REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10502

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
JAN 28 2025 4:20 p.m.

x - x

RESOLUTION

MANAHAN, *J.*:

For resolution of the Court are the following incidents:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2024)* filed on October 11, 2024, with petitioner's *Comment/Opposition [Re: Respondent's Motion for Partial Reconsideration dated October 2, 2024]* filed on November 5, 2024; and

2. Petitioner's *Motion for Partial Reconsideration* filed on October 14, 2024, with respondent's *Opposition (Re: Motion for Partial Reconsideration of the Decision dated 23 September 2024).*

For easy reference, the dispositive portion of the assailed Decision reads, as follows:

> "**ACCORDINGLY**, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱70,767,488.00**, representing petitioner's erroneously paid excise taxes for its imported Jet

A-1 fuel sold and delivered to tax-exempt international air carriers during the period from April to May 2019.

SO ORDERED."

Respondent's Motion for Partial Reconsideration

Respondent asserts in his motion that petitioner's liability for excise tax arises upon importation of the subject Jet A-1 fuel. Ordinarily, as importer, petitioner may pass on the excise tax burden to its buyers. However, if the imported Jet A-1 fuel is sold to an exempt entity, petitioner is precluded from passing on the excise tax and as a result, petitioner shall bear the tax burden.

Petitioner counters that respondent's above-arguments were mere rehash of the points already raised in respondent's Answer and Memorandum. Moreover, petitioner argues that in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*[1] *(2015 Chevron* case*)*, the Supreme Court ruled that the excise taxes paid by Chevron on imported petroleum products are the proper subject of refund if subsequently sold to an exempt entity, rendering such excise taxes as erroneously or illegally paid.

Petitioner's Motion for Partial Reconsideration

On the other hand, petitioner asserts in its motion that the following pieces of evidence clearly establish that the Jet A-1 fuel sold to Deutsche Lufthansa AG was consumed outside the Philippines: (1) The Aviation Service Returns; (2) The testimony, by way of judicial affidavit, of witness Mr. Matias D. Aquiatan, Jr.; (3) The Certification issued by the Civil Aviation Authority of the Philippines; and (4) The Air Transport Agreement with Germany.

Respondent counters that petitioner has the burden of proof to establish the factual basis of its claim for tax credit or refund. Partaking the nature of a tax exemption, claims for refund are strictly construed against the claimant.

[1] G.R. No. 210836, September 1, 2015.

Based on the respective motions of both parties, the Court shall resolve the following issues: (1) Whether petitioner is entitled to its claim for refund as per the assailed Decision; and (2) Whether petitioner proved that the Jet A-1 fuel sold to Lufthansa AG was consumed outside the Philippines.

After careful consideration of the merits, the Court resolves to deny both motions.

Petitioner is partially entitled to its claim for refund as discussed in the assailed decision

At the onset, the Court agrees with petitioner's observation that respondent merely rehashed the arguments that he already raised in the pleadings and papers submitted before the Court. Said arguments had already been addressed in the assailed Decision, as follows:

> In addition, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation ('2014 Pilipinas Shell* case'), which involved the same parties, the Supreme Court categorically declared that petitioner, as the statutory taxpayer who paid the excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid pursuant to Section 135 of the NIRC, as amended, to wit:
>
>> 'xxx 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**.'
>
> Moreover, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue (2015 Chevron* case), the exemption granted under Section 135 of the NIRC of 1997, as amended, was discussed as follows:
>
>> '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.'"**

Thus, the *2014 Pilipinas Shell* case and the *2015 Chevron* case clearly provide that petitioner, as the statutory taxpayer who paid the excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid which is deemed illegal or erroneous.

Considering the foregoing, the Court finds no reason to deviate from its earlier ruling as to the partial propriety of petitioner's refund claim.

As to its client, Deutsche Lufthansa AG, petitioner failed to prove that the imported Jet A-1 fuel products were used or consumed outside the Philippines

In this regard, the Court found that petitioner failed to prove that the subject imported fuel products were used or consumed outside the Philippines, *i.e.*, petitioner failed to present Deutsche Lufthansa AG's Foreign Air Carrier Permit (FACP) issued by the Civil Aeronautics Board (CAB).

Petitioner alleges that Deutsche Lufthansa AG is not armed with an FACP issued by the CAB because it is not an on-line carrier that maintains regular flight operations from the Philippines to another country. Considering that it is not armed with an FACP, said carrier may only land at the Ninoy Aquino International Airport for purposes of maintenance and/or refueling only.

However, the Court cannot consider petitioner's above-allegations, because it is a hornbook doctrine that mere allegations do not constitute proof.[2] Hence, without any evidentiary basis to show that the FACP requirement may be dispensed with respect to Deutsche Lufthansa AG, the Court cannot give credence to petitioner's allegations. Again, the petitioner is required to show that the carrier is armed with a permit to operate scheduled international services to and from the Philippines. Incidentally, without an FACP, the Court cannot determine whether the subject imported fuel products were used or consumed outside the Philippines.

As such, the Court likewise finds petitioner's motion unmeritorious.

FOR THESE REASONS, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2024)* and petitioner's *Motion for Partial Reconsideration* are both **DENIED**, for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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[2] *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc. et al.*, G.R. Nos. 165585 & 176982, November 20, 2013.