REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10289

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
NOV 15 2023 2:40 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on June 30, 2020, by petitioner SL Harbor Bulk Terminal Corporation[1] ("**Petitioner**") against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner prays for the grant of its claim for tax credit in relation to the alleged erroneously paid excise taxes.

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[1] Docket – Vol. I, pp. 10 to 25.

[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[4] A.M. No. 05-11-07-CTA.

THE PARTIES

Petitioner SL Harbor Bulk Terminal Corporation is a domestic corporation organized and existing under and by virtue of Philippine laws, duly registered with the Bureau of Internal Revenue ("**BIR**") Revenue District Office ("**RDO**") No. 29, and with principal office at Block 4, Lots 10 and 11, Manila Harbor Center, North Harbor, Barangay 128, Zone 10, Tondo, Manila.[5]

Respondent is the Commissioner of the BIR, who holds office on the 5th Floor, BIR National Office Building, BIR Road, Agham Road, Diliman, Quezon City, and is vested with the power to decide tax cases, including claims for refunds and/or tax credits under Section 14 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended.[6]

THE FACTS

On June 26, 2020, petitioner filed an administrative claim for tax credit with Revenue District Officer Teresita R. Yumang of RDO No. 29 of the BIR[7] for erroneously paying excise taxes on imported bunker fuel and diesel sold to tax-exempt entities registered with the Board of Investments ("**BOI**"), Subic Bay Metropolitan Authority ("**SBMA**"), and Philippine Economic Zone Authority ("**PEZA**"), for the period covering April 1 to June 30, 2018, in the aggregate amount of ₱25,164,902.50.

THE PROCEEDINGS BEFORE THE COURT

On June 30, 2020, petitioner filed a *Petition for Review*,[8] praying for this Court to grant its claim for tax credit.

Respondent then posted his *Answer* on August 14, 2020,[9] interposing his special and affirmative defenses.

The Pre-Trial Conference was initially set for October 26, 2020.[10]

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[5] Par. 2(a), Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. III, pp. 1318 and 1411.
[6] Par. 2(b), JSFI, Docket – Vol. III, pp. 1318 to 1319, and 1411 to 1412.
[7] Par. 2(c), JSFI, Docket – Vol. III, pp. 1319 and 1412; Exhibits "P-13" and "P-14", Docket – Vol. II, pp. 949 to 954.
[8] Docket – Vol. I, pp. 7 to 33.
[9] Docket – Vol. II, pp. 886 to 896.
[10] *Notice of Pre-Trial Conference* dated September 7, 2020, Docket – Vol. II, pp. 898 to 899.

On September 15, 2020, petitioner filed a *Motion for Leave to Admit Amended Petition for Review,*[11] attaching the said *Amended Petition for Review,*[12] which reduces petitioner's claim for a tax credit of erroneously paid excise tax from ₱25,164,902.50 to ₱10,331,662.50.

Respondent transmitted to this Court the *BIR Records* of the case on October 16, 2020.[13]

On November 3, 2020, respondent then posted his *Manifestation (To Petitioner's Motion for Leave to Admit Amended Petition for Review),*[14] stating that upon evaluation of petitioner's *Motion for Leave,* he deems it proper not to file his comment and submits the same *Motion* to the sound discretion of this Court.

In the *Resolution* dated January 6, 2021,[15] the Court granted the *Motion for Leave to Admit* in the interest of justice and noted petitioner's *Amended Petition for Review.*

The Pre-Trial Conference was reset to and eventually held on February 1, 2021.[16] Prior thereto, *Respondent's Pre-Trial Brief* was filed on October 16, 2020,[17] while petitioner's *Pre-Trial Brief* was submitted on October 23, 2020.[18]

On February 22, 2021, the parties posted their *Joint Stipulation of Facts and Issues,*[19] which the Court approved and adopted in the *Pre-Trial Order* dated March 8, 2021,[20] thereby deeming the termination of the Pre-Trial.

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

[11] Docket – Vol. II, pp. 900 to 904.
[12] Docket – Vol. II, pp. 905 to 932.
[13] *Compliance* dated October 16, 2020, Docket – Vol. III, pp. 1256 to 1257.
[14] Docket – Vol. III, pp. 1284 to 1286.
[15] Docket – Vol. III, p. 1291.
[16] Refer to the Minutes of the hearing held on, and Order dated, October 26, 2020, Docket – Vol. III, pp. 1277 and 1279, respectively; *Notice of Resetting* dated November 9, 2020, Docket – Vol. III, p. 1282; Minutes of the hearing held on, and Order dated, February 1, 2021, Docket – Vol. III, pp. 1294 to 1295.
[17] Docket – Vol. III, pp. 1252 to 1255.
[18] Docket – Vol. III, pp. 1258 to 1272.
[19] *Compliance* dated February 19, 2021, attaching therewith the parties' *Joint Stipulation of Facts and Issues*, Docket – Vol. III, pp. 1407 to 1413, and 1314 to 1320.
[20] Docket – Vol. III, pp. 1510 to 1516.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Shiela Mary A. Ahing,[21] Finance Manager of petitioner; (2) Mr. Christian Ivan R. Requinta,[22] petitioner's Trading Head; (3) Ms. Jenny V. Catriz,[23] petitioner's Billing Head; and (4) Ms. Alma C. Sese,[24] the Court-commissioned independent certified public accountant (**"ICPA"**).[25]

The *Report* of the said ICPA was posted on July 8, 2021.[26] Thereafter, the ICPA's *Amended Report* was posted on October 15, 2021.[27]

On November 29, 2021, petitioner posted its *Formal Offer of Evidence (with Motion to Mark Exhibits)*,[28] to which respondent filed his *Comment/Opposition [Re: Petitioner's Formal Offer of Evidence dated 29 November 2021]* on December 14, 2021.[29] In the *Resolution* dated March 18, 2022,[30] the Court granted petitioner's offered exhibits, *except* for Exhibits "P-1", "P-1-1", "P-2", "P-2-1", "P-5", "P-6", "P-12", "P-15", "P-15-1", "P-19", "P-19-1", "P-19-2", "P-20", and "P-20-1", which are mere photocopies of the documents they purport to be.

For his part, respondent presented the testimony of Revenue Officer Loreto P. Tilbe, Jr.[31]

On June 20, 2022, respondent filed his *Formal Offer of Evidence*.[32] Petitioner then filed its *Comment/Objection (Re: Formal Offer of Evidence dated 17 June 2022)* on July 4, 2022.[33] In the *Resolution* dated September 1, 2022,[34] the Court admitted respondent's offered exhibits.

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[21] Exhibit "P-22", Docket – Vol. III, pp. 1414 to 1428; Minutes of the hearing held on, and Order dated, March 15, 2021, Docket – Vol. III, pp. 1533 to 1534, and 1536 to 1537, respectively.
[22] Exhibit "P-23", Docket – Vol. III, pp. 1477 to 1486; Minutes of the hearing held on, and Order dated, March 15, 2021, Docket – Vol. III, pp. 1533 to 1534, and 1536 to 1537, respectively.
[23] Exhibit "P-24", Docket – Vol. III, pp. 1495 to 1505; Minutes of the hearing held on, and Order dated, March 15, 2021, Docket – Vol. III, pp. 1533 to 1534, and 1536 to 1537, respectively.
[24] Exhibit "P-29", Docket – Vol. IV, pp. 2036 to 2053; Minutes of the hearing held on, and Order dated, July 19, 2021, Docket – Vol. V, pp. 2056 to 2057; Exhibit "P-48" (not marked), Docket – Vol. VI, pp. 2593 to 2612; Order dated October 20, 2021, Docket – Vol. VI, p. 2588.
[25] *Oath of Commission* dated March 15, 2021, Docket – Vol. III, p. 1535; Minutes of the hearing held on, and Order dated, March 15, 2021, Docket – Vol. III, pp. 1533 to 1534, and 1536 to 1537, respectively.
[26] *Compliance* dated July 8, 2021, with attached ICPA *Report* dated June 30, 2021, Docket – Vol. V, pp. 2058 to 2072; Exhibit "P-28", Docket – Vol. V, pp. 1604 to 1614.
[27] *Manifestation and Compliance* dated October 15, 2021, with attached ICPA *Report* dated June 30, 2021, Docket – Vol. VI, pp. 2589 to 2591; Exhibit "P-28", Docket – Vol. V, pp. 2541 to 2551.
[28] Docket – Vol. VII, pp. 2941 to 2964.
[29] Docket – Vol. VII, pp. 2938 to 2940.
[30] Docket – Vol. VII, pp. 3267 to 3268.
[31] Exhibit "R-6", Docket – Vol. VII, pp. 3272 to 3277; Minutes of the hearing held on, and Order dated, May 18, 2022, Docket – Vol. VII, pp. 3287 to 3288.
[32] Docket – Vol. VII, pp. 3292 to 3295.
[33] Docket – Vol. VII, pp. 3301 to 3304.
[34] Docket – Vol. VII, pp. 3307 to 3308.

Respondent then posted his *Memorandum* on October 14, 2022,[35] while petitioner posted its *Memorandum* on October 28, 2022.[36]

On November 22, 2022, the present case was considered submitted for decision.[37]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

> "a. Whether or not the Honorable Court has jurisdiction over the instant Petition; and
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> b. Whether or not petitioner is entitled to a refund of the excise tax in the aggregate amount of Php10,331,662.50 for the period of 01 April 2018 to 30 June 2018."[38]

PETITIONER'S ARGUMENTS

Petitioner argues that the Court has jurisdiction over the instant petition and is entitled to a tax credit for the erroneously paid excise taxes in the aggregate amount of ₱10,331,662.50, covering the period from April 1, 2018 to June 30, 2018.

RESPONDENT'S ARGUMENTS

Respondent contends that the Court has no jurisdiction over the instant petition, that petitioner is not entitled to its claim for refund, and that petitioner is not the proper party to claim for tax refund.

THE RULING OF THE COURT

The instant *Petition for Review* is not impressed with merit.

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[35] Docket – Vol. VII, pp. 3313 to 3326.
[36] Docket – Vol. VII, pp. 3330 to 3356.
[37] Resolution dated November 22, 2022, Docket – Vol. VII, p. 3359.
[38] Pars. 3(a) and 3(b), JSFI, Docket – Vol. III, pp. 1319 and 1412.

The Court has no jurisdiction over a part of petitioner's claim for a tax credit.

Before the Court delves into the merits of the case, We shall first determine whether the Court has jurisdiction to take cognizance of this case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. For the court or an adjudicative body to have the authority to dispose of the case on its merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all the parties or by the erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, its only power is to dismiss the action.[39]

Sections 7(a)(1) and (2), and 11 of Republic Act ("**RA**") No. 1125,[40] as amended by RA No. 9282,[41] confer jurisdiction to this Court relative to decisions and inactions of respondent and state the manner of appealing the same, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) ***Decisions* of the <u>Commissioner of Internal Revenue</u> in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) ***Inaction* by the <u>Commissioner of Internal Revenue</u> in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal

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[39] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[40] AN ACT CREATING THE COURT OF TAX APPEALS.
[41] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis added)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the Commissioner of Internal Revenue...**may file an **appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ... *[Emphases supplied.]*

Relatedly, Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

"SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *[Emphasis supplied.]*

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

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

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must file an administrative claim with respondent before filing a 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 <u>mandatory and jurisdictional</u>.** Thus, the Court cannot take cognizance of a judicial claim for tax credit filed prematurely or out of time. It must be stressed that as for the judicial claim, the law 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."[42]

Moreover, the foregoing provisions allow the recovery of a tax 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.[43]

Thus, for the present claim for tax credit to prosper, petitioner must establish that it has *timely filed* its claim for tax credit and prove that the subject excise taxes paid are *erroneous or illegal.*

Respondent opines that this Court does not have jurisdiction over the present case, while petitioner argues otherwise, claiming that its administrative and judicial claims for tax credit were timely filed.

We partly agree with petitioner and respondent.

In the present case, petitioner allegedly paid excise taxes totaling ₱25,164,902.50 to the Bureau of Customs on **<u>May 15 and 18, 2018,</u>**[44] and on **<u>June 7 and 8, 2018,</u>**[45] relative to its importation of bunker fuel and diesel on various dates in May and June 2018. Upon the assumption that petitioner paid the excise taxes subject of the present claim on the said dates, petitioner had until **<u>May 15 and 18, 2020,</u>** and **<u>June 7 and 8, 2020</u>**, respectively, to file its administrative and judicial claims for refund or tax credit under the above-quoted Sections 204(C)

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

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

[44] Exhibits P-36-1.1.B", "P-36-1.2", "P-36-1.3", "P-36-1.4", and "P-36-1.5"; Exhibits "P-36-2.1A", "P-36-2.2", "P-36-2.3" (offered as "P-36-2.4"), "P-36-2.4", and "P-36-2.5".

[45] Exhibits P-36-3.1", "P-36-3.2", "P-36-3.3", "P-36-3.4", and "P-36-3.5"; Exhibits "P-36-4.1A", "P-36-4.2", "P-36-4.3", "P-36-4.4", and "P-36-4.5".

and 229 of the NIRC of 1997. Based on these provisions, petitioner's administrative claim for tax credit filed on **June 26, 2020** before the BIR,[46] and its judicial claim filed before this Court on **June 30, 2020**,[47] already fell *outside* the two-year prescriptive period.

Nonetheless, under RA No. 11469,[48] Section 2 of Revenue Regulations ("**RR**") No. 11-2020[49] extended to **June 30, 2020**,[50] from the original period of two (2) years after the payment of the tax or penalty, the period to file applications for tax credits/refunds for erroneous payments made from May 1 to 31, 2018. Thus, petitioner had until **June 30, 2020** to file its administrative claim for the erroneous payments of excise taxes on May 15 and 18, 2018.

In relation thereto, Administrative Circular No. 39-2020,[51] issued on May 14, 2020, extended the filing of petitions and appeals that fall due up to May 31, 2020, for 30 calendar days counted from June 1, 2020, *viz.*:

> "Considering that the Inter-Agency Task Force for the Management of Emerging Infectious Diseases has placed certain areas in the country, *i.e.*, National Capital Region xxx xxx xxx under Modified Enhanced Community Quarantine (MECQ) until 31 May 2020, all the courts in the said areas under MECQ shall operate as follows during the said period:
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> xxx xxx xxx
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> 7. **The filing of petitions, appeals,** complaints, motions, **pleadings,** and other submissions **that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020**, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are

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[46] Exhibits "P-14" and "13", Docket – Vol. II, pp. 954 and 949 to 953, respectively.
[47] Docket – Vol. I, pp. 7 to 34.
[48] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES.
[49] SUBJECT: Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as Bayanihan to Heal As One Act."
[50] Type of Transaction/Document No. 39.
[51] RE : MODIFIED ENHANCED COMMUNITY QUARANTINE IN CERTAIN AREAS UNTIL 31 MAY 2020.

likewise extended for 30 calendar days counted from 1 June 2020." *[Emphasis and underscoring supplied.]*

Accordingly, petitioner had thirty (30) days from June 1, 2020, or until **July 1, 2020** to file its judicial claim for the erroneous payments of excise taxes on May 15, 2018 and May 18, 2018.

The administrative claim for the erroneous payments on June 7 and 8, 2018, absent an issuance extending the period for filing applications for refund or tax credit of the same with the BIR, is already time-barred for being filed beyond the two-year statutory period under Section 204 (C) of the NIRC of 1997, as amended. As for petitioner's judicial claim, Administrative Circular No. 41-2020[52] explicitly did not extend the filing of petitions and appeals that fall due beginning June 1, 2020, *viz.*:

> "Considering that many parts of the country have been placed under General Community Quarantine (GCQ) beginning June 1, 2020, ALL COURTS nationwide shall operate, as follows:
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> xxx xxx xxx
>
> 10. **There shall no longer be extensions in the filing of petitions, appeals, complaints, motions, pleadings and other court submissions that will fall due beginning 1 June 2020**. In the same manner, the period for court actions with prescribed period beginning 1 June 2020 shall no longer be extended." *[Emphasis supplied.]*

To summarize and for easy reference, the following dates are relevant and significant to the subject claim for tax credit:

<table>
<tr><th>Date of payment of excise tax</th><th>Last day of the two (2) years to file a claim for tax credit</th><th>Last day of the extended period to file an administrative claim for a tax credit</th><th>Date of filing of an administrative claim for a tax credit</th><th>Last day of the extended period to file a judicial claim for a tax credit</th><th>Date of filing of a judicial claim for a tax credit</th></tr>
<tr><td>May 15, 2018</td><td>May 15, 2020</td><td>June 30, 2020</td><td rowspan="4">June 26, 2020</td><td>July 1, 2020</td><td rowspan="4">June 30, 2020</td></tr>
<tr><td>May 18, 2018</td><td>May 18, 2020</td><td>June 30, 2020</td><td>July 1, 2020</td></tr>
<tr><td>June 7, 2018</td><td>June 7, 2020</td><td>(none)</td><td>(none)</td></tr>
<tr><td>June 8, 2018</td><td>June 8, 2020</td><td>(none)</td><td>(none)</td></tr>
</table>

[52] RE : COURT OPERATIONS BEGINNING 1 JUNE 2020.

In fine, petitioner's administrative and judicial claims for the erroneous payments on May 15, 2018, and May 18, 2018, were timely filed on June 26, 2020 and June 30, 2020, respectively. Such being the case, this Court has jurisdiction to entertain the same. The rest of the claims are already barred by prescription; thus, this Court has no jurisdiction to take cognizance of the same.

Respondent's contention that the petition should be *dismissed* for the failure of petitioner to exhaust administrative remedies by filing a judicial claim on June 30, 2020, or barely four days after it filed its administrative claim for refund on June 26, 2020, is without merit.

It has long been settled that a claimant can file a judicial claim without waiting for respondent's resolution of its administrative claim to prevent the forfeiture of its claim through prescription. [53] The Supreme Court's ruling in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[54] is instructive, *viz.:*

> Still, in *CBK Power Company,* this Court further held that Section 229 does not require that the Commissioner first act on the taxpayer's claim, and that the taxpayer cannot go to court without the Commissioner's action. Citing *P.J. Kiener Company, Ltd. v. David,* this Court held that the administrative claim filed before the Commissioner was intended "primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow[.]."
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> Hence, applying the ruling in *CBK Power Company,* this **Court finds proper respondent's filing of judicial claim <u>10 days</u> after it had filed its administrative claim**, even without petitioner's ruling. The judicial claim was timely filed within the two-year prescriptive period based on the plain language of Section 229 of the 1997 National Internal Revenue Code. *[Emphasis supplied; citations omitted]*

Concerning respondent's claim that the amended Petition for Review was filed beyond the two-year prescriptive period based on the ruling in *Ching v. Court of Appeals*[55] that a pleading superseded or amended is considered abandoned and

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[53] *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue,* G.R. No. 182582, April 17, 2017; *CBK Power Company Ltd. v. Commissioner of Internal Revenue,* G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 750 SCRA 748-766.
[54] G.R. No. 226592, July 27, 2021.
[55] G.R. No. 110884, April 27, 2000.

ceases its status as a pleading and no longer forms part of the record, Section 8, Rule 10 of the Rules of Court, as amended,[56] provides as follows:

> "Section 8. *Effect of amended pleadings* — An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader, and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived."

Thus, an amended complaint supersedes the original pleading, which it amends. In *Verzosa v. Court of Appeals et al.*,[57] however, the Supreme Court clarified the effect of filing an amended complaint that does not introduce a new or different cause of action *vis-à-vis* the date when the suit is deemed instituted, *viz.*:

> **"It follows that when the amended complaint does not introduce new issues, causes of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed, not on the date of the filing of the amended complaint**. In other words, for demands already included in the original complaint, the suit is deemed to have commenced upon the filing of such original complaint. In short, for purposes of determining the commencement of a suit, the original complaint is deemed abandoned and superseded by the amended complaint *only if the amended complaint introduces a new or different cause of action or demand.*
>
> Hence, it has been held that 'an amendment which merely supplements and amplifies the facts originally alleged relates back to the date of the commencement of the action and is not barred by the statute of limitations, the period of which expires after service of the original complaint but before service of amendment.' It is the actual filing in court that controls and not the date of the formal admission of the amended pleading." *[Emphasis supplied]*

In this case, a comparison of petitioner's *Amended Petition for Review* and its original *Petition for Review* reveals that the changes or amendments done were to correct a supposed mistaken allegation in the amount of tax credit claimed, *i.e.*, from ₱25,164,902.50 to ₱10,331,662.50, and other errors relative to the stated dates, quantities of petroleum products sold, and exhibit numbers. Considering that such amendments

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[56] A.M. No. 19-10-20-SC.
[57] G.R. No. 119511, November 24, 1998.

did not introduce new issues, causes of actions, or demands, the suit is deemed to have commenced on June 30, 2020, the date the original *Petition for Review* was filed, and not on the date of the filing of the *Amended Petition for Review* on September 15, 2020.

The Court shall now determine petitioner's entitlement to its judicial claim for the erroneous payment of excise taxes on May 15, 2018, and May 18, 2018.

Petitioner failed to prove that the excise taxes paid were erroneous or illegal.

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

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and <u>to things imported</u>**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'
>
> xxx xxx xxx." *(Emphasis and underscoring added)*

> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* — (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.'
>
> xxx xxx xxx." *(Emphasis added)*

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

(a) xxx

(b) xxx

(c) Entities which are by law exempt from direct and indirect taxes.

As can be gleaned from the above provisions and consistent with the earlier quoted Section 229 of the NIRC of 1997, as amended, it must be shown that (1) the entity to which petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes, and (2) petitioner paid the claimed excise taxes on the same petroleum products sold to the exempt entity.

As held by the Supreme Court in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*,[58] considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under the afore-quoted Section 135, any excise taxes that were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund.

Relative thereto, pertinent portions of Section 12(c) of RA No. 7227,[59] as amended by RA No. 9400,[60] provide as follows:

"SEC. 12. *Subic Special Economic Zone.* — xxx

xxx xxx xxx

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

---

[58] G.R. No. 211303, June 15, 2021.
[59] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE.
[60] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

Moreover, Sections 3(h) and 21 of the *Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and The SBMA Under RA No. 7227* provide:

> "Sec. 3. *Definitions.* For purposes of these Rules these terms shall be understood to have the following meanings:
>
> xxx xxx xxx
>
> h. ***Certificate of Registration*** **refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> xxx xxx xxx." *(Emphases added)*
>
> "Sec. 21. *Effect of Issuance of Certificates.* **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, <u>**shall entitle and subject**</u> **the business enterprise or resident** <u>**to all the benefits**</u> **and obligations under the Act and these Rules**, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Thus, Section 12(c) of RA No. 7227 recognizes national and local tax exemptions on business enterprises within the Subic Special Economic Zone ("**SSEZ**"). Furthermore, the said local and national tax exemptions take effect only upon the issuance by the SBMA of a Certificate of Registration or Certificate of Registration and Tax Exemption ("**CRTE**") to a business enterprise within the SSEZ. In other words, it is only at the date of issuance of the *Certificate of Registration* or CRTE, which represents the registration of the concerned business enterprise, that the latter is entitled to the tax exemption granted under RA No. 7227, as amended.

On the other hand, Section 24 of RA No. 7916,[61] as amended by RA No. 8748,[62] provides as follows:

[61] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

[62] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995."

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

Under the aforesaid provision, business establishments operating within the ECOZONE are exempt from national and local taxes. In lieu thereof, the said enterprises shall pay 5% of their gross income to the national government and the municipality or city where they are located.

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

Customer Name	SBMA/PEZA Certification	Exhibit No.
Johnson Controls–Hitachi Air Conditioning Philippines, Inc.	SBMA CRTE No. 1997-0022	"P-41-1"
JX Nippon Mining & Metals Philippines, Inc.	PEZA Amended Certificate of Registration No. 96-080 and PEZA Certification No. 2018-0596	"P-41-2"
Philippine Sinter Corporation	PEZA Certificate of Registration No. 11-04 and PEZA Certification No. 2018-0841	"P-41-3"

A scrutiny of the above certifications shows that Exhibit "P-41-1" was valid from June 18, 2018 to June 17, 2021, while Exhibits "P-41-2" and "P-41-3" were valid for 2018.

Given that the SBMA issued the CRTE to Johnson Controls–Hitachi Air Conditioning Philippines, Inc. on June 18, 2018, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes in the SSEZ, as of the said date. Thus, the sale of imported petroleum products between petitioner and Johnson Controls–Hitachi Air Conditioning Philippines, Inc. *prior* to the issuance of said CRTE on June 18, 2018, is *subject* to excise taxes.

Furthermore, petitioner presented the following invoices to prove that it sold bunker fuel oil ("**BFO**") and special fuel oil ("**SFO**") to allegedly tax-exempt entities in April and June 2018:[63]

Date	Invoice No.	Customer	Quantity (L)
April 7, 2018	28024	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 18, 2018	28204	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 27, 2018	28310	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 30, 2018	28344	JX Nippon Mining & Metals Phils.	360,000.00
April 30, 2018	28878	Philippine Sinter Corp.	265,948.00
April 30, 2018	28879	Philippine Sinter Corp.	1,826,717.00
May 8, 2018	28899	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
May 24, 2018	29096	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
May 31, 2018	29294	JX Nippon Mining & Metals Phils.	80,000.00
May 31, 2018	29474	JX Nippon Mining & Metals Phils.	280,000.00
May 31, 2018	29671	Philippine Sinter Corp.	800,000.00
June 7, 2018	29825	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
June 22, 2018	29915	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
June 30, 2018	30190	JX Nippon Mining & Metals Phils.	380,000.00
		TOTAL	**4,132,665.00**

Hence, petitioner's claim of ₱10,331,662.50 is computed as 4,132,665 liters of fuel oil sold to tax-exempt entities multiplied by the excise tax rate paid of ₱2.50.

As stated earlier, petitioner's sales to Johnson Controls-Hitachi Air Conditioning Philippines, Inc. prior to the issuance of the CRTE on June 18, 2018, are subject to excise tax. Consequently, the following sales to the said entity prior to June 18, 2018 should be disallowed:

Invoice Date	Invoice No.	Quantity (L)
April 7, 2018	28024	20,000.00
April 18, 2018	28204	20,000.00
April 27, 2018	28310	20,000.00
May 8, 2018	28899	20,000.00
May 24, 2018	29096	20,000.00
June 7, 2018	29825	20,000.00
	TOTAL	**120,000.00**

[63] Exhibit "P-38".

The ICPA, on the other hand, reported the following findings:[64]

Sales to tax exempt customers per petitioner declaration	4,132,665 L
Sales to tax exempt customers based on supported documents	2,030,000 L
Difference/lacking documents	**2,102,665 L**

Notably, the above discrepancy was accounted for as follows:

Lacking documents	1,092,665 L
Unsigned withdrawal certificates by BIR representatives	1,000,000 L
Discrepancy in the withdrawal certificate/sales invoice 29474	10,000 L
Total as accounted for	**2,102,665 L**

Such being the case, petitioner's total disallowed sales to tax-exempt entities are summarized as follows:

Disallowed sales per ICPA report	2,102,665 L
Disallowed sales to Johnson Controls-Hitachi Air Conditioning Phils. Inc. prior to June 18, 2018	120,000 L
Total disallowed sales to tax-exempt entities	**2,222,665 L**

For the excise tax on the remaining sales of fuel oil of 1,910,000 liters (4,132,665 less 2,222,665) to be refundable, however, it must be determined that **the subject sales came from the importation with excise tax paid on May 18, 2018**.

Thus, petitioner submitted, among others, the following documents, *viz.*:[65]

Exhibit	Documentary Evidence
"P-31"	List of Ending Inventory as of December 31, 2017
"P-31-1"	Validation of Inventory as of December 31, 2017
"P-31-2"	List of Ending Inventory as of December 31, 2017, duly submitted to BIR
"P-32"	Importation Schedule 2018 (First Quarter)
"P-32-1.2" to "P-32-4.5"	Commercial Invoices, Bills of Lading, Assessment Notices, Import Entry Declarations, and Statements of Settlement of Duties and Taxes for January to March 2018
"P-32-5"	Summary of Local Purchases for 1st Quarter of 2018
"P-33"	Summary of Monthly Sales per Product for the 1st Quarter of 2018
"P-34"	Validation of Inventory Accounted vs. Reported to BIR as of 31 March 2018

[64] Exhibit "P-28", p. 9, Docket – Vol. VI, p. 2549.
[65] *Formal Offer of Evidence (with Motion to Mark Exhibits)*, Docket – Vol. VI, pp. 2640 to 2647.

"P-34-1"	Ending Inventory as of 31 March 2018 – with Certificates of Stock Inventory
"P-35"	Comparative Inventory as of 01 April 2018 based on filed Petition
"P-36"	Petitioner's Importation Schedule for 2nd Quarter 2018
"P-36-1.1.B" to "P-36-4.5"	Commercial Invoices, Bills of Lading, Assessment Notices, Import Entry Declarations, and Statements of Settlement of Duties and Taxes for April to June 2018
"P-37"	Summary of Monthly Sales per Product for 2nd Quarter 2018
"P-38"	Schedule of Sales to Excise Tax Exempt Entity for the period of 01 April 2018 to 30 June 2018
"P-38-1.1" to "P-38-20.4"	Sales Invoices, Withdrawal Certificates, Delivery Notes, and Proof of Collection for the period 01 April 2018 to 30 June 2018
"P-39"	Review of Subsequent Collection of Sales Subject for Tax Refund from 01 April 2018 to 30 June 2018
"P-46"	Summary of Local Purchases (2nd Quarter of 2018)
"P-47"	Ending Inventory as of June 30, 2018 – with Certificates of Stock Inventory

From the foregoing, it cannot be determined with certainty that petitioner paid the excise taxes on the petroleum products sold to Johnson Controls–Hitachi Air Conditioning Philippines, Inc.; JX Nippon Mining & Metals Philippines, Inc.; and Philippine Sinter Corporation, considering that it failed to offer in evidence the supply or sales agreements with these entities. Details such as the dates of the sale, a complete description of all petroleum products associated with the transaction, the dates of performance of each contractual event, evidence of an agreement between the tax-exempt entities and petitioner, and the purchase price, among others, would have been included in these supply or sales agreements, which petitioner did not submit. To be sure, the Summary of Monthly Sales per product for the 2nd Quarter of 2018,[66] the Schedule of Sales to Tax-Exempt Entities for April to June 2018,[67] sales invoices,[68] withdrawal certificates,[69] delivery notes,[70] and collection receipts[71] presented by petitioner are insufficient to establish that petitioner sold the imported petroleum products, as explicitly imported on May 15, 2018 or May 18, 2018, to these entities, and that petitioner paid the claimed excise taxes on the same petroleum products sold to them.

[66] Exhibit "P-37".
[67] Exhibit "P-38".
[68] Exhibits "P-38-1.1" to "P-38-14.1".
[69] Exhibits "P-38-1.2" to "P-38-11.2".
[70] Exhibits "P-38-1.3" to "P-38-14.3".
[71] Exhibits "P-38-1.4" to "P-38-20.4".

Furthermore, even if petitioner provided the pertinent supply or sales agreements, the documentary evidence submitted is not enough to allow the Court to trace the movement of petitioner's fuel oil inventory using the first-in, first-out ("**FIFO**") method, which is the method of inventory valuation provided by Section 8(b) of RR No. 2-2018. Petitioner should have provided its properly supported fuel oil inventory record and submitted the sales invoices and pertinent sales documents of all its sales for at least the 2nd quarter of 2018 for the Court to properly determine that the fuel oil sold to tax-exempt entities came from the imported lot that petitioner paid for excise tax on May 15, 2018 or May 18, 2018. Without information on all its purchases and sales for the claim period, the Court finds it impossible to apply the FIFO method.

Thus, for petitioner's failure to sufficiently prove that the excise taxes for the petroleum products supposedly sold to Johnson Controls–Hitachi Air Conditioning Philippines, Inc., JX Nippon Mining & Metals Philippines, Inc., and Philippine Sinter Corporation, were paid on May 15, 2018 or May 18, 2018, the present claim must fail.

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

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

It is incumbent upon petitioner to clearly show the factual basis for claiming that it is entitled to a tax credit.

Accordingly, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements required by law. [73] As discussed above, petitioner failed to do so in the present case.

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[72] G.R. No. 222428, February 19, 2018.
[73] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.

In fine, We see no valid ground to grant the present claim for a tax credit.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION, Petitioner,	**CTA Case No. 10289**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 15 2023

x - x
2:40 p.m.

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, insofar as it denies the Petition for Review of petitioner SL Harbor Bulk Terminal Corporation (**petitioner**). However, with due respect I take exception from the *ponencia*'s determination of the reckoning point of the two (2)-year prescriptive period from which petitioner may claim a tax refund of excise taxes in this case.

In the *ponencia* it was ruled that: (1) a portion of the subject claim for refund relating to excise payments made on 07 June and 08 June 2018 had prescribed; and, (2) petitioner failed to prove that the remaining sales of petroleum products aggregating 1,910,000 liters relate to the unprescribed excise tax payments made on 15 May or 18 May 2018 and came from petitioner's importations.

Sections 204(C) and 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provide that:

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...

(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.

...

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.[1]

...

In ruling that a portion of the subject claim for refund has already prescribed, the *ponencia* took note of the following pertinent dates:

Date of payment of excise tax	Last day of the two (2) years to file a claim for tax credit	Last day of the extended period to file an administrative claim for a tax credit	Date of filing of an administrative claim for a tax credit	Last day of the extended period to file a judicial claim for a tax credit	Date of filing of a judicial claim for a tax credit
May 15, 2018	May 15, 2020	June 30, 2020	June 26, 2020	July 1, 2020	June 30, 2020

[1] Emphasis supplied.

May 15, 2018	May 15, 2020	June 30, 2020		July 1, 2020	
June 7, 2018	June 7, 2020	(none)		(none)	
June 8, 2018	June 8, 2020	(none)		(none)	

It can be gleaned from the foregoing that the *ponencia* reckons the running of the 2-year prescriptive period from the payment of excise taxes *i.e.*, upon importation of the subject petroleum products.

I, respectfully, disagree on this particular point.

Firstly, in the instant case, petitioner claims that it sold petroleum products to tax-exempt entities registered with the Board of Investments (**BOI**), Subic Bay Metropolitan Authority (**SBMA**) and Philippine Economic Zone Authority (**PEZA**), pursuant to Section 135 of the NIRC of 1997, as amended, which states that:

> ...
>
> **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 agreement 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; and
>
> **(c) Entities which are by law exempt from direct and indirect taxes.**[2]
>
> ...

[2] Emphasis supplied.

In the case of *Chevron Philippines Inc. v. Commissioner of Internal Revenue*[3], the Supreme Court elucidated that the aforecited operates as a condition as to the taxability of the petroleum products, to wit:

> ...
>
> Pursuant to Section 135 (c), *supra*, petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase *which are by law exempt from direct and indirect taxes* describes the entities to whom the petroleum products **must be sold in order to render the exemption *operative***. Section 135 (c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers — that is, the entities that are by law exempt from direct and indirect taxes — because they are not under any legal duty to pay the excise tax.
>
> ...
>
> Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customs house, Chevron was bound to pay, and actually paid such taxes. But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007 (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). Before then, Chevron did not have **any legal basis to claim the tax refund or the tax credit as to the petroleum products**.
>
> Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed **illegal and erroneous upon the sale of the petroleum products to CDC**. ...[4]
>
> ...

The same was echoed by the Supreme Court in the recent case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[5], *viz*:

> ...
>
> 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.

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[3] G.R. No. 210836 (Resolution), 01 September 2015.
[4] Emphasis and underscoring supplied and italics in the original text.
[5] G.R. No. 211303, 15 June 2021.

> 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."[6]
>
> ...

Clearly from the foregoing, **the refund can only be ascertained,** or **the excise taxes will only be deemed erroneously or illegally collected** *once* the petroleum products are sold to the entities mentioned under Section 135 of the NIRC of 1997, as amended. The phrase "two (2) years from the date of **payment**" of the 2nd paragraph of Section 229 of the NIRC of 1997, as amended, must be read in relation to the title of the same Section, *i.e.*, "Recovery of Tax **<u>Erroneously or Illegally Collected</u>**". Thus, **the reckoning point of the 2-year period must start *not* from the payment of tax *per se* but from the erroneous or illegal payment of tax.** This is the *raison d'etre* of why 2-year prescriptive period for excessively collected income taxes reckons from the actual filing of the final adjustment annual income tax return, and not from the payment of quarterly income tax instead, as held in the case of *Commissioner of Internal Revenue v. Court of Appeals, et al.*[7], to wit:

> ...
>
> Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, we held:
>
> > **<u>Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished</u>**. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the *TMX Sales* case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be construed in conjunction with it.
>
> ...

6 Emphasis and italics in the original text and supplied.
7 G.R. No. 117254, 21 January 1999.

Thus, it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. **This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer.** Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed.[8]

...

By analogy, the 2-year prescriptive period must be reckoned from the time petitioner sold the petroleum products to the tax-exempt entities under Section 135 of the NIRC of 1997, as amended, since only at that point could one can actually ascertain whether there has been an overpayment. Simply put, it is upon the sale of the manufactured or imported petroleum products to the entities enumerated under Section 135 of the NIRC of 1997, as amended, that the excise taxes previously paid thereon become wrongfully or erroneously collected, by operation of law, on which (in turn) a claim for refund under Section 229 may be made.

Secondly, it bears noting that the law on prescription, being a remedial measure, should be interpreted in a way conducive in bringing about the beneficent purpose of balancing the taxpayer's and the government's interests. Here, the government's interest of fiscal adequacy, *i.e.*, availability of funds from the collection of taxes being not left subject to the contingency of refund brought about by certain acts (which are solely within the exclusive control of the private contracting parties[9]), must be balanced with the legislative objectives of Section 135 of the NIRC of 1997, as amended, *i.e.*, (a) in fulfillment of the country's obligation, under the Chicago Convention[10] and various bilateral agreements, not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers to promote and expand international travel through avoidance of multiple taxation and ensure the viability and safety of international air travel; (b) to prevent the practice of "tankering" and instead encourage international carriers to purchase domestic petroleum or establish refueling depots here in our country; and, (c) to avoid the Government the risk of retaliatory actions from other countries.[11]

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[8] Citation omitted, emphasis supplied, italics and underscoring in the original text.

[9] *Atlanta Land Corporation v. Commission of Internal Revenue*, C.T.A. EB No. 79, 23 May 2006.

[10] See International Civil Aviation Organization (ICAO) Publications, Convention on International Civil Aviation <https://www.icao.int/publications/pages/doc7300.aspx> (visited 06 November 2023).

[11] See Associate Justice Alfredo Benjamin S. Caguioa's Concurring Opinion in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, *supra* at note 5, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. No. 188497, 19 February 2014.

Lastly, statutory construction enjoins that laws be construed in a manner that avoids absurdity or unreasonableness.[12] It would be the height of absurdity to deny a claim for refund under Section 135 of the NIRC of 1997, as amended, of excise taxes on manufactured and imported petroleum products only *recently* sold to exempt entities on the ground that the payment of the related excise taxes (which was *legally* or *properly* made by the taxpayer) happened beyond the 2-year prescriptive period.

To my mind, the strict nature of tax laws does not call for the abandonment of elementary rules of interpretation. *Lex non cognit ad impossibilia* – "**the law does not require the impossible.**" To reckon petitioner's right to claim a tax refund from a time when the same could not as yet be ascertained or more precisely, when its cause of action (*i.e.*, the sale to tax exempt entities) has yet to exist, renders petitioner legally incapable of complying with the requirements to attain the relief it seeks.

Proceeding from the foregoing, it is of my considered view that prescription must be determined as follows:[13]

<table>
<tr><th>Invoice No.</th><th>Date of Sale</th><th>Last day of the two (2) years to file a claim for tax credit</th><th>Last day of the extended period to file an administrative claim for a tax credit pursuant to Item 39 of RR No. 11-2020[14]</th><th>Date of filing of an administrative claim for a tax credit</th><th>Last day of the extended period to file a judicial claim for a tax credit pursuant to SC Administrative Circular No. 39-2020[15]</th><th>Date of filing of a judicial claim for a tax credit</th></tr>
<tr><td>28024</td><td>April 7, 2018</td><td>April 7, 2020</td><td rowspan="6">June 14, 2020</td><td rowspan="14">June 26, 2020</td><td rowspan="11">July 1, 2020</td><td rowspan="14">June 30, 2020</td></tr>
<tr><td>28204</td><td>April 18, 2018</td><td>April 18, 2020</td></tr>
<tr><td>28310</td><td>April 27, 2018</td><td>April 27, 2020</td></tr>
<tr><td>28344</td><td>April 30, 2018</td><td>April 30, 2020</td></tr>
<tr><td>28878</td><td>April 30, 2018</td><td>April 30, 2020</td></tr>
<tr><td>28879</td><td>April 30, 2018</td><td>April 30, 2020</td></tr>
<tr><td>28899</td><td>May 8, 2018</td><td>May 8, 2020</td><td rowspan="5">June 30, 2020</td></tr>
<tr><td>29096</td><td>May 24, 2018</td><td>May 24, 2020</td></tr>
<tr><td>29294</td><td>May 31, 2018</td><td>May 31, 2020</td></tr>
<tr><td>29474</td><td>May 31, 2018</td><td>May 31, 2020</td></tr>
<tr><td>29671</td><td>May 31, 2018</td><td>May 31, 2020</td></tr>
<tr><td>29825</td><td>June 7,2018</td><td>June 7,2020</td><td>(none)</td><td>(none)</td></tr>
<tr><td>29915</td><td>June 22, 2018</td><td>June 22, 2020</td><td>(none)</td><td>(none)</td></tr>
<tr><td>30190</td><td>June 30, 2018</td><td>June 30, 2020</td><td>(none)</td><td>(none)</td></tr>
</table>

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[12] *The Bureau of Customs and the Commissioner of Customs v. Jade Bros. Farm and Livestock, Inc.*, G.R. No. 246343, 18 November 2021.

[13] Exhibit "P-38", USB.

[14] Amends Section 2 of Revenue Regulations No. 10-2020 Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of any Document and the Payment of Taxes Pursuant to Section 4 (z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act".

[15] Modified Enhanced Community Quarantine in Certain Areas until 31 May 2020.

Consequently, only the related excise payments on the following sales to exempt entities have not prescribed:

Invoice No.	Date of Sale	Customer	Quantity (L)
28899	May 8, 2018	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000
29096	May 24, 2018	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000
29294	May 31, 2018	JX Nippon Mining & Metals Phils.	80,000
29474	May 31, 2018	JX Nippon Mining & Metals Phils.	280,000
29671	May 31, 2018	Philippine Sinter Corp.	800,000
30190	June 30, 2018	JX Nippon Mining & Metals Phils.	380,000
Total			**1,580,000**

However, it must be pointed out that of the 1,580,000 liters, about 50,000 liters must be disallowed due to the following reasons:

Invoice No.	Date of Sale	Quantity (L)	Reasons for Disallowance
28899	May 8, 2018	20,000	Sold prior to the issuance of the buyer's Certificate of Registration and Tax Exemption
29096	May 24, 2018	20,000	
29474	May 31, 2018	10,000	Discrepancy in the withdrawal certificate and Sales Invoice No. 29474
Total		**50,000**	

As to the remaining 1,530,000 liters, it is incumbent upon petitioner to prove, with preponderant evidence, that the same came from its importation of petroleum products since only at this instance that the tax incidence or the actual liability to pay the tax arises. It is at this point that petitioner acquires a standing to file a claim for refund as opposed to its local purchases of petroleum products (wherein only the tax burden is passed on it, hence no excise tax refund should arise therefrom).[16] It is noted that petitioner did not proffer as evidence its Official Registry Book as of 30 April 2018, 31 May 2018 and 30 June 2018, respectively, which would have shown the ***monthly*** movement of the petroleum products pursuant to Section 41 of RR No. 13-77.[17] It bears noting further that petitioner was able to submit a copy of the Official Registry Book as of 31 March 2018.[18]

On a final note, I would like to reiterate that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, **but also the pieces of evidence presented entitling a taxpayer to an**

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16 See *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, supra at note 5.
17 Petroleum Products Regulations.
18 Exhibit "P-5", Division Docket, Volume I, pp. 58-93.

exemption is *strictissimi* scrutinized and must be duly proven.[19] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[20]

All told, I vote to **DENY** the petition.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[19] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

[20] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.