,2015 [3] and March 30, 2016[4] | 12,265,200 | 45,013,284.00 |
| Maluku Palm | December 29, 2015 to January 1, 2016 | December 29, 2015 [3] and March 7, 2016 [4] | 12,826,889 | 47,074,682.63 |
| Ocean Lynx | January 15-17, 2016 | January 14, 2016 [3] and May 23, 2016 [4] | 10,827,974 | 39,738,664.58 |
| Songa Diamond | February 8-11, 2016 | February 10, 2016 [3] and May 30, 2016 [4] | 13,228,124 | 48,547,215.08 |
| Everhard Schulte | April 2-4, 2016 | April 1, 2016 [3] and June 30, 2016 [4] | 18,533,294 | 68,017,188.98 |
| Ardmore Capella | April 9-13, 2016 | April 8, 2016 [3] and July 25, 2016 [4] | 12,818,819 | 47,045,065.73 |
| Rio Daytona | April 22-24, 2016 | April 21, 2016 [3] and July 25, 2016 [4] | 12,738,576 | 46,750,573.92 |
| Aulac Diamond | April 28-30, 2016 | May 16, 2016 [3] and July 25, 2016 [4] | 12,197,188 | 44,763,679.96 |
| Aulac Diamond | May 7-9, 2016 | May 16, 2016 [3] and September 20, 2016 [4] | 12,462,699 | 45,738,105.33 |
| Aulac Jupiter | May 9-12, 2016 | May 16, 2016 [3] and September 7, 2016 [4] | 12,874,308 | 47,248,710.36 |
| **Total** | | | **130,773,071** | **₱479,937,170.57** |

*[1] We noted that there were no importations from May 13, 2016 up to December 31, 2016.*
*[2] Arrival date is considered the last day when the imported Jet A-1 fuel were fully discharged from the vessel to the Petitioner's storage tanks in Bataan Refinery (PBR).*
*[3] Date when the duties and taxes have been paid based on tentative liquidation.*
*[4] Date when the duties and taxes have been paid based on final assessment.*

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131 Exhibit "P-202-2-imported".
132 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".
133 Exhibits. "P-205-1-imported" to "P-205-10-imported".
134 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported".

Upon tracing the Petitioner's importations with the vendors' CIs[135] and the related BLs[136] for the period from 23 December 2015 to 31 December 2016, it was verified that the total volume of the ten (10) importations per the vendors' CIs ties up with the total volume per BLs as follows:[137]

CIs vs BLs:

| Particulars | Volume (In Barrels) |
|---|---|
| Per CIs | 815,180.000 |
| Per BLs | 815,180.000 |
| **Difference** | - |

This shows that importations of Jet A-1 fuel were indeed made during the period 23 December 2015 to 31 December 2016.

***Petitioner paid the corresponding excise tax on the importation of Jet A-1 fuel.***

Upon tracing the details of the vendor's CIs[138] to the corresponding IEIRDs,[139] CPRs,[140] BOC Certifications,[141] BIR ATRIG,[142] and CIS,[143] the ICPA verified that petitioner reported and paid the corresponding duties and taxes on these importations, with a total volume of 130,773,071 liters, and corresponding excise tax of Php481,164,216.00, as shown in the Summary of Comparison of CIs with IEIRDs, CPRs, BOC Certifications, BIR ATRIG and CIS for the period from December 2015 to September 2016,[144] summarized as follows:

CIs vs IEIRD, CPR, BOC Certifications, ATRIG and CIS:

| Particulars | Amounts |
|---|---|
| Total volume per CIS – 815,180.000 Barrels (KL at air) | 130,773.071 |
| Multiply by: Equivalent liters per KL | 1,000 |
| Total volume per CIS (liters at air) | 130,773,071 |
| Multiply by: Equivalent excise tax per liter | ₱3.67 |
| Amount of excise tax that should have been paid | ₱479,937,170.57 |
| Actual amount of excise tax paid | 481,164,216.00 |
| **Difference representing overpayment** | **(₱1,227,045.43)** |

135 Exhibits. "P-203-1-imported" to "P-203-10-imported".
136 Exhibits. "P-203-11-imported" to "P-203-22-imported".
137 Supplemental Judicial Affidavit of Ms. Dayego dated October 20, 2020 marked as Exhibit "P-190-imported"; Exhibit "P-203-imported".
138 Exhibits. "P-203-1-imported" to "P-203-10-imported".
139 Exhibits. "P-204-1-imported" to "P-204-12-imported".
140 Exhibits. "P-204-13-imported" to "P-204-36-imported".
141 Exhibits. "P-204-37-imported" to "P-204-48-imported".
142 Exhibits. "P-204-49-imported" to "P-204-60-imported".
143 Exhibits. "P-204-61-imported" to "P-204-70-imported".
144 Exhibit "P-204-imported".

Petitioner explained that the overpayment pertains to the net effect of the movement in volume of the imported Jet A-1 fuels. There are instances where the volume of imported Jet A-1 fuels per CIS is lower than the volume per BL resulting to a loss, representing the overpayment of taxes paid, on the part of petitioner. However, the difference has no effect on petitioner's claim for refund since the claim is based on the amount of excise tax that "should have been paid" by petitioner, which, in this case, is less than what had actually been paid.[145]

The CIS[146] was also compared with the CIC[147] and the volume received as shown in the monthly PBR-ORBs[148] submitted by petitioner to the BIR to confirm that the volume used by petitioner as a basis for the payment of duties and taxes matches with the volume recorded in the PBR – ORB.

Further, petitioner records each transaction to its GL-SAP system which generates a PMMT report where all transfers, whether receipts, issuances, or returns, are recorded among the PBR, Ex-PBR (*i.e.*, SAP temporary account for in-transit inventories) depots, ITPs, and refuellers.[149]

These were compared against the volume reflected in the monthly PBR – ORBs. The result of such verification is that the volume of imported Jet A-1 fuels per CIS matches with the volume of imported Jet A-1 received and recorded in the CIC, as well as in the SAP-PMMT and PBR-ORB signed by the Revenue Officer on the Premise ("ROOP"), as shown in the Summary of Comparison of Certificates of Independent Survey with Cargo Intake Certificates, Petron Bataan Refinery's Jet A-1 Fuels SAP Product Movements by Movement Type – Receipts and Petron Bataan Refinery – Official Register Books Signed by Revenue Officer on Premise for the Period December 2015 to June 2016,[150] summarized as follows:

CIS vs CIC, SAP PMMT- Receipts and PBR – ORB - Receipts

| **Particulars** | **Volume** |
|---|---|
| Total volume per CIS (KL at air) | 130,773,071 |
| Multiply by: Equivalent liters per KL | 1,000 |
| Total volume per liter at air: | |
| CIS | 130,773,071 |
| CIC, SAP PMMT – Receipts and PBR – ORB – Receipts | 130,773,071 |

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145 Consolidated ICPA Report, Exhibit "189-imported".
146 Exhibits "P-204-61-imported" to "P-204-70-imported".
147 Exhibits "P-205-1-imported" to "P-205-10-imported".
148 Exhibits "P-205-11-imported" to "P-205-15-imported".
149 Exhibits "P-211-1-imported", "P-211-1-1-imported to P-211-1-102-imported" for PBR; Exhibits "P-212-1-imported", "P-212-1-1-imported to P-212-1-187-imported" for Ex-PBR.
150 Exhibit No. "P-205-imported."

| **Difference** | |
|---|---|

Likewise, the invoices claimed under the Product Replenishment Scheme for the period January to August 2016[151] were not reported in the claim for tax refund or issuance of TCC.[152]

This proves that the excise tax due on the importation of Jet A-1 fuel was actually paid by petitioner.

***The volumes and amount imported Jet A-1 fuel removed from the PBR to petitioner's depots then subsequently transferred to another depot, ITPs and refuellers, are accurate and properly supported.***

From the PBR, the imported Jet A-1 fuel is then transferred to petitioner's depots spread across the Philippines. Subsequently, the same is transferred from the said depots to other depots, ITPs, and refuellers prior to the same being delivered and sold to end customers.[153] As shown above, petitioner operates various depots where its petroleum products are stored before delivery to various airline companies.

Upon receipt of imported Jet A-1 fuels by the PBR, petitioner schedules delivery to the depots through cargo vessels depending on the latter's inventory requirements. Imported Jet A-1 fuels are directly transferred from the PBR to the depots.[154] Each transfer or delivery of imported Jet A-1 fuels and by the PBR is supported by a Cargo Outturn Certificate ("COC")[155] if the transfer was made through a cargo vessel or a Stock Transfer Out – Delivery Note ("STO-DN")[156] if the transfer was made through tank trucks, and WC.[157]

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151 Exhibits "P-208-imported".
152 Supplemental Judicial Affidavit of Ms. Dayego, dated 20 October 2020, Exhibit No. "P-190-imported."; Exhibits "P-208-imported", "P-201-imported", "P-209-imported", "P-210-imported".
153 *Ibid.*
154 *Ibid.*
155 Exhibits "P-206-6-imported" to "P-206-91-imported".
156 Exhibts "P-307-1-1 to P-307-1-962", "P-307-2-1 to P-307-2-1621", "P-307-3-1 to P-307-3-1859", "P-307-4-1 to P-307-4-153", P-307-5-1 to P-307-5-390", "P-307-6-1 to P-307-6-319", "P-307-7-1 to P-307-7-58", "P-307-9-1 to P-307-9-238", "P-307-10-1 to P-307-10-363", "P-307-11-1 to P-307-11-366" and "P-307-12-1 to P-307-12-328".
157 Exhibits "P-207-1-imported to P-207-86-imported".

Upon receipt and recording of the imported Jet A-1 fuels from the PBR, a Jet A-1 LS[158] is used to account for the movement of every shipment or receipt of petroleum products (inventories) and their corresponding deliveries to another depot (*i.e.* inter-facility transfers) or to air carriers (*i.e.* sale).[159] The LS is prepared by the depots upon transfer or sale of a particular shipment of the imported Jet A-1 fuels, which is normally within one to two days from the receipt of the inventories. WC, COC, and CIC numbers are indicated in the LS. The CIC reference number in the LS is the same as that of the COC.[160]

The receipt of the cargo by the depot is recorded in the GL through the PMMT by accepting the transfer initially recorded by the PBR based on the COC reference number.[161] Once accepted by the depot, the GL-SAP, through the PMMT, also generates the CIC reference number. Then, the movement of the imported Jet A-1 fuels is generated from the SAP system using the PMMT report, which is then used by the depot in its daily preparation of LSs.[162]

Upon verification, this Court found that the volume of imported Jet A-1 fuel delivered from the PBR to the depots matches with the COC and the WC submitted to the BIR and, thus, were sourced from importation of Jet A-1 fuel during the period from 23 December 2015 to 31 December 2016:[163]

PRB-ORB - Issuances vs SAP-Generated PBR-ORB – Issuances:

| **Particulars** | **Volume (In Liters)** | |
|---|---|---|
| Total Issuances: | | |
| Per PBR-ORB | | 136,469,568 |
| Per COC by PBR: | | |
| Davao Depot | 5,215,805 | |
| Iloilo Depot | 4,156,186 | |
| Navotas Depot | 25,193,526 | |
| Rosario Depot | 2,346,865 | |
| SL Harbor Center Depot | 83,073,993 | |
| Mactan Depot | 13,398,674 | |
| Palawan Depot | 450,034 | |

158 Exhibits "P-221-1-imported to P-221-5-imported", "P-222-1-imported to P-222-4-imported", P-223-1-imported to P-223-20-imported", "P-224-1-imported to P-224-2-imported", "P-225-1-imported to P-225-55-imported", "P-226-1-imported to P-226-8-imported", "P-227-1-imported", and "P-228-1-imported to P-228-3-imported".

159 Supplemental Judicial Affidavit of Ma. Clarissa C. Arguelles, dated 10 September 2020, Exhibit "P-190-imported".

160 *Ibid.*

161 *Ibid.*

162 *Ibid.*

163 Supplemental Judicial Affidavit of Ms. Dayego, dated 20 October 2020, Exhibit "P-190-imported".

| | | |
|---|---|---|
| | 2,062,324 | |
| Zamboanga Depot | | |
| Others | 572,161 | 136,469,568 |
| **Difference** | | – |

SAP-Generated PBR-ORB – Issuances vs Depots' COC and WC:

| **Particulars** | **Volume (In Liters)** |
|---|---|
| Per SAP-Generated PBR-ORB – Issuances[164] | 136,469,568 |
| Per COC and WC[165] | 136,469,568 |
| **Difference** | – |

Moreover, a comparison[166] of the WCs from the PBR[167] with the WC reference number indicated in the LS of the depots,[168] and a summary of the related receipts and issuances for the said depots from petitioner's PMMT report,[169] as well as the journal entry print-outs of Jet A-1 fuels[170] will show that the volume of imported Jet A-1 fuel delivered by the PBR matches with the volume received by the respective depots:

PBR – Issuances per WC vs Depots – Receipts per LS and ORB (Volume in Liters):

| | | **Per WC** | **Per LS** | | | | | **Per ORB Volume received by depots** | |
|---|---|---|---|---|---|---|---|---|---|
| **Depots** | **Exhibit No.** | **Withdrawals from PBR** | **Gross volume received** | **In-transit gain (loss)** | **Net volume to be received** | **Difference[1]** | **Exhibit No.** | **Related to Claim** | **Not Related to Claim** |
| Davao | **P-221-Imported** | 5,215,805 | 5,215,805 | (166,371) | 5,049,434 | – | **P-229** | 5,049,434 | 17 |
| Iloilo | **P-222-Imported** | 2,917,230 | 2,917,230 | (25,475) | 2,891,755 | – | **P-230** | 2,891,755 | 1,230,402 |
| Navotas | **P-223-Imported** | 25,193,526 | 25,193,526 | (20,436) | 25,173,090 | – | **P-231** | 25,173,090 | (1,610) |
| Rosario | **P-224-Imported** | 2,346,865 | 2,346,865 | (18,045) | 2,328,820 | – | **P-232** | 2,328,820 | 24,401 |
| SL Harbor | **P-225-Imported** | 81,597,239 | 81,597,239 | (114,091) | 81,483,148 | – | **P-233** | 81,483,148 | 20,866,325 |
| Mactan | **P-226-Imported** | 13,398,674 | 13,558,003 | (37,310) | 13,520,693 | (159,329) | **P-234** | 13,520,693 | 1,125,123 |

164 Exhibit "P-206-imported".
165 Exhibits "P-206-imported" and "P-207-imported".
166 Exhibits "P-221-imported to P-228-imported".
167 Exhibits "P-207-1-imported to P-207-86-imported".
168 Exhibits "P-221-1-imported to P-221-5-imported", "P-222-1-imported to P-222-4-imported", "P-223-1-imported to P-223-20-imported", "P-224-21-imported to P-224-2-imported", "P-225-1-imported to P-225-55-imported", "P-226-1-imported to P-226-8-imported", "P-227-1-imported", and "P-228-1-imported to P-228-3-imported".
169 Exhibits "P-229-imported to P-236-imported".
170 Exhibits "P-213-1-1-imported to P-213-1-5-imported", "P-214-1-1-imported to P-214-1-4-imported", "P-215-1-1-imported to P-215-1-22-imported", "P-216-1-1-imported to P-216-1-2-imported", "P-217-1-1-imported to P-217-1-55-imported", "P-218-1-1-imported to P-218-1-8-imported", "P-217-1-1-imported to P-217-1-55-imported", "P-218-1-1-imported to P-218-1-8-imported", P-219-1-1-imported", "P-220-1-1-imported to P-220-1-3-imported".

| | | Per WC | Per LS | | | | | Per ORB Volume received by depots | |
|---|---|---|---|---|---|---|---|---|---|
| **Depots** | **Exhibit No.** | **Withdrawals from PBR** | **Gross volume received** | **In-transit gain (loss)** | **Net volume to be received** | **Difference[1]** | **Exhibit No.** | **Related to Claim** | **Not Related to Claim** |
| Palawan | **P-227-Imported** | 450,034 | 450,034 | (5,576) | 444,458 | - | **P-235** | 444,458 | – |
| Zamboanga | **P-228-Imported** | 2,062,324 | 2,062,324 | 11,027 | 2,073,351 | – | **P-236** | 2,073,351 | – |
| **Total** | | **133,181,697** | **133,341,026** | **(376,277)** | **132,964,749** | **(159,329)** | | **132,964,749** | **23,244,658** |

To reiterate, in-transit gain or loss pertains to the effect of the variations of the volume of imported Jet A-1 fuels due to several factors.[171]

For the transfer of imported Jet A-1 fuel from a depot to other depots, ITPs, and refuellers, a comparison was made between the volume of imported Jet A-1 fuel delivered by the respective depots with the volume received by other depots, ITPs and refueller by obtaining the latter's corresponding LSs.[172] The comparison revealed that the volume of the imported Jet A-1 fuels delivered by the depots differs from the volume actually received by the respective ITPs and refueller, as provided below:

Comparison of Depots LS Issuances with SAP PMMT – Issuances and Depot/ITP/ Refueller LS - Receipts (Volume in Liters)

| **Total Issuances – Depots to Depots/ ITPs/Refueller** | **Exhibit No.** | **Per Depot LS – Issuances Subject to Claim** | **Per SAP PMMT – Issuances Related to Claim** | **Difference** | **Per Depots/ITPs/ Refueller LS – Receipts** | **Direct Delivery to Customers** | **Difference** |
|---|---|---|---|---|---|---|---|
| Davao depot to Davao ITP | **P-253-Imported** | 4,345,110 | 4,345,110 | – | 4,345,110 | – | – |
| Iloilo depot to: | | | | | | | |
| Iloilo ITP | **P-254-Imported** | 300,000 | 300,000 | – | 300,000 | – | – |
| Mactan depot | **P-254-5-Imported** | 40,000 | 40,000 | – | 40,000 | – | – |
| Kalibo ITP | **P-255-Imported** | 2,441,755 | 2,411,755 | 30,000 | 2,471,755 | – | (30,000) |
| | | 2,781,755 | 2,751,755 | 30,000 | 2,811,755 | – | (30,000) |
| SL Harbor depot to: | | | | | | | |
| JOCASP/NAIA depot | **P-256-Imported** | 80,832,471 | 80,832,471 | – | 80,832,471 | – | – |
| Laoag ITP | **P-257-Imported** | 38,000 | 38,000 | – | 38,000 | – | – |
| | | 80,870,471 | 80,870,471 | – | 80,870,471 | – | – |

[171] Consolidated ICPA Report, Exhibit P-189-imported.

[172] Exhibits "P-253-1-imported to P-253-5-imported", "P-254-1-imported to P-254-4-imported", "P-254-5-1-imported", "P-255-1-imported to P-255-4-imported", "P-256-1-imported to P-256-55-imported", "P-258-1-imported to P-258-20-imported" and "P-259-1-imported to P-259-2-imported", "P-257-1-imported to P-257-2-imported", "P-260-1-imported to P-260-3-imported".

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Navotas depot to JOCASP/NAIA depot | **P-258-Imported** | 24,893,090 | 24,893,090 | – | 24,893,090 | – | – |
| Rosario depot to JOCASP/NAIA depot | **P-259-Imported** | 80,000 | 80,000 | – | 80,000 | – | – |
| Mactan depot to Customers | **P-294-Imported** | 10,138,509 | 10,138,509 | – | – | 10,138,509 | – |
| Palawan depot to Customers | **P-295-Imported** | 10,658 | 10,658 | – | – | 10,658 | – |
| Zamboanga depot to Zamboanga refueller | **P-260-Imported** | 1,719,555 | 1,719,555 | – | 1,719,555 | – | – |
| **Total** | | **124,839,148** | **124,809,148** | **30,000** | **114,719,981** | **10,149,167** | **(30,000)** |

Thus, the volumes and amounts of imported Jet A-1 fuel removed from the PBR to petitioner's depots then subsequently transferred to other depots, ITPs, and refuellers are accurate and properly supported, aside from those noted variances which are summarized at the end of this Decision.

***The imported Jet A-1 fuel was sold and delivered to various air carriers of Philippine or foreign registry for the latter's use or consumption outside the Philippines and to alleged tax-exempt entities.***

To reiterate, petitioner prepares and generates the Sis under its SAP,[173] in accordance with the commercial terms and orders stated in the respective contracts executed between the Petitioner and the airline companies. The summary of ADRs[174] covering the period billable to the airline companies forms an integral part of the SI as proof that the volumes of imported Jet A-1 fuels were delivered to the air carriers. All SIs involving sales of imported tax-paid Jet A-1 to air carriers of Philippine or foreign registry on their use or consumption outside the Philippines and to tax-exempt entities shall carry a "No Excise Tax Billed" notation, while an invoice involving the sale of imported tax-paid Jet A-1 fuels to air carriers for domestic flights does not carry such notation.[175]

Furthermore, the amounts per SI for sale of imported Jet A-1 fuels to international air carriers on their use or consumption outside the Philippines and to tax-exempt entities are dollar-denominated and translated to Philippine

[173] Exhibits "P-277-1-imported to P-277-57-imported", "P-278-1-imported to P-278-6-imported", "P-279-1-imported to P-279-36-imported", "P-280-1-imported to P-280-144-imported", "P-281-1-imported to P-281-8-imported", "P-282-1-imported to P-282-92-imported", "P-283-1-imported to P-283-3-imported", "P-284-1-imported to P-284-82-imported."

[174] Exhibits "P-269-1-imported to P-269-216-imported", "P-270-1-imported to P-270-20-imported", "P-271-1-imported to P-271-250-imported", "P-272-1-imported to P-272-3070-imported", "P-273-1-imported to P-273-8-imported", "P-274-1-imported to P-274-805-imported", "P-275-1-imported to P-275-3-imported", "P-276-imported to P-276-93-imported".

[175] Supplemental Judicial Affidavit of Ms. Dayego, dated 20 October 2020, Exhibit "P-190-imported".

peso using the prescribed rates by petitioner, which are in accordance with the contract and adjusted at end of the month in the SAP based on Philippine Dealing System rate.[176]

Petitioner also prepares the LS indicating the disposition of the Jet A-1 fuels received.[177] The LS shows the source of the Jet A-1 fuel, whether it came from importations or local production, and where the Jet A-1 fuels were delivered, either international or domestic deliveries.[178] Thus, based on the LS, it was determined that the Jet A-1 fuel delivered to international air carriers on their use or consumption outside the Philippines and to tax-exempt entities were sourced from importations for the period from 23 December 2015 to 31 December 2016. The following table summarizes the LS movements for the receipts and issuances of imported Jet A-1 fuel:[179]

LS Movements – Receipts and Issuances (Volume in Liters):

| Depots/ITPs/ Refueller | Exhibit No. | Per Depots/ITPs/ Refueller LS – Receipts | Direct Delivery to Customers | Per LS – Issuances | | |
|---|---|---|---|---|---|---|
| | | | | Subject to Claim | Not Subject to Claim | Total |
| Davao ITP | P-262-Imported | 4,345,110 | – | 1,642,509 | 2,702,601 | 4,345,110 |
| Iloilo ITP | P-263-Imported | 300,000 | – | 155,056 | 144,944 | 300,000 |
| Mactan depot | P-263-1-Imported | 40,000 | – | 40,000 | – | 40,000 |
| Kalibo ITP | P-264-Imported | 2,471,755 | – | 2,344,015 | 127,740 | 2,471,755 |
| JOCASP/NAIA depot | P-265-Imported | 105,805,561 | – | 84,963,216 | 20,842,345 | 105,805,561 |
| Laoag ITP | P-266-Imported | 38,000 | – | 29,360 | 8,640 | 38,000 |
| Mactan depot | P-242-Imported | – | 10,138,509 | 10,138,509 | – | 10,138,509 |
| Palawan depot | P-243-Imported | – | 10,658 | 10,658 | – | 10,658 |
| Zamboanga refueller | P-267-Imported | 1,719,555 | – | 166,894 | 1,552,661 | 1,719,555 |
| **Total** | | **114,719,981** | **10,149,167** | **99,490,217** | **25,378,931** | **124,869,148** |

Thus, the imported Jet A-1 fuel was sold and delivered to various air carriers of Philippine or foreign registry for the latter's use or consumption outside the Philippines and to alleged tax-exempt entities, except for certain

[176] Consolidated ICPA Report, Exhibit "P-189-imported"; Judicial Affidavit of Ma. Clarissa C. Arguelles, dated 25 October 2018, Exhibit "P-170-imported".
[177] Judicial Affidavit of Allan James T. Tenorio, dated 25 October 2018, Exhibit "P-174-imported".
[178] *Ibid.*
[179] Consolidated ICPA Report, Exhibit "P-189-imported"; Judicial Affidavit of Mr. Pausing, dated 15 October 2018, Exhibit "P-190-imported"; Judicial Affidavit of Allan V. Peczon, dated 25 October 2018, Exhibit "P-173-imported".

variances noted by the ICPA and which is summarized at the end of this Decision.

***The imported Jet A-1 fuel was billed and collected net of excise tax.***

The deliveries of imported Jet A-1 fuel were billed and collected from alleged international carriers and tax-exempt entities without any excise tax.

In arriving at this conclusion, this Court compared the details per ADRs of the depots, ITPs and refueller to the corresponding SIs billed to airline companies. After which, the details of the SIs are traced to the pricing conditions in petitioner's SAP. The tracing resulted in the following table:[180]

| | Exhibit No. | | |
|---|---|---|---|
| **Depot/ITP** | **ADRs** | **SIs** | **SAP-Pricing Conditions** |
| Davao ITP | **P-269-1-Imported to P-269-216-Imported** | **P-277-1-Imported to P-277-57-Imported** | **P-277-58-Imported to P-277-114-Imported** |
| Iloilo ITP | **P-270-1-Imported to P-270-20-Imported** | **P-278-1-Imported to P-278-6-Imported** | **P-278-7-Imported to P-278-12-Imported** |
| Kalibo ITP | **P-271-1-Imported to P-271-250-Imported** | **P-279-1-Imported to P-279-36-Imported** | **P-279-37-Imported to P-279-72-Imported** |
| JOCASP/NAIA Depot | **P-272-1-Imported to P-272-3070-Imported** | **P-280-1-Imported to P-280-144-Imported** | **P-280-145-Imported to P-280-288-Imported** |
| Laoag ITP | **P-273-1-Imported to P-273-8-Imported** | **P-281-1-Imported to P-281-8-Imported** | **P-281-9-Imported to P-281-16-Imported** |
| Mactan Depot | **P-274-1-Imported to P-274-805-Imported** | **P-282-1-Imported to P-282-92-Imported** | **P-282-93-Imported to P-282-184-Imported** |
| Palawan Depot | **P-275-1-Imported to P-275-3-Imported** | **P-283-1-Imported to P-283-3-Imported** | **P-283-4-Imported to P-283-6-Imported** |
| Zamboanga Refueller | **P-276-1-Imported to P-276-93-Imported** | **P-284-1-Imported to P-284-82-Imported** | **P-284-83-Imported to P-284-164-Imported** |

Further, petitioner's SI tied up with the SAP pricing conditions, showing that it did not charge any excise tax to international carriers and tax-exempt entities:[181]

[180] *Ibid.*
[181] *Ibid.*

ADR vs. SI:

| | | ADR | SI | | | |
|---|---|---|---|---|---|---|
| | | | Volume (In Liters) | | | |
| Exhibit No. | Point of Sale | Volume (In Liters) | Related to Claim | Not Related to Claim | Total | Equivalent USD Amount |
| **P-277-Imported** | Davao ITP | 1,494,475 | 1,494,475 | 251,122 | 1,745,597 | US$746,430.67 |
| **P-278-Imported** | Iloilo ITP | 155,056 | 155,056 | 95,334 | 250,390 | 108,926.64 |
| **P-279-Imported** | Kalibo ITP | 2,328,608 | 2,328,608 | 2,545,837 | 4,874,445 | 2,184,136.70 |
| **P-280-Imported** | JOCASP/NAIA Depot | 84,974,058 | 84,974,058 | 142,580,521 | 227,554,579 | 80,588,823.93 |
| **P-281-Imported** | Laoag ITP | 29,360 | 29,360 | 3,556 | 32,916 | 16,836.16 |
| **P-282-Imported** | Mactan Depot | 10,178,509 | 10,178,509 | 16,633,021 | 26,811,530 | 10,355,665.81 |
| **P-283-Imported** | Palawan Depot | 10,658 | 10,658 | – | 10,658 | 5,334.64 |
| **P-284-Imported** | Zamboanga Refueller | 166,894 | 166,894 | – | 166,894 | 59,734.96 |
| **Total** | | **99,337,618** | **99,337,618** | **162,109,391** | **261,447,009** | **US$94,065,889.51** |

SI vs. SAP Pricing Condition:

| | | SI | SAP Pricing Condition | | | |
|---|---|---|---|---|---|---|
| Exhibit No. | Point of Sale | USD Amount | USD Amount | Duty Rate* | Total USD Amount | Equivalent Peso Amount |
| **P-277-Imported** | Davao ITP | US$746,430.67 | US$746,430.67 | US$ – | US$746,430.67 | ₱35,028,291.61 |
| **P-278-Imported** | Iloilo ITP | 108,926.64 | 108,926.64 | – | 108,926.64 | 5,087,546.48 |
| **P-279-Imported** | Kalibo ITP | 2,184,136.70 | 2,184,136.70 | – | 2,184,136.70 | 102,316,146.54 |
| **P-280-Imported** | JOCASP/ NAIA Depot | 80,588,823.93 | 80,588,823.93 | – | 80,588,823.93 | 3,773,033,688.44 |
| **P-281-Imported** | Laoag ITP | 16,836.16 | 16,836.16 | – | 16,836.16 | 791,893.70 |
| **P-282-Imported** | Mactan Depot | 10,355,665.81 | 10,355,665.81 | – | 10,355,665.81 | 486,509,800.33 |
| **P-283-Imported** | Palawan Depot | 5,334.64 | 5,334.64 | – | 5,334.64 | 250,503.33 |
| **P-284-Imported** | Zamboanga Refueller | 59,734.96 | 59,734.96 | – | 59,734.96 | 2,782,216.59 |
| **Total** | | **US$94,065,889.51** | **US$94,065,889.51** | **US$ –** | **US$94,065,889.51** | **₱4,405,800,087.02** |

** Duty rate pertains to excise tax billed to customers.*

To reiterate, collections of SAP-generated SIs are made through inward remittances by petitioner's customers, which normally cover the payment of several invoices. However, for the airline company and tax-exempt entities that do not provide details of the invoices against which the collection would be applied, petitioner applies the collection on the outstanding invoices on a first-in, first-out basis.[182]

A verification of the amount of collection per SAP clearing, inward remittances/bank advices, ORs, and bank certifications will show that these reconcile with the amount billed to the airline companies and tax-exempt entities and proves that petitioner has not collected any excise tax from its customers.[183] The same is proven by the following table:

[182] Consolidated ICPA Report, Exhibit "P-189-imported"; Judicial Affidavit of Allan V. Peczon, dated 25 October 2018, Exhibit "P-173-imported".

[183] *Ibid.*

SI vs. SAP Clearing and Inward Remittance/Bank Certification/OR:

| Particulars | Amount (in USD) | Amount (in Peso) |
|---|---|---|
| Per SI | US$94,065,889.51 | ₱4,405,800,087.02 |
| Per Collection documents: | | |
| Per SAP Clearing | 94,065,889.51 | 4,405,800,087.02 |
| Per Inward Remittance/Bank Certifications/OR | 94,065,889.51 | 4,405,800,087.02 |

**Petitioner adduced competent evidence showing that the buyers of its petroleum products are international carriers and tax-exempt entities.**

To repeat, one of the instances where ***Section 135 of the NIRC*** grants an exemption from excise tax on petroleum products is if the buyer of the petroleum product is an international carrier whose country similarly exempts Philippine international carriers.

In the case at bar, petitioner presented the various Air Services Agreements which the Philippines has with the countries of registry of all the international carriers which it transacted with for the sale of Jet A-1 fuel.[184] A perusal of said Agreements reveals that the countries of registry similarly provide an exemption from excise tax on the petroleum products sold to international carriers of Philippine registry. Thus, any sale of petroleum products to these international carriers are likewise exempt from excise tax.

With respect to the sale of Jet A-1 fuel and unleaded gasoline fuel to alleged tax-exempt entities, petitioner presented evidence[185] showing that the entities which purchased such petroleum products are indeed exempt from excise tax on petroleum products.

Following this, petitioner has indeed proven that it sold petroleum products to international carriers and tax-exempt entities. It is thus entitled to the refund sought pertaining to erroneously paid excise tax on petroleum products as provided under ***Section 185 of the NIRC.***

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[184] Exhibit "P-38-imported" to "P-57-imported", also marked as Exhibits "P-134" to "P-141" and "P-155"; Supplemental Judicial Affidavit of Ma. Clarissa C. Arguelles, dated 10 September 2020, Exhibit "P-190-imported".

[185] Exhibits "P-105-imported" to "P-109-imported", including sub-markings, and "P-95" to "P-100".

**Petitioner's refund claim must be reduced due to certain unexplained variances noted by the ICPA.**

In the course of her audit and inspection of petitioner's voluminous documents submitted in support of the present refund claim, the ICPA noted certain variances which petitioner failed to explain. This Court is thus constrained to deduct these unexplained variances from the total amount which can be refunded or credited in favor of petitioner. The variances are summarized, as follows:[186]

| | CTA Case No. 9738 | | CTA Case No. 9741 | | | | Consolidated |
|---|---|---|---|---|---|---|---|
| | Jet A-1 Fuel | | Jet A-1 Fuel | | Unleaded Gasoline Fuel | | |
| Particulars | Volume (In Liters) | Amount (At ₱3.67 per Liter) | Volume (In Liters) | Amount (At ₱3.67 per Liter) | Volume (In Liters) | Amount (At ₱4.35 per Liter) | Total Amounts |
| Amount of Claim Per Schedule of Excise Tax Paid/ Petition for Review | 99,501,062 | ₱365,168,897.54 | 7,728,768 | ₱28,364,578.56 | 865,070 | ₱3,763,054.50 | ₱397,296,530.60 |
| Less downward adjustments: | | | | | | | |
| Not traced to WC – Mactan depot | 159,329 | 584,737.43 | NA | NA | NA | NA | 584,737.43 |
| Not traced to SAP PMMT – Issuances – Kalibo ITP | 30,000 | 110,100.00 | NA | NA | NA | NA | 110,100.00 |
| Not traced to Iloilo LS - Issuances – Kalibo ITP | 30,000 | 110,100.00 | NA | NA | NA | NA | 110,100.00 |
| Sales/Deliveries to local destinations: | | | | | | | |
| Davao ITP | 148,034 | 543,284.78 | NA | NA | NA | NA | 543,284.78 |
| Kalibo ITP | 15,407 | 56,543.69 | NA | NA | NA | NA | 56,543.69 |
| Sales/Deliveries sourced from importation not subject to claim: | | | | | | | |
| JOCASP/NAIA depot | 10,842 | 39,790.14 | NA | NA | NA | NA | 39,790.14 |
| Difference of Sales/Deliveries per Schedule of Claim and Actual LS – Issuance: | | | | | | | |
| Davao ITP | 3 | 11.01 | NA | NA | NA | NA | 11.01 |
| PBR Removals from 2015 considered as out of period | NA | NA | 199,942 | 733,787.14 | – | – | 733,787.14 |
| | NA | NA | 199,942 | 733,787.14 | – | – | 733,787.14 |
| *(Forwarded)* | | | | | | | |
| *(Balance forwarded)* | | | | | | | |
| Sales/Deliveries to domestic air carriers with local destination: | | | | | | | |
| JOCASP/NAIA depot | NA | NA | 20,980 | 76,996.60 | – | – | 76,996.60 |
| Mactan depot | NA | NA | 64,049 | 235,059.83 | – | – | 235,059.83 |
| Kalibo ITP | NA | NA | 4,305 | 15,799.35 | – | – | 15,799.35 |
| DMIA/Clark depot | NA | NA | 5,521 | 20,262.07 | – | – | 20,262.07 |
| | | | 94,855 | 348,117.85 | – | – | 348,117.85 |
| Total downward adjustments | 393,615 | 1,444,567.05 | 294,797 | 1,081,904.99 | – | – | 2,526,472.04 |
| **Total** | **99,107,447** | **₱363,724,330.49** | **7,433,971** | **₱27,282,673.57** | **865,070** | **₱3,763,054.50** | **₱394,770,058.56** |

[186] Consolidated ICPA Report, Exhibit "P-189-imported".

Accordingly, petitioner's refund claim is granted up to the following amounts:

| CTA Case No. | Particulars | Amount |
|---|---|---|
| 9738 | Claim for refund or issuance of TCC pertaining to imported tax-paid Jet A-1 fuel | ₱363,724,330.49 |
| 9741 | Claim for refund or issuance of TCC pertaining to locally manufactured tax-paid Jet A-1 and unleaded gasoline fuels | 31,045,728.07 |
| | **Total** | **₱394,770,058.56** |

**WHEREFORE**, the consolidated Petitions for Review filed by petitioner Petron Corporation are hereby **PARTIALLY GRANTED.** Respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of **Three Hundred Ninety Four Million Seven Hundred Seventy Thousand Fifty Eight and 56/100 Pesos (Php394,770,058.56)** representing erroneously paid excise tax on petroleum products sold to international carriers and tax-exempt entities.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**I CONCUR:**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## ATTESTATION

I attest 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's Division.

**MA. BELEN M. RINGPIS-LIBAN**
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 cases were assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice