REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, *Petitioner,*	**CTA Case No. 10502** Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 23 2024 2:50 p.m.

x - x

DECISION

MANAHAN, *J.*:

THE CASE

In this *Petition for Review* filed by petitioner Pilipinas Shell Petroleum Corporation, petitioner seeks for the refund or issuance of a tax credit certificate in the total amount of ₱71,182,352.00, allegedly representing excise taxes paid by petitioner on imported Jet A-1 fuel that were sold and delivered to tax-exempt international air carriers, from April to May 2019.

THE PARTIES

Petitioner Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines[1] with office address at 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, 1635 Taguig City.[2]

---

[1] Exhibit "P-38", Docket – Vol. II, pp. 793 to 808.
[2] Par. 1, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 7 and 342, respectively.

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building located at Agham Road, Diliman, Quezon City.[3]

THE FACTS

On November 4, 2020, petitioner filed its letter-application for refund or tax credit dated September 14, 2020 and *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the Excise Large Taxpayers Audit Division II of the BIR,[4] seeking for the recovery of alleged excise taxes paid on Jet A-1 fuel imported in April 2019 which were sold to various international airlines for the period from April 9, 2019 to May 8, 2019, in the aggregate amount of ₱71,182,352.00, determined as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
Sales to international carriers of Philippine or foreign registry pursuant to Section 135 of the Tax Code	17,795,588	₱4.00 per liter	₱ 71,182,352.00

PROCEEDINGS BEFORE THIS COURT

On May 17, 2021, petitioner filed the present *Petition for Review*.[5] The case was initially raffled to this Court's First Division.

On October 26, 2021, respondent filed his *Answer*,[6] where he raised the following special and affirmative defenses: (1) Section 135 of the Tax Code does not automatically exempt from excise tax petroleum products sold to international carriers and exempt entities and agencies; (2) There is no provision in the Tax Code which provides that petitioner is entitled to a refund or the issuance of tax credit certificate for excise taxes paid on imported Jet A-1 fuel sold to international air carriers; and (3) Petitioner is clearly asking for a refund or

---

[3] Par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 7 and 342, respectively.
[4] Exhibits "P-37" to "P-37-1", BIR Records, pp. 180 to 182, and 174, respectively.
[5] Docket – Vol. I, pp. 7 to 34.
[6] Docket – Vol. I, pp. 342 to 348.

issuance of a tax credit certificate which the law itself does not clearly provide.

On March 22, 2022, respondent transmitted the *BIR Records* of the case, consisting of 190 pages in one (1) folder.[7]

The Pre-Trial Conference was initially set on January 27, 2022,[8] but was later reset on April 7, 2022,[9] where respondent's counsel manifested that he is waiving the right to present evidence in this case. Prior thereto, the *Pre-Trial Brief for Petitioner* was filed on March 11, 2022,[10] while *Respondent's Pre-Trial Brief* was filed on March 22, 2022.[11]

On April 27, 2022, petitioner filed a *Manifestation [On Non-Filing of Joint Stipulation of Facts and Issues]*,[12] stating, among others, that it failed to enter into admissions and stipulation of facts with respondent, which was noted by the Court in the Resolution dated May 6, 2022.[13] On May 26, 2022, the Court issued the Pre-Trial Order.[14]

During trial, petitioner presented the following witnesses: (1) Ms. Anna Beatriz Vergel de Dios,[15] petitioner's Import/Additives Scheduler; (2) Mr. Matias D. Aquiatan, Jr.,[16] petitioner's Country Operations Manager; (3) Mr. Jonathan Juanillo,[17] petitioner's Terminal Operations Manager at the Tabangao Depot; (4) Atty. Farida Nimfa G. Dimailig,[18] petitioner's Country Tax Manager; (5) Ms. Berenice Angelique L. Flores,[19] petitioner's Tax Advisor; (6) Ms. Maria Luz S.

---

[7] *Compliance* dated March 21, 2022, Docket – Vol. I, pp. 381 to 383.
[8] Notice of Pre-Trial Conference dated November 25, 2021, Docket – Vol. I, pp. 350 to 352.
[9] Notice of Resetting dated February 18, 2022, Docket – Vol. I, p. 356; Minutes of the hearing held on, and Order dated, April 7, 2022, Docket – Vol. I, pp. 394 to 396 and 399 to 399-B, respectively.
[10] Docket – Vol. I, pp. 359 to 376.
[11] Docket – Vol. I, pp. 385 to 388.
[12] Docket – Vol. I, pp. 470 to 486.
[13] Docket – Vol. I, p. 489.
[14] Docket – Vol. II, pp. 533 to 556.
[15] Exhibit "P-44", Docket – Vol. I, pp. 60 to 75; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket – Vol. II, pp. 596 to 603.
[16] Exhibit "P-45", Docket – Vol. I, pp. 107 to 121; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket – Vol. II, pp. 596 to 603.
[17] Exhibit "P-46", Docket – Vol. II, pp. 570 to 575; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket – Vol. II, pp. 596 to 603.
[18] Exhibits "P-49" and "P-50", Docket – Vol. I, pp. 154 to 161 and Docket – Vol. II, pp. 579 to 582, respectively; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 645 to 654.
[19] Exhibit "P-47", Docket – Vol. I, pp. 297 to 309; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 645 to 654.

Verdejo,[20] Head Librarian at the Carlos P. Romulo Library of the Department of Foreign Affairs – Foreign Service Institute; and (7) Ms. Madonna Mia S. Dayego,[21] the Court-commissioned independent certified public accountant (ICPA).[22]

The *Report* of the ICPA was submitted on July 5, 2022.[23]

On August 26, 2022, petitioner filed an *Omnibus Motion For Leave of Court: I. to Reopen the Case for Presentation of Additional Evidence; II. to Admit the Supplemental Judicial Affidavit of Atty. Farida Nimfa G. Dimailig; and III. to Defer the Filing [of] Formal Offer of Evidence.*[24] Respondent failed to file his comment thereto.[25] In the Resolution dated December 1, 2022,[26] the Court granted the *Omnibus Motion For Leave of Court: I. to Reopen the Case for Presentation of Additional Evidence; II. to Admit the Supplemental Judicial Affidavit of Atty. Farida Nimfa G. Dimailig,* while the *[Motion] III. to Defer the Filing [of] Formal Offer of Evidence* was deemed moot. Thus, Atty. Farida Nimfa G. Dimailig was recalled to testify again.[27]

On August 30, 2022, petitioner filed its *Formal Offer of Evidence Ad Cautelam with Manifestation [On Omnibus Motion For Leave of Court dated August 26, 2022 and filed on even date],*[28] to which respondent filed a *Comment (Re: Formal Offer of Evidence)* on October 4, 2022.[29] Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence with Manifestation* on March 13, 2023;[30] however, respondent failed to file

---

[20] Exhibit "P-48", Docket – Vol. I, pp. 406 to 412; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 645 to 654.
[21] Exhibit "P-70", Docket – Vol. II, pp. 638 to 644; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 645 to 654.
[22] *Oath of Commission* dated May 31, 2022, Docket – Vol. II, p. 563; Minutes of the hearing held on, and Order dated May 31, 2022, Docket – Vol. II, pp. 560 to 562 and 564 to 565, respectively.
[23] Exhibit "P-69", Docket – Vol. II, pp. 607 to 629.
[24] Docket – Vol. II, pp. 665 to 670.
[25] Records Verification dated October 28, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 921.
[26] Docket – Vol. II, pp. 923 to 928.
[27] Exhibit "P-71", Docket – Vol. II, pp. 671 to 674; Minutes of the hearing held on, and Order dated, March 7, 2023, Docket– Vol. II, pp. 941 to 944.
[28] Docket – Vol. II, pp. 679 to 710.
[29] Docket – Vol. II, pp. 912 to 914.
[30] Docket – Vol. II, pp. 946 to 952.

comment thereto.[31] In the Resolution dated June 6, 2023,[32] the Court admitted all of petitioner's offered exhibits.

In the meantime, the present case was transferred to the Third Division of this Court pursuant to the Notice of Resolution dated May 31, 2023.[33]

On July 14, 2023, respondent filed his *Memorandum*,[34] while the *Memorandum for Petitioner* was submitted on July 26, 2023.[35]

The present case was considered submitted for decision on September 22, 2023.[36]

THE ISSUE

The parties submitted this lone issue for the Court's resolution:

> "Whether or not petitioner is entitled to the recovery of excise taxes in the amount of ₱71,182,352.00 paid in April 2019 on imported Jet A-1 fuel sold to international air carriers for use or consumption outside the Philippines during the period from April to May 2019."[37]

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

Governing provisions for refund claims.

---

[31] Records Verification dated March 22, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 953.
[32] Docket – Vol. II, pp. 957 to 967.
[33] Docket – Vol. II, p. 955.
[34] Docket – Vol. II, pp. 979 to 986.
[35] Docket – Vol. II, pp. 988 to 1018.
[36] Resolution dated September 22, 2023, Docket – Vol. II, pp. 1020 to 1022.
[37] Par. IV. Issue To Be Tried or Resolved, Pre-Trial Order dated May 26, 2022, Docket – Vol. II, p. 541; Refer to Minutes of the hearing held on, and Order dated, April 7, 2022, Docket – Vol. I, pp. 394 to 396 and 399 to 399-B, respectively; Par. II, Stipulation of Issues, petitioner's *Manifestation [On Non-Filing of Joint Stipulation of Facts and Issues]*, filed on April 27, 2022, Docket – Vol. I, p. 471.

Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended, respectively 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 added)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

The above-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[38]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[39] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[40]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it timely filed its refund claim, it must likewise prove that the subject excise tax paid is erroneous, illegal, or wrongful.

Petitioner timely filed its administrative and judicial claims.

For excise tax on imported articles, in general, the same is paid by the owner or importer upon importation and prior to removal thereof from the customshouse as provided in Sections 129 and 131 of the 1997 NIRC, 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 to things imported**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

---

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

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

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

xxx xxx xxx."*(Emphasis 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 customshouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

xxx xxx xxx."*(Emphasis added)*

Based on the foregoing provisions, the two (2)-year period prescribed in Sections 204(C) and 229 of the 1997 NIRC, as amended, should be reckoned from the date of actual payment of excise taxes.

Here, petitioner paid the excise taxes on its Jet A-1 fuel importations on April 5, 2019,[41] April 17, 2019,[42] and May 28, 2019, respectively.[43] Counting two (2) years from the earliest payment, *i.e.*, April 5, 2019, petitioner had until April 5, 2021, within which to file its administrative and judicial claims for refund. In this case, petitioner's administrative claim for refund was filed on November 4, 2020.[44] Thus, the administrative claim was filed within the two (2)-year prescriptive period.

On the other hand, the judicial claim for refund was only filed before this Court on May 17, 2021.[45]

In this regard, the Supreme Court issued the following Administrative Circulars (ACs) that extended or suspended the filing periods for pleadings or court submissions in the National Capital Region until the physical reopening of the relevant court, by reason of the COVID-19 pandemic:

AC No.	Date Issued	Subject	Content
15-2021	April 3, 2021	RE: EXTENSION OF THE PHYSICAL	"Likewise, the **filing periods** of pleadings

[41] Exhibit "P-5", Docket – Vol. II, p. 715.
[42] Exhibit "P-15", Docket – Vol. II, p. 730.
[43] Exhibits "P-5-1" and "P-10", Docket – Vol. II, pp. 716, and 724 to 725, respectively.
[44] Exhibits "P-37" to "P-37-1", BIR Records, pp. 180 to 182, and 174, respectively.
[45] Docket – Vol. I, pp. 7 to 34.

		CLOSURE OF COURTS AND THE FILING PERIODS FOR PLEADINGS AND OTHER COURT SUBMISSIONS IN LIGHT OF THE FURTHER EXTENSION OF THE ENHANCED COMMUNITY QUARANTINE FROM APRIL 5 TO APRIL 11, 2021.	and other court submissions that fell due or would fall due <u>during the period beginning from **March 29** to **April 11, 2021**</u> are hereby **EXTENDED** for seven (7) calendar days, counted from April 12, 2021. xxx"
21-2021	April 10, 2021	RE: EXTENSION OF PHYSICAL CLOSURE OF COURT	"Considering the unabated rise of COVID-19 cases, the requests of the judges and court personnel, and upon the concurrence of the members of the Court en banc, ALL the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain physically closed until 18 April 2021. They may be reached through their hotlines and email addresses as posted in the Supreme Court website. xxx xxx xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
22-2021	April 14, 2021	RE: PHYSICAL CLOSURE OF COURTS IN ENHANCED COMMUNITY QUARANTINE AND MODIFIED ENHANCED COMMUNITY QUARANTINE AREAS	"Considering that the National Capital Region, and the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City are under Modified Enhanced Community Quarantine (MECQ) until 30 April 2021, the physical closure of courts in the said areas

am

			is likewise extended to 30 April 2021. xxx xxx xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
29-2021	April 30, 2021	RE: WORK ARRANGEMENTS IN COURTS ON 3 – 14 MAY 2021	"Considering that the National Capital Region, the provinces of Abra, Bulacan, Cavite, Laguna, Quirino, and Rizal, and Santiago City, Isabela, continue to be under Modified Enhanced Community Quarantine (MECQ) until 14 May 2021, **ALL** first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall continue to be physically closed until 14 May 2021. xxx xxx xxx The time for filing and service of pleadings and motions during this period in these areas is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
33-2021	May 14, 2021	RE: COURT OPERATIONS STARTING 17 MAY 2021	"Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal, together with some provinces and cities, have been placed under General Community Quarantine (GCQ) starting 15 May until 31 May 2021, all first and

			second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be physically opened with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), beginning 17 May 2021 until further notice."

Based on the foregoing ACs, the reopening of the courts resumed on May 17, 2021, and petitioner had seven (7) days therefrom, or until May 24, 2021, within which to file its *Petition for Review.* Considering that petitioner filed its judicial claim for refund on May 17, 2021, the same is timely filed.

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

Section 135 of the 1997 NIRC, as amended, reads:

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

(a) **International carriers of Philippine or foreign registry on their use or consumption outside the Philippines**: *Provided,* That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) **Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption**: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) **Entities which are by law exempt from direct and indirect taxes**." *(Emphases and underscoring added)*

A plain reading of the foregoing provision reveals that the law did not distinguish between locally-manufactured or imported petroleum products, in relation to excise tax exemption. Where the law does not distinguish, courts should not distinguish.[46] In other words, the taxpayer may claim exemption under Section 135 of the 1997 NIRC, as amended, regardless of whether the subject Jet A-1 fuel was locally-manufactured or imported, provided that the taxpayer satisfies the conditions set forth therein.

In addition, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation ("2014 Pilipinas Shell* case"*)*,[47] which involved the same parties, the Supreme Court categorically declared that petitioner, as the statutory taxpayer who paid the excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid pursuant to Section 135 of the 1997 NIRC, as amended, to wit:

> "xxx We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC**." *(Emphasis added)*

Moreover, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue ("2015 Chevron* case"*)*,[48] the exemption granted under Section 135 of the 1997 NIRC, as amended, was discussed as follows:

---

[46] *Manila International Airport Authority vs. Court of Appeals, et al.*, G.R. No. 155650, July 20, 2006.
[47] G.R. No. 188497 (Resolution), February 19, 2014.
[48] G.R. No. 210836, September 1, 2015.

> "Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous; and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products**." *(Emphases added)*

Although the exemption in *2015 Chevron* case was premised on Section 135(C) of the 1997 NIRC, as amended, while the *2014 Pilipinas Shell* case was premised on Section 135(A) of the same law, the Supreme Court held in *2015 Chevron* case that "[n]otwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the 1997 NIRC, as amended, the basic tax principle applicable was the same in both cases – that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the 1997 NIRC, as amended, must be construed in favor of the petroleum products on which the excise tax was initially imposed."

Furthermore, in the *2014 Pilipinas Shell* case, the Supreme Court held that "exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent." In contrast, the Supreme Court held in the *Chevron* case that "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."

Notably, in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[49] the Supreme Court elucidated on certain conceptual distinctions in the *2014 Pilipinas Shell* case vis-à-vis the Court's subsequent pronouncements in the *2015 Chevron* case, holding that Section 135 confers an impersonal tax exemption, to wit:

---

[49] G.R. No. 211303, June 15, 2021.

"II

By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a specific rate or *ad valorem*. As case law characterizes, **an excise tax is not a tax on the exercise of a privilege, but rather a levy on certain articles which are manufactured or imported for domestic consumption. It is equally settled that the accrual or liability to pay the same arises immediately upon importation or as soon as the goods come into existence when manufactured**.

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

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

On the other, **indirect taxes** are 'those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered**.' As jurisprudence explains, 'this **shifting process**, otherwise known as '**passing on**,' is largely a **contractual affair** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the **manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the **owner or importer** (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law**. To this end, **the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**.'

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

III.

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

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

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

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

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

xxx xxx xxx

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

must be sold to make the excise tax exemption operative.'

IV.

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

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

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

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

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

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

Thus, the tax exemption under Section 135 of the 1997 NIRC, as amended, applies regardless of whether the Jet A-1 fuel was manufactured, produced, or imported by the statutory taxpayer (*i.e.*, manufacturer or producer or owner or importer). However, the status of the petroleum products as exempt from excise taxes would be confirmed only upon their sale to any of the entities enumerated under Section 135 of the 1997 NIRC, as amended.

Moreover, with respect to the availability of the refund remedy, the Supreme Court explained that the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).

Applying the foregoing to the instant case, the subject Jet A-1 fuel importations are tax exempt upon its sale to various international air carriers. Consequently, petitioner's payment of excise taxes on its imported petroleum products became erroneously or illegally collected. Hence, these are proper subjects of a claim for refund or credit under Sections 204 and 229 of the 1997 NIRC, as amended.

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

Records show that petitioner has its own refinery in Tabangao, Batangas, which generally produces Jet A-1 fuel from crude refining process.[50] Meanwhile, petitioner resorts to occasional importation of finished Jet A-1 fuel in instances where the refinery shuts down or if the demand for Jet A-1 fuel fails to meet the projected supply of locally manufactured Jet A-1 fuel.[51]

Petitioner follows a specific process and document flow on its of Jet A-1 fuel importations, as follows: (1) requisition of goods and importation; (2) arrival and discharge of imported goods; and (3) payment of taxes and import duties.[52]

In relation to the subject case, petitioner had two (2) importations of Jet A-1 fuel in April 2019 at the Batangas port.[53]

---

[50] Exhibit "P-44" (Q&A No. 10), Docket - Vol. I, pp. 62 to 63.
[51] Exhibit "P-44" (Q&A No. 11), Docket - Vol. I, p. 63.
[52] Exhibit "P-44" (Q&A No. 13), Docket – Vol. I, p. 63.
[53] Exhibit "P-44" (Q&A No. 47), Docket - Vol. I, p. 70.

1st importation:

The 1st importation was on April 5, 2019 for 8,324,660 liters of Jet A-1 fuel, which arrived at the Tabangao Refinery private port. The latter is located within the jurisdiction of the Port of Batangas based on the Certificate of Quantity Received (CQR).[54] This was declared under Bureau of Customs (BOC) Single Administrative Document (SAD) with Customs Reference C 5043 and shipped in the vessel, MT Everhard Schulte.[55] Petitioner paid excise taxes in the amount of ₱33,298,640.00.[56]

The importation of the said 8,324,660 liters of Jet A-1 fuel and the amount of excise taxes paid thereon were evidenced by the following documents, *viz.*:

a. Bill of Lading dated March 30, 2019 showing the quantity of 8,327,131 liters (@ 30°C) or its equivalent 8,318,388 liters (@ Obs. Temp);[57]
b. Load Port Survey Report (LPSR) dated April 3, 2019;[58]
c. Customs Invoice - Bulk Product dated April 1, 2019;[59]
d. BOC SAD with Customs Reference C 5043 dated April 4, 2019, with date stamped April 5, 2019, showing the quantity at 8,318,388 liters;[60]
e. Statement of Settlement of Duties and Taxes (SSDT) dated April 5, 2019;[61]
f. Authority To Release Imported Goods (ATRIG) dated April 4, 2019;[62]
g. CQR with date received on April 7, 2019, showing the quantity at air of 8,324,660 liters and its equivalent quantity at metric tons of 6,557,069 liters;[63]
h. Tax Invoice dated April 22, 2019;[64]
i. Assessment Notice with attached updated computation for additional taxes;[65]

---

[54] Exhibit "P-7", Docket – Vol. II, p. 718.
[55] Exhibit "P-4", Docket – Vol. II, p. 714.
[56] Exhibit "P-44" (Q&A No. 47), Docket – Vol. I, p. 70.
[57] Exhibit "P-1", Docket – Vol. II, p. 711.
[58] Exhibit "P-2", Docket – Vol. II, p. 712.
[59] Exhibit "P-3", Docket – Vol. II, p. 713.
[60] Exhibit "P-4", Docket – Vol. II, p. 714.
[61] Exhibit "P-5", Docket – Vol. II, p. 715.
[62] Exhibit "P-6", Docket – Vol. II, p. 717.
[63] Exhibit "P-7", Docket – Vol. II, p. 718.
[64] Exhibit "P-8", Docket – Vol. II, pp. 719 to 721.

j. BOC Official Receipt (OR) No. 01879220830 dated May 28, 2019;[66] and
k. Updated SSDT dated May 28, 2019.[67]

An examination of SAD with Customs Reference C 5043[68] as well as SSDT dated April 5, 2019[69] reveals that petitioner paid excise tax amounting to only ₱33,273,552.00 for 8,318,388 liters of Jet A-1 fuel for the 1st importation. However, an updated SSDT dated May 28, 2019[70] and the Assessment Notice with attached updated computation of additional taxes[71] was submitted by petitioner, reflecting the amount of ₱33,298,640.00 as the payment for excise tax for 8,324,660 liters of imported Jet A-1. The difference of ₱25,088.00 (₱33,298,640.00 less ₱33,273,552.00) was included in the payment made to BOC under OR No. 01879220830 dated May 28, 2019 amounting to ₱3,025,679.00,[72] broken down as follows:

Value-added tax	₱ 3,000,591.00
Excise tax	25,088.00
Total Duties/Taxes	**₱ 3,025,679.00**[73]

2nd importation:

The 2nd importation was for 11,378,738 liters of Jet A-1 fuel, which arrived on April 15, 2019 at the Tabangao Refinery, which is likewise located within the jurisdiction of the Port of Batangas. This was declared under BOC SAD with Customs Reference C 5699 and shipped in the vessel, MT Ocean Venus.[74] Petitioner paid excise taxes in the amount of ₱45,514,952.00[75] in relation to this importation.

The importation of the said 11,378,738 liters of Jet A-1 fuel and the amount of excise taxes paid thereon were evidenced by the following documents, to wit:

---

[65] Exhibit "P-9", Docket – Vol. II, pp. 722 to 723.
[66] Exhibit "P-10", Docket – Vol. II, pp. 724 to 725.
[67] Exhibit "P-5-1", Docket – Vol. II, p. 716.
[68] Exhibit "P-4", Docket – Vol. II, p. 714.
[69] Exhibit "P-5", Docket – Vol. II, p. 715.
[70] Exhibit "P-5-1", Docket – Vol. II, p. 716.
[71] Exhibit "P-9", Docket – Vol. II, pp. 722 to 723.
[72] Exhibit "P-10", Docket – Vol. II, pp. 724 to 725.
[73] Exhibit "P-9", Docket – Vol. II, pp. 722 to 723.
[74] Exhibit "P-14", Docket – Vol. II, p. 729.
[75] Exhibit "P-44" (Q&A No. 47), Docket – Vol. I, p. 70.

a. Ocean Bill of Lading dated April 7, 2019 showing the quantity of 11,378,738 liters (@ OBSRD);[76]
b. LPSR dated April 7, 2019;[77]
c. Customs Invoice - Bulk Product dated April 8, 2019;[78]
d. BOC SAD with Customs Reference C 5699 dated April 15, 2019 showing the quantity at 11,378,738 liters;[79]
e. SSDT dated April 17, 2019;[80]
f. ATRIG dated April 15, 2019;[81]
g. CQR with date received on April 15, 2019, showing the quantity at air of 11,330,275 liters and its equivalent quantity at metric tons of 8,868,614 liters;[82]
h. Tax Invoice dated May 1, 2019;[83]
i. Assessment Notice;[84]
j. BOC OR No. 01879221325 dated June 25, 2019;[85] and
k. Updated SSDT dated May 28, 2019 with attached updated computation for additional taxes.[86]

A perusal of the SAD with Customs Reference C 5699,[87] as well as the Assessment Notice,[88] SSDT dated April 17, 2019,[89] and updated SSDT[90] reveals that petitioner paid excise tax amounting to ₱45,514,952.00 on its 2nd importation of Jet A-1 fuel.

Petitioner sufficiently proved that it had erroneously paid excise taxes on imported Jet A-1 fuel sold to international air carriers but only in the amount of ₱70,767,488.00.

---

76 Exhibit "P-11", Docket – Vol. II, p. 726.
77 Exhibit "P-12", Docket – Vol. II, p. 727.
78 Exhibit "P-13", Docket – Vol. II, p. 728.
79 Exhibit "P-14", Docket – Vol. II, p. 729.
80 Exhibit "P-15", Docket – Vol. II, p. 730.
81 Exhibit "P-16", Docket – Vol. II, p. 733.
82 Exhibit "P-17", Docket – Vol. II, p. 735.
83 Exhibit "P-18", Docket – Vol. II, pp. 736 to 738.
84 Exhibit "P-19", Docket – Vol. II, p. 739.
85 Exhibit "P-20", Docket – Vol. II, pp. 740 to 741.
86 Exhibit "P-15-1", Docket – Vol. II, pp. 731 to 732.
87 Exhibit "P-14", Docket – Vol. II, p. 729.
88 Exhibit "P-19", Docket – Vol. II, p. 739.
89 Exhibit "P-15", Docket – Vol. II, p. 730.
90 Exhibit "P-15-1", Docket – Vol. II, pp. 731 to 732.

For the period April to May 2019, petitioner allegedly sold excise tax-paid Jet A-1 from the 1st and 2nd importations to various international airlines for their use or consumption outside the Philippines, as follows:[91]

CUSTOMER	TOTAL VOLUME IN LITERS
Air China Ltd	674,309
Air Nuiguini Ltd	273,515
Airasia Berhad	474,954
Asiana Airlines Inc	834,627
China Airlines Ltd	531,466
China Eastern Airlines Co. Ltd.	413,122
China Southern Airlines Co. Ltd.	540,270
Deutsche Lufthansa AG	103,716
Federal Express Corp	389,766
Jetstar Asia Airways Pte Ltd	177,011
Scoot Tigerair Pte Ltd	86,955
Silkair Singapore Private Limited	236,313
Xiamen Airline Co Ltd	114,635
Cebu Air Inc	2,629,679
Philippine Airasia Inc	1,318,467
Philippine Airlines Inc	8,996,783
Total Aviation Sales (in Liters)	**17,795,588**
Excise Tax Rate	₱4.00/Liter
Total Excise Tax	**₱71,182,352.00**

Alleging that the international air carriers to which it sold imported Jet A-1 fuel are exempt from excise taxes under Section 135(a) of NIRC of 1997, petitioner seeks the recovery of excise taxes paid thereon in the amount of ₱71,182,352.00, as computed above.

In order for the excise tax exemption, *i.e.*, sale of petroleum products to an international air carrier, under Section 135(a) of the 1997 NIRC, as amended, to apply, petitioner must present the following:

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

[91] Par. 7, Statement of the Facts, *Petition for Review*, Docket – Vol. I, pp. 8-9.

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

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

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

As to the *first* requirement, petitioner presented the Certifications issued by the Civil Aviation Authority of the Philippines (CAAP) dated March 31, 2021[92] and February 22, 2022.[93] Later on, another Certificate dated August 12, 2022 was issued to correct some information due to typographical error[94] to confirm the countries of registry of the international air carriers to whom the petitioner sold and delivered Jet A-1 fuel, based on the aircraft registration code as provided by such international airline customers and as appearing in the Aviation Service Returns.[95]

As to petitioner's international air-carrier customers which are of Philippine registry, namely, Philippine Airlines, Inc., Cebu Air, Inc., and Philippines AirAsia, Inc., petitioner presented the Certification from the Civil Aeronautics Board (CAB) dated March 24, 2021[96] which certifies that:

"*a. Philippine Airlines, Inc. has been granted a franchise permit through Presidential Decree No. 1590 from June 11, 1978 to present,*
b. Cebu Air, Inc. has been granted a franchise permit through Republic Act No. 7151 (R.A. 7151), which was approved on August 30,

---

[92] Exhibit "P-40-1", Docket – Vol. II, pp. 809 to 820; Exhibit "P-62-5", USB.
[93] Exhibit "P-62-6", USB.
[94] Exhibit "P-40-2", Docket – Vol. II, pp. 675 to 676; Exhibit "P-71" (Q&A Nos. 5 to 7), Docket – Vol. II, pp. 672 to 673.
[95] Exhibit "P-50" (Q&A No. 5), Docket – Vol. II, p. 580.
[96] Exhibit "P-42", Docket – Vol. I, p. 287; Exhibit "P-62-4", USB.

> *1991, from the date of effectivity of R.A. 7151 to present; and*
>
> c. *Philippines AirAsia, Inc., through its predecessor Asian Spirit, Inc., has been granted a franchise th[r]ough Republic Act No. 9183 (R.A. 9183), which was approved on January 09, 2003.*
>
> *The said airlines are authorized to operate and maintain air transport services in the Philippines and between the Philippines and other countries, and that R.A. 9183, R.A. 7151 and P.D. 1590 authorized Philippines AirAsia, Inc., Cebu Air, Inc. and Philippine Airlines, Inc. to operate international flights from the date of effectivity of R.A. 7151 and P.D. 1590 to present, including the year 2019."*

Considering the said pieces of evidence, the Court finds that petitioner satisfied the first requirement.

Proof that the imported Jet A-1 fuel were used or consumed outside the Philippines

As to the *second* requirement, the CAB Certification dated March 24, 2021[97] shows that the international air carriers of foreign registry listed therein have been issued with Foreign Air Carrier's Permit (FACP), which authorized them to operate international flights only for a period covering, but not limited to, the year 2019. Furthermore, the Aviation Service Returns (ASRs)[98] submitted by petitioner, indicated the details of the Jet A-1 fuel deliveries made by petitioner to international air carriers, including the origin and destination of the international carriers. It can be seen from each of the ASRs that the route of the international air carrier named therein (whether of foreign or Philippine registry) is only between the Philippines and other country, thereby proving that the sold imported Jet A-1 fuel was used or consumed outside the Philippines.

The list of international air carriers which is authorized to operate international flights and its respective country of

---

[97] *Id.*
[98] Exhibits "P-68-1" to "P-68-961", USB.

registration as indicated in the CAB Certification[99] vis-à-vis CAAP Certifications[100] is shown below:

International Air Carrier	Aircraft Registration No.	Country of Registration
1. Air China Ltd.	B1909, B5167, B5170, B5179, B5236, B5312, B5326, B5328, B5901, B5906, B5912, B5913, B5916, B5919, B5946, B5947, B5948, B5956, B5957, B5977, B5978, B6075, B6076, B6080, B6091, B6092, B6101, B6113, B6117, B6503, B8383, B8385, B8386, B8579, B8689	China
2. Air Niugini Ltd.	P2PXC, P2PXD, P2PXV, P2PXW	Papua New Guinea
3. Air Asia Berhad	9MAFB, 9MAFC, 9MAFD, 9MAFE, 9MAFF, 9MAFV, 9MAFW, 9MAGA, 9MAGB, 9MAGC, 9MAGD, 9MAGE, 9MAGF, 9MAGG, 9MAGH, 9MAGI, 9MAGJ, 9MAGK, 9MAGL, 9MAGM, 9MAGN, 9MAGO, 9MAGP, 9MAGR, 9MAGS, 9MAGT, 9MAGU, 9MAGV, 9MAGW, 9MAGX, 9MAGY, 9MAGZ, 9MAHE, 9MAHL, 9MAHS, 9MAHV, 9MAHX, 9MAHY, 9MAHZ, 9MAIP, 9MAJA, 9MAJC, 9MAJD, 9MAJE, 9MAJG, 9MAJH, 9MAJI, 9MAJJ, 9MAJK, 9MAJN, 9MAJP, 9MAJS, 9MAJT, 9MAJW, 9MAJX, 9MAJY, 9MAJZ, 9MAQA, 9MAQB, 9MAQC, 9MAQF, 9MAQH, 9MAQM, 9MAQN, 9MAQP, 9MAQQ, 9MAQS, 9MAQZ, 9MNEO, 9MRAA, 9MRAB, 9MRAC, 9MRAD, 9MRAE, 9MRAG, 9MRAH, 9MRAI, 9MRAJ, 9MRAK, 9MRAL, 9MRAM, 9MRAO, 9MRAP, 9MRAQ, 9MRAR, 9MRAT, 9MVAA, 9MVAB, 9MVAD, 9MYAA, 9VAJG, AK585, 9MXBE, 9MXXA, 9MXXI, 9MXXP	Malaysia
4. Asiana Airlines, Inc.	HL7413, HL7415, HL7417, HL7418, HL7428, HL7579, HL7625, HL7626, HL7732, HL7736, HL7739, HL7740, HL7741, HL7746, HL7747, HL7754, HL7755, HL7756, HL7775, HL7791, HL7793, HL7794, HL8254, HL8258, HL8259, HL8284, HL8286, HL8293, HL8362	Republic of Korea
5. China Airlines, Ltd.	B15358, B18210, B18301, B18302, B18303, B18305, B18306, B18307, B18308, B18309, B18310, B18311,	China

[99] Exhibit "P-42", Docket – Vol. I, p. 287; Exhibit "P-62-4", USB.
[100] Exhibit "P-40-1", Docket – Vol. II, pp. 810 to 820; Exhibit "P-62-5", USB; Exhibit "P-62-6", USB; Exhibit "P-40-2", Docket – Vol. II, pp. 675 to 676.

	B18315, B18316, B18317, B18351, B18352, B18353, B18355, B18356, B18357, B18358, B18359, B18360, B18361, B18610, B18612, B18615, B18617, B18622, B186507, B18651, B18652, B18653, B18655, B18656, B18657, B18658, B18659, B18660, B18661, B18662, B18663, B18665, B18666, B18667, B18701, B18706, B18707, B18708, B18709, B18710, B18711, B18712, B18715, B18716, B18717, B18718, B18719, B18720, B18721, B18722, B18723, B18725, B8655	
6. China Eastern Airlines Co., Ltd.	B1033, B1041, B1049, B1066, B1073, B1211, B1520, B1525, B1607, B1615, B1640, B1679, B1680, B1700, B1701, B1736, B1748, B1781, B1782, B1835, B1860, B1861, B1916, B1917, B1950, B1952, B1953, B2207, B2208, B2290, B2335, B2336, B2337, B2338, B2413, B2419, B300P, B300Q, B300R, B3026, B302G, B302W, B303E, B304C, B304P, B5300, B5586, B5598, B5749, B5902, B5906, B5908, B5920, B5926, B5930, B5931, B5936, B5937, B5938, B5941, B5942, B5943, B5952, B5961, B5968, B5973, B5976, B6001, B6002, B6003, B6008, B6009, B6010, B6012, B6082, B6099, B6370, B6506, B6507, B6537, B6538, B6545, B6559, B6586, B6587, B6591, B6592, B6616, B6617, B6642, B6668, B6716, B6753, B6755, B6802, B6831, B6870, B6886, B6925, B6926, B6927, B6951, B7969, B8172, B8230, B8231, B8276, B8360, B8406, B8566, B8571, B8572, B8573, B8575, B8576, B8650, B8652, B8653, B8862, B8863, B8967, B8968, B8970, B8971, B8972, B9900, B9906, B9946, B9947,	China
7. China Southern Airlines Co., Ltd.	B1520, B1525, B1585, B1700, B1701, B1736, B1737, B1748, B1749, B1781, B1782, B1916, B1917, B1925, B1950, B1952, B1953, B1979, B209D, B209X, B20AA, B20CJ, B2693, B2694, B2695, B2696, B2697, B2725, B2726, B2727, B2732 B2733, B2735, B2736, B2737, B2787, B2788, B5041, B5042, B5067, B5147, B5149, B5189, B5191, B5192, B5195, B5300, B5340, B5356, B5445, B5446, B5586, B5598, B5609, B5675, B5677,	China

om

	B5678, B5698, B5715, B5741, B5745, B5749, B5760, B5917, B5922, B5928, B5939, B5940, B5951, B6086, B6087, B6135, B6502, B6515, B6516, B6526, B6528, B6531, B6532, B6542, B6547, B6548, B7969, B8358, B8360, B8363, B8365, B8426, B8870	
8. Federal Express Corp.	B18667, B18716, B884FD, N101FE, N102FE, N103FD, N103FE, N104FE, N106FE, N107FE, N108FE, N121FE, N132FE, N194FD, N410FE, N522FE, N529FE, N574FE, N584FE, N588FE, N589FE, N597FE, N598FE, N602FE, N603FE, N605FE, N608FE, N613FE, N617FE, N618FE, N619FE, N621FE, N642FE, N643FE, N844FD, N850FD, N854FD, N855FD, N856FD, N858FD, N859FD, N861FD, N863FD, N865FD, N866FD, N868FD, N869FD, N876FD, N882FD, N885FD, N891FD, N892FD, N893FD, N895FD, N897FD, N914FD, N914FE, N918FD, N919FD, N919FE, N924FD, N946FD, N947FD, N948FD	United States of America
9. Jetstar Asia Airways Pte., Ltd.	9VJSB, 9VJSF, 9VJSH, 9VJSL, 9VJSM, 9VJSN, 9VJSO, 9VJSP, 9VJSQ, 9VJSR, 9VJSS, 9VJSU	Singapore
	9VJJH, 9VJSA, 9VJSB, 9VJSF, 9VJSH, 9VJSI, 9VJSJ, 9VJSK, 9VJSL, 9VJSM, 9VJSN, 9VJSO, 9VJSP, 9VJSQ, 9VJSR, 9VJSS, 9VJSU, 9VJSV, 9VJSW	Zambia
10. Scoot Tigerair Pte., Ltd.	9VTAN, 9VTAO, 9VTAQ, 9VTAU, 9VTAV, 9VTAX, 9VTAZ, 9VTRA, 9VTRB, 9VTRC, 9VTRD, 9VTRE, 9VTRH, 9VTRI, 9VTRK, 9VTRL, 9VTRM, 9VTRN, 9VTRO, 9VTRP, 9VTRQ, 9VTRR, 9VTRS, 9VTRT, 9VTRU, 9VTRV, 9VTRW, 9VTRX	Singapore
11. Silkair Singapore Private Limited	9VMGA, 9VMGB, 9VMGC, 9VMGD, 9VMGE, 9VMGF, 9VMGG, 9VMGH, 9VMGI, 9VMGJ, 9VMGK, 9VMGL, 9VMGM, 9VMGN, 9VMGO, 9VMGP, 9VMGQ, 9VMGU, 9VSLL, 9VSLM, 9VSLO, 9VSLP, 9VSLQ, 9VSLR, 9VSLS	Singapore
12. Xiamen Airline Co., Ltd.	B1352, B1356, B1566, B1567, B1706, B1707, B1708, B1709, B1749, B1911, B1912, B1913, B1915, B1964, B1966, B1969, B1970, B1971, B2760, B2762, B2763, B2769, B5151, B5152, B5160, B5161, B5162, B5167, B5216, B5218, B5219, B5278, B5279, B5280, B5301, B5302, B5303, B5305, B5306, B5307, B5308, B5355, B5382, B5383,	China

am

	B5385, B5386, B5388, B5435, B5458, B5476, B5487, B5488, B5489, B5528, B5529, B5532, B5533, B5535, B5565, B5595, B5601, B5602, B5603, B5605, B5630, B5631, B5632, B5633, B5635, B5653, B5656, B5657, B5658, B5659, B5688, B5706, B5707, B5750, B5751, B5752, B5788, B5789, B5790, B5791, B5792, B5845, B5847, B6482, B6483, B6485, B6487, B6488, B6489, B6490, B7836, B7838, B7846, B7849	
13. Cebu Air, Inc.	RPC3287, RPC3228, RPC3231, RPC3233, RPC3237, RPC3238, RPC3239, RPC3244, RPC3249, RPC3250, RPC3260, RPC3261, RPC3262, RPC3263, RPC3264, RPC3265, RPC3266, RPC3267, RPC3268, RPC3269, RPC3270, RPC3271, RPC3272, RPC3273, RPC3274, RPC3275, RPC3276, RPC3277, RPC3278, RPC3279, RPC3281, RPC3287, RPC3341, RPC3342, RPC3343, RPC3344, RPC3345, RPC3346, RPC3347, RPC3348, RPC4100, RPC4101, RPC4102, RPC4103, RPC4104, RPC4105, RPC4106, RPC4108, RPC4109, RPC4110, RPC4111, RPC4112, RPC4113, RPC4114, RPC4115, RPC4116, RPC4117, RPC4118, RPC4119, RPC4120, RPC4121, RPC4122	
14. Philippine Airasia Inc.	RPC3227, RPC3228, RPC3504, RPC8189, RPC8641, RPC8896, RPC8940, RPC8941, RPC8946, RPC8948, RPC8949, RPC8950, RPC8963, RPC8964, RPC8965, RPC8966, RPC8967, RPC8970, RPC8971, RPC8972, RPC8974, RPC8975, RPC8976, RPC8977, RPC8978, RPC8979, RPC8986, RPC9948	Philippines
15. Philippine Airlines, Inc.	HL7778, RP-C8760, RPC124, RPC3327, RPC3328, RPC3278, RPC3501, RPC3503, RPC3504, RPC3506, RPC3507, RPC3508, RPC7772, RPC7773, RPC7774, RPC7775, RPC7776, RPC7777, RPC7778, RPC7779, RPC7781, RPC7782, RPC8189, RPC8613, RPC8616, RPC8619, RPC8620, RPC8760, RPC8762, RPC8763, RPC8764, RPC8765, RPC8766, RPC8771, RPC8780, RPC8781, RPC8782, RPC8783, RPC8784, RPC8785, RPC8786, RPC8789, RPC8941, RPC8948, RPC8980, RPC9901, RPC9902, RPC9003, RPC9005, RPC9906, RPC9907, RPC9909, RPC9912, RPC9914, RPC9915, RPC9916, RPC9917, RPC9918, RPC9919, RPC9925,	

can

	RPC9926, RPC9928, RPC9929, RPC9930, RPC9932, RPC9933, RPC9934, RPC9935, RPC9936, RPC9937, RPC9938,	

Thus, only the sale of imported Jet A-1 fuel to the above enumerated airlines with valid FACP may qualify for the refund or issuance of a tax credit certificate of the erroneously paid excise taxes.

However, the Court finds that petitioner's customer Deutsche Lufthansa Ag was not included in the list with valid FACP. Thus, the sale of 103,716 liters of Jet A-1 fuel thereto, with corresponding excise tax payment of ₱414,864.00, is disallowed.

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

Finally, as to the *third* requirement, petitioner presented the following witnesses to explain the process and documentation of the receipts and withdrawals of imported Jet A-1 fuel at petitioner's storage tanks in Tabangao Refinery through the Tabangao Depot and its subsequent delivery to: (1) Joint Oil Company Aviation Storage Plant at the Ninoy Aquino International Airport in Manila (JOCASP); (2) Clark Aviation Services, Inc. facility in the Clark International Airport in Pampanga (CASI), and (3) storage facility leased from Total Oil and Gas Resources, Inc., formerly the Total Bulk Corporation, near Mactan Cebu International Airport in Mandaue, Cebu (TOGRI) for eventual sale to international carriers:

1. Ms. Anna Beatriz Vergel de Dios, petitioner's Import/Additives Scheduler;[101]
2. Mr. Matias D. Aquiatan, Jr., petitioner's Country Operations Manager for Aviation;[102]
3. Ms. Berenice Angelique L. Flores, petitioner's Tax Advisor;[103] and

---

[101] Exhibit "P-44", Docket – Vol. I, pp. 60 to 73.
[102] Exhibit "P-45", Docket – Vol. I, pp. 107 to 119.

4. Mr. Jonathan Juanillo, petitioner's Terminal Operations Manager at Tabangao Depot.[104]

Based on their testimonies, the liters of imported Jet A-1 fuel that are stored in product tanks are withdrawn from the Tabangao Refinery to be delivered to intermediate storage facilities in JOCASP, CASI, and TOGRI. Deliveries to JOCASP, CASI and TOGRI are eventually sold and delivered to international air carriers refueling in the international airports.[105]

Furthermore, these fuel withdrawn from the Tabangao Refinery and delivered to JOCASP and CASI pass through the Tabangao Depot and are delivered by lorries or tank trucks. Those withdrawn from the Tabangao Refinery and delivered to TOGRI are delivered straight from Tabangao Refinery by barge and do not pass through the Tabangao Depot. Once in JOCASP, CASI and TOGRI, the same are then sold and delivered to international air carriers which are refueling in the international airports.[106]

The importation, as well as the withdrawal, of Jet A-1 fuel in the Tabangao Refinery are recorded and summarized in the Official Register Book (ORB),[107] which is jointly signed by an authorized representative of petitioner and the Revenue Officer on Premises (ROOP). The ORB indicates the receipts and removals of Jet A-1 fuel for a certain period and the running balance of stored Jet A-1 fuel for that period.[108]

Aside from the ORB, removals of Jet A-1 fuel are recorded in the Daily Product Deliveries Report (DPDR) which shows the date of removal of the Jet A-1 fuel, its shipment reference number, the Withdrawal Certificate (WC) covering the same, and the amount of excise tax paid thereon. Before the removal of the imported Jet A-1 fuel from the Tabangao Refinery, the WC[109] is prepared and signed by the ROOP and a representative of petitioner. The WC shows the source of the

---

[103] Exhibit "P-47", Docket – Vol. I, pp. 297 to 308.
[104] Exhibit "P-46", Docket – Vol. II, pp. 570 to 574.
[105] Exhibit "P-44" (Q&A No. 50), Docket – Vol. I, pp. 71-72.
[106] Exhibit "P-45" (Q&A No. 10), Docket – Vol. I, pp. 109-110.
[107] Exhibits "P-54-1", "P-57-1", "P-58-1" to "P-58-2", USB.
[108] Exhibit "P-44" (Q&A No. 51), Docket – Vol. I, p. 72.
[109] Exhibits "P-56-1" to "P-56-22", USB.

Jet A-1 fuel, its destination, the date of its withdrawal, and its volume at the time withdrawn.[110]

Upon removal of the imported Jet A-1 fuel from the Tabangao Refinery through the Tabangao Depot for deliveries to JOCASP and CASI or directly from the Tabangao Refinery for deliveries to TOGRI, the Jet A-1 fuel is accompanied by a Bulk Delivery Note (BDN),[111] which provides the date of the transfer of the imported Jet A-1 fuel, its volume, its source, and its destination.[112]

From JOCASP, CASI and TOGRI, the Jet A-1 fuel is eventually delivered to customer international air carriers via a specialized vehicle which pumps the Jet A-1 fuel directly into the tank of the air carrier. The specialized vehicle is equipped with a meter that determines the volume of Jet A-1 fuel pumped into the air carrier.[113]

The sales and deliveries of imported Jet A-1 fuel to international air carriers are supported by ASRs[114] and petitioner's Invoices.[115] In an ASR, the customer acknowledges the receipt from petitioner of a particular volume of Jet A-1 fuel. On the other hand, the petitioner's Invoice indicates the quantity, unit price, any other charges, and the total amount due for the Jet A-1 fuel sold and delivered to the customer.[116] The ASR is either printed through the Data Capture System (DCS) used by petitioner or manually prepared when the system is down. With the DCS, the details of the delivery are immediately captured by petitioner's computer system, enabling it to generate a report on a daily basis.[117]

A Monthly Supplier Sales Report (MSSR) may be generated by the DCS to summarize the daily deliveries to air carrier customers. It indicates the ASR number and date, the customer, the aircraft registration number, the volume of Jet A-1 fuel delivered to that customer, the destination of the aircraft, and the invoice number, and date. A Daily Product Movement Report Subject to Excise Tax Claim is also

---

[110] Exhibit "P-47" (Q&A No. 14), Docket – Vol. I, p. 300.
[111] Exhibits "P-61-1" to "P-61-490", USB.
[112] Exhibit "P-47" (Q&A No. 17), Docket – Vol. I, p. 301.
[113] Exhibit "P-47" (Q&A No. 24), Docket – Vol. I, p. 303.
[114] Exhibits "P-68-1" to "P-68-961", USB.
[115] Exhibits "P-63-1" to "P-63-136", USB.
[116] Exhibit "P-47" (Q&A No. 25), Docket – Vol. I, p. 303.
[117] Exhibit "P-45" (Q&A No. 22), Docket – Vol. I, pp. 112-113.

prepared, which is the summary of all transactions for the day including receipts from Tabangao Refinery.[118]

Based on the foregoing, the Court finds that petitioner satisfied the *third* requirement.

In sum, petitioner sufficiently proved that the excise taxes it paid for the imported Jet A-1 fuel and subsequently sold to tax-exempt international air carriers were erroneous and thus, refundable, pursuant to Sections 204 and 229 of the NIRC of 1997, but only in the reduced amount of **₱70,767,488.00**, computed as follows:

Particulars	**Volume in Liters**	**Amount of Excise Taxes Paid at ₱4.00**
Volume/Amount of Excise Tax Claim per Petition for Review	17,795,588	₱ 71,182,352.00
Less: Sales made to international carrier without valid FACP	103,716	414,864.00
Volume/ Amount of Refundable Excise Taxes	**17,691,872**	**₱ 70,767,488.00**

ACCORDINGLY, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱70,767,488.00**, representing petitioner's erroneously paid excise taxes for its imported Jet A-1 fuel sold and delivered to tax-exempt international air carriers during the period from April to May 2019.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

[118] *Id.*

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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson, 3rd Division

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice