20-000230-0083

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10320

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. MYRNA R. SANTELICES
Bureau of Internal Revenue - Revenue Region No. 6
5th Floor, Legal Division, BIR Bldg. 1
Solana Street, Intramuros, Manila

GERODIAS SUCHIANCO ESTRELLA
Suite 2404, Discovery Center
25 ADB Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **March 13, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 14, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10320

Members:
DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO *JJ.*

Promulgated:
MAR 13 2024; 10:30AM

x- -x

DECISION

REYES-FAJARDO, ***J.*:**

This Amended Petition for Review[1] filed by SL Harbor Bulk Terminal Corporation on September 29, 2020, prays for the issuance of a tax credit certificate (TCC) in the amount of ₱9,850,000.00, allegedly representing its erroneously paid excise taxes on July 2, 2018, July 4, 2018, August 22, 2018, and August 28, 2018.[2]

THE FACTS

Petitioner SL Harbor Bulk Terminal Corporation is a domestic corporation, with principal office at Block 4 Lots 10 and 11, Manila Harbor Center, North Harbor, Barangay 128, Zone 10, Tondo, Manila. It is duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 29.[3] It is engaged in the business of handling, storing, distributing, importing, marketing, buying and

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1 Docket- Vol. II, pp. 402 to 424.
2 Prayer, *Amended Petition for Review*, Docket – Vol. II, p. 423.
3 Par. 2(a), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1184.

selling, at wholesale/retail and to international/domestic customers as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description such as, but not limited to fuels, lubricants and other petroleum products, petroleum products mixed with fuel additives, ethanol fuel grade products, and coco methyl ester (cme), and of blending and/or manufacturing of blended fuel oil grades.[4]

Respondent is the Commissioner of Internal Revenue (CIR), vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of his office, including the authority to refund and/or credit taxes under Section 204 of the 1997 National Internal Revenue Code (NIRC), as amended. He holds office at the Office of the CIR at Room 511, Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[5]

Petitioner claims that it paid the following excise tax on its importations of bunker fuel in the 3rd quarter of 2018:[6]

Date Paid[7]	Quantity (L)	Rate	Excise Tax
July 2, 2018	20,775,151.00	₱2.50	₱ 51,937,877.50
July 4, 2018	24,681,137.00	2.50	61,702,842.50
August 22, 2018	22,267,323.00	2.50	55,668,307.50
August 28, 2018	24,375,277.00	2.50	60,938,192.50
TOTAL	**92,098,888.00**		**₱230,247,220.00**

Petitioner alleges that it sold a total of 3,940,000 liters of bunker fuel oil (BFO) and special fuel oil (SFO) to tax-exempt entities registered with either the Subic Bay Metropolitan Authority (SBMA) or the Philippine Economic Zone Authority (PEZA) for the period July to September 2018.[8] By virtue of the exemption under Section 135(c) of the NIRC, as amended, petitioner allegedly did not pass the excise taxes it paid on the BFO and SFO to said clients.[9]

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4 Exhibit "P-3," Docket - Vol. IV, pp. 2084 to 2119.

5 Par. 2(b), JSFI, Docket - Vol. III, pp. 1184 to 1185.

6 *Amended Petition for Review*, Docket - Vol. II, pp. 406 to 407. See also Exhibit "P-28," p. 6, Docket - Vol. III, p. 1385 and Exhibit "P-32," Docket - Vol. IV, p. 1644, USB.

7 Expressed in mm/dd/yyyy.

8 Par. 4.7, *Amended Petition for Review*, Docket - Vol. II, p. 407.

9 Par. 4.10, *Amended Petition for Review*, Docket - Vol. II, p. 407.

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On August 12, 2020, petitioner filed an administrative claim for issuance of TCC with BIR Revenue District Office No. 29,[10] in the amount of ₱29,285,082.50, allegedly representing erroneously paid excise taxes on the importation of BFO and SFO.[11]

On August 20, 2020, petitioner filed a Petition for Review[12] alleging inaction on the part of respondent.

On September 29, 2020, petitioner filed a Motion for Leave to Admit Amended Petition for Review,[13] attaching its Amended Petition for Review,[14] which corrects petitioner's measurement of its remaining inventory of imported bunker fuel and diesel as of July 1, 2018, from 88,980.091 liters to 90,461,772 liters.[15]

By Resolution dated October 16, 2020,[16] the Court granted petitioner's Motion for Leave to Admit and admitted petitioner's Amended Petition for Review.

On December 4, 2020, respondent filed his Amended Answer.[17]

On January 22, 2021, respondent transmitted to the Court the BIR Records of the case.[18]

On February 4, 2021, the Pre-Trial Conference was held.[19]

On February 19, 2021, the parties posted their Joint Stipulations of Facts and Issues,[20] which the Court approved through Resolution

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[10] Par. 2(c), JSFI, Docket - Vol. III, p. 1185.

[11] Exhibits "P-11" and "10," Docket - Vol. IV, pp. 2126, and 2122 to 2125, respectively.

[12] Docket - Vol. I, pp. 6 to 31.

[13] Docket - Vol. II, pp. 397 to 400.

[14] Docket - Vol. II, pp. 402 to 426.

[15] Par. 4.2, *Amended Petition for Review*, Docket - Vol. II, p. 405.

[16] Docket - Vol. II, pp. 825 to 827.

[17] Docket - Vol. II, pp. 838 to 848.

[18] *Compliance* dated January 21, 2021, Docket - Vol. II, pp. 859 to 860.

[19] Notice of Pre-Trial Conference dated January 13, 2021, Docket - Vol. II, pp. 852 to 854; Minutes of the hearing held on, and Order dated, February 4, 2021, Docket - Vol. III, pp. 968 to 970, and 972 to 974, respectively.

[20] Docket - Vol. III, pp. 1184 to 1186, attached to *Compliance* dated February 19, 2021, Docket - Vol. III, pp. 1180 to 1182.

dated March 9, 2021.[21] On the basis thereof, a Pre-Trial Order dated June 21, 2021, was issued.[22]

Trial ensued during which petitioner presented as its witnesses: (1) Ms. Shiela Mary A. Ahing,[23] petitioner's Finance Manager; (2) Mr. Christian Ivan R. Requinta,[24] petitioner's Trading Head; (3) Ms. Jenny V. Catriz,[25] petitioner's Billing Head; and, (4) Ms. Ma. Alma C. Sese,[26] the Court-commissioned Independent Certified Public Accountant (ICPA Sese).[27]

On November 8, 2021, petitioner posted its Formal Offer of Evidence (with Motion to Re-Mark Exhibits),[28] to which respondent filed his Comment/Opposition [Re: Petitioner's Formal Offer of Evidence dated 08 November 2021] on November 26, 2021.[29]

Under Resolution dated March 21, 2022,[30] the Court granted petitioner's Motion to Re-Mark Exhibits, and admitted petitioner's offered exhibits, except for:

> 1. Exhibits "P-1," "P-1-1," "P-6," "P-12," "P-12-1," "P-16," "P-16-1," "P-16-2," "P-17," and "P-17-1," for failure to present the original for comparison;
>
> 2. Exhibit "P-5," for failure to present the original for comparison, and for failure to correspond with the

21 Docket - Vol. III, pp. 1260 to 1261.
22 Docket - Vol. III, pp. 1333 to 1354.
23 Exhibit "P-19" (previously marked as Exhibit "P-28"), Docket - Vol. III, pp. 1187 to 1201; Order dated June 9, 2021, Docket - Vol. III, pp. 1320 to 1322.
24 Exhibit "P-20" (previously marked as Exhibit "P-27"), Docket - Vol. III, pp. 1241 to 1251; Order dated June 9, 2021, Docket - Vol. III, pp. 1320 to 1322.
25 Exhibit "P-21," Docket - Vol. III, pp. 1426 to 1435 (provisionally marked copy) and Docket - Vol. I, pp. 374 to 383 (original but not marked); Minutes of the hearing held on, and Order dated, October 19, 2021, Docket - Vol. III, pp. 1438 to 1446.
26 Exhibit "P-27," Docket - Vol. III, pp. 1399 to 1414 (provisionally marked copy), and pp. 1478 to 1493 (original but not marked); Minutes of the hearing held on, and Order dated, October 19, 2021, Docket - Vol. III, pp. 1438 to 1446.
27 *Oath of Commission* dated June 9, 2021, Docket - Vol. III, p. 1356; and Order dated June 9, 2021, Docket - Vol. III, pp. 1320 to 1322.
28 Docket - Vol. IV, pp. 2052 to 2078.
29 Docket - Vol. V, pp. 2574 to 2576.
30 Docket - Vol. V, pp. 2585 to 2590.

document actually marked and as identified by the witness;

3. Exhibits "P-25" and "P-26," for not being found in the records; and,

4. Exhibits "P-2," "P-2-1," "P-32-1.4-A," "P-32-2.4A," "P-36-1," "P-36-2," "P-36-3," "P-36-4," "P-36-5," "P-36-6," "P-36-7," "P-36-8," "P-36-9," "P-36-10," "P-36-11," "P-36-12," "P-36-13," "P-36-14," "P-36-15," "P-36-16," and "P-36-17," for failure to identify.

On May 6, 2022, petitioner posted its Omnibus Motion (Re: Resolution dated 21 March 2022),[31] to which respondent filed his Comment/Opposition [Re: Petitioner's Omnibus Motion dated 06 May 2022] on June 20, 2022.[32]

Through Resolution dated August 5, 2022,[33] the Court admitted Exhibits "P-6," "P-36-1," "P-36-2," "P-36-3," "P-36-4," "P-36-5," "P-36-6," "P-36-7," "P-36-8," "P-36-9," "P-36-10," "P-36-11," "P-36-12," "P-36-13," "P-36-14," "P-36-15," "P-36-16," and "P-36-17," but still denied the admission of Exhibits "P-1," "P-1-1," "P-12," "P-12-1," "P-16" "P-16," "P-16-1," "P-16-2," "P-17," and "P-17-1," for failure to present the originals for comparison.

Respondent presented Revenue Officer Kim Edmar M. Lintag[34] as his witness.

On October 3, 2022, respondent filed his Formal Offer of Evidence,[35] to which petitioner posted its Comment/Objection (Re: Formal Offer of Evidence dated 30 September 2022) on October 10, 2022.[36]

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31 Docket – Vol. V, pp. 2623 to 2630.
32 Docket – Vol. V, pp. 2686 to 2689.
33 Docket – Vol. V, pp. 2691 to 2702.
34 Exhibit "R-6," Docket – Vol. III, pp. 1508 to 1512; Order dated September 20, 2022, Docket – Vol. V, in between pp. 2726 and 2727.
35 Docket – Vol. V, pp. 2731 to 2734.
36 Docket – Vol. V, pp. 2737 to 2740.

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By Resolution dated December 6, 2022,[37] the pieces of evidence offered by respondent were admitted.

On February 27, 2023, petitioner filed, via accredited courier, a Motion for Additional Time to File Memorandum.[38]

By Resolution dated March 13, 2023,[39] petitioner's Motion was denied, and this case was submitted for decision, considering respondent's Memorandum filed on January 17, 2023.[40]

On March 14, 2023, petitioner filed its Memorandum,[41] which was expunged from the records through Resolution dated March 16, 2023.[42]

On April 4, 2023, petitioner filed its Omnibus Motion (Re: Resolutions dated 13 March 2023 and 16 March 2023),[43] which the Court denied through Resolution dated June 9, 2023.[44]

THE ISSUES

The parties raised the following issues for the resolution of the Court:

> a. Whether the Honorable Court has jurisdiction over the instant Petition; and,
>
> b. Whether petitioner is entitled to a refund of the excise tax in the aggregate amount of Php9,850,000.00 for the period of 01 July 2018 to 30 September 2018."[45]

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37 Docket – Vol. V pp. 2744 to 2745.
38 Docket – Vol. V, pp. 2762 to 2764.
39 Docket – Vol. V, p. 2769.
40 Docket – Vol. V, pp. 2746 to 2761.
41 Docket – Vol. V, pp. 2770 to 2794.
42 Docket – Vol. V, p. 2797.
43 Docket – Vol. V.
44 Docket – Vol. V.
45 Pars. 3(a) and (b), JSFI, Docket – Vol. III, p. 1185.

THE ARGUMENTS

Petitioner argues that its claim for tax credit for the erroneously paid excise taxes should be granted because: (1) its administrative and judicial claims for tax credit were filed within the two (2)-year prescriptive period provided in Sections 204 (C) and 229, of the NIRC, as amended; and, (2) the imported BFO and SFO were sold to tax-exempt entities registered either with SBMA or PEZA.

Respondent, on the other hand, rejects petitioner's claim for tax credit, because: (1) petitioner's administrative and judicial claims for tax credit were filed out of time; (2) petitioner failed to exhaust administrative remedies before elevating the case to the Court of Tax Appeals; and, (3) petitioner as an importer of petroleum products cannot invoke the excise tax exemption in favor of tax-exempt entities under Section 135 of the NIRC, as amended.

THE RULING

Foremost, the Court shall determine its jurisdiction over this case.

Section 7(a)(2) of Republic Act (RA) No. 1125,[46] as amended by RA No. 9282, in relation to Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[47] clothes the Court with jurisdiction over inaction of respondent involving credit of national

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46 Sec. 7. Jurisdiction. - The CTA shall exercise:
a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
...
2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in** relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Boldfacing supplied)

47 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges,** penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws, administered by the Bureau of Internal Revenue ... (Boldfacing supplied)

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internal revenue taxes, among others. Among the kinds of credit of national internal revenue taxes is one that is erroneously or illegally collected, as recognized in Sections 204 (C)[48] and 229[49] of the NIRC, as amended. 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.[50]

Relevantly, *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier)*[51] laid down the conditions for the Court to acquire jurisdiction over a claim for tax credit premised on Section 204(C), in relation to Section 229 of the NIRC, as amended, thus:

> Section 204 [of the NIRC, as amended] refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative

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

...

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

49 **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.

50 *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.

51 G.R. No. 226592, July 27, 2021.

> claim for refund or credit must be filed within two years from payment of the tax.
>
> Section 229 [of the NIRC, as amended], on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, **both administrative and judicial claims must be filed within the two-year period.** Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time."[52]

Here, petitioner paid excise tax due on its importation of BFO and SFO to the Bureau of Customs in the amount of ₱9,850,000.00 on July 2, 2018,[53] July 4, 2018,[54] August 22, 2018,[55] and August 28, 2018.[56] Following *Carrier*, it had two (2) years from July 2, 2018, July 4, 2018, August 22, 2018, and August 28, 2018, or until July 2, 2020, July 4, 2020, August 22, 2020 and August 28, 2020, respectively, to file both its administrative and judicial claims for tax credit. Record shows that petitioner filed its administrative claim for tax credit on August 12, 2020, while the judicial claim for tax credit was filed on August 20, 2020. Therefore, petitioner's judicial claim pertaining to excise taxes paid on July 2, 2018, and July 4, 2018 is barred by the statute of limitations.

52 Boldfacing supplied.
53 Exhibit "P-32-1.5".
54 Exhibits "P-32-2.5".
55 Exhibits "P-32-3.5".
56 Exhibits "P-32-4.5".

Ponder on the following presentation:

Date of Payment	Amount of Excise Taxes Paid	2-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
July 2, 2018[57]	₱51,937,877.00	July 2, 2020	August 12, 2020[58]	August 20, 2020[59]
July 4, 2018[60]	61,702,842.00	July 4, 2020		
August 22, 2018[61]	55,668,307.00	August 22, 2020		
August 28, 2018[62]	60,938,192.00	August 28, 2020		
Total	**₱230,247,218.00**			

In fine, the Court has acquired jurisdiction over petitioner's judicial claim for tax credit pertaining only to petitioner's payment of excise taxes on the importation of BFO and SFO on August 22, 2018 and August 28, 2018.

In any event, even assuming that all of petitioner's judicial claim is timely instituted, the *Amended Petition for Review* is denied.

Petitioner's claim for tax credit is governed by Sections 129, 131, and 135 of NIRC, as amended, which read:

> SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply** to goods manufactured or produced in the Philippines for

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57 Exhibit "P-32-1.5".

58 Par. 2(c), JSFI attached to *Compliance* dated February 19, 2021, Docket - Vol. III, p. 1185; Exhibits "P-11" and "10," Docket - Vol. IV, pp. 2126 and 2122 to 2125, respectively.

59 Docket - Vol. I, pp. 6 to 30.

In *Alpha Plus International Enterprises Corp. v. Philippine Charter Insurance Corp., et al.*, G.R. No. 203756, February 10, 2021, the Supreme Court explained that an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action, and is not barred by the statute of limitations which expired after the service of the original complaint. Thus, **when the amended complaint does not introduce new issues, cause of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed.**

A comparison of petitioner's *Amended Petition for Review* filed on September 29, 2020 and admitted by this Court on October 16, 2020 and its original *Petition for Review* reveals that the only amendment done was to correct petitioner's remaining inventory of its bunker fuel and diesel as of July 1, 2018 from 88,980,091 liters to 90,461,772 liters. Considering that such amendment does not introduce new issues, causes of actions, or demands, the suit is deemed to have commenced on August 20, 2020, the date the original *Petition for Review* was filed, and not September 29, 2020, the date the *Amended Petition for Review* was filed.

60 Exhibits "P-32-2.5".

61 Exhibits "P-32-3.5".

62 Exhibits "P-32-4.5".

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.

...

SEC. 131. *Payment of Excise Taxes on Imported Articles.* —

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

...

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) ...

(b) ...

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

To justify a grant of tax credit for excise taxes paid on its importation of BFO and SFO on August 22, 2018 and August 28, 2018, petitioner must establish the following: *first,* the entity to which the petitioner sold the petroleum products is an entity exempt by law from direct and indirect taxes; and, *second,* petitioner paid the excise taxes on its importation of BFO and SFO subsequently sold to the tax-exempt entities under Section 135(c) of the NIRC, as amended.

Chevron Philippines, Inc. v. Commissioner of Internal Revenue (Chevron),[63] explained that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC exempt from excise tax is deemed illegal or

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63 G.R. No. 210836, September 1, 2015.

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erroneous and should be credited to the payor pursuant to Section 204 of the NIRC, as amended, thus:

> 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.

Additionally, *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[64] clarified that 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.

For the *first* condition, the status of petitioner's clients as tax-exempt entities under Section 135(c) of the NIRC, as amended may not be denied.

Section 12(c) of RA No. 7227,[65] as amended by RA No. 9400,[66] recognizes national and local tax exemption within the Subic Special Economic Zone (SSEZ) on business enterprises within the SSEZ:

> SEC. 12. *Subic Special Economic Zone.* — ...
>
> ...
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In**

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

[65] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE.

[66] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

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> **lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone...[67]

Sections 3(h) and 21 of the Implementing Rules and Regulations (IRR)[68] of RA No. 7227, states:

> Sec. 3. *Definitions.* For purposes of these Rules these terms shall be understood to have the following meanings:
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> ...
>
> h. *Certificate of Registration* - **refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> ...
>
> Sec. 21. *Effect of Issuance of Certificates.* - **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, **shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules,** and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.[69]

Likewise, Section 24 of RA No. 7916,[70] as amended by RA No. 8748,[71] provides:

> SEC. 24. *Exemption from National and Local Taxes.* - Except for real property taxes on land owned by developers, no taxes, local and

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[67] Boldfacing supplied.

[68] Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone (SSEFZ) and the Subic Bay Metropolitan Authority (SBMA) IRR of RA 7227. 03 November 1992.

[69] Boldfacing supplied.

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

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

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national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

Section 2 (s) and (t) Rule I and Section 2 Rule XIII of the IRR[72] of RA No. 7916 states:

...

PART I - GENERAL PROVISIONS

Rule I. Definition and Basic Guidelines

...

SECTION 2. Definition of Terms - For purposes of these Rules and Regulations, the following definitions shall apply:

...

s. "Certificate of Registration" shall mean the certificate issued by the PEZA to an ECOZONE Enterprise upon its registration.

t. "Date of Registration" shall refer to the date appearing in the certificate of registration.

...

SECTION 2. Scope of Entitlement - New or expanding ECOZONE Developers / Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, registered on or after the effectivity of these Rules, shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.

...

72 Rules and Regulations to Implement Republic Act No. 7916, IRR of RA 7916, 17 May 1995.

In this case, petitioner presented the Certifications issued by the SBMA and PEZA to prove that its customers are tax-exempt entities:[73]

Customer Name	Certification	Exhibit No.	Period
Johnson Controls-Hitachi Air Conditioning Philippines, Inc.	Certificate of Registration and Tax Exemption Subic Bay Freeport Enterprise Certificate No. 1997-0022	"P-35-1" to "P-35-1A"	June 18, 2018 to June 17, 2021.
JX Nippon Mining & Metals Philippines, Inc.	PEZA Amended Certificate of Registration No. 96-080 and PEZA Certification No. 2018-0596	"P-35-2" to "P-35-2A"	Valid for the year 2018
Philippine Sinter Corporation	PEZA Certificate of Registration No. 11-04 and PEZA Certification No. 2018-0841	"P-35-3" to "P-35-3B"	Valid for the year 2018
Del Monte Philippines, Inc.	PEZA Certificate of Registration No. 07-68 and PEZA Certification No. 2018-2139	"P-35-4"	Valid for the year 2018

In relation to the *second* condition, petitioner has the burden of proving that the BFO and SFO sold to tax-exempt entities came from the importations on which petitioner paid excise taxes on August 22 and 28, 2018:

Date Paid[74]	Quantity (L)	Rate	Excise Tax
August 22, 2018	22,267,323.00	₱2.50	₱ 55,668,307.50
August 28, 2018	24,375,277.00	2.50	60,938,192.50
TOTAL	**92,098,888.00**		**₱230,247,220.00**

Petitioner presented its Commercial Invoices, Bills of Lading, Assessment Notices, Import Entry Declarations, Authority to Release Imported Goods (BIR Form No. 1918), and Statements of Settlement of

[73] Exhibit "P-35," Docket – Vol. IV, p. 2025, USB.

[74] Expressed in mm/dd/yyyy.

Duties and Taxes for July to September 2018 to prove its importations of BFO and SFO on August 22 and 28, 2018.[75]

The above documents reveal that petitioner is the proper party to file the claim for tax credit of excise taxes paid on BFO and SFO sold to tax-exempt entities.

For the 3rd quarter of 2018, petitioner sold 3,940,000 liters of BFO and SFO to tax-exempt entities in the total amount of ₱109,650,318.64.[76] Hence, petitioner's claim of ₱9,850,000.00 is computed as 3,940,000 liters of fuel oil multiplied by the excise tax rate of ₱2.50.

ICPA Sese, on the other hand, reported the following findings:[77]

Sales to tax exempt customers per petitioner declaration	3,940,000 L
Sales to tax exempt customers based on complete supporting documents	3,680,000 L
Difference	**260,000 L**

The above discrepancy was accounted for as unsigned withdrawal certificates by the BIR Representative from Philippine Sinter Corporation sales invoice no. 32462 for 260,000 Liters.

Therefore, per ICPA Sese's finding, the amount of ₱650,000.00, computed as 260,000 liters of BFO and SFO multiplied by the excise tax rate of ₱2.50 was disallowed.[78]

For the excise tax on the remaining sales of BFO and SFO to tax-exempt entities of 3,680,000 liters (3,940,000 liters less 260,000 liters) to be eligible for tax credit, it must be determined that the BFO and SFO sold to tax-exempt entities came from the importations of BFO and SFO on which petitioner paid excise taxes on August 22 and 28, 2018.

75 Exhibits "P-32-3.1" to "P-32-4.5," Docket - Vol. IV, pp. 1658 to 1671, USB.
76 Exhibit "P-34," USB.
77 Exhibit "P-28," pp. 7 to 8, Docket - Vol. III, pp. 1386 to 1387.
78 See also Exhibit "P-28," p. 8, Docket - Vol. III, p. 1387.

Thus, petitioner presented the following documents:[79]

Exhibit	Documentary Evidence
"P-30"	Summary of Ending Inventory as of 30 June 2018 based on Schedule of Receipts and Removals
"P-30-1" to "P-30-17"	Schedule of Receipts and Removals in the Official Register Book of petitioner's storage locations for the month of June 2018
"P-32"	Importation Schedule for 3rd Quarter 2018
"P-32-1.1" to "P-32-4.5"	Commercial Invoices, Bills of Lading, BOC Assessment Notices, Import Entry Declarations, Authority to Release Imported Goods, and Statements of Settlement of Duties and Taxes for July to September 2018
"P-32-5"	Summary of Purchase Orders from local purchases
"P-33"	Summary of Monthly Sales per product for 3rd Quarter 2018
"P-34"	Schedule of Sales to Excise Tax Exempt Entit[ies] for the period 01 July 2018 to 30 September 2018
"P-34-1.1" to "P-34-22.1"	Sales Invoices for the period 01 July 2018 to 30 September 2018
"P-34-1.2" to "P-34-22.2[AL]"[80]	Withdrawal Certificates for the period 01 July 2018 to 30 September 2018
"P-34-1.3" to "P-34-22.3AL"	Delivery Notes for the period 01 July 2018 to 30 September 2018
"P-34-1.4" to "P-34-11.4"	Collection Receipts issued by petitioner to tax-exempt entities
"P-34-12.4" to "P-34-23.4"	Bank transaction schedule and statement of account issued by Mitsubishi UFJ Financial Group (MUFG) bank to petitioner
"P-36"	Ending Inventory as of 30 September 2018 with Certificates of Stock Inventory
"P-36-1" to "P-36-17"	Schedule of Receipts and Removals in the Official Register Book of petitioner's storage locations for the month of September 2018

Yet, an examination of these documents will not show the movement of petitioner's inventory of petroleum products using the first-in, first-out method.[81] Petitioner submitted the Official Registry

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79 *Formal Offer of Evidence (with Motion to Re-Mark Exhibits)*, Docket – Vol. IV, pp. 2052 to 2078.

80 Refer to Resolution dated March 21, 2022, where the Court noted the discrepancy in the reference number per Formal Offer of Evidence and per actual markings, Docket – Vol. V, p. 2588.

81 Pursuant to Section 8(b) of Revenue Regulations No. 2-2018.
Subject: Providing for the Revised Tax Rates and other Implementing Guidelines on Petroleum Products Pursuant to Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law."

SEC. 8.

Books (ORB) only for the months of **June** and **September 2018**. Petitioner should have submitted the ORB for the months of July and August 2018 pursuant to Section 41 of the Revenue Regulations (RR) No. 13-77[82] for the Court to confirm that the BFO and SFO sold to the tax-exempt entities are the same petroleum products which petitioner paid excise taxes on August 22 and 28, 2018. Petitioner too, should have provided its properly supported fuel oil inventory record and submitted the sales invoices and other pertinent documents of all its sales for at least the 3rd quarter of 2018 for the Court to properly determine that the fuel oil sold to tax-exempt entities came from the imported lot that petitioner paid for excise taxes on August 22 and 28, 2018. In this regard, ICPA Sese reported a significant number of missing invoices for the 3rd quarter of 2018.[83]

Therefore, the Court is convinced that petitioner failed to prove a nexus between the imported BFO and SFO on which petitioner paid excise taxes on August 22 and 28, 2018 and the imported BFO and SFO sold to tax-exempt entities.

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b) *Accounting for stocks or inventory of goods after each date of effectivity of the new excise tax rates.* These inventories of petroleum products taken prior to each date of effectivity shall be liquidated and accounted for on a "First-In First-Out" (FIFO) method of inventory.

82 Subject: Petroleum Products Regulations

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CHAPTER X

BOOKS AND RECORDS

SECTION 41. *Records to be kept by importers.* — **Every person or entity engaged in the importation of petroleum products shall keep an official register book wherein shall** be entered the following;

(a) *On the debit side* — Date of arrival of the importations, subsidiary document reference (e.g. Customs Formal Entry), kind of product, quantity actually received, amount of specific taxes paid, number and date of the covering official receipt payment.

(b) *On the credit side* — Date of removal, consignee and address, kind of product removed, quantity, and remarks.

(c) *Resumé* — At the end of the month, the importer shall prepare a resumé which shall show the totals of the beginning balance, the importations for the month, the sales for the month, and finally the ending balance. These records should be submitted to the Chief, Gasoline & Miscellaneous Tax Division on or before the 8th day of the succeeding month.

The importer shall certify that the entries on the page of the transcript sheets contain a true and correct account of all petroleum products imported during the month, for the debit side, and the petroleum products removed, sold or disposed of, in the case of the credit side. The books of account shall be subject to periodic verification. Boldfacing supplied.

83 Exhibit "P-28," p. 8, Docket - Vol. III, p. 1387 and Exhibit "P-33-1," USB.

Actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven**. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.[84] Petitioner failed in this regard.

WHEREFORE, the *Amended Petition for Review* filed by SL Harbor Bulk Terminal Corporation, is **DENIED**, for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

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84 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018. Boldfacing supplied.