REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 960
(CTA CASE NO. 7731)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 09 2013 9:05 a.m.

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DECISION

DEL ROSARIO, PJ.:

This is an appeal filed by petitioner Pilipinas Shell Petroleum Corporation pursuant to Republic Act (RA) No. 9282 seeking to reverse and set aside the Decision[1] promulgated on September 7, 2012 ("assailed Decision") by the former Third Division of the Court of Tax Appeals ("CTA-Third Division") and its Resolution[2] dated November 12, 2012 ("assailed Resolution") in CTA Case No. 7731, entitled *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, which denied petitioner's claim for refund or issuance of tax credit certificate for excise taxes paid on Jet A-1 fuel sold to international carriers in the total amount of

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[1] *Rollo*, pp. 6-22.
[2] *Rollo*, pp. 23-26.

Php91,655,658.98 covering the period February to April 2006, for lack of merit.

FACTS OF THE CASE

The following are taken from the records of the Court *a quo*:

> "Petitioner, Pilipinas Shell Petroleum Corporation, is a corporation organized and existing under the laws of the Philippines, with office address at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City. It is engaged, among others, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue ("BIR") National Office Building at Agham Road, Diliman, Quezon City.
>
> On February 15, 2007, petitioner filed a claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the BIR for the recovery of excise taxes paid on Jet A-1 fuel in the amount of P91,655,658.98.
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> On February 15, 2008, due to respodent's inaction thereto, petitioner filed the present Petition for Review.
>
> On April 25, 2008, respondent filed her Answer, interposing the following Special and Affirmative Defenses:
>
> '5. Petitioner's claim for tax refund is subject to administrative routinary investigation and/or examination by the respondent.
>
> 6. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with the law and the rules and regulations, and the burden to prove otherwise is upon the petitioner.
>
> 7. Petitioner must show that it has complied with the provisions of Section[s] 204(C) and 229 of the National Internal Revenue Code of 1997 (1997 NIRC) on the prescriptive period for claiming tax refund/credit.
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> 8. As to petitioner's importation of Jet A-1 fuel on February to April 2006, petitioner was correctly and properly assessed [with] the corresponding excise tax pursuant to Section 131 (A), in relation to Section 148

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of the 1997 NIRC. Under Section 131 of the 1997 NIRC, it provides that:

> "Section 131. *Payment of [E]xcise [T]axes on Imported Articles.*-
>
> (A) "*Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or ***importer*** to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in the possession of articles which are exempt in f[ro]m excise taxes other than those legally entitled to exemption." (*Emphasis supplied.*)

9. As to petitioner's purchase of imported Jet A-1 fuel from Chevron (Philippines) Corporation ("Chevron") for which the latter paid the corresponding excise tax, petitioner cannot claim a tax refund for the excise tax being shifted and/or passed on by the seller, Chevron, the same being part of the selling price and considering further that the excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article as wisely held in the case of *Philippine Acetylene vs. Commissioner of Internal Revenue, 20 SCRA 789.* (*Emphasis and underscoring supplied.*)

10. Similarly, it was held that excise tax partaking the nature of an indirect tax is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. Where the burden of the tax is shifted to purchaser, the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes a part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on manufacturer or producer though the impact of taxation or the burden of taxation falls on another person, which in this case is petitioner herein.

11. Petitioner based its tax refund/credit on Section 135(a) and (b) of the 1997 NIRC which states:

> "Section 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* - Petroleum products sold to the following are exempt from excise tax:

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> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use and 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; xxx"

12. The reliance of petitioner o[n] the above-quoted provision of the 1997 NIRC to claim [sic] for a tax refund/credit is utterly misplaced.

13. It has been repeatedly held by this Honorable Court that it is only the manufacturer/producer of the petroleum products sold, being the taxpayer, which has the legal personality to claim for the refund of excise taxes paid on petroleum products sold to international carriers based on Section[s] 130(A)(2) and 204 (C) of the 1997 NIRC. Section 130(A)(2) of the 1997 NIRC provides that "unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the ***manufacturer/producer*** before removal of domestic products from place of production." On the other hand, Section 204(C) of the same Code states, ["The Commissioner may"] [3] "[c]redit 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. No credit or refund of taxes or penalties shall be allowed unless the ***taxpayer*** file[s] in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: *Provided*, *however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which ***the taxpayer is directly liable***. Any request for conversion into refund or unutilized tax credits may be

[3] *Supplied.*

allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation; *Provided, further*, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payments was made." (*Emphasis supplied.*)

14. Further, it was stated that the determination of who the taxpayer is, plays a vital role in claims for refund because the same law provides that it is only the taxpayer who has the legal personality to ask for refund in case of erroneous payment of taxes. Corollarily, the proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Thus, the manufacturer or producer and not the purchaser, is statutory taxpayer [who] is entitled to claim a refund based on Section 135 of the 1997 NIRC.

15. In the instant case, petitioner is merely an ***importer and purchaser*** of Jet A-1 fuel and ***not the manufacturer or producer*** of the Jet A-1 Fuel sold to international carriers, hence, petitioner is not the proper party to seek refund/credit on the sale of petroleum products to international carriers and is not treated as the taxpayer in contemplation of the 1997 NIRC. (*Emphasis supplied.*)

16. The amount of P91,655,658.98 being claimed as tax refund/credit for the excise tax paid by petitioner for the sale of Jet A-1 fuel to international carriers was not properly documented.

17. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications.

18. The claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and liberally in favor of the taxing authority. (*Citations omitted.*)'

On May 28, 2008, the parties entered their Joint Stipulation of Facts and Issues, which was approved by the Court in a Resolution, dated May 30, 2008.

> On January 7, 2010, pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010, entitled "Implementing the Fully Expanded Membership in the Court of Tax Appeals," the case at bench was transferred to the Third Division of the Court.
>
> During trial, petitioner presented its evidence; while respondent manifested that she will not present any evidence.
>
> On September 20, 2011, the case was submitted for decision, considering the Memorandum filed by respondent on August 26, 2011, and the Memorandum for Petitioner filed on September 15, 2011."

As aforestated, the Court *a quo* issued the assailed Decision on September 7, 2012, denying petitioner's petition for review for lack of merit. Petitioner received a copy of the assailed Decision on September 12, 2012.

On September 27, 2012, petitioner filed a Motion for Reconsideration of the assailed Decision. On November 12, 2012, the Court *a quo* issued the assailed Resolution denying petitioner's Motion for Reconsideration for lack of merit. Petitioner received a copy of the assailed Resolution on November 14, 2013.

On November 28, 2012, petitioner filed a Motion for Extension of Time to File Petition for Review with the Court *En Banc*. In a Resolution dated December 3, 2012, the Court *En Banc* granted petitioner an additional period of fifteen (15) days from November 29, 2012 or until December 14, 2012 within which to file its Petition for Review.

On December 14, 2012, petitioner filed the instant Petition for Review.

The Court *En Banc* ordered herein respondent to file her comment within ten (10) days from receipt of its Resolution dated January 23, 2013.

On February 12, 2013, respondent filed her Comment/Opposition (Re: Petition for Review).

In a Resolution dated February 21, 2013, the Court *En Banc* gave due course to the Petition for Review and directed both parties to file their respective memoranda, within thirty (30) days from receipt of the said Resolution; thereafter, with or without such memoranda, the Petition for Review shall be deemed submitted for resolution.

On March 7, 2013, respondent filed a Manifestation stating that she is adopting her Comment/Opposition to the instant Petition for Review filed on February 12, 2013 as her Memorandum. On the other hand, petitioner filed its Memorandum on April 22, 2013.

On May 15, 2013, the Court *En Banc* issued a Resolution submitting the case for decision.

ISSUES

Petitioner raises the following issues for the resolution of the Court *En Banc*:

1. Whether or not the decision of the Supreme Court in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation* [4] *("PSPC case")* is applicable to the instant case.

2. Whether or not the CTA-Third Division erred in ruling against petitioner's claim for refund or tax credit of erroneously paid excise taxes under Section 135 (A) of the 1997 NIRC.

3. Whether or not the excise taxes paid by petitioner subject of the instant case is an "erroneously paid tax", which can be recovered pursuant to Sections 204 and 229 of the 1997 NIRC.

4. Whether or not petitioner is entitled to the refund or tax credit of excise taxes erroneously paid on petroleum products sold to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines in the aggregate amount of Php91,655,658.98. [5]

PETITIONER'S ARGUMENTS

Petitioner argues that the *PSPC case* does not apply here as the *PSPC case* is still on appeal before the Supreme Court. Hence, it has not yet become final and executory. Furthermore, the *PSPC case* was decided by the

[4] G.R. No. 188497, April 25, 2012.
[5] *Rollo*, p. 41.

Supreme Court in division, hence, it cannot modify earlier decisions[6] of the Supreme Court which recognize the excise tax exemption of petroleum sold to international carriers. Under Section 4(3) of Article VIII of the Constitution, the power to modify or reverse existing doctrine or principle of law earlier laid down by the Supreme Court is vested only on the Supreme Court sitting en banc.

Petitioner avers that the instant case involves a significant fact that does not exist in the *PSPC case*, which may alter the decision in the instant case altogether, that is, the application of bilateral Air Transport Agreements with various other countries. In view thereof, the *PSPC case* does not constitute *stare decisis* and should not be relied upon by the Court *En Banc*.

Petitioner also contends that Section 135(a)[7] of the National Internal Revenue Code of 1997 ("1997 NIRC"), as amended, clearly provides for excise tax exemption on petroleum products sold to international carriers. In interpreting Section 135(a), petitioner argues that it is important to take into consideration the underlying nature of excise tax. Excise taxes refer to taxes applicable to certain specific goods or articles for domestic sale or consumption or for any other disposition whether manufactured or produced or imported into the Philippines. According to petitioner, as a manufacturer or producer of petroleum products, it is liable to pay excise tax under Sec. 148[8] of the 1997 NIRC, as amended but when petitioner sells the petroleum product to international carriers, its excise tax liability is reversed because of the exemption of the very same product from excise tax under Section 135 of the 1997 NIRC, as amended.

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[6] Petitioner cited the cases of Exxonmobil Petroleum & Chemical Holdings vs. CIR, 640 SCRA 203 (2011); Silkair vs. CIR, 571 SCRA 141 (2008); Silkair vs. CIR, 544 SCRA 100 (2008)

[7] **Section 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; xxx

[8] **CHAPTER V - EXCISE TAX ON PETROLEUM PRODUCTS**

Section 148. *Manufactured Oils and Other Fuels.* - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
Xxx xxx xxx.

Petitioner further argues that if petroleum manufacturers or producers (such as petitioner) would be required to shoulder the burden of the excise tax, such petroleum manufacturers or producers would be constrained to shift the burden of the tax to international carriers in the form of an addition to the selling price thereby defeating the very reason why the exemption was initially established. This will result in non-fulfillment of obligations on the part of the Philippine government, contained in many international agreements, in absolute violation of *pacta sunt servanda*.

In particular, petitioner cites the Chicago Convention in which Section 24 thereof, provides, "fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges." In the same vein, petitioner highlights the various air service agreements entered into by the Philippines with other Contracting States which contain provisions expressly exempting fuel from the same custom duties, inspection fees and other duties or taxes imposed in the territory of the other Contracting Party.

Petitioner then posits that the Supreme Court should have applied the principle of *Ubi lex non distinguit, nec nos disinguere debemus* or where the law does not distinguish, we ought not to distinguish in the *PSPC case*. The Supreme Court struck down the express exemption on fuels used in international transportation found in the Chicago Convention and various service agreements entered into by the Philippines with other contracting states. Petitioner insists that the Supreme Court effectively violated the express mandate of the bilateral agreements entered into by the Philippines.

Petitioner finally argues that the CTA-Third Division erroneously interpreted Section 130(D)[9] of the 1997 NIRC when it applied the ruling of the Supreme Court in the *PSPC case*. Petitioner contends that Section 130(D) is clearly meant to be read in light of the other provisions of the 1997 NIRC, particularly the provisions on erroneously paid tax under Section

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[9] **Section 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* -

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

229[10] thereof. To hold otherwise would be absurd and would be tantamount to judicial legislation.

RESPONDENT'S COUNTER-ARGUMENTS

On the other hand, respondent avers that with regard to petitioner's importation of Jet A-1 fuel for the period February to April 2006, the latter was correctly and properly assessed the corresponding excise tax pursuant to Section 131(A)[11], in relation to Section 148 of the 1997 NIRC, as amended.

In relation to petitioner's local purchases of Jet A-1 fuel from Chevron Philippines, Inc. ("Chevron"), respondent contends that petitioner cannot claim for a tax refund for the excise tax being shifted and/or passed on by Chevron, the same being already a part of the selling price. The excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article as wisely held in the case of *Philippine Acetylene vs. Commissioner of Internal Revenue.*[12] Respondent also contends that excise tax, which partakes the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden

[10] **Section 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, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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

[11] **Section 131.** *Payment of Excise Taxes on Importer Articles.* -

(A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

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[12] G.R. No. L-19707, August 17, 1967.

of the tax to the purchaser. Where the burden of the tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on the manufacturer or producer though the impact of taxation or the burden of taxation falls on another person, which in this case is herein petitioner.

Respondent cited the *PSPC case* and agrees with the ruling of the CTA-Third Division that petitioner, as the taxpayer statutorily liable to pay the excise taxes, rightfully paid what was demandable from it.

Finally, respondent argues that petitioner failed to discharge its burden of establishing its entitlement to a tax refund or tax credit. According to respondent, failure to prove the same is fatal for it is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

RULING OF THE CTA-THIRD DIVISION

In denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of Php91,655,658.98 representing excise taxes paid on Jet A-1 fuel sold to international carriers for the period February to April 2006, the CTA-Third Division applied the ruling of the Supreme Court in the *PSPC case* where the Supreme Court resolved the issue of whether a manufacturer or producer of petroleum products is exempt from the payment of excise tax on petroleum products sold to international carriers.

Relevant portions of the assailed Decision of the CTA-Third Division which substantially quoted pertinent pronouncements in the *PSPC case* state as follows:

> "In order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must, therefore, be present:
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> 1) That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;
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> 2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

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3) That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

In a recovery of internal revenue taxes, or sums erroneously, excessively, illegally or wrongfully collected, the term erroneous or illegal tax is defined "as one levied without statutory authority."

And in determining petitioner's compliance with the first requisite — that the claimed excise taxes in the amount of P91,655,658.98 were erroneously or illegally paid — the records show that petitioner is engaged, *inter alia*, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof; that it manufactures Jet A-1 fuel primarily for sale and delivery to foreign and domestic air carriers and other customers; that Jet A-1 fuel is ordinarily manufactured in its refinery in Tabangao, Batangas utilizing imported crude oil as raw materials; that it occasionally imports finished Jet A-1 fuel if the refinery shuts down or if the demand for Jet A-1 fuel exceeds the projected supply of locally-manufactured Jet A-1 fuel, and in some instances, however, it purchases Jet A-1 fuel from other oil companies, such as Chevron Philippines, Inc. ("Chevron"); and that in February and March 2006, it imported Jet A-1 fuel through its refinery in Tabangao, Batangas ("Tabangao Refinery"), and accordingly, paid to the Bureau of Customs in Batangas excise taxes at the rate of P3.67 per liter on the imported Jet A-1 fuel. The details of petitioner's importation and payment of excise taxes are as follows:

Exhibit	Date of Receipt	Exhibit	IEIRD No.	Date of final payment	Qty (in liters)	Excise taxes paid
"B-2"	02/19/06	"B"	293-06	03/20/06	6,552,827	P24,048,875.09
"C-2"	03/04/06	"C"	333-06	04/03/06	12,070,992	44,300,541.00
"D-2"	03/21/06	"D"	407-06	04/20/06	9,954,854	36,534,314.18
				Total	28,578,673	P104,883,730.27

The importations of Jet A-1 fuel are supported by the following documents:

a. Import Entry and Internal [Revenue] [13] Declaration ("IEIRD");
b. Import Entry Declaration ("IED");
c. Certificate of Quantity Received ("CQR");
d. Tax Invoice;
e. Tanker Bill of Lading;
f. Equitable PCI Bank Official Receipt;
g. Authority to Release Imported Goods ("ATRIG");
h. Time Log Report/Surveyor's Report prepared by SGS Philippines, Inc.

And within the same period, petitioner likewise purchased from Chevron, 3,192,012 liters of imported Jet A-1 fuel, the excise taxes due

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[13] *Supplied.*

thereon at the rate of P3.67 per liter were paid for by the latter; however, the same tax was subsequently billed or passed-on to the former.

Of the aforementioned imported and locally purchased Jet A-1 fuel, a total of 24,974,294 liters, petitioner avers that the same were sold to various international airlines for the period covering February 27 to April 9, 2006 for their use or consumption outside the Philippines, and thus, are exempt from excise tax pursuant to Section 135 of the 1997 NIRC, as amended. Thus, it posits that since it had already paid excise taxes on the imported Jet A-1 fuel that were sold to exempt international carriers, then said excise taxes paid partake the nature of erroneously or illegally collected taxes, and that it is entitled to a refund in the amount of P91,655,658.98, computed as follows:

Description	Volume in liters	Excise Tax Rate	Amount
Sales to international carriers of Philippine or foreign registry pursuant to Sec. 135 of the Tax Code	24,974,294	P3.67	P91,655,658.98
TOTAL	24,974,294		P91,655,658.98

The Court, however, takes judicial notice of a similar and recent case, wherein the Supreme Court, in reversing and setting aside the Decision dated March 25, 2009, and Resolution dated June 24, 2009, promulgated by this Court sitting En Banc, exhaustively ruled in this wise:

> 'The instant petition squarely raised the issue of **whether respondent as manufacturer or producer of petroleum products is exempt from the payment of excise tax on such petroleum products it sold to international carriers.**
>
> In the previous cases decided by this Court involving excise taxes on petroleum products sold to international carriers, what was only resolved is the question of who is the proper party to claim the refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. We have ruled in the said cases that the statutory taxpayer, the local manufacturer of the petroleum products who is directly liable for the payment of excise tax on the said goods, is the proper party to seek a tax refund. Thus, a foreign airline company who purchased locally manufactured petroleum products for use in its international flights, as well as a foreign oil company who likewise bought petroleum products from local manufacturers and later sold these to international carriers, have no legal personality to file a claim for tax refund or credit of excise taxes previously paid by the local manufacturers even if the latter passed on to the said buyers the tax burden in the form of additional amount in the price.

Excise taxes, as the term is used in the NIRC, refer to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the value-added tax (VAT).

As to petroleum products, Sec. 148 provides that excise taxes [shall][14] attach to the following refined and manufactured mineral oils and motor fuels as soon as they are in existence as such:

(a) Lubricating oils and greases;
(b) Processed gas;
(c) Waxes and petrolatum;
(d) Denatured alcohol to be used for motive power;
(e) Naphtha, regular gasoline and other similar products of distillation;
(f) Leaded premium gasoline;
(g) Aviation turbo jet fuel;
(h) Kerosene;
(i) Diesel fuel oil, and similar fuel oils having more or less the same generating power;
(j) Liquefied petroleum gas;
(k) Asphalts; and
(l) Bunker fuel oil and similar fuel oils having more or less the same generating capacity.

Beginning January 1, 1999, excise taxes levied on locally manufactured petroleum products and indigenous petroleum are required to be paid before their removal from the place of production. However, Sec. 135 provides:

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Respondent claims it is entitled to a tax refund because those petroleum products it sold to international carriers are not subject to excise tax, hence the excise taxes it paid upon withdrawal of those products were erroneously or illegally collected and should not have been paid in the first place. Since the excise tax exemption attached to the petroleum products themselves, the manufacturer or producer is under no duty to pay the excise tax thereon.

We disagree.

Under Chapter II *"Exemption or Conditional Tax-Free Removal of Certain Goods"* of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured

[14] *Supplied.*

(domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, **Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer.** Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135(a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.

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Thus, if an airline company purchased jet fuel from an unregistered supplier who could not present proof of payment of specific tax, the company is liable to pay the specific tax on the date of purchase. **Since the excise tax must be paid upon withdrawal from the place of production, respondent cannot anchor its claim for refund on the theory that the excise taxes due thereon should not have been collected or paid in the first place.**

Sec. 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.

Respondent's locally manufactured petroleum products are clearly subject to excise tax under Sec. 148. Hence, its claim for tax refund may not be predicated on Sec. 229 of the NIRC allowing a refund of erroneous or excess payment of tax. Respondent's claim is premised on what it determined as a tax exemption "attaching to the goods themselves," which must be based on a statute granting tax exemption, or "the result of legislative grace." Such a claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute.

The exemption from excise tax payment on petroleum products under Sec. 135(a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to 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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In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

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

Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such," there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135(a) for their purchases of locally manufactured petroleum products. **Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.**

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An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered. OM

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> In the case of international air carriers, the tax exemption granted under Sec. 135(a) is based on "a long-standing international consensus that fuel used for international air services should be tax-exempt." The provisions of the 1944 Convention of International Civil Aviation or the "Chicago Convention," which form binding international law, requires the contracting parties not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state. Between individual countries, the exemption of airlines from national taxes and customs duties on a range of aviation-related goods, including parts, stores and fuel is a standard element of the network of bilateral "Air Service Agreements." Later, a Resolution issued by the International Civil Aviation Organization (ICAO) expanded the provision as to similarly exempt from taxes all kinds of fuel taken on board for consumption by an aircraft from a contracting state in the territory of another contracting State departing for the territory of any other State. Though initially aimed at establishing uniformity of taxation among parties to the treaty to prevent double taxation, the tax exemption now generally applies to fuel used in international travel by both domestic and foreign carriers.
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> **Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.'** (*Boldfacing supplied and citations omitted.*)

Premises considered, excise taxes paid on Jet A-1 fuel sold to international air carriers for the period covering February to April 2006, in the total amount of P91,655,658.98, cannot be considered erroneously or illegally paid. Petitioner, as the taxpayer statutorily liable to pay the said excise taxes, rightfully paid what was demandable from it.

> In sum, the Court finds petitioner not entitled to any refund or issuance of tax credit certificate of excise taxes previously paid on the said goods." *(Citations omitted)*

RULING OF THE COURT *EN BANC*

The Court *En Banc* shall now resolve the first issue of whether or not the decision of the Supreme Court in the *PSPC case* is applicable to petitioner's case.

Contrary to petitioner's allegations, the Court En Banc finds that the parties, the facts, the issues and the laws involve in the instant Petition for Review are the same as in the *PSPC case*. The pivotal issue resolved in the *PSPC case* is whether a manufacturer/seller is entitled to a tax refund pursuant to Section 135 of the 1997 NIRC, as amended. In the *PSPC case*, the Supreme Court ruled that Pilipinas Shell Petroleum Corporation (which is also the petitioner herein) is not entitled to a tax refund of excise taxes it paid on Jet A-1 fuel sold to international carriers. The Supreme Court ratiocinated that "the exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to 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."

The Court *En Banc* sees no compelling reason why it should not apply the *PSPC case* in resolving the instant case. Needless to say, the Court *En Banc* is bound to adhere to the principle of *stare decisis et non quieta movere*.

Article 8 of the Civil Code, which provides that **"[J]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines"**, encapsulates the principle of *stare decisis et non quieta movere*. A decision of the Supreme Court, which necessarily includes its decision in the PSPC case, becomes judicial precedent to be followed in subsequent cases by all courts in the land. "The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."[15]

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[15] De Mesa vs. Pepsi Cola, G.R. Nos. 153063-70, August 19, 2005.

Petitioner argues that the *PSPC case* does not set a precedent since it is still on appeal and has yet to attain finality. Moreover, petitioner claims that the *PSPC case*, which was decided by the Supreme Court in Division, could not have lawfully modified long and settled doctrines purportedly declaring that petroleum sold to international carriers are exempt from excise tax.

Petitioner's arguments are bereft of merit.

For one, lower courts have the duty to follow the edicts of the highest court of the land pursuant to the principle of *stare decisis*. This Court cannot just sit idly and wait for petitioner's appeal to be resolved. To do so would set a bad precedent and create a vacuum where courts would wait for an issue to be resolved by the Supreme Court before rendering judgment which would be tantamount to violating Article 9 [16] of the Civil Code. "The doctrine of stare decisis is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, xxx."[17] What petitioner posits is a legal scenario where the resolution of petitioner's appeal of the *PSPC case* in the Supreme Court is indispensable in the determination of the instant petition, which situation is neither sanctioned by law or jurisprudence.

This Court cannot and should not shirk away in performing its duty. Since the Supreme Court is the undisputed final arbiter of all questions of law,[18] this Court is obliged to follow the ruling of the Supreme Court in the *PSPC case*.

Moreover, a closer scrutiny of the *PSPC case* [19] reveals that the *PSPC case* did not actually modify the doctrines pronounced by the Supreme Court

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[16] **Article 9.** No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

[17] Ty vs. Banco Filipino Savings And Mortgage Bank, G.R. No. 188302, June 27, 2012.

[18] Sps. Chua vs. Ang, et al., G.R. No. 156164, September 04, 2009.

[19] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012 *citing* Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 166482, January 25, 2012; Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011, 640 SCRA 203; Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 184398, February 25, 2010, 613 SCRA 639; Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141; and Silkair (Singapore), Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 173594, February 6, 2008, 544 SCRA 100.

in the cases [20] cited by petitioner. Truth to tell, the Supreme Court even discussed those cases in the *PSPC case, viz*:

> "The instant petition squarely raised the issue of whether respondent as manufacturer or producer of petroleum products is exempt from the payment of excise tax on such petroleum products it sold to international carriers.
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> **In the previous cases decided by this Court involving excise taxes on petroleum products sold to international carriers, what was only resolved is the question of who is the proper party to claim the refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. We have ruled in the said cases that the statutory taxpayer, the local manufacturer of the petroleum products who is directly liable for the payment of excise tax on the said goods, is the proper party to seek a tax refund.** Thus, a foreign airline company who purchased locally manufactured petroleum products for use in its international flights, as well as a foreign oil company who likewise bought petroleum products from local manufacturers and later sold these to international carriers, have no legal personality to file a claim for tax refund or credit of excise taxes previously paid by the local manufacturers even if the latter passed on to the said buyers the tax burden in the form of additional amount in the price.[21] (*Citation omitted and Emphasis supplied*)

In the cases invoked by petitioner, the Supreme Court clarified who is the **proper party** to file a claim for refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. Notably, in those cases, the Supreme Court ruled that the proper party to seek a tax refund of excise taxes on petroleum products is the local manufacturer as it is the one who is directly liable for the payment of excise tax on the said goods. On the other hand, in the PSPC case, the Supreme Court resolved the issue of whether or not there is an express grant under the 1997 NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, which issue was not resolved in the cases cited by petitioner. Clearly, there is no existing doctrine

[20] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012 *citing* Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 166482, January 25, 2012; Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011, 640 SCRA 203; Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 184398, February 25, 2010, 613 SCRA 639; Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141; and Silkair (Singapore), Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 173594, February 6, 2008, 544 SCRA 100.
[21] *Id.*

or principle of law laid down by the Supreme Court in the cases invoked by petitioner which was reversed or modified in the *PSPC case*.

Applying the decision of the Supreme Court in the PSPC case to the case at bar, the Court *En Banc* holds that petitioner correctly paid the excise taxes on Jet A-1 fuel sold to international carriers for the period covering February to April 2006 in the total amount of Php91,655,658.98. Stated differently, the excise taxes paid by petitioner on the sale of Jet A-1 fuel to international carriers for the period February to April 2006 in the amount of Php91,655,658.98 cannot be considered erroneously or illegally paid.

Thus, finding no reversible error, the Court *En Banc* affirms the assailed Decision of the CTA-Third Division denying petitioner's claim for refund or issuance of tax credit certificate of excise taxes paid on Jet A-1 fuel sold to international carriers in the total amount of Php91,655,658.98 covering the period February to April 2006 as well as its assailed Resolution denying petitioner's Motion for Reconsideration, both for lack of merit.

In view of the foregoing, the Court *En Banc* finds the remaining issues raised by petitioner in the instant Petition for Review no longer necessary for the disposition of this case.

WHEREFORE, in light of the aforestated principles, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision promulgated on September 7, 2012 of the CTA-Third Division and its Resolution dated November 12, 2012 are hereby **AFFIRMED** *in toto*.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice