REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION, *Petitioner,*	**CTA Case No. 7565**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson and* **MANAHAN**, *JJ.*
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 27 2019 2:35 p.m.

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review[1] filed by Philippine Associated Smelting and Refining Corporation praying for the credit or refund of excise taxes paid for the period January to October 2005 amounting to Php11,687,467.62.

FACTS

Petitioner Philippine Associated Smelting and Refining Corporation (PASAR) is a domestic corporation duly organized and existing under Philippine laws, with office address at 11th Floor Zuellig Building, Makati Ave. cor. Pase De Roxas, Makati City.[2]

Respondent is the Commissioner of Internal Revenue (CIR) with office at the 5th Floor, BIR National Office Building, Agham Road, East Triangle, Diliman, Quezon City.[3]

PASAR is engaged in the business of exporting, processing, smelting and refining metals. Its plant is located at

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[1] Docket, Vol. I, pp. 4-17.
[2] Docket, Vol. V, Memorandum, p. 2420.
[3] Docket, Vol. 1, Joint Stipulation of Facts and Issues (JSFI), p. 127.

the Leyte Industrial Development Estate (LIDE), Isabel Leyte, a Special Export Processing Zone established pursuant to Presidential Decree (PD) No. 66, as amended, and Executive Order (EO) No. 567, dated November 13, 1979.[4]

PASAR is duly registered as a Zone Export Enterprise[5] with the Export Processing Zone Authority (EPZA) pursuant to the provisions of PD No. 66, as amended, and EO No.567.[6]

In its operations, PASAR uses petroleum products such as industrial diesel oil (IDO), automotive diesel oil (ADO), diesel, bunker fuel oil (BFO) or industrial fuel oil (IFO) and lubricants. These are purchased from local distributors like Petron Corporation (Petron), which imports the same and pays the corresponding customs duties to the Bureau of Customs (BOC) and the excise taxes to the Bureau of Internal Revenue (BIR). Petron, in turn, bills PASAR the duties and excise taxes it paid on the petroleum products.[7]

On November 23, 2006, PASAR, invoking the provisions of Section 17(1) of PD No. 66 and Article 77 of EO No. 226, originally filed an application with respondent, thru Assistant Commissioner Nestor Valeroso of the Large Taxpayers Service Division of the main office of the BIR, for tax credit and/or refund arising from excise tax payments in connection with its purchase of petroleum products covering the period January 2005 to October 2005 in the total amount of Php11,687,467.62.[8] Not being a large taxpayer, PASAR re-filed its claim for tax credit and/or refund with the Office of the Regional Director of Revenue Region No. 14, Palo, Leyte on December 28, 2006.[9]

In a letter dated January 3, 2007, respondent, through Regional Director Estrella V. Martinez of Revenue Region No. 14, Palo, Leyte, denied PASAR's application for tax credit and/or refund of excise tax payments.[10]

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[4] Docket, Vol. I, JSFI, p. 128.
[5] Docket, Vol. IV, Exhibit "P-1", p. 1769.
[6] Docket, Vol. I, JSFI, p. 128.
[7] Docket, Vol. I, Petition for Review (PFR), p. 5.
[8] Docket, Vol. I, JSFI, p. 128.
[9] Docket, Vol. I, PFR, p. 6.
[10] Docket, Vol. I, JSFI, p. 128.

On January 9, 2007, PASAR filed the instant Petition for Review,[11] appealing the denial of its claim for tax credit and/or refund of excise tax payments.

On February 6, 2007, respondent CIR filed his Answer,[12] while PASAR filed its Reply (to the Answer of Respondent)[13] on February 23, 2007.

The case proceeded to pre-trial and the parties submitted their respective briefs.[14] Subsequently, the parties submitted their Joint Stipulation of Facts and Issues (JSFI)[15] on July 30, 2007. Said JSFI was approved in the Court's Resolution dated August 7, 2007.[16]

On September 19, 2007, respondent's "Motion to Preliminary Resolve the Issue of Whether or Not Petitioner is the Proper Party That May Ask For A Refund"[17] was granted. The Court reasoned as follows:

> Like the VAT, the excise tax is also an indirect tax. As such, the seller who paid the excise tax may shift or pass the same to the buyer as part of the price of the commodity. This does not mean however that the seller is transferring his liability for the excise tax. Instead, he is transferring the burden to pay the excise tax to the buyer (*Cebu Portland Cement Co. vs. Collector of Internal Revenue*, 25 SCRA 789).
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> In this case, petitioner neither paid nor remitted excise taxes to the BIR. When the petitioner purchased the subject petroleum products from Petron, the latter included in the purchase price the excise taxes it paid and remitted. In other words, what was transferred to petitioner was only Petron's excise tax burden. Being the party liable for the excise tax, Petron is the proper party to claim for a refund. Thus, petitioner cannot ask for a refund because it was not the proper party in this case.
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> Under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended, every action must be

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[11] Docket, Vol. I, pp. 4-13.
[12] Docket, Vol. I, pp. 43-49.
[13] Docket, Vol. I, pp. 51-57.
[14] Docket, Vol. I, Pre-Trial Brief (For the Petitioner), pp. 69-76; Respondent's Pre-Trial Brief, pp. 84-88.
[15] Docket, Vol. I, pp. 127-131.
[16] Docket, Vol. I, p. 133.
[17] Docket, Vol. I, pp. 96-105

> prosecuted and defended in the name of the real party-in-interest. Petitioner, not being the real party-in-interest to file the present petition for refund or issuance of tax credit certificate for the allegedly erroneously paid excise taxes, the case should be dismissed for lack of cause of action (*Sustiguer vs. Tamayo*, 176 SCRA 579).
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> WHEREFORE, premises considered, respondent's motion is hereby GRANTED. Accordingly, the instant Petition for Review is DISMISSED.
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> SO ORDERED.[18]

Petitioner's Motion for Reconsideration (of the Resolution dated 19 September 2007)[19] was denied in the Court's Resolution dated December 3, 2007.[20]

Petitioner appealed to the CTA *En Banc*, which was docketed as CTA EB No. 351. On November 12, 2008, the CTA *En Banc* ruled as follows:

> WHEREFORE, premises considered, the Assailed Resolutions dated September 19, 2007 and December 3, 2007, are hereby SET ASIDE and the present Petition for Review is hereby remanded to the CTA Second Division for the reception of evidence and for the proper and immediate determination of the amount to be refunded to the petitioner.
>
> SO ORDERED.[21]

Respondent CIR's Motion for Reconsideration before the CTA *En Banc* was denied in the Resolution dated January 30, 2009.[22]

Aggrieved, the CIR filed its appeal before the Supreme Court docketed as G.R. No. 186223. On October 1, 2014, the Supreme Court denied the CIR's appeal.[23] It explained:

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[18] Docket, Vol. I, Resolution dated September 19, 2007, pp. 143-144.
[19] Docket, Vol. I, pp. 147-155.
[20] Docket, Vol. I, pp. 163-164.
[21] Docket, Vol. I, p. 350.
[22] Docket, Vol. I, pp. 387-389.
[23] Docket, Vol. I, Resolution, pp. 544-548.

PASAR is a business enterprise registered with the EPZA pursuant to P.D. No. 66. There is no dispute as regards its use of fuel and petroleum products for the processing, smelting and refining of its export copper products, and that Petron, from which PASAR purchased its fuel and petroleum products, passed on the excise taxes paid to the latter. In ruling that PASAR is the proper party to file the claim for the refund/credit, the CTA *En Banc* chiefly relied on the Court's rulings in *Commissioner of Customs v. Philippine Phosphate Fertilizer Corp.* and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue.*

Commissioner of Customs involved a claim for refund by Philippine Phosphate Fertilizer Corporation (Philphos) of the customs duties it indirectly paid on fuel and petroleum products purchased from Petron Corporation for the period of October 1991 until June 1992. This was opposed by the Commissioner of Customs. One of the issued raised in the case was the legal basis for Philphos' exemption from duties and taxes, it being an EPZA-registered company. While it may be true that *Commissioner of Customs* involved the refund of customs duties paid on petroleum products, it was nevertheless correctly applied by the CTA *En Banc.*

Notably, in *Commissioner of Customs*, the Court squarely interpreted the exemption granted under Section 17 of P.D. No. 66 as applicable to **both customs duties and internal revenue taxes**, *viz:*

> **The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions.** x x x
>
> Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:
>
> > SEC. 17. *Tax Treatment of Merchandize in the Zone.* – (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, *supplies, articles, equipment, machineries, spare parts and wares of every description,* except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted

> cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or *used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding.*

> The cited provision certainly covers petroleum supplies used, directly or indirectly, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. **The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly, as they had been in this case**. (Emphasis and underscoring ours)

Thus, the Court affirmed the refund of customs duties granted by the CTA and in closing, stated that "[t]he grant of exemption under Section 17(1) is clear and unambiguous. x x x.

Philphos, meanwhile, involved Philphos' claim for refund of excise taxes passed on by Petron. One of the issues identified by the Court in the case was whether the CTA should have granted the claim for refund. In resolving said issue, the Court ruled that the CTA erred when it disallowed the petitioner's claim due to its failure to present invoices as there is nothing in CTA Circular No. 1-95 that requires its presentation. The issue of whether the petitioner was entitled to exemption from payment of excise taxes was not lengthily discussed by the Court because it was already **undisputed**. Thus, the Court stated:

> In this case, **there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise**. As stated by the CTA, the only thing left to be determined is whether or not petitioner is entitled to the amount claimed for refund.

> x x x x

> **Since it is not disputed that petitioner is entitled to tax exemption**, it should not be precluded from presenting evidence to substantiate the amount of refund it is claiming on mere technicality especially in this case, where the failure to present invoices at the first instance was adequately explained by petitioner. (Emphasis ours)

Applying the foregoing rulings in this case, it is therefore undeniable that PASAR is exempted from payment of excise taxes.

The next pivotal question then that must be resolved is whether PASAR has the legal personality to file the claim for the refund of the excise taxes passed on by Petron. The petitioner insists that PASAR is not the proper party to seek a refund of an indirect tax, such as an excise tax or Value Added Tax, because it is not the statutory taxpayer. The petitioner's argument, however, has no merit.

The rule that it is the statutory taxpayer which has the legal personality to file a claim for refund finds no applicability in this case. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, the Court distinguished between the kinds of exemption enjoyed by a claimant in order to determine the propriety of a tax refund claim. "**If the law confers an exemption from both direct or <u>indirect taxes</u>, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax**. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim. In PASAR's case, Section 17 of P.D. No. 66, as affirmed in *Commissioner of Customs*, specifically declared that supplies, including petroleum products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemption includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund. (*Underscoring and emphasis in the original*)

The abovementioned Supreme Court Resolution became final and executory on September 2, 2015, and recorded in the Book of Entries of Judgments.[24]

Hence, the case was remanded to the CTA for continuation of proceedings.

On June 1, 2016, petitioner filed its Motion to Commission[25] Mr. Alongan L. Batara as independent Certified Public Accountant (ICPA), which was granted during the hearing held on September 15, 2016.[26]

However, upon the withdrawal of said ICPA,[27] petitioner filed anew for commissioning of an ICPA on February 24, 2017.[28] During the hearing on March 16, 2017,[29] Motion to Commission was granted, and Ms. Cristina B. Ocampo was appointed as the ICPA. Ms. Ocampo was granted a period of forty-five (45) days within which to submit her report.

After several extensions,[30] the ICPA's Report was submitted on June 14, 2017.[31]

Petitioner presented the following witnesses: (1) Ms. Maria Cristina Josefina B. Ocampo;[32] (2) Atty. Ma. Clarissa C. Arguelles;[33] and (3) Mr. Leve T. Arique.[34]

On December 1, 2017, petitioner filed its Formal Offer of Evidence (FOE).[35] On February 1, 2018, the Court resolved said FOE thereby admitting and denying petitioner's

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[24] Docket, Vol. I, p. 598.
[25] Docket, Vol. II, pp. 614-617.
[26] Docket, Vol. II, Minutes of Hearing held on September 15, 2016, p. 1025.
[27] Docket, Vol. II, Manifestation and Motion to Defer Submission of Report of ICPA filed on October 14, 2016, pp. 1028-1031.
[28] Docket, Vol. II, Motion to Commission, pp. 1036-1039.
[29] Docket, Vol. II, Minutes of Hearing held on March 16, 2017, p. 1053.
[30] Docket, Vol. II, Order dated May 2, 2017, p. 1059; Order dated May 17, 2017, p. 1065.
[31] Docket, Vol. III, Compliance, pp. 1068-1070.
[32] Docket, Vol. III, Direct Testimony by way of Judicial Affidavit of Petitioner's Witness, Ms. Maria Cristina Josefina B. Ocampo, CPA, pp. 1302-1306; Minutes of Hearing held on July 24, 2017, p. 1307.
[33] Docket, Vol. III, Direct Testimony by way of Judicial Affidavit of Petitioner's Witness, Ma. Clarissa C. Arguelles, pp. 1338-1348; Minutes of Hearing held on September 27, 2017, p. 1744.
[34] Docket, Vol. IV, Direct Testimony by way of Judicial Affidavit of Petitioner's Witness, Leve T. Arique, pp. 1758-1768; Minutes of Hearing held on November 22, 2017, p. 2078.
[35] Docket, Vol. IV, pp. 2294-2363.

exhibits.[36] The Court resolved petitioner's Motion for Partial Reconsideration[37] on May 25, 2018, thereby also admitting Exhibits "P-4-VVVVVV", "P-9", "P-1-", and "P-11".

Meanwhile, respondent manifested that he will not present evidence in this case.[38]

The Court received petitioner's Memorandum[39] on July 2, 2018, while respondent's Memorandum[40] was received on July 13, 2018.

Thus, on July 23, 2018, the instant case was considered submitted for decision.[41]

ISSUE

The parties submit the following issues for the Court's decision:

> 1. Whether or not petroleum products purchased from Petron and delivered to PASAR to be used in its operations in LIDE are exempt from excise taxes under Section 17 of PD No. 66 and thus entitled to a refund or issuance of a tax credit certificate.
>
> 2. Whether or not PASAR is the proper party to claim for refund or issuance of a tax credit certificate for excise taxes paid.
>
> 3. Whether or not the claim for tax credit/ refund is properly substantiated by receipts and invoices.
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> 4. Whether or not the claim for tax credit/ refund is timely filed.[42]

Petitioner's Arguments

[36] Docket, Vol. V, pp. 2368-2371.
[37] Docket, Vol. V, pp. 2374-2383.
[38] Docket, Vol. V, Minutes of Hearing held on February 21, 2017, p. 2372.
[39] Docket, Vol. V, pp. 2420-2442.
[40] Docket, Vol. V, pp. 2445-2450.
[41] Docket, Vol. V, Resolution dated July 23, 2018, p. 2451.
[42] Docket, Vol. I, JSFI, p. 130.

Petitioner states that it is the proper party to claim for the refund/issuance of tax credit certificate (TCC) for excise taxes, being exempt from the taxes and duties paid for its purchases of petroleum products.

Petitioner also states that it is entitled to the refund/issuance of TCC in the amount of Php10,664,267.62 representing the erroneously paid excise taxes which are properly substantiated by supporting documents.

PASAR states that the provisions of the PEZA law and PEZA Implementing Rules and Regulations (IRR) cover petroleum supplies, such as bunker fuel and diesel oil, which PASAR needs for smelting and refining. The use of these petroleum products allegedly falls under the phrase "used directly or indirectly", as such, these supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances.

Respondent's Counter-Arguments

Respondent states that petitioner anchors its claim on Section 229 of the 1997 National Internal Revenue Code, as amended (NIRC). Thus, respondent argues that petitioner must prove that such alleged payments are indeed erroneously or illegally collected before the same can be a proper subject of a claim for refund.

Respondent states that there is nothing in Section 17(1) of P.D. No. 66 and BIR Ruling No. 126-86 which clearly provides that petroleum products sold and delivered to EPZA registered enterprises are exempt from taxes. Section 18(i) of P.D. No. 66, as amended by P.D. No. 1449, states that the tax credit to be given to registered zone enterprises shall cover the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacturing or processing or production of its export products and forming part thereof. Respondent argues that the specific taxes herein sought to be refunded/credited do not form part of the export products manufactured by petitioner and therefore not refundable.

Finally, respondent states that the burden of proof to establish the factual basis of a claim for tax credit or refund lies with the claimant; and that such claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

RULING OF THE COURT

The petition has no merit.

The Petition for Review was timely filed.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal the inaction of the CIR in cases involving refunds of internal revenue taxes.[43] Said appeal may be availed of by filing a petition for review with the CTA within thirty days after the expiration of the period fixed by law for the CIR to act on the claim for refund.[44]

In the instant case, petitioner filed its administrative claim for refund on November 23, 2006, covering the excise tax payments from its purchases of petroleum products from Petron covering the period January 2005 to October 2005. This application was filed with the Large Taxpayers Service Division of the BIR.

On December 28, 2006, petitioner re-filed its application with the Regional Director of Revenue Region No. 14, Palo, Leyte, after petitioner was informed that it was not a large taxpayer.

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[43] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:
(a) Exclusive original or 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 xxx.

[44] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

On January 9, 2007, petitioner filed its Petition for Review with the Court of Tax Appeals (CTA), after receipt of the denial of its claim for refund on January 3, 2007.

Considering that this is an appeal under Section 229[45] of the NIRC, petitioner timely filed both its administrative claim and judicial claim within the two-year period from date of payment, as required under Section 229.

PASAR is not entitled to the claim for refund.

As ruled by the Supreme Court in *Commissioner of Internal Revenue v. Philippine Associated Smelting and Refining Corporation*,[46] petitioner is indeed the proper party to file the instant claim for refund.

Thus, the Court will now delve into whether petitioner was able to substantiate its claim for refund.

Petitioner claims that in its operations, it uses petroleum products such as industrial diesel oil (IDO), automotive diesel oil (ADO), diesel, bunker fuel oil (BFO) or industrial fuel oil (IFO) and lubricants. These are purchased from local distributors like Petron Corporation (Petron), which imports the same and pays the corresponding customs duties to the Bureau of Customs (BOC) and the excise taxes to the Bureau of Internal Revenue (BIR). Petron, in turn, bills petitioner the duties and excise taxes it paid on the petroleum products.[47]

The Court-commissioned Independent Certified Public Accountant (ICPA), Ocampo, Mendoza, Leong, Lim & Co., through its Managing Partner, Ms. Maria Cristina Josefina B. Ocampo, presented in her report dated June 14, 2017, a summary of the total quantity in liters and the corresponding

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[45] 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.
<u>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</u>; xxx.

[46] G.R. No. 186223, October 1, 2014.

[47] Docket, Vol. I, Petition for Review, p. 5.

amount of excise taxes of petroleum products delivered by Petron to petitioner for January 2005 to October 2005, as follows:[48]

Month	Exhibit No.	Deliveries of ADO	Deliveries of IDO	Deliveries of IFO
Total Volume of Purchases:				
January to March 2005	P-8	246,000	961,817	5,424,115
April to June 2005	to	240,000	918,888	4,965,235
July to September 2005	P-8-B	240,000	868,176	5,722,757
October 2005		72,000	324,073	1,813,935
		798,000	**3,072,954**	**17,926,042**
Multiplied by excise tax rate per liter charged by Petron		₱1.63	₱1.63	₱0.30
Refund claimed for excise taxes erroneously paid		₱1,300,740.00	₱5,008,915.02	₱5,377,812.60
Total				**₱11,687,467.62**

Out of the total claim for refund in the amount of ₱11,687,467.62 representing excise taxes paid for the period of January 2005 to October 2005, the ICPA determined that only the amount of ₱10,644,267.62 was adequately substantiated by supporting documents. On the other hand, the difference of ₱1,043,200.00 pertains to excise taxes with sales invoices untraceable to cash receipts in the amount of ₱1,007,340.00[49] and excise taxes on petroleum products with no corresponding attachments in the amount of ₱35,860.00,[50] summarized as follows:[51]

Amount of Excise Tax					
Per Claim	**Per ICPA's Verification**			**Difference**	
Amount	**Exhibit No.**	**Payor No.**	**Amount**	**Exhibit No.**	**Amount**
	P-13-E to P-13-H	1003842	₱10,386,727.62[52]	P-13-K to P-13-N	
	P-13-I to P-13-J	1003376	257,540.00[53]		
₱11,687,467.62			**₱10,644,267.62**		**₱1,043,200.00**

The Court finds that the sales invoices,[54] cash receipts,[55] and accounts payable vouchers[56] supporting the ICPA recommended amount of ₱10,644,267.62 do not show any

[48] Docket, Vol. III, Exhibit "P-13-A", ICPA Report, p. 1072.
[49] Docket, Vol. III, Exhibits "P-13-K" to "P-13-M", ICPA Report, pp. 1082-1084.
[50] Docket, Vol. III, Exhibit "P-13-N", ICPA Report, p. 1085.
[51] Docket, Vol. III, Exhibit "P-13-C", ICPA Report, p. 1074.
[52] Docket, Vol. III, Exhibits "P-13-E" to "P-13-H", ICPA Report, pp. 1076-1079.
[53] Docket, Vol. III, Exhibits "P-13-I" to "P-13-J", ICPA Report, pp. 1080-1081.
[54] Docket, Vol. III, Exhibits "P-4" to "P-4-AAAAAAA", pp. 1373-1530.
[55] Docket, Vol. III, Exhibits "P-5" to "P-5-W", pp. 1531-1554.
[56] Docket, Vol. II, Exhibits "P-3-A" to "P-3-T", pp. 871-973.

indication that the fuel prices charged by Petron against petitioner included the excise taxes imposed on the petroleum products. Neither did petitioner offer its Supply or Sales Agreement with Petron which would show that the amounts billed by Petron to petitioner per the sales invoices are inclusive of excise taxes.

Moreover, petitioner failed to establish that Petron actually paid the said excise taxes to the BIR.

Petitioner submitted a Certification from Petron attesting that the latter paid to the BIR excise taxes amounting to ₱11,687,467.62 on petroleum products sold and delivered to petitioner during the period of January 2005 to October 2005.[57] However, the Court cannot ascertain the truthfulness of such claim from the supporting documents submitted such as Petron's Excise Tax Returns (BIR Form No. 2200-P) (together with the Summary of Removals and Excise Tax Due on petroleum products, Payment Order for Liftings, and, Daily Summary of Liftings);[58] Schedule of Petroleum Deliveries to PASAR;[59] Withdrawal Certificates of Manufactured Petroleum Products (BIR Form No. 267);[60] and, List of Withdrawal Certificates[61]. The excise taxes on petroleum products sold to petitioner cannot be traced from the Daily Summary of Liftings attached to Petron's Excise Tax Returns. The invoices related to Petron's deliveries to petitioner cannot be found among those listed per the Daily Summary of Liftings.

Thus, for petitioner's failure to sufficiently prove that Petron paid to the BIR the excise taxes due on the petroleum products it sold to petitioner and that the said excise taxes were subsequently passed on/charged to and paid by petitioner, the instant claim must fail.

It bears stressing that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the Government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit. In this case, petitioner failed to discharge this burden with regard to the claimed amount of ₱11,687,467.62.

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[57] Docket, Vol. III, Exhibit "P-12", p. 1743.
[58] Docket, Vol. III, Exhibits "P-7" to "P-7-W-6", pp. 1566-1739.
[59] Docket, Vol. III, Exhibits "P-6" to "P-6-I", pp. 1556-1565.
[60] Docket, Vol. III, Exhibits "P-2-A" to "P-2-W", pp. 1350-1372.
[61] Docket, Vol. III, Exhibit "P-2", p. 1349.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence. Accordingly, the denial by respondent of petitioner's application for tax credit and/or refund of excise tax payments is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice