REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CHEVRON PHILIPPINES, INC., Petitioner,	CTA CASE NO. 7939
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 31 2012 ; 2:00 p.m.

x--x

DECISION

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

For disposition is the *Petition for Review*[1] filed on June 29, 2009, seeking for the refund or issuance of Tax Credit Certificate (TCC) in the amount of Php6,542,400.00, representing excise taxes allegedly paid by petitioner Chevron Philippines, Inc. on its importation of petroleum products which was subsequently sold to Clark Development Corporation (CDC).

[1] Docket, pp. 4-37.

Chevron Philippines Inc. (petitioner) is a duly organized and existing domestic corporation, with address at 6th Floor, 6750 Building, Ayala Avenue, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR) as a value-added and excise taxpayer with Tax Identification No. 000-349-759-000.[3]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to refund any internal revenue tax erroneously or illegally assessed or collected. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it sold and delivered to CDC the following gasoline products for the period between August to December 2007:[4]

Product	**Volume**	**Price**
Gold 95-ron ("Gold")	570,000 liters	P16,421,207
Silver 93-ron ("Silver")	934,000 liters	P25,348,966

[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), docket, p. 391; Exhibit "B".
[3] Exhibit "D".
[4] Par. 12, Petition for Review, docket, p. 8.

By virtue of the exemption enjoyed by CDC under Section 135(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Republic Act (R.A.) Nos. 9400 and 7916, it allegedly did not pass on or shifted to CDC the excise taxes it paid on the imported petroleum products.[5]

June 26, 2009, petitioner filed with respondent's Large Taxpayers Services-National Office an administrative claim for refund or issuance of tax credit certificate for taxable year 2007 amounting to P6,542,400.00.[6]

On June 29, 2009, petitioner elevated its claim for refund or tax credit to the Court by way of a *Petition for Review* alleging inaction on the part of the respondent.

In her Answer,[7] dated September 2, 2009, respondent diametrically opposes petitioner' contention saying that there is no provision in the NIRC of 1997, as amended that expressly exempt the owner or importers of petroleum products from paying excise tax on its imported products from the time of withdrawal from the customhouse. Under Section 135 of the

---

[5] Par. 18, Petition for Review, docket, p. 9.
[6] Par. 13, Stipulation of Facts, JSFSI, docket, p. 394; Exhibits "A", "A-1", and "A-2".
[7] Docket, pp. 298-309.

NIRC, petitioner cannot pass on or shift to international carriers and exempt agencies the excise taxes it paid on its importation of petroleum products in the aggregate amount of P6,542,400.00, which it subsequently sold to Clark Development Corporation (CDC). The exemption from tax is only in favor of international carriers and exempt entities as buyers of petroleum products and not in favor of the owner or importer of petroleum products who is the statutory taxpayer, pursuant to Section 131 of the same Code.

Further, only Section 130 (D) of the NIRC allows the tax credit or refund of excise tax paid to goods which are locally produced or manufactured and subsequently exported. The enumeration in Section 130 (D) excludes all others in accord with the basic principle *expressio unius est exclusio alterius* or the express inclusion of one implies the exclusion of all others. The application of the cited maxim is consistent with the settled rule that claims for refund, being in the nature of a claim for exemption, should be construed in *strictissimi juris* against the taxpayer. Since petitioner's claim does not fall within the ambit of Section 130 (D), its tax refund prayed for cannot be granted.

In support of her position, respondent cites the cases of *Maceda v. Macaraig, Jr.*[8] and *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue.*[9]

On March 19, 2010, the parties filed their *Joint Stipulation of Facts and Simplification of Issues*[10], which the Court approved in the Resolution dated March 30, 2010. [11]

Trial ensued during which petitioner presented four (4) witnesses, namely, Ericson S. Inocensio, Josephine San Juan-Macatingrao, Emmanuel R. Estacion, and 4) Martin C. Pacatang.

Witness Ericson S. Inocencio, by way of a Judicial Affidavit[12], testified that as the District Manager, Northern Luzon, Commercial and Industrial, of Chevron Philippines, Inc., he was familiar with the instant case as the transactions with CDC was within the competence. The instant case involves the refund of excise taxes amounting to Php6,542,400.00, which petitioner paid for the period June to December, 2007, on its imported petroleum products which it subsequently sold to CDC.

---

[8] 223 SCRA 217.
[9] 20 SCRA 1056 (1967).
[10] Docket, pp. 391-395.
[11] Docket, p. 412.
[12] Docket, pp. 415-418.

CDC is a government-owned and controlled corporation established under Executive Order (EO) No. 80, Series of 1993[13] as the operating and implementing arm of the Bases Conversion and Development Authority (BCDA). It manages the Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). It is a duly registered CSEZ enterprise operating within the CFZ, thus it enjoys, under Section 5 of EO No. 80, all the applicable incentives in the Subic Special Economic and Free Port Zone under Republic Act (RA) No. 7227 as well as those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may thereafter be enacted.

The witness opined that since CDC was legally exempt from payment of direct and indirect taxes, precluding petitioner from passing on to CDC the excise taxes it paid on the imported petroleum products sold to the latter. Thus, the petroleum products sold to CDC were exclusive of indirect taxes such as value-added and excise taxes.

---

[13] Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program.

Petitioner also presented its Tax Accountant Josephine San Juan-Macatingrao, who also executed a Judicial affidavit.[14] She testified that her duties include the payment and filing of various national taxes, preparation of reports and other documents required by the Bureau of Internal Revenue (BIR) as well as the Bureau of Customs (BOC), safekeeping of all documents related to tax cases/claims of petitioner and all importation related documents, and coordinating with the concerned business units/tax counsel of the company with regard to the various reportorial requirements related to petitioner's tax cases/claims.

The petroleum products sold to CDC were imported by petitioner between June and December 2007. In compliance with Section 1301 of the Tariff and Customs Code of the Philippines, as amended, petitioner filed the corresponding Import Entry Declarations (IEDs) and paid in advance ninety percent (90%) of the approximate taxes and duties due on the imported petroleum products. Thereafter, petitioner filed Import Entry and Internal Revenue Declarations (IEIRDs) to fully pay the taxes and duties.

[14] Docket, pp. 437-446.

She further testified that CDC was legally exempt from payment of direct and indirect taxes. As a Philippine Economic Zone Authority (PEZA) registered entity, CDC had the option to choose between two (2) fiscal incentives, namely, 1) 5% preferential tax rate on gross income earned in lieu of national and local taxes (P.D. No. 66, as amended, and Section 24 of R.A. No. 7916); and 2) income tax holiday of four (4) or six (6) years depending on whether an entity is registered as a pioneer or non-pioneer enterprise (Book VI of E.O. No. 226, in relation to Rule VI of its Implementing Rules and Regulations). CDC opted for the first for taxable year 2007.

On recall on July 8, 2010, witness Josephine San Juan-Macatingrao explained that only photocopies of the purchase invoices were presented in court as the originals of the said documents were submitted to the BOC for the processing of the IEIRDs for the release of the shipments in compliance with Customs Memorandum Order No. 127-88.

For his part Emmanuel R. Estacion testified that he is familiar with petitioner's transactions with CDC being its Business Consultant for Northern Luzon, Commercial and Industrial. Petitioner generally passes indirect taxes to customers but not with CDC. The prices of the petroleum products sold to the latter were exclusive of indirect taxes such as value-added and excise taxes which petitioner paid upon importation, as indicated in the sales invoices it issued to CDC.

Petitioner's last witness Martin Pacatang, an employee of Facilities Managers, Inc., assigned at petitioner's Beata Warehouse in Pandacan, testified that he managed the inactive files from petitioner's Makati office kept in Beata Warehouse. Sometime in May, 2010, upon request of Ericson Inocencio and Emmanuel Estacion, he was able to retrieve the original sales invoices pertaining to the petroleum products sold by petitioner to CDC in 2007 except Exhibits E-67 to E-99, despite efforts. The loss of the documents could be attributed to the flooding at the Beata Warehouse brought about by Typhoon Ondoy sometime in September 2009.

All the evidence presented by petitioner were admitted except Exhibits W-1 to W-9 and X-1 to X-8, due its failure to prove the loss, destruction, or unavailability of their originals which it claimed to be in the possession of the BOC.[15]

---

[15] Docket, pp. 556-562.

On the other hand, respondent was deemed to have waived her right to present evidence for non-appearance of her counsel during the scheduled presentation of her evidence, despite due notice.[16]

On September 21, 2011,[17] the instant petition was submitted for decision.

The following issues were submitted for the resolution of the Court[18], to wit:

1. Whether sales by petitioner of imported Petroleum Products to CDC are deemed sales to an entity that is by law exempt from indirect taxes and are thus tax-exempt transactions.

2. Whether petitioner may claim a refund for excise taxes it paid on imported Petroleum Products which it later sold to CDC.

3. Whether petitioner is entitled to a tax credit certificate or refund of the excise taxes it paid on its importation of Petroleum Products, which petitioner subsequently sold to CDC, amounting to P6,542,400.00.

4. Whether this Honorable Court has jurisdiction over this Petition for Review.

---

[16] Docket, p. 574.
[17] Docket, p. 618.
[18] Simplification of Issues, JSFSI, docket, p. 394.

5. Whether petitioner exhausted administrative remedies prior to the filing of this Petition for Review.

Petitioner avers that, as a general rule, excise tax on petroleum products is paid by the manufacturer or producer before its removal from its place of production or by the importer upon its importation. Excise tax, being an indirect tax, could be passed on to the customer or end-user except when the latter is by law granted tax exemptions from direct or indirect taxes pursuant to Section 135 of the NIRC of 1997, as amended.

According to petitioner, it has complied with all the requirements for entitlement for a tax credit certificate or refund under Section 135(c) of the NIRC of 1997, as amended, and as laid down by the Court in the case of *Filpride Resources Inc. vs. Bureau of Internal Revenue.*[19] It was able to establish that CDC is exempt by law from direct and indirect taxes, such as excise tax for which reason it paid the excise taxes due on the imported petroleum products sold to CDC. Its claim for refund was filed within two (2) years from the payment of excise taxes on the petroleum products.

[19] C.T.A. Case No. 6696, March 14, 2007.

Respondent, on the other hand, counters that there is no provision in the NIRC of 1997, as amended, that expressly exempts importers of petroleum products from excise tax. Under the Tax Code, only locally produced or manufactured goods which are actually exported may be granted tax credit or refund for excise taxes paid thereon, but which circumstance is not obtaining in the case at bar. In support of its arguments petitioner cited the cases of *Maceda vs. Macaraig, Jr.*[20] and *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue.*[21]

THE RULING OF THE COURT

Is petitioner entitled to a tax credit certificate or refund of the alleged excise taxes it paid on its imported petroleum products sold to CDC in the amount of Php6,542,400.00?

The answer is in the negative.

[20] G.R. No. 88291, June 8, 1993, 223 SCRA 217.
[21] No. L-19707, August 17, 1967, 20 SCRA 1056.

Excise taxes refer to taxes imposed on certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the VAT.[22]

In claiming entitlement to the refund sought, petitioner invokes Section 135(c) of the NIRC of 1997, as amended, which reads as follows:

> 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) 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;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or 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; and

[22] Section 129, NIRC of 1997.

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

But nothing in the foregoing provision explicitly grants exemption from the payment of excise tax in favor of oil companies selling their imported petroleum products to legally exempt entities. The exemption provided is explicit and petitioner does not fall in any of the categories provided therein.

Relevantly, Section 131 of the NIRC of 1997, identifies the persons liable to pay excise taxes, thus:

> 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 customshouse, **or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.**
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and

> internal revenue tax due on such importation.
>
> xxx xxx xxx

Clearly, being the importer of the petroleum products, petitioner is liable to pay the excise tax due on the said importation.

In the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue*,[23] the Supreme Court explained that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer/importer/seller of the goods for any tax due to it as the manufacturer/importer/seller. The excise tax imposed on importation of petroleum products under Section 131 of the NIRC of 1997, as amended, is the direct liability of the importer who cannot thus invoke the excise tax exemption granted to its buyers who, by law, are legally exempted from the payment of direct and indirect taxes.

In the very recent case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[24] the

[23] 20 SCRA 1056.
[24] G.R. No. 188497, April 25, 2012.

Supreme Court held that oil companies who sold their petroleum products to international carriers are **not entitled to a refund of excise taxes previously paid** on the petroleum products sold. The pertinent portion of the ruling reads:

> 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.

Plainly, Section 135(c) of the NIRC of 1997, as amended, cannot be used as basis for any claim for refund of excise tax paid on imported petroleum products subsequently sold to exempt entities. As correctly pointed out by respondent, the only claim for refund of excise taxes authorized by the NIRC is the payment of excise taxes on exported goods, as provided in Section 130(D) of the NIRC of 1997, as amended, to wit:

> SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —
>
> xxx xxx xxx
>
> (D) *Credit for Excise Tax on Goods Actually Exported.* — **When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported. (*Emphasis supplied*)

Based on the above-quoted provision of the law, when **goods locally produced or manufactured are removed and actually exported, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**.

Record reveals that CDC is a duly registered PEZA enterprise; hence, sales to it are deemed "export sales" pursuant to Article 23 of Executive Order No. 226,[25] to wit:

> Article 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: Provided, further, That without actual exportation **the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **<u>sales to export processing zones</u>**; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: xxx (*Emphases supplied*)

---

[25] The Omnibus Investments Code of 1987.

Admittedly, the petroleum products sold by petitioner to CDC were not locally produced or manufactured but imported goods. The fact of importation is shown in all the importation documents presented by petitioner itself to the Court. In other words, petitioner's claim for refund cannot be granted.

On the final note, tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be mis-interpreted,[26] it is never presumed[27] nor be allowed solely on the ground of equity.[28] These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed

---

[26] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 155, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation*, G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 224.
[27] *Province of Abra v. Hernando*, No. L-49336, August 31, 1981, 107 SCRA 104, 109, citing early cases.
[28] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. Nos. 122161 & 20991, February 1, 1999, 302 SCRA 442, 453, citing *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue*, G.R. No. 117359, July 23, 1998, 293 SCRA 76, 91.

against the taxpayer, as taxes are the lifeblood of the government.[29]

WHEREFORE, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

[29] *Silkair(Singapore) PTE. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, citing *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

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.

ERNESTO D. ACOSTA
Presiding Justice