REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**CTA CASE NO. 7731**
- *versus* -	Members: **BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 07 2012

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DECISION

BAUTISTA, J.:

The Petition for Review seeks for the refund or issuance of a tax credit certificate, representing excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period covering February to April 2006, in the total amount of ₱91,655,658.98.[1]

FACTS OF THE CASE

Petitioner, Pilipinas Shell Petroleum Corporation, is a corporation organized and existing under the laws of the Philippines, with office address at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City. It is engaged, among others, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.

[1] *Records*, pp. 1-32, with Annexes.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue ("BIR") National Office Building at Agham Road, Diliman, Quezon City.

On February 15, 2007, petitioner filed a claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the BIR for the recovery of excise taxes paid on Jet A-1 fuel in the amount of ₱91,655,658.98.

And on February 15, 2008, due to respondent's inaction thereto, petitioner filed the present Petition for Review.[2]

On April 25, 2008, respondent filed her Answer,[3] interposing the following Special and Affirmative Defenses:

> 5. Petitioner's claim for tax refund is subject to administrative routinary investigation and/or examination by the respondent.
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> 6. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with the law and the rules and regulations, and the burden to prove otherwise is upon the petitioner.
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> 7. Petitioner must show that it has complied with the provisions of Section[s] 204(C) and 229 of the National Internal Revenue Code of 1997 (1997 NIRC) on the prescriptive period for claiming tax refund/credit.
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> 8. As to petitioner's importation of Jet A-1 fuel on February to April 2006, petitioner was correctly and properly assessed [with] the corresponding excise tax pursuant to Section 131(A), in relation to Section 148 of the 1997 NIRC. Under Section 131 of the 1997 NIRC, it provides that:

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[2] *Id.*; Raffled to the then First Division of the Court, before the issuance of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.
[3] *Id.*, at pp. 51-58.

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

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

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

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

> "Sec. 135. *Petroleum Products [S]old to International Carriers and Exempt Entities o[r] 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;
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> (b) Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use and consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; xxx"

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

13. It has been repeatedly held by this Honorable Court that it is only the manufacturer/producer of the petroleum products sold, being the taxpayer, which has the legal personality to claim for the refund of excise taxes paid on petroleum products sold to international carriers based on Section[s] 130(A)(2) and 204(C) of the 1997 NIRC. Section 130(A)(2) of the 1997 NIRC provides that "unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the ***manufacturer or producer*** before removal of domestic products from place of production." On the other hand, Section 204(C) of the same Code states, "[c]redit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the ***taxpayer*** file[s] in writing with the Commissioner a claim for credit or refund within two (2) years after 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. A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which ***the taxpayer is directly liable***. Any request for conversion into refund or unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code:

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

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

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

16. The amount of ₱91,655,658.98 being claimed as tax refund/credit for the excise tax paid by petitioner for the sale of Jet A-1 fuel to international carriers was not properly documented.

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

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

On May 28, 2008, the parties entered their Joint Stipulation of Facts and Issues,[4] which was approved by the Court in a Resolution, dated May 30, 2008.[5]

On January 7, 2010, pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010, entitled "Implementing the Fully Expanded Membership in the Court of Tax Appeals," the case at bench was transferred to the Third Division of the Court.[6]

During trial, petitioner presented its evidence; while respondent manifested that she will not present any evidence.

On September 20, 2011,[7] the case was submitted for decision, considering the Memorandum filed by respondent on August 26, 2011,[8] and the Memorandum for Petitioner filed on September 15, 2011.[9]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I. WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE REQUIREMENTS UNDER SECTIONS 204(C) AND 229 OF THE 1997 NIRC FOR THE RECOVERY OF INTERNAL REVENUE TAXES THAT HAVE BEEN ERRONEOUSLY, WRONGFULLY, OR ILLEGALLY OR EXCESSIVELY ASSESSED OR COLLECTED;

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[4] *Id.*, at pp. 87-91.
[5] *Id.*, at p. 93.
[6] *Id.*, at p. 593.
[7] *Id.*, at p. 1292.
[8] *Id.*, at pp. 1247-1257.
[9] *Id.*, at pp. 1263-1290.

II. WHETHER OR NOT THE PETITIONER'S SALES AND DELIVERIES OF JET A-1 FUEL TO VARIOUS INTERNATIONAL CARRIERS FOR THE PERIOD FEBRUARY TO APRIL 2006 FOR THEIR USE OR CONSUMPTION OUTSIDE THE PHILIPPINES ARE EXEMPT FROM EXCISE TAX UNDER SECTION 135 OF THE 1997 NIRC; and

III. WHETHER OR NOT PETITIONER IS ENTITLED TO THE RECOVERY OF EXCISE TAXES PAID ON JET A-1 FUEL ALLEGEDLY SOLD TO TAX-EXEMPT INTERNATIONAL CARRIERS FOR THE PERIOD FEBRUARY TO APRIL 2006 IN THE AGGREGATE AMOUNT OF ₱91,655,658.98.[10]

RULING OF THE COURT

The Court finds the Petition for Review bereft of merit.

The 1997 National Internal Revenue Code ("NIRC"), as amended, specifically, Sections 204(C) and 229, scilicet:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (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 stamped 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.
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> xxx xxx xxx
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any

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[10] *Id.*, at p. 90.

> 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.
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> 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 therefore, 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. (*Boldfacing supplied.*)

In order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must, therefore, be present:

1) That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

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

In a recovery of internal revenue taxes, or sums erroneously, excessively, illegally or wrongfully collected, the term *erroneous or illegal tax* is defined "as one levied without statutory authority."[11]

And in determining petitioner's compliance with the first requisite - that the claimed excise taxes in the amount of ₱91,655,658.98 were erroneously or illegally paid - the records show that petitioner is engaged, *inter alia*, in the business of

[11] Commissioner of Internal Revenue *v.* Philippine National Bank, G.R. No. 161997, October 25, 2005, *citing Black's Law Dictionary*, 8th Ed, pp. 1496-1497.

processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof;[12] that it manufactures Jet A-1 fuel primarily for sale and delivery to foreign and domestic air carriers and other customers; that Jet A-1 fuel is ordinarily manufactured in its refinery in Tabangao, Batangas utilizing imported crude oil as raw materials;[13] that it occasionally imports finished Jet A-1 fuel if the refinery shuts down or if the demand for Jet A-1 fuel exceeds the projected supply of locally-manufactured Jet A-1 fuel, and in some instances, however, it purchases Jet A-1 fuel from other oil companies, such as Chevron Philippines, Inc. ("Chevron");[14] and that in February and March 2006, it imported Jet A-1 fuel through its refinery in Tabangao, Batangas ("Tabangao Refinery"), and accordingly, paid to the Bureau of Customs in Batangas excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel. The details of petitioner's importation and payment of excise taxes are as follows:

Exhibit	Date of Receipt	Exhibit	IEIRD No.	Date of final payment	Qty (in liters)	Excise taxes paid
"B-2"	02/19/06	*"B"*	293-06	03/20/06	6,552,827	₱ 24,048,875.09
"C-2"	03/04/06	*"C"*	333-06	04/03/06	12,070,992	44,300,541.00
"D-2"	03/21/06	*"D"*	407-06	04/20/06	9,954,854	36,534,314.18
				Total	**28,578,673**	**₱104,883,730.27**

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

a. Import Entry and Internal Declaration ("IEIRD");[15]
b. Import Entry Declaration ("IED");[16]
c. Certificate of Quantity Received ("CQR");[17]

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[12] Stipulation of Facts and Issues, par. 6; *Records*, p. 89.
[13] Memorandum for Petitioner, Statement of Facts, No. 5; *Records*, p. 1264.
[14] *Ibid.*, No. 6.
[15] *Exhibits "B," "C,"* and *"D"*; *Records*, pp. 643, 652 and 661, respectively.
[16] *Exhibits "B-1," "C-1,"* and *"D-1"*; *Records*, pp. 644, 653 and 662, respectively.

d. Tax Invoice;[18]
e. Tanker Bill of Lading;[19]
f. Equitable PCI Bank Official Receipt;[20]
g. Authority to Release Imported Goods ("ATRIG");[21]
h. Time Log Report/Surveyor's Report prepared by SGS Philippines, Inc.[22]

And within the same period, petitioner likewise purchased from Chevron, 3,192,012 liters of imported Jet A-1 fuel,[23] the excise taxes due thereon at the rate of ₱3.67 per liter were paid for by the latter; however, the same tax was subsequently billed or passed-on to the former.

Of the aforementioned imported and locally purchased Jet A-1 fuel, a total of 24,974,294 liters, petitioner avers that the same were sold to various international airlines for the period covering February 27 to April 9, 2006 for their use or consumption outside the Philippines, and thus, are exempt from excise tax pursuant to Section 135 of the 1997 NIRC, as amended. Thus, it posits that since it had already paid excise taxes on the imported Jet A-1 fuel that were sold to exempt international carriers, then said excise taxes paid partake the nature of erroneously or illegally collected taxes, and that it is entitled to a refund in the amount of ₱91,655,658.98, computed as follows:

Description	**Volume in liters**	**Excise Tax Rate**	**Amount**

[17] *Exhibits "B-2," "C-2,"* and *"D-2"*; *Records*, pp. 645, 654 and 663, respectively.
[18] *Exhibits "B-3," "C-3,"* and *"D-3"*; *Records*, pp. 646-647, 655-656 and 664-665, respectively.
[19] *Exhibits "B-4," "C-4,"* and *"D-4"*; *Records*, pp. 648, 657 and 666, respectively.
[20] *Exhibits "B-5-1," "B-5-2," "C-5," "C-5-1," "D-5-1," "D-5-2,"* and *"D-5-3"*; *Records*, pp. 649-650, 658-659, 667-670, 1168 and 1169.
[21] *Exhibits "B-6," "C-6,"* and *"D-6"*; *Records*, pp. 651, 660 and 671, respectively.
[22] *Exhibits "CCC," "DDD," "EEE,"* and *"EEE-1"*; *Records*, pp. 1212-1218.
[23] *Exhibits "E," "E-1," "E-2," "E-3," "E-4,"* and *"E-5"* to *"E-5-4"*; *Records*, pp. 672-684.

Sales to international carriers of Philippine or foreign registry pursuant to Sec. 135 of the Tax Code	24,974,294	₱3.67	₱91,655,658.98
TOTAL	**24,974,294**		**₱91,655,658.98**

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

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

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[24] Commissioner of Internal Revenue *v.* Pilipinas Shell Petroleum Corporation, CTA EB Case No. 415 (CTA Case Nos. 6775 and 6839).
[25] Commissioner of Internal Revenue *v.* Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012.

other disposition and to things imported into the Philippines. These taxes are imposed in addition to the value-added tax (VAT).

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

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

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

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

We disagree.

Under Chapter II "*Exemption or Conditional Tax-Free Removal of Certain Goods*" of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas

Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, **Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer.** Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135(a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.

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

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

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

The exemption from excise tax payment on petroleum products under Sec. 135(a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

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According to the Solicitor General, Sec. 135(a) in relation to the other provisions on excise tax and from the nature of indirect taxation, may only be construed as prohibiting the manufacturers-sellers of petroleum products from passing on the tax to international carriers by incorporating previously paid excise taxes into the selling price. In other words, respondent cannot shift the tax burden to international carriers who are allowed to purchase its petroleum products without having to pay the added cost of the excise tax.

We agree with the Solicitor General.

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

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

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

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

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In the case of international air carriers, the tax exemption granted under Sec. 135(a) is based on "a long-standing international consensus that fuel used for international air services should be tax-exempt." The provisions of the 1944 Convention of International Civil Aviation or the "Chicago Convention," which form binding international law, requires the contracting parties not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state. Between individual countries, the exemption of airlines from national taxes and customs duties on a range of aviation-related goods, including parts, stores and fuel is a standard element of the network of bilateral "Air Service Agreements." Later, a Resolution issued by the International Civil Aviation Organization (ICAO) expanded the provision as to similarly exempt from taxes all kinds of fuel taken on board for consumption by an aircraft from a contracting state in the territory of another contracting State departing for the territory of any other State. Though initially aimed at establishing uniformity of taxation among parties to the treaty to prevent double taxation, the tax exemption now generally applies to fuel used in international travel by both domestic and foreign carriers.

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Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. **Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.** (*Boldfacing supplied and citations omitted.*)

Premises considered, excise taxes paid on Jet A-1 fuel sold to international air carriers for the period covering February to April 2006, in the total amount of ₱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.

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.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice