REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8492

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

FEB 1 8 2015 4:15 pm

x- x

RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is respondent's **Motion for Partial Reconsideration (Re: Decision dated 28 November 2014)** filed on December 16, 2014, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration (Re: Decision dated 28 November 2014) dated December 16, 2014]** filed on January 20, 2015.

In the assailed Decision, the Court partially granted petitioner's claim for refund representing excise taxes it paid on aviation turbo jet fuel ("Jet A-1 fuel") sold to various exempt international carriers for the period May 26 to July 2, 2010. The dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **P46,794,180.86** representing petitioner's erroneously paid excise taxes on petroleum

products sold to international carriers from May 26 to July 2, 2010, computed as follows:

Claimed Excise Taxes	₱ 48,570,772.81
Less: Disallowed Excise Taxes	1,776,591.95
Substantiated Excise Taxes	**₱ 46,794,180.86**

SO ORDERED."

In her motion, respondent seeks reconsideration of the Court's Decision and prays that another one be rendered denying the claim for refund in its entirety.

Respondent alleges that nowhere is it stated that petitioner enjoys any of the tax exemptions covered by tax treaties, conventions and other international agreements regarding its sale of petroleum products. In fact, its petroleum products are clearly subject to excise tax under Section 148[1] of the National Internal Revenue Code (NIRC) of 1997, as amended. She also alleges that petitioner's claim for tax refund cannot be predicated on Section 229[2] of the NIRC of 1997 allowing a refund of erroneous or excess payment of tax.

Respondent argues that the intent of the law is to grant excise tax exemption to international carriers and exempt entities as buyers of petroleum products and not to the manufacturers or producers of said goods. She further maintains that petitioner, as manufacturer/seller, is prohibited under Sec. 135 (a) of the NIRC from shifting the burden of the excise tax to its exempt buyers.

---

[1] **SEC. 148.** ***Manufactured Oils and Other Fuels.*** - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

xxx xxx xxx

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (P3.67);

xxx xxx xxx

[2] **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.

Consequently, the oil companies which sold such petroleum products to international carriers should not be entitled to a refund of excise taxes previously paid on the goods.

In its Comment/Opposition, petitioner contends that respondent presents no new arguments to support the latter's contention and thus, the motion should be denied outright.

Petitioner cites the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[3] *(Shell* case*)*, where the Supreme Court ruled that manufacturer-seller, such as the petitioner herein, is entitled to refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise taxes under Sec. 135 of the NIRC.

Petitioner further argues that in light of the *Shell* case and under the doctrine of *stare decisis*, the Court's recognition of its entitlement to claim for refund based on Sec. 135 of the NIRC of 1997, as amended, must be respected.

After a careful evaluation of the arguments presented by the parties and the records of the case, the Court finds no compelling reason to reconsider and set aside the assailed Decision dated November 28, 2014.

Petitioner correctly pointed out that the respondent presented no new arguments to support her contention. Respondent's grounds were mere rehash of her arguments during the trial.

The issue on whether or not petitioner is entitled to the recovery of excise taxes paid on petroleum products sold to international carriers has already been settled in the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[4]. The Supreme Court held that local manufacturer/seller of petroleum products, as statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise taxes under Sec. 135(a) of the NIRC. The Court notes the pertinent portion of the Supreme Court's discussion on the matter, to wit:

---

[3] G.R. No. 188497, Resolution dated February 19, 2014.
[4] *Ibid.*

"Under the basic international law principle of *pacta sunt servanda,* we have the duty to fulfill our treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. In this case, Sec. 135(a) of the NIRC embodies our compliance with our undertakings under the Chicago Convention and various bilateral air service agreements not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers. In our Decision in this case, we interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production, pursuant to Article 148 and pertinent BIR regulations. Ruling on respondent's claim for tax refund of such paid excise taxes on petroleum products sold to tax-exempt international carriers, we found no basis in the Tax Code and jurisprudence to grant the refund of an "erroneously or illegally paid" tax.

Justice Bersamin argues that '(T)he shifting of the tax burden by manufacturers-sellers is a business prerogative resulting from the collective impact of market forces,' and that it is 'erroneous to construe Section 135(a) only as a prohibition against the shifting by the manufacturers-sellers of petroleum products of the tax burden to international carriers, for such construction will deprive the manufacturers-sellers of their business prerogative to determine the prices at which they can sell their products."

We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, **we agree that there is a need to reexamine the effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.**

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from

> national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.
>
> The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:
>
> > Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.
>
> With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of 'tankering' would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.**
>
> In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC.** *(Emphases supplied)*

The instant petition was pending at the time *Shell* case was promulgated. Thus, under the principle of *stare decisis*, the application in this case of the *Shell* doctrine is proper.

In the case of *Commissioner of Internal Revenue vs. The Insular Life Assurance Co. Ltd.*[5], the Supreme Court discussed the importance of upholding the principle of *stare decisis*, to wit:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that **when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same.** *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. ***Stare decisis*** **simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.** It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis a bar to any attempt to relitigate the same issue. *(Emphasis supplied)*

The Court finds no reason to reverse, modify or amend the assailed Decision.

WHEREFORE, premises considered, respondent's "Motion for Partial Reconsideration (Re: Decision dated 28 November 2014)" is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[5] G.R. No. 197192, June 4, 2014.