REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11086

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
DEC

4:20 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* filed on February 17, 2023, prays for the refund and/or issuance of tax credit certificate in the amount of ₱113,487,216.00, allegedly representing petitioner's excise taxes paid from February to May 2021 on Jet A-1 fuel sold to tax exempt international air carriers during the period from April to June 2021.[1]

THE PARTIES

Petitioner Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines, with principal office address at 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Brgy. Fort Bonifacio, Taguig City.[2]

[1] Summary of the Case, Pre-Trial Order dated January 12, 2024, Docket – Vol. I, p. 248.
[2] Exhibit "P-24", Docket – Vol. II, pp. 504 to 519.

Respondent is the duly appointed Commissioner of Internal Revenue who can be served with processes and pleadings at Room 703, Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[3]

THE FACTS OF THE CASE

Petitioner filed three (3) separate administrative claims for refund or tax credit certificate together, with the corresponding *Applications for Tax Credits/Refunds* (BIR Form No. 1914), on August 24, 2021,[4] September 22, 2021,[5] and November 2, 2021,[6] with the Excise Large Taxpayers Audit Division II of the BIR, seeking for the recovery of alleged excise taxes paid on Jet A-1 fuel sold to international air carriers for the period from April to June 2021 for their use or consumption outside the Philippines, in the aggregate amount of ₱113,487,216.00, computed as follows:

Administrative Claim	**Product**	**Volume in Liters**	**Excise Tax Rate per Liter**	**Specific Tax Amount**
1st	Jet A-1 fuel	10,428,309	₱4.00	₱41,713,236.00
2nd	Jet A-1 fuel	9,040,763	₱4.00	36,163,052.00
3rd	Jet A-1 fuel	8,902,732	₱4.00	35,610,928.00
			Total	**₱ 113,487,216.00**

Petitioner filed the present *Petition for Review* on February 17, 2023.[7]

On April 14, 2023, respondent filed his *Answer*,[8] interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to refund of excise taxes in the amount of ₱113,487,216.00, representing alleged excise taxes on imported Jet A-1 fuel subsequently sold to international air carriers; and (2) claims for refund of excise taxes paid is authorized only by Section 130(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

On April 27, 2023, respondent transmitted the *BIR Records* of this case.[9]

The Pre-Trial Conference was initially set on August 8, 2023,[10] but was later reset to, and held on, September 26, 2023.[11] Prior thereto, *Respondent's Pre-*

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[3] Par. 1, Stipulation of Fact[s], *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 198.
[4] Exhibits "P-21" to "P-21-1", Docket – Vol. II, pp. 491 to 494.
[5] Exhibits "P-22" to "P-22-1", Docket – Vol. II, pp. 495 to 498.
[6] Exhibits "P-23" to "P-23-1" Docket – Vol. II, pp. 499 to 502.
[7] Docket – Vol. I, pp. 6 to 35.
[8] Docket – Vol. I, pp. 107 to 116.
[9] Respondent's *Compliance* dated April 25, 2023, Docket – Vol. I, pp. 121 to 123.
[10] Notice of Pre-Trial Conference dated April 25, 2023, Docket – Vol. I, pp. 118 to 119.
[11] Notice of Resetting dated July 25, 2023, Docket – Vol. I, p. 132; Minutes of the hearing, and Order dated, September 26, 2023, Docket – Vol. I, pp. 192 to 193, and 196 to 197, respectively.

Trial Brief was filed on May 10, 2023,[12] while the *Pre-Trial Brief for Petitioner* was submitted on September 21, 2023.[13]

On October 25, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[14] which was admitted and approved by the Court in its Resolution dated November 13, 2023,[15] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 12, 2024 was then issued.[16]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Merrie Marriel V. Veloso,[17] petitioner's Import/Additives Scheduler; (2) Mr. Patrick R. Manalo,[18] petitioner's Airport Operations Manager; (3) Mr. Marvin Joseph Ilagan,[19] petitioner's Site Health, Safety, Security, and Environment Advisor; (4) Ms. Berenice Angelique L. Flores,[20] petitioner's Tax Advisor; (5) Atty. Farida Nimfa G. Dimailig,[21] petitioner's Country Tax Manager; (6) Ms. Maria Luz S. Verdejo,[22] Head Librarian at the Carlos P. Romulo Library of the Department of Foreign Affairs – Foreign Service Institute; and (7) Ms. Rose Anne Apostol-Valix,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the ICPA was submitted on March 18, 2024.[25]

Respondent filed a *Manifestation* on May 28, 2024, stating that he will not be presenting any witness.[26]

On May 30, 2024, petitioner filed its *Formal Offer of Evidence,*[27] to which respondent submitted his *Comment (Re: Formal Offer of Evidence)* on May 31, 2024.[28]

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[12] Docket – Vol. I, pp. 126 to 129.
[13] Docket – Vol. I, pp. 133 to 149.
[14] Docket – Vol. I, pp. 198 to 211.
[15] Docket – Vol. I, p. 230.
[16] Docket – Vol. I, pp. 248 to 254.
[17] Exhibit "P-29", Docket – Vol. I, pp. 42 to 60; Minutes of hearing held on, and Order dated, January 16, 2024, Docket – Vol. I, pp. 256 to 258.
[18] Exhibit "P-30", Docket – Vol. I, pp. 61 to 75; Minutes of hearing held on, and Order dated, January 16, 2024, Docket – Vol. I, pp. 256 to 258.
[19] Exhibit "P-31", Docket – Vol. I, pp. 76 to 82; Minutes of hearing held on, and Order dated, February 20, 2024, Docket – Vol. I, pp. 259 to 260.
[20] Exhibit "P-32", Docket – Vol. I, pp. 83 to 96; Minutes of hearing held on, and Order dated, February 20, 2024, Docket – Vol. I, pp. 259 to 260.
[21] Exhibit "P-33", Docket – Vol. I, p. 97 to 104; Minutes of the hearing held on, and Order dated, March 14, 2024, Docket – Vol. I, pp. 261 to 262.
[22] Exhibit "P-34", Docket – Vol. I, pp. 153 to 158; Minutes of the hearing held on, and Order dated, March 14, 2024, Docket – Vol. I, pp. 261 to 262.
[23] Exhibit "P-85", Docket – Vol. I, pp. 273 to 280; Minutes of the hearing held on, and Order dated, April 11, 2024, Docket – Vol. I, pp. 268 to 269.
[24] *Oath of Commission* dated January 16, 2024, Docket – Vol. I, p. 255; Minutes of hearing held on, and Order dated, January 16, 2024, Docket – Vol. I, pp. 256 to 258.
[25] Exhibit "P-35" (Refer to one [1] separate binder).
[26] Docket – Vol. I, pp. 288 to 290.
[27] Docket – Vol. II, pp. 292 to 335.
[28] Docket – Vol. II, pp. 650 to 652.

In the Resolution dated November 11, 2024,[29] the Court admitted all of petitioner's offered exhibits.

Respondent filed his *Memorandum* on November 26, 2024;[30] while the *Memorandum for Petitioner* was submitted on December 16, 2024.[31]

The present case was considered submitted for decision on January 7, 2025.[32]

THE STIPULATED ISSUE

The parties submit the following issue for this Court's resolution, to wit:

> **"WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF TAXES OR ISSUANCE OF TAX CREDIT CERTIFICATE (TCC) OF ALLEGED EXCISE TAXES ON IMPORTED JET A-1 FUEL SUBSEQUENTLY SOLD TO INTERNATIONAL AIR CARRIERS AND TO TAX-EXEMPT ENTITIES FOR USE OR CONSUMPTION OUTSIDE THE PHILIPPINES DURING THE PERIOD FROM APRIL TO JUNE 2021 IN THE AMOUNT OF ₱113,487,216.00**."[33]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that it timely filed its claim for refund or credit for excise taxes erroneously, wrongfully, illegally, or excessively collected from excise taxes paid during the period from February to May 2021, pursuant to Sections 204 and 229 of the NIRC; and that petitioner is entitled to the recovery of excise taxes in the amount of ₱113,487,216.00 paid during the period from February to May 2021 on imported Jet A-1 fuel sold to international carriers for use or consumption outside the Philippines during the period from April to June 2021.

Respondent contends that petitioner is not entitled to refund of excise taxes on its alleged sales and deliveries of Jet A-1 fuel to international carriers and to tax exempt entities in the amount of ₱113,487,216.00 for the period April to June 2021; and that claims for refund of excise taxes paid is authorized only by Section 130(D) of the NIRC of 1997, as amended.

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[29] Docket – Vol. II, pp. 656 to 657.
[30] Docket – Vol. II, pp. 659 to 667.
[31] Docket – Vol. II, pp. 671 to 707.
[32] Minute Resolution dated January 7, 2025, Docket – Vol. II, p. 708.
[33] Par. 2, Stipulation of Issue[s], JSFI, Docket – Vol. I, pp. 198 to 199.

THE COURT'S RULING

The present *Petition for Review* is granted.

Governing provisions for refund claims.

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

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[34]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[35] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[36]

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

Petitioner timely filed its administrative and judicial claims.

For excise tax on imported articles, in general, the same is paid by the owner or importer upon importation and prior to removal thereof from the customshouse as provided in Sections 129 and 131(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **<u>Excise taxes apply</u> to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and <u>to things imported</u>.** The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> xxx xxx xxx." *(Emphasis and underscoring added)*
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* —

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

[35] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[36] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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

Thus, based on the foregoing provisions, the two (2)-year period prescribed in Sections 204(C) and 229 of the NIRC of 1997, in relation to the aforequoted provisions of Sections 129 and 131 of the same Code, should be reckoned from the date of actual payment of excise taxes.

In this case, petitioner allegedly imported Jet A-1 fuel from February 2021 to May 2021, though its refinery in Tabangao, Batangas, and paid the corresponding excise taxes thereof, as follows:[37]

SAD[38] No.	SAD Date	Volume in Barrels	Rate	Amount of Excise Tax	Payment Date as per SSDT[39]
C2172[40]	Feb. 17, 2021	39,750	₱4.00	₱30,862,400.00	Feb. 18, 2021[41]
					Apr. 27, 2021[42]
C3949[43]	Mar. 22, 2021	53,198	₱4.00	₱34,256,380.00	Mar. 23, 2021[44]
					May 28, 2021[45]
C5780[46]	Apr. 29, 2021	62,508	₱4.00	₱40,449,600.00	Apr. 30, 2021[47]
					July 8, 2021[48]
C6355[49]	May 11, 2021	30,260	₱4.00	₱19,513,372.00	May 14, 2021[50]
					July 12, 2021[51]
C7089[52]	May 28, 2021	69,940	₱4.00	₱45,319,600.00	May 31, 2021[53]
					July 23, 2021[54]

[37] Refer to Exhibit "P-124" (Binder 1 of 6), pp. 2 to 3 and Annex "A-3" thereof.
[38] That is, "Single Administrative Document".
[39] That is, "Statement of Settlement of Duties and Taxes".
[40] Exhibit "P-1-3", Docket – Vol. II, pp. 338 to 340.
[41] Exhibit "P-1-4", Docket – Vol. II, p. 342.
[42] Exhibit "P-1-4-1", Docket – Vol. II, p. 343.
[43] Exhibits "P-2-3" to "P-2-3-1", Docket – Vol. II, pp. 358 to 360.
[44] Exhibit "P-2-4", Docket – Vol. II, p. 362.
[45] Exhibit "P-2-4-1", Docket – Vol. II, p. 363.
[46] Exhibits "P-3-3" to "P-3-3-1", Docket – Vol. II, pp. 374 to 376.
[47] Exhibit "P-3-4", Docket – Vol. II, p. 378.
[48] Exhibit "P-3-4-1", Docket – Vol. II, p. 379.
[49] Exhibits "P-4-3" to "P-4-3-1", Docket – Vol. II, pp. 391 to 393.
[50] Exhibit "P-4-4", Docket – Vol. II, p. 395.
[51] Exhibit "P-4-4-1", Docket – Vol. II, p. 396.
[52] Exhibits "P-5-3" to "P-5-3-1", Docket – Vol. II, pp. 408 to 410.
[53] Exhibit "P-5-4", Docket – Vol. II, p. 412.
[54] Exhibit "P-5-4-1", Docket – Vol. II, p. 413.

		263,563	₱4.00	₱170,401,352.00	

Thus, counting two (2) years from the earliest payment of excise tax on imported articles on February 18, 2021, petitioner had until February 18, 2023, to file its administrative and judicial claims for refund.

Considering that petitioner filed its three (3) administrative claims for refund on August 24, 2021,[55] September 22, 2021,[56] and November 2, 2021,[57] while its judicial claim for refund on February 17, 2023,[58] petitioner timely filed its administrative and judicial claims for refund within two (2) years from the earliest date of payment of the excise tax on imported Jet A-1 fuel in accordance with Sections 204(C) and 229 of the NIRC of 1997.

In view of the timely filing of the present *Petition for Review,* this Court has jurisdiction to entertain the same.

Having settled the foregoing matters, the Court shall now determine whether the excise taxes paid by petitioner in February 2021 to May 2021 for imported Jet A-1 fuel sold to international air carriers during the period from April to June 2021 are illegal or erroneous, as claimed by petitioner.

The excise taxes paid on imported Jet A-1 fuel sold to international air carriers are erroneously or illegally collected.

Petitioner argues that its right to claim a refund of, or issuance of a tax credit certificate for, excise taxes paid on petroleum products sold to international carriers has already been recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation.*[59]

Respondent counter-argues that petitioner, being an importer of petroleum products sold to international air carriers of Philippine or foreign registry, is liable to pay excise taxes due thereon as soon as they are in existence. Accordingly, the only instance that petitioner may invoke a claim for refund is the erroneous payment of the excise tax, but since the excise tax paid by petitioner was legally and validly collected, it is liable to pay such tax. Respondent also claims that Section 135 cannot be a source for petitioner's claim for refund, as it cannot be invoked by sellers, like herein petitioner, but only by the buyers who are exempt entities.[60]

[55] Exhibits "P-21" to "P-21-1", Docket – Vol. II, pp. 491 to 494.
[56] Exhibits "P-22" to "P-22-1", Docket – Vol. II, pp. 495 to 498.
[57] Exhibits "P-23" to "P-23-1" Docket – Vol. II, pp. 499 to 502.
[58] Docket – Vol. I, pp. 6 to 35.
[59] 783 SCRA 490 (2016).
[60] Respondent's *Memorandum*, Docket Vol. II, at p. 663.

The Court disagrees with respondent.

To recall, Section 129 of the NIRC defines excise taxes as taxes applied "to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. xxx." As a corollary thereto, Section 135 of the NIRC of 1997, as amended, reads 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;
>
> (b) **Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption**: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies;
>
> (c) Entities which are by law exempt from direct and indirect taxes." *(Emphases and underscoring added)*

A plain reading of the foregoing provision reveals that the words *"petroleum products"* were never qualified. The law did not distinguish whether the petroleum products sold were locally-manufactured or were imported, in order for there to be an excise tax exemption. Where the law does not distinguish, courts should not distinguish.[61] Thus, the exemption given under Section 135 of the NIRC of 1997 may be resorted regardless of whether the subject Jet A-1 fuel was locally-manufactured or imported, so long as the conditions therein are complied with by the refund-claimant.

Moreover, in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue* (*2021 Pilipinas Shell* case),[62] the Supreme Court sitting *En Banc* discussed lengthily the nature of excise tax in this wise:

> "By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a

[61] *Manila International Airport Authority vs. Court of Appeals, et al.*, G.R. No. 155650, July 20, 2006.
[62] G.R. No. 211303, June 15, 2021.

specific rate or *ad valorem*. As case law characterizes, **an excise tax is not a tax on the exercise of a privilege, <u>but rather a levy on certain articles which are manufactured or imported for domestic consumption</u>. It is equally settled that that the accrual or liability to pay the same arises <u>immediately upon importation or as soon as the goods come into existence when manufactured</u>**.

Furthermore, excise taxes are **indirect taxes, as opposed to direct taxes**. Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of **tax incidence** (or the actual liability to pay the tax) and **tax burden** (the economic burden of the tax incident).

On the one hand, **direct taxes** are 'those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,' which means, the tax incidence and tax burden fall upon the same person.

On the other, **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**.' As jurisprudence explains, 'this **<u>shifting process</u>**, otherwise known as '**<u>passing on</u>**,' is largely a **<u>contractual affair</u>** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, **the manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the **owner or importer** (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law**. To this end, <u>the purchaser does not really pay the tax</u>; **rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**.'

Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. **Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with <u>the statutory taxpayer, who</u>**

must correspondingly benefit from any tax exemption. In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not *per se* the excise tax liability imposed under Section 129 of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that '**[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers**. The fact that [statutory taxpayer/importer], on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer.' **This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the 'exemption' granted under Section 135 governing excise taxes.**

III.

At its core, the purpose of a grant of tax exemption is 'some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption.' However, the **object of the grant of tax exemption** is not necessarily a natural person similar to how 'the objects of taxation are either persons, property[,] and property rights within the jurisdiction of the taxing authority.' As such, generally speaking, the object of tax exemptions may either be **personal or impersonal**. Personal exemptions conceptually pertain to those 'granted directly in favor of such persons as are within the contemplation of the law granting the exemption.' On the other hand, an impersonal exemption may be said to exist when a tax exemption is 'granted directly in favor of a <u>certain class of property</u>.' If the tax exemption is impersonal in nature, then, regardless of who transacts with the property, the exemption should still apply. This framework of personal and impersonal tax exemptions underpins the exemption granted under Section 135 on excisable articles.

Notably, the Court, in the 2014 *Pilipinas Shell* Resolution, stated that the 'exemption from payment of excise tax' under Section 135 is 'conferred on international carriers who purchased the petroleum products of respondent'; thus, in said case, the tax exemption under Section 135 covering said products was characterized as a grant of a personal tax exemption.

However, in the subsequent case of 2015 *Chevron*, the Court effectively abandoned the foregoing characterization, and instead, correctly categorized that the tax exemption under Section 135 is '**in favor of the petroleum products on which the excise tax was levied in the first place**.' As such, the Court, in 2015 Chevron, validated the nature of Section 135 as a provision conferring an impersonal tax exemption, which, in fact, cogently squares with the nature of excise taxes being a tax on property, rather than a tax on persons.

Being an impersonal tax exemption, Section 135 cannot be therefore interpreted as an exemption primarily conferred to the buyers because 'they are not under any legal duty to pay the excise tax.' To reiterate, upon the buyers' purchase of the articles, the 'excise tax' they pay, if any, is, in reality, a mere passed-on cost that forms part of the purchase price. Hence, while purchasers bear the economic burden, they do not, by the mere fact of assuming the passed-on costs, become legally regarded as statutory taxpayers. In this regard, Associate Justice Henri Jean Paul B. Inting aptly observed that 'a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune from therefrom.'

The impersonal nature of the tax exemption is also expressed in the wording itself of Section 135:

xxx xxx xxx

As worded, the object of Section 135 itself is not the enumerated persons but rather, the '**petroleum products sold**.' Palpably, **<u>based on Section 135's phraseology, the enumerated persons are merely descriptive of the petroleum products, *i.e.*, the persons to which the products are sold to. As such, the wording of Section 135 hews more closely with the character of impersonal tax exemptions, which is, in turn, consistent with the nature of excise taxes as taxes not on persons but on the goods/articles</u>**. As equally observed by Associate Justice Alfredo Benjamin S. Caguioa, '[t]he succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. **Paragraphs (a), (b)[,] and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative**.'

IV.

At this juncture, it is likewise relevant to mention that since an excise tax is in the nature of a property tax, it is thus erroneous to consider the operation of a tax exemption thereto in the same way as a transactional tax, wherein every purchaser and seller may be considered as a statutory taxpayer for every succeeding transaction, only ending with the final consumer. **Rather, the exemption under Section 135 must be reconciled with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation.**

The Court, in the 2015 *Chevron*, had already settled that the true status of the goods, whether ultimately taxable or tax-exempt, is **actually conditional** or **subject to confirmation** upon the sale of the articles to any of the entities enumerated under Section 135. This conditional taxability can actually be seen in another related provision in the Tax Code, *i.e.*, Section 131 thereof:

> Section 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the 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.
>
> **In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are <u>subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities</u>, the purchasers or recipients shall be considered the importers thereof, and <u>shall be liable for the duty and internal revenue tax due on such importation.</u>**
>
> xxx xxx xxx (Emphasis and underscoring supplied)

As may be gleaned from Section 131 as above-cited, although certain articles may be free from excise taxes upon importation, they may subsequently become subject to the same depending on the subsequent buyer. This is essentially the same principle of **subsequent confirmation** espoused by the 2015 *Chevron*, and is also a necessary consequence of excise tax being a property tax, and not a tax on persons.

Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, any excise taxes which were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund. In turn, the petroleum products become exempt from excise taxes once it is determined that they are to be sold to, among others, international carriers. This reflects Section 135's wording, *i.e.*, that the petroleum products are considered as tax-exempt once they are 'sold to [*inter alia*] x x x [i]nternational carriers.'

Based on *(a)* the nature of excise taxes as a property tax and an indirect tax, and *(b)* the principle that a buyer, when shouldering the tax burden, does not become the statutory taxpayer, **it is thus clear that the purchaser of local products (such as international carriers) cannot be deemed to have been conferred a tax exemption when it has not been imposed a tax liability**. In the ordinary course of things, international carriers do not manufacture or import petroleum products and hence, are not statutory taxpayers to which the exemption under Section 135 could pertain. **If anything, international carriers merely bear the tax burden when the costs therefor are passed on to them by the actual manufacturers or importers**. However, as earlier discussed, the 'passing on' of the tax burden is largely a contractual affair between the parties and should not determine the tax incidence imposed by law unless the contrary is provided. **As such, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).**" *(Emphasis added)*

Thus, the Supreme Court has already discredited respondent's claim herein that petitioner as the seller cannot claim a refund under Section 135 of the NIRC, as only the buyer who are exempt entities can invoke the same. As explained by the High Court, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).

Applying the foregoing doctrinal principles, upon petitioner's sale of its imported Jet A-1 fuel to various international air carriers, the status of the said sold petroleum product as tax-exempt solidifies. Consequently, the excise taxes it previously paid on the imported Jet A-1 fuel became erroneously or illegally collected taxes that are proper subject of a claim for refund or credit under Sections 204(C) and 229 of the NIRC of 1997.

The excise taxes due on the imported Jet A-1 fuel, subject of the present claim, were duly paid by petitioner.

For the period covering February to May 2021, petitioner imported 263,563 barrels (equivalent to 42,600,338 liters) of Jet A-1 fuel from Shell International Eastern Trading Company and paid excise taxes thereon at ₱4.00 per liter.[63]

The said importations are likewise supported by the following documents:

Documents	1st Importation Exhibit No.	2nd Importation Exhibit No.	3rd Importation Exhibit No.	4th Importation Exhibit No.	5th Importation Exhibit No.
Ocean Bill of Lading	"P-44"[64]	"P-44"[65]	"P-44"[66]	"P-44"[67]	"P-44"[68]
Load Port Survey Reports (LPSRs)	"P-45"[69]	"P-2-1"[70]	"P-3-1"[71]	"P-4-1"[72]	"P-5-1"[73]
Proforma Invoice	"P-1-2" to "P-1-2-1"[74]	"P-2-2"[75]	"P-3-2"[76]	"P-4-2"[77]	"P-5-2"[78]
Single Administrative Documents (SADs)	"P-1-3"[79] and "P-1-3-1"[80]	"P-2-3"[81] and "P-2-3-1"[82]	"P-3-3"[83] and "P-3-3-1"[84]	"P-4-3"[85] and "P-4-3-1"[86]	"P-5-3"[87] and "P-5-3-1"[88]

[63] Tables II.6 and II.8, Exhibit "P-35", pp. 7 to 8. See also Exhibits "P-46" and "P-48", USB (Exhibit "P-35-2").
[64] USB (Exhibit "P-35-2"), p. 1.
[65] USB (Exhibit "P-35-2"), p. 2.
[66] USB (Exhibit "P-35-2"), p. 3.
[67] USB (Exhibit "P-35-2"), p. 4.
[68] USB (Exhibit "P-35-2"), p. 5.
[69] USB (Exhibit "P-35-2"), p. 1.
[70] Docket – Vol. II, p. 356.
[71] Docket – Vol. II, p. 372.
[72] Docket – Vol. II, pp. 388 to 389.
[73] Docket – Vol. II, pp. 405 to 406.
[74] Docket – Vol. II, pp. 336 to 337.
[75] Docket – Vol. II, p. 357.
[76] Docket – Vol. II, p. 373.
[77] Docket – Vol. II, p. 390.
[78] Docket – Vol. II, p. 407.
[79] Docket – Vol. II, p. 338.
[80] Docket – Vol. II, pp. 339 to 340.
[81] Docket – Vol. II, p. 358.
[82] Docket – Vol. II, pp. 359 to 360.
[83] Docket – Vol. II, p. 374.
[84] Docket – Vol. II, pp. 375 to 376.
[85] Docket – Vol. II, p. 391.
[86] Docket – Vol. II, pp. 392 to 393.
[87] Docket – Vol. II, p. 408.
[88] Docket – Vol. II, pp. 409 to 410.

Statements of Settlement of Duties and Taxes (SSDTs)	"P-1-4" to "P-1-4-1"[89]	"P-2-4" to "P-2-4-1"[90]	"P-3-4" to "P-3-4-1"[91]	"P-4-4" to "P-4-4-1"[92]	"P-5-4" to "P-5-4-1"[93]
Authority to Release Imported Goods (ATRIGs)	"P-1-5"[94]	"P-2-5"[95]	"P-3-5"[96]	"P-4-5"[97]	"P-5-5"[98]
Quantity Reports	"P-1-6"[99]	"P-2-6"[100]	"P-3-6"[101]	"P-4-6"[102]	"P-5-6"[103]
Tax Invoices	"P-1-7" to "P-1-7-1"[104]	"P-2-7"[105]	"P-3-7"[106]	"P-4-7"[107]	"P-5-7"[108]
Assessment Notices	"P-1-3-2"[109]	"P-2-3-2"[110]	"P-3-3-2"[111]	"P-4-3-2"[112]	"P-5-3-2"[113]
Official Receipts (ORs)	"P-1-8"[114]	"P-2-8"[115]	"P-3-8"[116]	"P-4-8"[117]	"P-5-8"[118]

The ICPA examined petitioner's initial and final SADs and SSDTs for the subject importations and reported the following:[119]

Set	Vessel	SAD (Exhibits "P-46" and "P-52") and SSDTs (Exhibits "P-48" and "P-53")					BOC OR & E2M Receipt (Exhibits "P-55" and "P-57")
		SAD No.	**Volume Paid**	**Amount of Excise Tax**	**Total Assessed Amount for the declaration**	**Amount of Excise Tax Paid**	**Total Amount Paid**
INITIAL	MT UNIQUE HARMONY	C2172	7,715,600	₱ 30,862,400.00	₱ 52,852,988.95	₱ 30,862,400.00	₱1,023,772.28
FINAL		C2172	7,715,600	30,862,400.00	53,876,761.23	30,862,400.00	
Difference					**(1,023,772.28)**		
INITIAL	MT ANGEL NO. 6	C3949	8,564,095	34,256,380.00	59,013,986.56	34,256,380.00	1,342,776.41
FINAL		C3949	8,608,070	34,432,280.00	60,356,762.97	34,432,280.00	
Difference			**(43,975)**	**(175,900.00)**	**(1,342,776.41)**	**(175,900.00)**	
INITIAL	MT ELANDRA PINE	C5780	10,112,400	40,449,600.00	70,202,883.37	40,449,600.00	2,444,887.91
FINAL		C5780	10,112,400	40,449,600.00	72,647,771.28	40,449,600.00	
Difference					**(2,444,887.91)**		
INITIAL	MT SANTYA	C6355	4,878,343	19,513,372.00	34,314,867.02	19,513,372.00	923,775.97
FINAL		C6355	4,920,931	19,683,724.00	35,238,642.99	19,683,724.00	

89 Docket – Vol. II, pp. 342 to 343.
90 Docket – Vol. II, pp. 362 to 363.
91 Docket – Vol. II, pp. 378 to 379.
92 Docket – Vol. II, pp. 395 to 396.
93 Docket – Vol. II, pp. 412 to 413.
94 Docket – Vol. II, p. 344.
95 Docket – Vol. II, p. 364.
96 Docket – Vol. II, p. 380.
97 Docket – Vol. II, p. 397.
98 Docket – Vol. II, p. 414.
99 Docket – Vol. II, p. 345.
100 Docket – Vol. II, p. 365.
101 Docket – Vol. II, p. 381.
102 Docket – Vol. II, p. 398.
103 Docket – Vol. II, p. 415.
104 Docket – Vol. II, pp. 346 to 353.
105 Docket – Vol. II, pp. 366 to 369.
106 Docket – Vol. II, pp. 382 to 385
107 Docket – Vol. II, pp. 399 to 402.
108 Docket – Vol. II, pp. 416 to 419.
109 Docket – Vol. II, p. 341.
110 Docket – Vol. II, p. 361.
111 Docket – Vol. II, p. 377.
112 Docket – Vol. II, p. 394.
113 Docket – Vol. II, p. 411.
114 Docket – Vol. II, pp. 354 to 355.
115 Docket – Vol. II, p. 370.
116 Docket – Vol. II, p. 386.
117 Docket – Vol. II, p. 403.
118 Docket – Vol. II, pp. 420 to 421.
119 Table II.14, Exhibit "P-35", p. 11.

Difference			(42,588)	(170,352.00)	(923,775.97)	(170,352.00)	
INITIAL	MT GLORY OCEAN	C7089	11,329,900	45,319,600.00	79,816,864.17	45,319,600.00	2,317,207.2
FINAL		C7089	11,329,900	45,319,600.00	82,134,071.44	45,319,600.00	
Difference					(2,317,207.27)		
Total Initial SADs/SSDTs			42,600,338 L	₱170,401,352.00	₱296,201,590.07	₱170,401,352.00	₱8,052,419.84
Total Final SADs/SSDTs			42,686,901 L	₱170,747,604.00	₱304,254,009.91	₱170,747,604.00	
TOTAL			86,563 L	₱ 346,252.00	₱ 8,052,419.84	₱ 346,252.00	

An examination of the Bureau of Customs (BOC) ORs and E2M Customs Payment Receipts shows the following:[120]

Exhibits "P-55" & "P-57"	OR No./ Payment Reference	VAT	Excise Tax	Miscellaneous	Total
At p. 1	01915436986/2021C272	₱ 1,023,772.27	₱ -	₱ 0.01	₱ 1,023,772.28
At p. 2	01916366495/2021C3949	1,342,775.42	-	0.99	1,342,776.41
At p. 3	01916377880/2021C5780	2,444,887.89	-	0.02	2,444,887.91
At p. 4	01916378779/2021C6355	753,423.97	170,352.00	-	923,775.97
At p. 5	01918241972/2021C7089	2,317,205.29	-	1.98	2,317,207.27
	TOTAL	₱7,882,064.84	₱170,352.00	₱ 3.00	₱8,052,419.84

Thus, the excise taxes on petitioner's importations of Jet A-1 fuel for the period February to May 2021 were duly paid and all the excise tax payments are supported by SADs, SSDTs, and BOC ORs.

The corresponding ATRIGs of the foregoing importations are as follows:[121]

Vessel	Control	Date	BILL OF LADING NO.	Quantity Release	Excise Tax	Exhibit No.
MT UNIQUE HARMONY	BIR0217215119138	Feb. 18, 2021	89489	7,715,600.00	₱ 30,862,400.00	"P-47" (at p. 1)
MT ANGEL NO. 6	BIR0322215155860	Mar. 23, 2021	2103300101EBL1	8,564,095.00	34,256,380.00	"P-47" (at p. 2)
MT ELANDRA PINE	BIR0423215198011	Apr. 26, 2021	9001	10,112,400.00	40,449,600.00	"P-47" (at p. 3)
MT SANTYA	BIR0512215218317	May 17, 2021	CSW133991	4,878,343.00	19,513,372.00	"P-47" (at p. 4)
MT GLORY OCEAN	BIR060125240540	June, 3, 2021	90249	11,329,900.00	45,319,600.00	"P-47" (at p. 5)
			TOTAL	42,600,338.00	₱170,401,352.00	

Moreover, the following findings by the ICPA is noted by this Court, *viz.*:[122]

"The review period spans from April 2021 to June 2021. However, due to the transition of TIF[123] to SHIFT[124] throughout May 2021

[120] Exhibits "P-55" and "P-57", USB (Exhibit "P-35-2").
[121] Annex E, Exhibit "P-35", USB (Exhibit "P-35-2").
[122] III(B), (C) and (E), Exhibit "P-35", pp. 13 and 19.
[123] That is, "Tabangao Import Facility".
[124] That is, "Shell Import Facility in Tabangao".

to June 2021, importations of Jet A-1 fuel were directly delivered to Tabangao Depot and as a result, no receipt and withdrawal transactions were made in TIF during the said period. Thus, only withdrawal documents of TIF for April 2021 were available for review. xxx of the final volume of 42,686,901 L of imported Jet A-1 fuel based on final SADs/SSDTs, only 16,262,550 L pass through the TIF, due to the transition xxx to SHIFT. xxx Importations of Jet A-1 fuel for the period of May 2021 to June 2021 were directly delivered to Tabangao Depot xxx."

Using the first-in, first-out method,[125] the ICPA traced the movement of petitioner's imported Jet A-1 fuel [volume in liters (L)] in the Tabangao Import Facility (TIF) for the period February to April 2021, summarized thus:[126]

	Additions	Deductions	Balance
Beg. Balance, February 1, 2021			11,968,496
For local production February		263,130	11,705,366
Withdrawals (2.1.2021 to 3.18.2021)		11,200,000	505,366
For local production March		291,470	213,896
1st Importation	7,659,014		7,872,910
WC 2018611408 - 360,000L:			
From Beginning Balance		213,896	7,659,014
From 1st importation		146,104	7,512,910
Withdrawals (3.20.2021 to 4.9.2021)		6,720,000	792,910
For local production - April		731,639	61,271
2nd Importation	8,603,536		8,664,807
WC 201800611625 560,000L:			
From 1st importation		61,271	8,603,536
From 2nd importation		498,729	8,104,807
Withdrawals (4.11.2021 to 4.29.2021)		6,600,000	1,504,807
End. Balance, April 30, 2021			1,504,807

The ICPA likewise examined the *Official Record Books* (ORBs) of petitioner's Tabangao Depot and found the following:[127]

"Table III.7-Tabangao Depot ORBs

Month	Total Receipt in Refinery	Removals (Jet A-1)	Additive	Jet A-1 Total Removal	Exhibit Reference
April 2021	10,119,991.93	10,119,991.96	8.09	10,120,000	P-59 p. 1
May 2021	10,759,989.70	10,759,989.70	8.59	10,760,000	P-59 pp. 2-3
June 2021	9,239,992.63	9,239,992.63	7.40	9,240,000	P-59 pp. 4-5
TOTAL	**30,119,974.26 L**	**30,119,974.29 L**	**24.08 L**	**30,120,000 L**	

Based on the foregoing, we noted that Tabangao Depot removed a total of **30,120,000 L** of Jet A- 1 fuel for the period of April 2021 to June 2021. Out of the **30,120,000 L, 10,120,000**

[125] Q&A-21 and 22, Exhibit "P-32", Docket - Vol. I, pp. 88 to 89.
[126] III(D), Exhibit "P-35", pp. 13 to 18.
[127] III(F), Exhibit "P-35", p. 19.

L of Jet A-1 fuel came from TIF while the remaining **20,000,000 L (10,760,000 L** in May 2021 and **9,240,000 L** in June 2021) were directly delivered to Tabangao Depot due to the transition of TIF to SHIFT."

Notably, the transfer of 10,120,000 L of Jet A-1 fuel from the TIF to Tabangao Depot in April 2021 is supported by *Withdrawal Certificates* (WCs).[128]

Further, the ICPA examined the WCs from the Tabangao Depot to the following destinations:[129]

Month	Total Jet A-1 Fuel Withdrawn (Volume in L) To JOCASP[130]	Total Jet A-1 Fuel Withdrawn (Volume in L) To CASI[131]	Total Jet A-1 Fuel Withdrawn (Volume in L)	Exhibit No.
April 2021	7,960,000	1,360,000	9,320,000	"P-62" (at pp. 1 to 233)
May 2021	9,120,000	1,560,000	10,680,000	"P-62" (at pp. 234 to 500)
June 2021	7,160,000	1,680,000	8,840,000	"P-62" (at pp. 501 to 721)
Total	**24,240,000**	**4,600,000**	**28,840,000**	

The foregoing withdrawals from the Tabangao Depot are also supported by *Bulk Delivery Notes* (BDNs) showing where the product comes from, the buyer and where the product is delivered, the delivery date, product description, and the ordered and delivered volume of Jet A-1 fuel.[132]

However, the ICPA found that several BDNs are not signed by the driver and/or authorized storage representative:[133]

Delivery On (Date)	Delivery Number	Order Number	Shipment Number	Sold by	Sold to	Product Description	Ordered Qty (L)	Delivered Qty (L)
Apr. 9, 2021	720911696	256381982	1520339395	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
Jun. 3, 2021	722676029	257914007	1520342230	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
Apr.10, 2021	720980736	256363399	7071875	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
May 14, 2021	722044001	257356060	1520341133	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
Jun. 14, 2021	723027929	258465698	1520342750	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
Jun. 19, 2021	723214051	257914487	1520343148	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
Jun. 20, 2021	723249680	257914554	1520343217	PSPC	JOCASP	Jet A-1 BULK	40,000	40,000
						TOTAL	**280,000 L**	**280,000 L**

An examination of the summary of *sales invoices*[134] issued by petitioner to international air carriers, which is subject of the instant claim for refund, reveals that the foregoing deliveries were not included therein.

[128] Exhibit "P-60", USB (Exhibit "P-35-2").
[129] Annex L, Exhibit "P-35", USB (Exhibit "P-35-2").
[130] That is, "Joint Oil Company Aviation Storage Plant".
[131] That is, "Clark Aviation Services Inc."
[132] Exhibit "P-63", USB (Exhibit "P-35-2"). See also Exhibit "P-35", p. 20.
[133] Table III.12, Exhibit "P-35", p. 21.
[134] Annex R, Exhibit "P-35", USB (Exhibit "P-35-2").

Further examination of the removals from Joint Oil Company Aviation Storage Plant (JOCASP) to international air carriers shows that of the 24,240,000 L withdrawn from the Tabangao Depot, only 23,891,686 L were delivered to international air carrier customers:[135]

Date	Total Volume Withdrawn (Volume in L)	Amount of Specific Tax	Exhibit No.
April 2021	8,842,449	Tax Paid	"P-64" (at pp. 1 to 30)
May 2021	7,902,293	Tax Paid	"P-64" (at pp. 31 to 61)
June 2021	7,146,944	Tax Paid	"P-64" (at pp. 62 to 91)
TOTAL	**23,891,686 L**		

As to the withdrawals from Clark Aviation Services Inc. (CASI), the ICPA found that the same were not supported by WCs as they were operated by a third party.[136] However, petitioner's daily *Stock Monitoring and Liquidation Reports* (SMLRs) likewise contain the pertinent information necessary to trace the movement of Jet A-1 fuel from CASI to the specific international air carrier customers, to wit:[137]

Month	ASR VOLUME (LITERS)	Exhibit No.
April 2021	1,385,860	"P-84" (at pp. 1 to 60)
May 2021	1,496,670	"P-84" (at pp. 61 to 123)
June 2021	1,714,521	"P-84" (at pp. 124 to 183)
	4,597,051 L	

Thus, of the 4,600,000 L withdrawn from the Tabangao Depot, only 4,597,051 L were delivered to international air carriers.[138] The Court also notes that the foregoing withdrawals based on the SMLRs also indicate the corresponding *Aviation Service Returns* (ASRs).

A summary of ASRs and *sales invoices* prepared by the ICPA reveals that a total of 28,447,374 L of Jet A-1 fuel were sold to the following international air carriers for the period April 1, 2021 to June 30, 2021:[139]

Customer	Quantity (L)
AIR NIUGINI LTD	637,266
AIRASIA BERHAD	50,596
CHINA AIRLINES LTD	968,800
CHINA CENTRAL LONGHAO AIRLINES CO	72,533
CHINA EASTERN AIRLINES	984,147
ETHIOPIAN AIRLINES	303,297
FEDERAL EXPRESS CORP	5,452,322
HONG KONG AIRLINES	5,693
JETSTAR ASIA AIRWAYS PTE LTD	60,334
MALAYSIA AIRLINES BERHAD	149,425

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[135] Table III.13, Exhibit "P-35", p. 21.
[136] III(J), Exhibit "P-35", p. 22.
[137] Table III.14, Exhibit "P-35", p. 22.
[138] III(J), Exhibit "P-35", p. 22.
[139] Annexes Q, Q.1, and R of Exhibit "P-35", USB (Exhibit "P-35-2").

PHILIPPINE AIRASIA INC	228,172
PHILIPPINE AIRLINES INC	19,471,026
XIAMEN AIRLINE CO LTD	63,763
Grand Total	**28,447,374 L**

The Court notes that the subject sales to international air carriers came from petitioner's importations in the period February to May 2021, after all the beginning inventory was withdrawn. However, petitioner's claim for refund consists only of 28,371,804 L:

Exhibit No.[140]	Volume in L	Excise Tax Rate	Excise Taxes Paid
"P-21"	10,428,309	₱4.00	₱ 41,713,236.00
"P-22"	9,040,763	₱4.00	36,163,052.00
"P-23"	8,902,732	₱4.00	35,610,928.00
	28,371,804 L		**₱ 113,487,216.00**

The ICPA found that the difference of 75,570 L (28,447,374 L less 28,371,804 L) pertains to fuel purchased locally and is not part of petitioner's importation claimed for refund. The difference was based on the actual volume indicated in ASRs per specific customers vs. the total volume subject for excise tax refund, broken down as follows:[141]

Delivery Date	ASR No.	Customer	Quantity in L per actual ASRs	Quantity in L per claimed ASRs	Difference (Volume in L)	Remarks	Exhibit No.
May 1, 2021	M0011379	FEDEX	16,553	1,464	15,089	The difference of 15,089 L pertains to liters purchased locally as indicated in the DPMR which is not part of our review.	"P-66" (at p. 317)
May 4, 2021	1805	ETHIOPIAN AIRLINES	13,913	2,646	11,267	The difference of 11,267 L pertains to liters purchased locally as indicated in the DPMR which is not part of our review.	"P-66" (at p. 343)
May 4, 2021	M0011387	FEDEX	19,209	14,555	4,654	The difference of 4,654 L pertains to liters purchased locally as indicated in the DPMR which is not part of our review.	"P-66" (at p. 344)
May 4, 2021	1803	PHILIPPINE AIRLINES INC	85,811	41,251	44,560	The difference of 44,560 L pertains to liters purchased locally as indicated in the DPMR which is not part of our review.	"P-66" (at p. 342)
		TOTAL	135,486 L	59,916 L	75,570 L		

The Court finds the foregoing in order. Thus, there is no doubt that the excise taxes due on the imported Jet A-1 fuel, subject of the present claim, were duly paid by petitioner.

Petitioner proved that it erroneously paid excise taxes on the imported Jet

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[140] Docket – Vol. II, pp. 491 to 502.
[141] Table III.18, Exhibit "P-35", p. 23. See also Exhibit "P-65", p. 8, USB (Exhibit "P-35-2").

A-1 fuel sold to tax exempt international air carriers.

For the period from April to June 2021, petitioner sold the said excise tax-paid Jet A-1 fuel, from its importations during the period from February to May 2021, to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines:[142]

1. AirAsia Berhad
2. Air Niugini Ltd.
3. China Airlines Ltd.
4. China Eastern Airlines Co., Ltd.
5. China Central Longhao Airlines Co.
6. Ethiopian Airlines Enterprise Sc.
7. Federal Express Corp.
8. Hong Kong Airlines Limited
9. Jetstar Asia Airways Pte. Ltd.
10. Malaysia Airlines Berhad
11. Philippines AirAsia Inc.
12. Philippine Airlines Inc.
13. Xiamen Airline Co. Ltd.

In order for the sale of petroleum products to an international air carrier be exempted from excise tax under Section 135(a) of the NIRC of 1997, as amended, petitioner must present the following:

1. proof of foreign registry of the international air carriers, or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights;

2. proof that the imported Jet A-1 fuel were used or consumed outside the Philippines; and

3. proof that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations.

<u>First requirement</u>: *Proof of foreign registry of the international air carriers or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights.*

To prove its compliance with the *first* requirement, petitioner presented *Certifications* issued by the Civil Aviation Authority of the Philippines (CAAP)

[142] Table IV. 2, Exhibit "P-35", p. 25.

dated February 9, 2023 and March 21, 2023,[143] which confirm the countries of registration of the international air carriers, whom petitioner allegedly sold and delivered Jet A-1 fuel subject of the present claim for use and consumption outside the Philippines.

Petitioner likewise presented the *Certification* dated February 6, 2023 from the Civil Aeronautics Board (CAB),[144] showing that the enumerated international carriers therein are grantees of *Foreign Air Carrier's Permit* (FACP) and are "authorized to operate international flights only and operating for the period which includes, but are not limited to the year 2021". The same *Certification* likewise certifies that:

> 1) Philippine Airlines, Inc. has been granted a Congressional Franchise through Presidential Decree (PD) No. 1590, signed on June 11, 1978, to operate and maintain air transportation services in the Philippines and between the Philippines and other countries. Philippine Airlines by virtue of PD No. 1590 operated international flights from June 11, 1978, to the present.
>
> 2) Philippines AirAsia Inc. has been granted a Congressional Permit (though its predecessor Asian Spirit Inc.) Republic Act No. 9183 and a Certificate of Public Convenience and Necessity (CPCN) via CAB Resolution No. 34 (BM04A-07-13-2017) to operate and maintain air transportation services in the Philippines and between the Philippines and other countries. The said permits authorize the said airline to operate international flights in the year 2021.

Also, petitioner presented a list of countries granting reciprocal tax exemptions to Philippine-registered/designated air carriers based on air transport agreements between the Philippines and those countries,[145] and as contained in the Department of Foreign Affairs' (DFA's) letter dated September 22, 2020.[146]

Summarized below are the below enumerated international air carrier and Philippine-registered customers to whom the Jet A-1 fuel were delivered during the subject period, with their respective countries of registration based on the CAAP certification and with the FACPs to operate international flights based on CAB *Certification*:

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[143] Exhibit "P-68", USB (Exhibit "P-35-2").
[144] Exhibit "P-69", USB (Exhibit "P-35-2").
[145] Exhibits "P-77" to "P-83", USB (Exhibit "P-35-2").
[146] Exhibit "P-37", USB (Exhibit "P-35-2").

Customer Name	Country of Registration	Listed on Certification Issued by		Countries with which the Philippines has concluded Air Services Agreement, and as per DFA's letter
		CAB	CAAP	
Airasia Berhad	Malaysia	Yes	Yes	Yes
Air Niugini Ltd.	Papua New Guinea	Yes	Yes	Yes
China Airlines Ltd.	China	Yes	Yes	Yes
China Eastern Airlines Co., Ltd.	China	Yes	Yes	Yes
China Central Longhao Airlines Co.	China	No	Yes	Yes
Ethiopian Airlines Enterprise SC	Ethiopia	Yes	Yes	Yes
Federal Express Corp	United States of America	Yes	Yes	Yes
Hong Kong Airlines Limited	Hongkong	Yes	Yes	Yes
Jetstar Asia Airways Pte Ltd.	Singapore	Yes	Yes	Yes
Malaysia Airlines Berhad	Malaysia	Yes	Yes	Yes
Philippines Airasia Inc.	Philippines	Yes	Yes	Not Applicable
Philippine Airlines Inc	Philippines	Yes	Yes	Not Applicable
Xiamen Airline Co Ltd.	China	Yes	Yes	Yes

Notably, although the China Central Longhao Airlines Co. was not listed in the *Certification* issued by CAB, the submitted ASR shows that the Jet A-1 sold to it was used and consumed outside of the Philippines as will be discussed momentarily.

Second requirement: *Proof that the imported Jet A-1 fuel were used or consumed outside the Philippines.*

Records show that the ASRs[147] submitted by petitioner indicated the details of the Jet A-1 fuel deliveries made by petitioner to international air carriers, including the origin and destination of the international carriers. It can be seen from each of the ASRs that the route of the international air carrier

[147] Exhibit "P-66", USB (Exhibit "P-35-2").

named therein (whether of foreign or Philippine registry) is only between the Philippines and other country.

The ICPA reported that the Jet A-1 fuel sold to the foregoing international air carriers were loaded to aircrafts of international air carriers with the following flight destinations indicated as airport codes in the ASRs:[148]

Airport Codes	Flight Destination - Airports	Quantity (L)
LAX	LOS ANGELES INTERNATIONAL AIRPORT	12,544,317
CAN	GUANGZHOU BAIYUN INTERNATIONAL AIRPORT	2,688,499
SYD	SYDNEY KINGSFORD SMITH INTERNATIONAL AIRPORT	2,242,154
CDG	CHARLES DE GAULLE INTERNATIONAL AIRPORT	2,209,996
JFK	JOHN F KENNEDY INTERNATIONAL AIRPORT	1,556,057
TPE	TAIWAN TAOYUAN INTERNATIONAL AIRPORT	1,329,831
LCK	RICKENBACKER INTERNATIONAL AIRPORT	1,234,827
PVG	SHANGHAI PUDONG INTERNATIONAL AIRPORT	770,212
POM	PORT MORESBY JACKSONS INTERNATIONAL	637,266
MEL	MELBOURNE INTERNATIONAL AIRPORT	594,659
DPS	NGURAH RAI (BALI) INTERNATIONAL AIRPORT	373,105
NGO	CHUBU CENTRAIR INTERNATIONAL AIRPORT	336,629
HKG	HONG KONG INTERNATIONAL AIRPORT	290,488
ADD	ADDIS ABABA BOLE INTERNATIONAL AIRPORT	288,385
HND	TOKYO INTERNATIONAL AIRPORT	230,345
KUL	KUALA LUMPUR INTERNATIONAL AIRPORT	200,021
GUM	ANTONIO B. WON PAT INTERNATIONAL AIRPORT	184,345
FOC	FUZHOU CHANGLE INTERNATIONAL AIRPORT	180,599
SFO	SAN FRANCISCO INTERNATIONAL AIRPORT	121,079
MEM	MEMPHIS INTERNATIONAL AIRPORT	100,390
HRI	MATTALA RAJAPAKSA INTERNATIONAL AIRPORT	87,937
SZX	SHENZHEN BAO'AN INTERNATIONAL AIRPORT	72,063
XMN	XIAMEN GAOQI INTERNATIONAL AIRPORT	63,763
SIN	SINGAPORE CHANGI INTERNATIONAL AIRPORT	60,334

[148] Table IV. 4, Exhibit "P-35", pp. 26 to 27.

CCU	NETAJI SUBHASH CHANDRA BOSE INTERNATIONAL AIRPORT	15,364
BKK	BANGKOK SUVARNABHUMI AIRPORT	14,912
MYY	MIRI AIRPORT	11,688
CGO	ZHENGZHOU XINZHENG INTERNATIONAL AIRPORT	8,109
	TOTAL	**28,447,374 L**

The Court finds the foregoing to be acceptable and proper.

In view of the foregoing disquisitions, petitioner was not only able to prove the foreign registry of its international air carrier customers, and the authority to operate international flights of its Philippine-registered air carrier customers, but also the fact that the imported Jet A-1 fuel were used or consumed outside the Philippines under Section 135(a) of the NIRC of 1997, as amended.

Third requirement: *Proof that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations.*

To prove that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations, petitioner presented its officers, particularly, Ms. Veloso,[149] Mr. Manalo,[150] Mr. Ilagan,[151] and Ms. Flores,[152] to explain the importation process and documentation of the receipts and withdrawals of Jet A-1 fuel at petitioner's storage tanks in its TIF and Tabangao Depot and the subsequent delivery to JOCASP and CASI for eventual sale to international carriers.

It was explained that all of the imported Jet A-1 fuel are stored in petitioner's TIF and completely discharged on the following dates, to wit:[153]

	Date Completely Discharged
1st Importation	February 26, 2021
2nd Importation	March 31, 2021
3rd Importation	May 08, 2021
4th Importation	May 17, 2021
5th Importation	June 06, 2021

[149] Exhibit "P-29", Docket – Vol. I, pp. 42 to 60.
[150] Exhibit "P-30", Docket – Vol. I, pp. 61 to 75.
[151] Exhibit "P-31", Docket – Vol. I, pp. 76 to 82.
[152] Exhibit "P-32", Docket – Vol. I, pp. 83 to 96.
[153] Q&A 41, Exhibit "P-29", Docket – Vol. I, pp. 51 to 52.

From the TIF, the fuel pass through the Tabangao Depot and is delivered to petitioner's storage facilities in JOCASP at the Ninoy Aquino International Airport in Manila and CASI at the Clark International Airport in Pampanga by lorries or tank trucks. The importations, as well as withdrawals, of Jet A-1 fuel are recorded and summarized in the ORB which is jointly signed by an authorized representative of petitioner and respondent's revenue officer on premises. Withdrawals of subject jet fuel from the TIF, Tabangao Depot, JOCASP or CASI to aircraft refuelling at the airports are covered by WCs.[154]

The BOC requires an ATRIG issued by the BIR before the SSDT is released. This constitutes permission from the BIR to withdraw the Jet A-1 fuel from the TIF after the settlement of the taxes and duties due thereon. Imported articles cannot be withdrawn without the ATRIGs.[155]

By the time the Jet A-1 fuel is withdrawn from the TIF through the Tabangao Depot, the excise taxes on the Jet A-1 fuel should have already been paid and indicated in the WCs. Removals from the Tabangao Depot are also accompanied by BDNs, while movement of Jet A-1 fuel in JOCASP and CASI is monitored through Daily Product Movement Reports (DPMRs) and SMLRs.[156]

Deliveries to air carrier customers are supported by ASRs showing the date of delivery, the air carrier customer, the aircraft registration number, the destination of the air carrier and the volume of Jet A-1 fuel delivered. The customer acknowledges receipt of the delivery and the corresponding volume of Jet A-1 fuel.[157]

Upon delivery of the Jet A-1 fuel, the details and information are immediately captured by petitioner's SAP program and the corresponding sales invoice is generated.[158] If the imported Jet A-1 fuel is sold and delivered to an international air carrier, the sales price excludes the excise and duty components.[159]

In support of the foregoing, petitioner submitted, among others, the various documents mentioned such as ATRIGs,[160] ORBs,[161] WCs,[162] DPMRs,[163]

N

[154] Q&A 7, 10 to 12, Exhibit "P-30", Docket - Vol. I, pp. 63 to 65.
[155] Q&A 25 to 26, Exhibit "P-29", Docket - Vol. I, p. 48.
[156] Q&A 11 to 13, Exhibit "P-30", Docket - Vol. I, pp. 64 to 65.
[157] Q&A 19 to 20, Exhibit "P-30", Docket - Vol. I, pp. 66 to 67.
[158] Q&A 28, Exhibit "P-30", Docket - Vol. I, p. 69.
[159] Q&A 24 and 27, Exhibit "P-32", Docket - Vol. I, pp. 89 to 90.
[160] Exhibit "P-47", USB (Exhibit "P-35-2").
[161] Exhibits "P-58" and "P-59", USB (Exhibit "P-35-2").
[162] Exhibits "P-60", "P-62", and "P-64", USB (Exhibit "P-35-2").
[163] Exhibit "P-65", USB (Exhibit "P-35-2").

SMLRs,[164] BDNs,[165] ASRs,[166] and *sales invoices*[167] issued by petitioner to international airlines, which were all examined by the ICPA.

The foregoing documents, among others, are in order. Thus, petitioner has proven that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations.

In view of petitioner's compliance with the foregoing three (3) requirements, it sufficiently proved that the excise taxes it paid for the imported Jet A-1 fuel and subsequently sold to tax-exempt international air carriers were erroneous. Thus, petitioner is entitled to the refund of taxes or issuance of tax credit certificate of the excise taxes in the amount of ₱113,487,216.00, which it paid on its imported Jet A-1 fuel for the period from February to May 2021 and sold to tax-exempt international air carriers during the period from April to June 2021, pursuant to Sections 204 and 229 of the NIRC of 1997, as amended.

ACCORDINGLY, the present *Petition for Review* is **GRANTED**.

Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱113,487,216.00**, representing excise taxes paid on its imported Jet A-1 fuel for the period from February to May 2021 and sold to tax-exempt international air carriers during the period from April to June 2021.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[164] Exhibit "P-84", USB (Exhibit "P-35-2").
[165] Exhibit "P-63", USB (Exhibit "P-35-2").
[166] Exhibit "P-66", USB (Exhibit "P-35-2").
[167] Exhibit "P-71", USB (Exhibit "P-35-2").

ATTESTATION

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

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 case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice