REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**CTA CASE NO. 7731**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 14 2024 4:11 p.m.

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DECISION

FERRER-FLORES, J.:

This is a remanded case for the determination of the refundable amount due to **Pilipinas Shell Petroleum Corporation (PSPC/petitioner)**, if any, pursuant to the Supreme Court *En Banc* Decision dated June 15, 2021, rendered in G.R. No. 211303, entitled *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*.

ANTECEDENTS

On February 15, 2008, petitioner filed the *Petition for Review* with the Court of Tax Appeals (CTA),[1] docketed as CTA Case No. 7731, praying that judgment be rendered:

1. Declaring petitioner entitled to a refund of, or issuance of a tax credit certificate for the amount of **₱91,655,658.98**, representing excise taxes paid on Jet A-1 fuel sold to tax-

[1] Docket – Vol. 1, pp. 1 to 15.

exempt international air carriers for the period from February to April 2006; and,

2. Ordering respondent to grant petitioner a refund or tax credit in the said amount of **₱91,655,658.98**.

After trial, on September 7, 2012, the CTA, through its former Third Division, promulgated its Decision,[2] denying PSPC's *Petition for Review*, as follows:

> Premises considered, excise taxes paid on Jet A-1 fuel sold to international air carriers for the period covering February to April 2006, in the total amount of ₱91,655,658.98, cannot be considered erroneously or illegally paid. Petitioner, as the taxpayer statutorily liable to pay the said excise taxes, rightfully paid what was demandable from it.
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> In sum, the Court finds petitioner not entitled to any refund or issuance of tax credit certificate of excise taxes previously paid on the said goods.
>
> **WHEREFORE,** the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On September 27, 2012, petitioner filed its *Motion for Reconsideration [of Decision dated September 7, 2012]*,[3] to which respondent filed his *Comment/Opposition (Re: Motion for Reconsideration)* on October 16, 2012.[4] The CTA Third Division denied the said *Motion* in the Resolution dated November 12, 2012.[5]

Within the period granted by the Court,[6] petitioner filed on December 14, 2012 its *Petition for Review* before the CTA *En Banc*, docketed as CTA EB No. 960.[7] Respondent filed his *Comment/Opposition (Re: Petition for Review)* on February 12, 2013.[8] In the Resolution dated February 21, 2013,[9] the CTA *En Banc* gave due course to the *Petition for Review* and required the parties to submit their respective memoranda within thirty (30) days from notice.

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2 Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Olga Palanca Enriquez and Associate Justice Amelia R. Cotangco-Manalastas; Docket – Vol. 3, pp. 1296 to 1312.

3 Docket – Vol. 3, pp. 1313 to 1360.

4 Docket – Vol. 3, pp. 1364 to 1369.

5 Docket – Vol. 3, pp. 1372 to 1374.

6 Petitioner's *Motion for Extension of Time to File Petition for Review* dated November 28, 2012 and Minute Resolution, EB No. 960, *Rollo*, pp. 1 to 4, and 27, respectively.

7 EB No. 960, *Rollo*, pp. 28 to 73.

8 EB No. 960, *Rollo*, pp. 181 to 186.

9 EB No. 960, *Rollo*, pp. 189 to 190.

Respondent's *Manifestation* was filed on March 7, 2013,[10] while *Memorandum for Petitioner* was filed via registered mail on April 22, 2013.[11]

On September 9, 2013, the CTA *En Banc* rendered its Decision,[12] the dispositive portion of which reads:

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

On October 2, 2013, petitioner filed an *Omnibus Motion A. For Reconsideration of the Decision dated September 9, 2013 B. To Set Case for Oral Argument C. To Suspend Proceedings Pending Final Resolution of the Shell case in the Supreme Court.*[13] Respondent filed his *Comment/Opposition (Re: Omnibus Motion for Reconsideration)*, on December 5, 2013.[14] The Court denied the said *Omnibus Motion* in its Resolution dated February 3, 2014.[15]

Petitioner filed via registered mail its *Motion for Extension of Time To File Petition for Review on Certiorari Under Rule 45]* and *Second Motion for Extension of Time [To File Petition for Review on Certiorari Under Rule 45]* on March 5, 2014[16] and March 20, 2014,[17] respectively. Both *Motions* were granted by the Supreme Court Third Division in its *Notice* dated April 21, 2014.[18]

On April 3, 2014, petitioner filed via registered mail its *Petition for Review on Certiorari [Under Rule 45]* before the Supreme Court entitled *"Pilipinas Shell Petroleum Corporation versus Commissioner of Internal Revenue"*,[19] and was docketed as G.R. No 211303. Respondent filed via registered mail his *Comment (on the Petition for Review on Certiorari dated March 31, 2014)* on September 18, 2014.[20] Thereafter, petitioner filed via registered mail its *Manifestation and Compliance (with attached Reply)* on March 2, 2017.[21] The case was raffled to Supreme Court Third Division on

[10] EB No. 960, *Rollo*, pp. 191 to 193.
[11] EB No. 960, *Rollo*, pp. 200 to 249.
[12] EB No. 960, *Rollo*, pp. 256 to 277.
[13] EB No. 960, *Rollo*, pp. 278 to 302.
[14] EB No. 960, *Rollo*, pp. 311 to 316.
[15] EB No. 960, *Rollo*, pp. 319 to 330.
[16] Docket – Vol. 3, pp. 1625 to 1628.
[17] Docket – Vol. 3, pp. 1705 to 1709.
[18] Docket – Vol. 5, p. 2585.
[19] Docket – Vol. 4, pp. 1722 to 1761.
[20] Docket – Vol. 5, pp. 2679 to 2696.
[21] Docket – Vol. 5, pp. 2702 to 2730.

March 10, 2014 and was elevated to Supreme Court *En Banc* on December 7, 2020.[22]

On June 15, 2021, the Supreme Court *En Banc* rendered its Decision,[23] the dispositive portion of which reads:

> **WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated September 9, 2013 and the Resolution dated February 3, 2014 rendered by the Court of Tax Appeals (CTA)-*En Banc* in CTA *EB* No. 960, as well as the Decision dated September 7, 2012 and Resolution dated November 12, 2012 of the CTA-Third Division in CTA Case No. 7731 are hereby **SET ASIDE**. The case is hereby **REMANDED** to the CTA in accordance with this Decision.
>
> **SO ORDERED.**

Respondent filed via registered mail his *Motion for Reconsideration (Re: Decision dated June 15, 2021)* on April 8, 2022.[24] However, the Supreme Court resolved with finality the said *Motion* as the basic issues raised therein have been passed upon and no substantial arguments were presented to warrant the reversal of the questioned Decision.[25]

Consequently, the Decision dated June 15, 2021 became final and executory on April 19, 2022, pursuant to the Entry of Judgment dated April 19, 2022 issued by the Supreme Court.[26]

Consistent with the above Supreme Court Decision dated June 15, 2021, the CTA *En Banc* remanded the present case to the CTA Third Division in the Resolution dated October 7, 2022.[27]

Thereafter, the CTA Third Division issued the Resolution dated January 27, 2023,[28] giving the parties a period of five (5) days from notice, to submit their respective *Manifestations*, informing the Court of any supervening event which may have transpired that would affect the final resolution of the present case and to determine whether there is a need to conduct further proceedings. In compliance thereto, respondent filed his

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[22] Refer to *Pilipinas Shell Petroleum Corporation vs, Commissioner of Internal Revenue*, G.R. No. 211303, June 15, 2021.
[23] EB No. 960, *Rollo*, pp. 341 to 358.
[24] Docket – Vol. 5, pp. 2796 to 2806.
[25] Notice dated April 19, 2022 issued by the Supreme Court, EB No. 960, *Rollo*.
[26] EB No. 960, *Rollo*, pp. 438 to 439.
[27] EB No. 960, *Rollo*, pp. 442 to 444.
[28] Docket – Vol. 5, pp. 2794 to 2795.

Manifestation (Re: Resolution dated 27 January 2023) on February 21, 2023,[29] while petitioner submitted its *Manifestation* on April 11, 2023.[30]

In the Minute Resolution dated August 14, 2023,[31] the CTA Second Division noted both *Manifestations* and submitted the present case anew for decision in accordance with the Supreme Court Decision in G.R. No. 211303 dated June 15, 2021.

THE RULING OF THE COURT

The present *Petition for Review* is partly meritorious.

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[32] the Supreme Court *En Banc* held as follows:

> All told, the Court concludes that upon PSPC's sale of its imported petroleum products to various international carriers from February 27 to April 9, 2006, the tax exemption under Section 135 (a) of the Tax Code came into effect. Consequently, the excise taxes it previously paid on the said petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund under Sections 204 and 229 of the same law.
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> ***The foregoing notwithstanding, the Court cannot – as of yet – declare that PSPC is entitled to the entirety of its refund claim***. On this score, the observations of Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda are well-taken that PSPC should not be entitled to a refund of the excise taxes pertaining to the Jet A-1 fuel it purchased from Chevron.
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> To expound, it must be highlighted that the **24,974,294 liters** of Jet A-1 fuel sold by PSPC to international carriers subject of its present claim for tax refund came from two (2) sources: ***first***, from **direct importation**, amounting to **28,578,673 liters**; and ***second***, from the local purchase from Chevron, amounting to **3,192,012 liters**.
>
> Based on the discussions above, **PSPC may claim refund for the excise taxes on the Jet A-1 fuel that it imported itself, considering that it was the statutory taxpayer in that instance.**
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> However, the same is not true for the fuel purchased from Chevron. Again, the standing principle is that the 'passing on' of the tax burden is largely a contractual affair between the parties and such affair does not

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[29] Docket – Vol. 5, pp. 2810 to 2812.
[30] Docket – Vol. 5, pp. 2814 to 2817.
[31] The case was re-raffled considering that the *ponente* of the case, former Associate Justice Lovell R. Baustista, now deceased, and another member of the Special Third Division, former Associate Justices Olga Palanca-Enrique and Amelia Cotangco-Manalastas have all retired pursuant to *Memorandum* dated June 20, 2023, Docket – Vol. 5, pp. 2819 to 2821.
[32] G.R. No. 211303, June 15, 2021.

determine the tax incidence imposed by law unless the contrary is provided. Here, when PSPC purchased Jet A-1 fuel from Chevron and paid the corresponding excise taxes due thereon as part of the purchase price, it did not operate to transform PSPC into the statutory taxpayer of the corresponding excise taxes. In reality, what PSPC paid was merely the tax burden, and hence, it cannot benefit from the tax exemption under Section 135 which operates to alleviate the tax incidence. Stated otherwise, in the case of the 3,192,012 liters purchased from Chevron, PSPC was merely a purchaser of the said fuel. Hence, even if it was subsequently sold to international carriers, PSPC could not invoke the exemption under Section 135 (a) because the tax incidence remained with Chevron. At the time that Chevron sold the fuel to PSPC (who is not an international carrier or any of the enumerated persons in Section 135), the excise taxes already became due and demandable, and PSPC's eventual sale thereof to an international carrier cannot anymore negate the accrual of the excise tax liability.

That being said, the Court cannot therefore make a categorical declaration as to the precise refund amount to award PSPC given that the records do not clearly show the composition of the 24,974,294 liters of Jet A-1 fuel actually sold to international carriers. Particularly, records fail to disclose the specific amounts of coming from each source, whether directly imported by PSPC or locally purchased by Chevron. Thus, **the Court deems it prudent to remand the case back to the CTA to make factual determinations** (and accordingly make the corresponding dispositions) on the following:

(a) If the 24,974,294 liters of Jet A-1 fuel sold to international carriers are entirely comprised of the 28,578,673 liters imported by PSPC itself, then the entire excise taxes paid by the PSPC therefor – provided, that the same is duly proven – may be refunded.

(b) If the 24,974,294 liters of Jet A-1 fuel sold to international carriers are comprised of a mix between the 28,578,673 liters imported by PSPC, and the 3,192,012 liters purchased from Chevron, then only the excise taxes paid by PSPC for the portion corresponding to PSPC's imported Jet A-1 fuel therefor – provided, that the same is duly proven – may be refunded; conversely, PSPC cannot claim any tax refund for the passed-on costs of excise taxes paid by Chevron, which forms part of the purchase price as agreed upon by them.

(c) Failure of PSPC to duly prove that its tax refund claim, or any portion thereof, is based on the excise taxes erroneously paid/collected for the imported Jet A-1 fuel it sold to international carriers within the period of February and March 2006 will result in the denial of the refund claim corresponding to that which is not duly proven.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 9, 2013 and the Resolution dated February 3, 2014 rendered by the Court of Tax Appeals (CTA)-En Banc in CTA EB No. 960, as well as the Decision dated September 7, 2012 and the Resolution dated November 12, 2012 of the CTA-Third Division in CTA Case NO. 7731 are hereby **SET ASIDE**. The case is hereby **REMANDED** to the CTA in accordance with this Decision.

SO ORDERED.

Thus, the task of this Court is to make, in the main, the foregoing factual determinations, as enunciated by the High Court, vis-à-vis petitioner's entitlement to the subject refund claim.

The 24,954,256[33] liters of Jet A-1 fuel sold to international air carriers came from its directly imported Jet A-1 fuel of 22,308,182 liters and locally sourced Jet A-1 fuel of 2,646,074 liters (including 2,506,072 liters from Chevron).

To recall, petitioner imported 28,578,673 liters of Jet A-1 fuel on various dates from March to April 2006 and paid to the Bureau of Customs (BOC) in Batangas excise taxes due at the rate of ₱3.67 per liter on the said importations. The details of petitioner's importations and payments of excise taxes based on the supporting documents [i.e., *Import Entry and Internal Declaration* (IEIRD) and *Certificate of Quantity Received* (COQR)] are as follows:

Table I – Summary of Importations and Excise Tax Payments

COQR		***IEIRD***			**Quantity (In Liters)**	**Excise Taxes Paid**
Exhibit	**Date of Receipt**	**Exhibit**	**Ref. No.**	**Date of Final Payment**		
"B-2"	02/19/06	"B"	293-06	03/20/2006	6,552,827	₱ 24,048,875.09
"C-2"	03/04/06	"C"	333-06	04/03/2006	12,070,992	44,300,541.00
"D-2"	03/21/06	"D"	407-06	04/20/2006	9,954,854	36,534,314.18
				Total	**28,578,673**	**₱104,883,730.27**

Petitioner avers that the 24,954,256[34] liters of Jet A-1 fuel sold to international air carriers were sourced from the above importation for which it paid excise taxes of ₱104,883,730.27. Petitioner, thus, claims that the excise taxes paid on the 24,954,256[35] liters of imported Jet A-1 fuel are erroneously paid and subject to refund.

Based on the review and examination of petitioner's claim and supporting documents by the Court-commissioned Independent Certified Public Accountant (ICPA), he found that petitioner's sales and deliveries to international air carriers of 24,974,294 liters of imported Jet A-1 fuel for the months of February, March and April 2006 were sourced from 22,468,222[36] liters of Jet A-1 fuel directly imported by petitioner, and 2,506,072[37] liters of

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[33] Claimed sales of 24,974,294 liters less 20,038 liters without proof of delivery and/or sale.
[34] *Id.*
[35] *Id.*
[36] The sum of 22,254,509 and 213,713 liters.
[37] The sum of 2,481,642 and 24,430 liters.

imported Jet A-1 fuel locally purchased by petitioner from Chevron (Philippines) Corporation (**Chevron**), as summarized below:[38]

Table II – Summary of Sales of Jet A-1 Fuel

	Sourced from Importation by PSPC		Sourced from Chevron		Summary		
	Without Exceptions	With Exceptions	Without Exceptions	With Exceptions	Without Exceptions	With Exceptions	Total
(In Pesos)							
March 2006	61,388,479.02	737,314.01	9,107,626.14	89,658.10	70,496,105.16	826,972.11	71,323,077.27
April 2006	20,285,569.01	47,012.70			20,285,569.01	47,012.70	20,332,581.71
Total	**81,674,048.03**	**784,326.71**	**9,107,626.14**	**89,658.10**	**90,781,674.17**	**873,984.81**	**91,655,658.98**
(In Liters)							
March 2006	16,727,106	200,903	2,481,642	24,430	19,208,748	225,333	19,434,081
April 2006	5,527,403	12,810			5,527,403	12,810	5,540,213
Total	**22,254,509**	**213,713**	**2,481,642**	**24,430**	**24,736,151**	**238,143**	**24,974,294**

Consistent with the High Court's pronouncements, the excise taxes of ₱9,197,284.24 paid by petitioner in relation to the 2,506,072[39] liters of Jet A-1 fuel it locally purchased from Chevron cannot be refunded. Hence, ₱9,197,284.24 should be disallowed from the total amount of refund claimed.

As to the excise taxes paid by petitioner in the amount of ₱82,458,374.74[40] on the 22,468,222 liters of Jet A-1 fuel which were classified and grouped under "Sourced from Importations by PSPC", the Court-commissioned ICPA correctly noted as an exception the amount of ₱513,807.34, which arose from 140,002 liters of locally sourced issuances of Jet A-1 fuel which are not included in the fuel importations for which excise taxes were paid and are subject of the present refund.[41]

Likewise, the ICPA correctly noted as exceptions the following excise tax payments in the sum of ₱73,539.46 on sales of 20,038 liters of Jet A-1 fuel, for not being supported by an Aviation Service Return (ASR) and/or a Sales Invoice:[42]

Table III – Sales of Jet A-1 Fuel Not Supported by ASR and/or Sales Invoice

International Airlines	ASR			Sales Invoice			Volume in Liters	Excise Taxes Paid
	Date	Number	Exhibit	Date	Number	Exhibit		
United Parcel Services, USA	March 11, 2006	151542	--	March 11, 2006	110065167	-	7,228	₱26,526.76
United Parcel Services, USA	April 9,2006	168066	"CC-283"	April 9, 2006	110066268	-	12,810	47,012.70
						Total	**20,038**	**₱73,539.46**

Therefore, only the excise taxes paid amounting to ₱81,871,027.94 corresponding to the sales of 22,308,182 liters of Jet A-1 fuel identified as

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[38] Exhibit "T" attached to Exhibit "WW" (ICPA Report Binder).
[39] The sum of 2,481,642 and 24,430 liters.
[40] The sum of ₱81,674,048.03 and ₱784,326.71
[41] Exhibit "T-2-2" attached to Exhibit "WW" (ICPA Report Binder); See also Exhibit "WW" (ICPA Report Binder), p. 10.
[42] Exhibit "T-2-1" attached to Exhibit "WW" (ICPA Report Binder).

sourced from direct importations made by petitioner and were found by the ICPA to be fully supported with complete documents, may be the proper subject of a claim for refund, viz.:

Table IV – Sales of Jet A-1 Fuel Sourced From Direct Importations

Particulars	Volume in Liters [A]	Excise Taxes Paid [A] * ₱3.67
Sales of Jet A-1 fuel to international air carriers sourced from petitioner's direct importations	22,468,222	₱ 82,458,374.74
Less: Sales from locally-sourced Jet A-1 fuel not part of the fuel importations for which excise taxes were paid and are subject of the present refund	140,002	513,807.34
Sales without supporting ASR and/or Sales Invoice	20,038	73,539.46
Sales of Jet A-1 fuel to international air carriers sourced from petitioner's direct importations	**22,308,182**	**₱ 81,871,027.94**

Petitioner sufficiently proved that it erroneously paid excise taxes on the imported Jet A-1 fuel sold to tax-exempt international air carriers but only to the extent of ₱80,068,801.28.

In order for the sales of 22,308,182 liters of imported Jet A-1 to international air carriers, as determined in *Table IV,* to be exempted from excise tax under Section 135(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner must present the following:

1. 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;

2. 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; and,

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

First requirement: Petitioner proved 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 complied with the ***first*** requirement.

Petitioner's witnesses: Mr. David B. Paguia,[43] Mr. Bryan Khriz L. Acosta,[44] Mr. Nicasio N. Manuel,[45] and Mr. Damaso G. Pastrana[46] explained the process and documentation of the receipts and withdrawals of imported Jet A-1 fuel at petitioner's storage tank in Tabangao Refinery and its subsequent delivery to Pandacan installation, Joint Oil Company Aviation Storage Plant (JOCASP) and United Parcel Services (UPS) in Clark, Pampanga, for eventual sale to international air carriers.

It was explained that, before the imported Jet A-1 fuel were removed from the Tabangao Refinery, the Revenue Officer On Premises (ROOP) prepared and signed the corresponding Withdrawal Certificates (WCs). The WCs signed by the ROOP indicate the volume of Jet A-1 fuel removed, among other petroleum products, and their destination.[47]

Indicated in the WCs is the term "AVTUR", which is short hand for Aviation Turbo Jet Fuel or Jet A-1 fuel. If the Jet A-1 fuel to be withdrawn from the refinery is imported, the WC indicates that it is "Tax-Paid" since the excise tax on the imported Jet A-1 fuel had already been paid to the BOC upon removal thereof from customs custody. Thus, petitioner shall no longer pay excise tax upon removal of the imported Jet A-1 fuel from its refinery.[48]

The receipts of imported Jet A-1 fuel at the Tabangao Refinery, as well as the withdrawals therefrom, are recorded and summarized in the Official Registry Book (ORB), which the ROOP and a representative of petitioner jointly signed.[49]

The imported Jet A-1 fuel withdrawn from the Tabangao Refinery are transferred via pipeline to petitioner's installation in Pandacan, Manila. The Pandacan installation serves only as intermediate storage of fuel, which are eventually transferred to either the Joint Oil Company Aviation Storage Plant (JOCASP) located at the Ninoy Aquino International Airport (NAIA), or United Parcel Services (UPS) at the Diosdado Macapagal International Airport in Clark, Pampanga.[50]

The imported Jet A-1 fuel are stored in bonded storage tanks in Pandacan. These bonded storage tanks are covered by a permit issued by the Bureau of Internal Revenue (BIR) allowing petitioner to maintain these

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[43] Exhibit "N", Docket – Vol. 2, pp. 704 to 707.
[44] Exhibit "H", Docket – Vol. 1, pp. 113 to 118.
[45] Exhibit "G", Docket – Vol. 1, pp. 157 to 164.
[46] Exhibit "S", Docket – Vol. 1, pp. 207 to 210.
[47] Exhibit "H", Docket – Vol. 1, p. 117.
[48] Exhibit "H", Docket – Vol. 1, pp. 117 to 118.
[49] TSN, October 6, 2010, pp. 14 to 16.
[50] Exhibit "N", Docket – Vol. 2, p. 705.

bonded storage tanks at the Pandacan installation, as well as in JOCASP Depot in NAIA, for the purpose of storing Jet A-1 fuel which will be sold to international carriers of Philippine or foreign registry for their consumption outside the Philippines.[51]

Petitioner has likewise been issued by the BIR a special permit to sell and deliver tax-exempt Jet A-1 fuel to UPS in Clark, Pampanga.[52]

There are instances where petitioner is allowed to withdraw locally produced Jet A-1 fuel without prepayment of taxes provided that the stocks are removed for delivery to those bonded storage tanks. In order to maximize the use of the tank capacity, petitioner has also been issued commingling permits by the BIR allowing the commingling of tax-free (*e.g.*, locally produced Jet A-1 fuel for delivery to tax-exempt international air carriers) and tax-paid (*e.g.*, imported Jet A-1 fuel) stocks in their bonded storage tanks.[53]

Before the locally produced and imported Jet A-1 fuel are removed from the Pandacan Depot, another set of WCs are prepared and signed by an ROOP indicating therein the volume of Jet A-1 fuel removed, their destination, and whether the Jet A-1 fuel are "tax-free" or "tax-paid" removals. Such WCs are summarized and recorded in the ORB, which is jointly signed by petitioner's authorized representative and the ROOP.[54]

The imported and locally produced Jet A-1 fuel withdrawn are delivered via lorries/tank trucks and are commingled and stored in bonded storage tanks at the JOCASP or UPS Clark to await sale and delivery to international and domestic carriers.[55]

Upon receipt of Jet A-1 fuel from the Pandacan installation, JOCASP prepares an ORB and a Liquidation Report to record the receipt and the eventual withdrawal of stocks for delivery to customers. When Jet A-1 fuel are removed from JOCASP, for instance, for delivery to the customers, a WC is prepared and signed by an ROOP indicating therein the volume of Jet A-1 fuel removed, their destination, and whether the Jet A-1 fuel is "tax-exempt", such as when it is to be delivered to international air carrier for consumption outside the country, or the amount of tax due, in case it is delivered to a domestic air carrier.[56]

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[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Exhibit "N", Docket – Vol. 1, p. 706; Exhibit "G", Docket – Vol. 1, p. 162.
[55] Exhibit "S", Docket – Vol. 1, p. 208.
[56] *Id.*

From JOCASP or UPS Clark, Jet A-1 fuel is delivered to international or domestic air carriers via specialized vehicle which pumps the Jet A-1 fuel directly into the fuselage of the air carrier. The specialized vehicle is equipped with a meter that determines the volume of Jet A-1 fuel delivered to the air carrier.[57]

Upon delivery of Jet A-1 fuel, petitioner presents to the authorized representative of the customer/air carrier a document called "Aviation Service Return" wherein the customer acknowledges receipt of the delivery and the corresponding volume of Jet A-1 fuel.

In support of the aforementioned *Judicial Affidavits*, petitioner submitted, among others, documents such as *Permit No. LTAD II-(P)-028-03-06-009095* dated March 17, 2006,[58] *BIR Letter* dated August 4, 1998 granting petitioner Permit to Maintain Bonded Storage Tanks situated at Pandacan Terminal and JOCASP Depot in NAIA,[59] *BIR Letter* dated December 9, 2005 approving the renewal of petitioner's permit to sell and deliver Jet A-1 fuel to UPS in Clark, Pampanga,[60] certified true copy of *Commingling Permit No. LTADII-(P)-008-01-06-008633* dated January 23, 2006,[61] certified true copy of *Commingling Permit No. LTADII-(P)-008-03-06-008965* dated March 7, 2006,[62] *WCs*,[63] *ORB*;[64] and *ASRs*.[65]

From the foregoing, the Court finds that petitioner presented sufficient proof of its compliance with the ***first*** requirement.

<u>*Second requirement:*</u> *Petitioner proved that the imported Jet A-1 fuel were sold to international air carriers of foreign or Philippine registry duly authorized to operate international flights.*

Anent the ***second*** requirement, petitioner complied therewith.

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[57] *Id.*
[58] Exhibit "I", Docket – Vol. 2, pp. 694 to 695.
[59] Exhibit "I-1", Docket – Vol. 2, p. 696 to 698.
[60] Exhibit "I-2", Docket – Vol. 2, p.699
[61] Exhibit "BBB", Docket – Vol. 3, pp. 1208 to 1209.
[62] Exhibit "BBB-1", Docket – Vol. 3, pp. 1210 to 1211.
[63] Exhibits "F', "F-1" to "F-8", Docket – Vol. 2, pp. 685 to 693; Exhibits "U-1" to "U-683", FOE Folders.
[64] Exhibits "J", "P", "AAA" and "AAA-1", Docket – Vol. 2, pp. 700, 720, 1206 and 1207; Exhibits "EE-1" to "EE-42", FOE Folders.
[65] Exhibits "V-1" to "V-925; "CC-1" to "CC-294", FOE Folders.

Petitioner presented the *Certification* issued by the Civil Aviation Authority of the Philippines (CAAP) dated December 5, 2008,[66] which confirms the country of registration of the aircraft operators listed therein, subject of the instant claim.

Petitioner likewise presented the *Certification* from the Civil Aeronautics Board (CAB) dated June 29, 2009,[67] that shows that the international air carriers of foreign registry listed therein, to which the Jet A-1 fuel subject of the case were sold, have been issued Foreign Air Carrier's Permits (FACPs), which authorized them to operate international flights only, for a specific period, including, but not limited to, the years 2006 to 2009. With regard to the Philippine-registered air carriers, the *Certification*[68] from the CAB dated November 6, 2008 proves that petitioner's customer, Philippine Airlines (PAL), a domestic airline with international operation, had been issued an FACP allowing PAL to operate scheduled international air services for the year 2006.

Summarized below are the international air carriers, with their respective countries of registration, with FACPs to operate international flights pursuant to the *CAAP Certification* dated December 5, 2008 and *CAB Certification* dated June 19, 2009:

Table V – Summary of International Air Carriers with FACPs

International Air Carrier	Aircraft Registration No.	Country of Registration
1. Air Niugini	P2-ANG	Papua New Guinea
2. Asiana Airlines, Inc.	HL-7507, HL-7731	Republic of Korea
3. China Airlines, Limited	B 18301, B 18302, B 18303, B 18307, B 18501, B 18573, B 18576, B 18601, B 18605, B 18606, B 18607, B 18608, B 18609, B 18610, B 18612, B 18615, B 18616, B 18617, B 18702, B 18703, B 18707, B 18708, B 18709, B 18711, B 18715, B 18718, B 18802, B 18805, B 18806, B 18807, B 18851, B-18302, B-18308, B-18351, B-18501, B-18573, B-18605, B-18607, B-18609, B-18610, B-18615, B-18616, B-18617, B-18701, B-18719, B-18851	China (including Hong Kong SAR and Macao SAR)
4. China Southern Airlines	B 2346, B 2366, B 2367, B 2374, B 2391, B 2393 B 2395, B 2396, B 2459	China (including Hong Kong SAR and Macao SAR)
5. Japan Airlines Co. Ltd.	JA 601J, JA 6045, JA 606J, JA 80163, JA 8080, JA 8080, JA 8125, JA 812J,	Japan

[66] Exhibit "JJ", FOE Folder.
[67] Exhibits "LL-1", FOE Folder.
[68] Exhibit "KK", FOE Folder.

Table V – Summary of International Air Carriers with FACPs

International Air Carrier	Aircraft Registration No.	Country of Registration
	JA 8131, JA 8141, JA 8150, JA 8155, JA 8162, JA 8163, JA 8166, JA 8173, JA 8177, JA 8178, JA 8183, JA 8185, JA 8189, JA 8980, JA 8987,	
6. Jet Star Aisa Airways Pte. Ltd.	9V-JSA, 9V-JSB, 9V-JSC, 9V-JSD	Singapore
7. Korean Airlines	HL-7400, HL-7402, HL-7403, HL-7404, HL-7407, HL-7412, HL-7434, HL-7439, HL-7449, HL-7482, HL-7483, HL-7484, HL-7487, HL-7489, HL-7490, HL-7491, HL-7492, HL-7493, HL-7494, HL-7497, HL-7498, HL-7532, HL-7533, HL-7534, HL-7573, HL-7600, ROKAF-006, ROKAF-05 183	Republic of Korea Republic of Korea/Airforce
8. Malaysian Airline System Berhad	9K-MKD, 9M MKG, 9M MRC, 9M MRK, 9M-MKA, 9M-MKD, 9M-MKE, 9M-MKF, 9M-MKH, 9M-MKJ, 9M-MKQ, 9M-MKS, 9M-MMA, 9M-MMD, 9M-MMH, 9M-MMI, 9M-MMK, 9M-MML, 9M-MMM, 9M- MMN, 9M-MMO, 9M-MMQ, 9M-MMS, 9M-MMT, 9M-MMV, 9M-MMW, 9M-MMX, 9M-MMY, 9M-MMZ, 9M-MQA, 9M-MQE, 9M-MQF, 9M-MQG, 9M-MQH, 9M-MQJ, 9M-MQM, 9M-MQN, 9M-MQO	Kuwait Malaysia
9. Nippon Cargo Airlines	JA-8167, JA-8181, JA-8182, JA-8194	Japan
10. Qantas Airways, Ltd.	VH-OGB, VH-OGC, VH-OGH, VH-OGM, VH-OGN, VH-OGO, VH-OGP, VH-OGQ, VH-OGR, VH-OGS, VH-OGT, VH-OGU	Australia
11. Thai Airways Int'l Public Co., Ltd.	HS-TJA, HS-TJB, HS-TJC, HS-TJD, HS-TJF, HS-TJH, HS-TKB, HS-TKC, HS-TKE	Thailand
12. United Parcel Service Company	N 307 UP, N 323 UP, N 462 UP, N 250 UP, N 251 UP, N 252 UP, N 255 UP, N 256 UP, N 271 UP, N 274 UP,	United States

Table V – Summary of International Air Carriers with FACPs

International Air Carrier	Aircraft Registration No.	Country of Registration
	N 277 UP, N 278 UP, N 279 UP, N 281 UP, N 301 UP, N 302 UP, N 303 UP, N 307 UP, N 308 UP, N 310 UP N 311 UP, N 312 UP, N 313 UP, N 314 UP, N 316 UP, N 317 UP, N 320 UP, N 323 UP, N 326 UP, N 329 UP, N 332 UP, N 334 UP, N 376 UP, N 446 UP, N 453 UP, N 455 UP, N 461 UP, N 462 UP, N 463 UP, N 466 UP, N-316	
	B 5053, B 5059	China (including Hong Kong SAR and Macao SAR)
13. Philippine Airlines (domestic airline with international operation)	F-OHPM, F-OHZT, F-DHPK, F-DHZP, F-DHZQ, F-DHZR, F-DHZS, F-DHZT, F-OHFL, F-OHPJ, F-OHPK, F-OHPL, F-OHPM, F-OHPN, F-OHZD, F-OHZM, F-OHZN, F-OHZO, F-OHZP, F-OHZQ, F-OHZR, F-OHZS, F-OHZT, F-OZHO, F-OZHS	France
	EICVN, EICVO	Ireland
	G-WWBB	United Kingdom
	N751PR, N752PR, N753PR, N754PR	United States
	RP-C 3224, RP-C 3228, RP-C 3221, RP-C 3223, RP-C 3224, RP-C 3227, RP-C 3228, RP-C 3229, RP-C 3230, RP-C 3231, RP-C 4007, RP-C 4008, RP-C 8168	Philippines

Accordingly, only the excise taxes on imported Jet A-1 fuel sold to the above airlines with valid FACP may be allowed for refund or issuance of a TCC of the erroneously paid excise taxes.

<u>Third requirement</u>: Petitioner proved that the imported Jet A-1 fuel were used or consumed outside the Philippines except for 409,070 liters of imported Jet A-1 fuel.

As to the ***third*** requirement, petitioner partially complied therewith.

Petitioner submitted ASRs[69] which indicate the details of the Jet A-1 fuel deliveries made by petitioner to international air carriers, including the route of the international air carriers, the origin and destination of the international air carriers named therein (whether of foreign or Philippine registry), to prove that the imported Jet A-1 fuel sold was consumed outside the Philippines.

However, the Court found that 91,723 liters of imported Jet A-1 fuel were purportedly sold to United Parcel Services with Aircraft Registration RP-C5353, but which aircraft was registered under Pacific East Asia Cargo Airlines, Inc. (Pacific), an aircraft operator with Philippine registry, and not under United Parcel Services.[70] Considering that Pacific was not included in the lists with FACP for the year 2006 per the *CAB Certifications* dated November 6, 2008 and June 29, 2009,[71] the amount of **₱336,623.41** representing excise tax payments on the 91,723 liters of imported Jet A-1 fuel delivered to Pacific must be denied, viz.:

Table VI – Sales of Jet A-1 Fuel to air carrier without FACP

Exhibit No.	ASR No.	No. of Liters
"CC-15"	151429	19,141
"CC-20"	151438	14,410
"CC-231"	151797	18,720
"CC-245"	168013	20,052
"CC-261"	168035	19,400
Total Liters		**91,723**
Multiplied by: Excise tax rate		₱3.67
Total Disallowed Excise Tax		**₱ 336,623.41**

Petitioner's claim shall be further reduced by **₱1,465,603.49** representing the excise tax payments on 399,347 liters of Jet A-1 fuel which should be disallowed for the following reasons:

[69] Exhibits "V-1" to "V-925; "CC-1" to "CC-294", FOE Folders.
[70] *CAAP Certification* dated December 5, 2008, Exhibit "JJ", p. 9, FOE Folder.
[71] Exhibits "KK" and "LL-1", FOE Folder.

Table VII – Sales of Jet A-1 Fuel not properly supported by ASRs

ICPA Summary	International Air Carrier	ASR		Volume in Liters [A]	Amount of Excise Taxes Paid [A] * ₱3.67
Exhibit No.		Exhibit No.	Number		
Destination not indicated in the supporting ASR					
"T-1" (p. 2)	Asiana Airlines	"V-46"	152448	13,150	₱ 48,260.50
"T-1" (p. 4)	China Airline	"V-152"	152471	6,350	23,304.50
"T-1" (p. 5)	China Airline	"V-184"	152769	5,880	21,579.60
"T-1" (p. 19)	PAL – International	"V-719"	152537	36,960	135,643.20
"T-1" (p. 21)	PAL – International	"V-829"	152838	15,170	55,673.90
			Sub-total	**77,510**	**₱ 284,461.70**
ASR cannot be found from the records					
"T-1" (p. 1)	Asiana Airlines	"V-98"	152045	8,720	₱ 32,002.40
"T-1" (p. 10)	Korean Airlines	"V-387"	152408	18,890	69,326.30
"T-1" (p. 11)	Korean Airlines	"V-429"	152710	20,000	73,400.00
"T-1" (p. 11)	Korean Airlines	"V-433"	152754	28,670	105,218.90
"T-1" (p. 15)	PAL – International	"V-588"	152120	11,370	41,727.90
"T-1", p. 15	PAL – International	"V-589"	152122	19,230	70,574.10
"T-1" (p. 15)	PAL – International	"V-590"	152123	12,800	46,976.00
"T-1" (p. 15)	PAL – International	"V-591"	152124	15,390	56,481.30
"T-1" (p. 15)	PAL – International	"V-592"	152126	27,280	100,117.60
"T-1" (p. 15)	PAL – International	"V-593"	152129	28,617	105,024.39
"T-1" (p. 20)	PAL – International	"V-762"	152659	37,350	137,074.50
"T-1" (p. 23)	PAL – International	"V-883"	155022	57,750	211,942.50
"T-1" (p. 30)	United Parcel Services	"CC-246"	168014	19,070	69,986.90
"T-1" (p. 30)	United Parcel Services	"CC-252"	168024	16,700	61,289.00
			Sub-total	**321,837**	**₱1,181,141.79**
			Total	**399,347**	**₱1,465,603.49**

In fine, petitioner sufficiently proved that excise taxes in the reduced amount of **₱80,068,801.28** on 21,817,112 liters of Jet A-1 fuel directly imported by petitioner, and subsequently sold to tax-exempt international air carriers, were erroneously paid, and thus, refundable, pursuant to Sections 204 and 229 of the NIRC of 1997, as amended, computed as follows:

Table VIII – Computation of Refundable Excise Taxes

Particulars	Volume in Liters [A]	Excise Taxes Paid [A] * ₱3.67
Excise tax claim on sales of imported Jet A-1 fuel to international air carriers per *Petition for Review*	**24,974,294**	**₱ 91,655,658.98**
Less: Disallowances		
Excise taxes on sales of imported Jet A-1 fuel which were sourced from local purchases from Chevron *[Table II]*	2,506,072	9,197,284.24
Excise taxes from locally-sourced Jet A-1 fuel not part of the fuel importations for which excise taxes were paid and are subject of the present refund *[Table IV]*	140,002	513,807.34
Excise taxes on sales without supporting ASR urn and/or Sales Invoice *[Table IV]*	20,038	73,539.46
Excise taxes on sales to air carrier without FACP *[Table VI]*	91,723	336,623.41
Excise taxes on sales not properly supported with ASRs *[Table VII]*	399,347	1,465,603.49
Total disallowances	**3,157,182**	**11,586,857.94**
Volume/Amount of Refundable Excise Taxes	**21,817,112**	**₱ 80,068,801.04**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE**, in favor of petitioner, in the reduced amount of **₱80,068,801.04,** representing excise taxes paid by petitioner on Jet A-1 fuel sold to tax-exempt international air carriers from February to April 2006.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

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

ROMAN G. DEL ROSARIO
Presiding Justice