REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

CTA EB No. 1301
(CTA CASE No. 8232)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 2 1 2016 3:29 p.m.

x- x

RESOLUTION

***Fabon-Victorino, J.*:**

In the instant Motion for Partial Reconsideration Re: Decision dated September 1, 2016, petitioner[1] Commissioner of Internal Revenue (CIR) assails the denial of his Petition for Review dated May 14, 2015 thereby sustaining the finding of the Court in Division that respondent is entitled to a refund of P63,161,734.94, representing excise taxes paid on petroleum products it sold to international carriers from March 1, 2009 to April 7, 2009, since such transaction is exempt from excise tax, pursuant to Section 135 of the National Internal Revenue Code (NIRC), as amended.

[1] Erroneously indicated in the pleading as "respondent".

Petitioner's bid for reconsideration is anchored on two grounds, to wit: (a) that respondent failed to exhaust administrative remedies; and (b) that respondent failed to establish entitlement to the exemption from excise tax as mandated under Section 135 of the NIRC, as amended.

By way of comment, respondent points out that the arguments of petitioner are mere rehash and repetition of his previous arguments raised during trial before the Court in Division and before the *En Banc,* all of which have already been considered and passed upon in the assailed Decision.

Anent the alleged failure to exhaust administrative remedies as respondent filed its judicial claim only 14 days after the filing of its administrative claim, respondent points out that it merely complied with the mandatory provisions of Sections 204 and 229 of the NIRC that both the administrative and judicial claims for refund must be instituted within two (2) years from the payment of the tax to be refunded. Contrary to petitioner's claim, respondent had no intention to deprive him of his power to pass judgment on the claim at his level but merely to avail of its right to judicial recourse, otherwise the right to appeal would have been lost.

Further, as the statutory taxpayer of excise tax on petroleum products sold to international carriers, the excise tax exemption conferred on petroleum products under Section 135 of the NIRC applies to respondent. This tax exemption, in fulfillment of the country's treaty obligations pursuant to the doctrine of *pacta sunt servanda*, has been confirmed by no less than the Supreme Court and applied by the Court in a number of cases.

Finally, petitioner failed to controvert the established fact that respondent paid the amount subject of the claim for refund, respondent says.

Evidently, the issues raised by petitioner are not new but mere reiteration of its previous arguments which have already been amply addressed by the Court in the assailed Decision of September 1, 2016. There being no compelling reason for the Court to modify, much less reverse its ruling in the Decision dated September 1, 2016, the prayer for reconsideration should be denied.

WHEREFORE, the Motion for Partial Reconsideration Re: Decision dated September 1, 2016 filed by petitioner, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice