

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**SPECIAL SECOND DIVISION**

**PILIPINAS SHELL  
PETROLEUM CORPORATION,**  
Petitioner,

**CTA CASE NO. 11041**

Members:

- versus -

**RINGPIS-LIBAN, P.J.,  
MODESTO-SAN PEDRO, and  
FERRER-FLORES, JJ.**

**COMMISSIONER OF  
INTERNAL REVENUE,**  
Respondent.

Promulgated:

AUG 07 2026

X -----X

**DECISION**

***FERRER-FLORES, J.:***

The **Petition for Review** filed on November 25, 2022 prays for the refund or issuance of tax credit certificate in the amount of **₱96,494,288.00**, allegedly representing excise taxes paid by petitioner during the period from November 2020 to February 2021 on imported aviation Jet A-1 fuel sold and delivered to tax-exempt international air carriers during the period from December 2020 to March 2021.<sup>1</sup>

**THE PARTIES**

Petitioner **Pilipinas Shell Petroleum Corporation** is a corporation organized and existing under the laws of the Philippines with office address at 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Taguig City, Metro Manila, 1635.<sup>2</sup>

Respondent is the duly appointed **Commissioner of Internal Revenue**.<sup>3</sup>

<sup>1</sup> Summary of the Case, Pre-Trial Order dated April 14, 2023, Docket – Vol. I, p. 299.

<sup>2</sup> Exhibit “23” Docket – Vol. II, pp. 598 to 613.

<sup>3</sup> Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 270.

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 2 of 27

### ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 3, 2021, petitioner filed with the Excise Large Taxpayers Audit Division II of the Bureau of Internal Revenue (BIR) its Application for Tax Credits/Refunds (BIR Form No. 1914),<sup>4</sup> together with its letter dated May 11, 2021,<sup>5</sup> requesting for the issuance of tax refund or credit, for the alleged excise taxes paid on its sale of petroleum products to international air carriers of Philippine or foreign registry for consumption outside the Philippines, for the period December 15, 2020 to January 30, 2021, in the amount of ₱39,552,336.00.

Thereafter, on July 8, 2021, petitioner filed with the same Division another Application for Tax Credits/Refunds (BIR Form No. 1914),<sup>6</sup> together with its letter dated June 8, 2021,<sup>7</sup> requesting for the issuance of tax refund or credit, for the alleged excise taxes paid on its sale of petroleum products to international air carriers of Philippine or foreign registry for consumption outside the Philippines, for the period February 4, 2021 to March 31, 2021, in the amount of ₱56,941,952.00.

### PROCEEDINGS BEFORE THIS COURT

As earlier stated, on November 25, 2022, petitioner filed the present *Petition for Review*.<sup>8</sup>

On February 2, 2023, respondent filed his *Answer*,<sup>9</sup> interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to refund in the amount of ₱96,494,288.00 allegedly representing excise taxes paid during the period November 2020 to February 2021 on imported Jet A-1 fuel allegedly sold and delivered to tax-exempt international carriers during the period December 2020 to March 2021; and, (2) claims for refund of excise taxes paid is authorized only by Section 130(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent transmitted thereafter the BIR Records of the present case on February 13, 2023.<sup>10</sup>

The Pre-Trial Conference was scheduled and held on April 20, 2023.<sup>11</sup> Prior thereto, the *Respondent's Pre Trial Brief* was filed on February 10,

<sup>4</sup> Exhibit "P-21-1", Docket – Vol. II, p. 592.

<sup>5</sup> Exhibit "P-21", Docket – Vol. II, pp. 589 to 591.

<sup>6</sup> Exhibit "P-22-1", Docket – Vol. II, p. 596.

<sup>7</sup> Exhibit "P-22", Docket – Vol. II, pp. 593 to 595.

<sup>8</sup> Docket – Vol. I, pp. 6 to 32.

<sup>9</sup> Docket – Vol. I, pp. 101 to 109.

<sup>10</sup> Respondent's *Compliance* dated February 10, 2023, Docket – Vol. I, pp. 118 to 120.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 3 of 27

2023,<sup>12</sup> while the *Pre-Trial Brief for Petitioner* was submitted on April 13, 2023.<sup>13</sup>

On May 22, 2023, the parties filed their *Joint Stipulation of Facts and Issues*,<sup>14</sup> which was admitted and approved by the Court in its Resolution dated July 5, 2023,<sup>15</sup> thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 14, 2023 was then issued by the Court.<sup>16</sup>

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Farida Nimfa G. Dimailig,<sup>17</sup> its Country Tax Manager; (2) Ms. Anna Beatriz Vergel de Dios,<sup>18</sup> its Import/Additives Scheduler until September 2022 and currently Commercial Fuels Account Manager; (3) Ms. Berenice Angelique L. Flores,<sup>19</sup> its Tax Advisor; (4) Patrick R. Manalo,<sup>20</sup> its Airport Operations Manager; (5) Mr. Jonathan Juanillo,<sup>21</sup> its Social Performance Adviser at the Tabangao Depot; (6) Ms. Maria Luz S. Verdejo,<sup>22</sup> Head Librarian at the Carlos P. Romulo Library of the Department of Foreign Affairs – Foreign Service Institute; and, (7) Ms. Hazel D. Pangandian-Tabamo,<sup>23</sup> the Court-commissioned Independent Certified Public Accountant (ICPA).<sup>24</sup>

The ICPA Report was submitted on December 13, 2023.<sup>25</sup>

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<sup>11</sup> Notice of Pre-Trial Conference dated February 9, 2023, Docket – Vol. I, pp. 111 to 112; Minutes of the hearing held on April 20, 2023, Docket – Vol. I, p. 255.

<sup>12</sup> Docket – Vol. I, pp. 113 to 116.

<sup>13</sup> Docket – Vol. I, pp. 236 to 253.

<sup>14</sup> Docket – Vol. I, pp. 270 to 283.

<sup>15</sup> Docket – Vol. I, p. 285.

<sup>16</sup> Docket – Vol. I, pp. 299 to 306.

<sup>17</sup> Exhibits “P-77” and “P-83” (marked as Exhibit “P-30” in the Docket), Docket – Vol. I, pp. 91 to 98, and 184 to 187, respectively; Minutes of the hearing held on, and Order dated, September 12, 2023, Docket – Vol. I, pp. 324 to 325, and 327 to 328, respectively. Refer to Resolution dated August 20, 2024, Docket – Vol. II, at p. 793, wherein the *Supplemental Judicial Affidavit of Farida Nimfa G. Dimailig* was deemed remarked and read as Exhibit “P-83”.

<sup>18</sup> Exhibit “P-76” (marked as Exhibit “P-28” in the Docket), Docket – Vol. I, pp. 36 to 54; Minutes of the hearing held on, and Order dated, September 12, 2023, Docket – Vol. I, pp. 324 to 325, and 327 to 328, respectively. For the remarking, refer to Minutes of the hearing held on January 23, 2024, Docket – Vol. II, p. 418, and Resolution dated August 20, 2024, Docket – Vol. II, at p. 793, wherein the *Judicial Affidavit of Anna Beatriz Vergel de Dios* was deemed remarked and read as Exhibit “P-76”.

<sup>19</sup> Exhibit “P-78”, Docket – Vol. I, pp. 128 to 141; Minutes of the hearing held on, and Order dated, February 27, 2024, Docket – Vol. II, pp. 429 to 430.

<sup>20</sup> Exhibit “P-79”, Docket – Vol. I, pp. 332 to 345; Minutes of the hearing held on, and Order dated, January 23, 2024, Docket – Vol. II, pp. 418 to 420.

<sup>21</sup> Exhibit “P-80”, Docket – Vol. I, pp. 70 to 76; Minutes of the hearing held on, and Order dated, January 23, 2024, Docket – Vol. II, pp. 418 to 420.

<sup>22</sup> Exhibit “P-82”, Docket – Vol. I, pp. 198 to 203; Minutes of the hearing held on, and Order dated, February 27, 2024, Docket – Vol. II, pp. 429 to 430.

<sup>23</sup> Exhibit “P-81”, Docket – Vol. II, pp. 411 to 417; Minutes of the hearing held on, and Order dated, January 23, 2024, Docket – Vol. II, pp. 418 to 420.

<sup>24</sup> *Oath of Commission* dated September 12, 2023, Docket – Vol. I, p. 326; Minutes of hearing held on, and Order dated, September 12, 2023, Docket – Vol. I, pp. 324 to 325, and 327 to 328, respectively.

<sup>25</sup> Exhibit “P-28” (on a separate binder).

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 4 of 27

On April 1, 2024, petitioner filed its *Formal Offer of Evidence [Ad Cautelam] with Manifestation and Motion to Remark Exhibits and/or Set Commissioner's Hearing*.<sup>26</sup> Respondent filed his *Comment (Re: Formal Offer of Evidence)* on April 2, 2024.<sup>27</sup> In the Resolution dated August 20, 2024,<sup>28</sup> the Court admitted all of petitioner's offered exhibits. In the same Resolution, the Court noted petitioner's *Manifestation and Motion to Remark Exhibit and/or Set Commissioner's Hearing* and granted its *Motion to Remark Exhibits*. Accordingly, the *Judicial Affidavit of Anna Beatriz Vergel de Dios* and the *Supplemental Judicial Affidavit of Farida Nimfa G. Dimailig* and their signatures thereon were deemed re-marked to be read as Exhibits "P-76", "P-83", "P-76-1", and "P-83-1", respectively, without need to set the case for commissioner's hearing or for petitioner to file a supplemental formal offer of evidence.

On September 12, 2024, the ICPA submitted her *Verified Declaration, Supplemental Certification*, and USB flash drive containing related Exhibits.<sup>29</sup>

Subsequently, on September 13, 2024, petitioner filed an *Omnibus Motion I. To Admit Supplemental Certification of ICPA II. To Allow Transfer of Marking of Exhibits III. To Set a Hearing for the Identification of Supplemental Certification*.<sup>30</sup> Respondent, however, failed to file his comment.<sup>31</sup> In the Resolution dated April 23, 2025,<sup>32</sup> the Court granted petitioner's *Omnibus Motion I. To Admit Supplemental Certification of ICPA*. Accordingly, the *Supplemental Certification* of ICPA, as well as the supplemental USB, containing the clearer copies of Exhibits "P-47", "P-49", and "P-53", were admitted as part of the records of this case. On the other hand, the Court denied petitioner's *Omnibus Motion II. To Allow Transfer of Marking of Exhibits III. To Set a Hearing for the Identification of Supplemental Certification*, inasmuch as Exhibits "P-47", "P-49", and "P-53" have been admitted into evidence.

In the meantime, respondent filed a *Manifestation* on February 7, 2025,<sup>33</sup> stating that he will not be presenting any witness in this case.

On May 26, 2025, respondent filed his *Memorandum*;<sup>34</sup> while the *Memorandum for Petitioner* was filed on June 2, 2025.<sup>35</sup>

<sup>26</sup> Docket – Vol. II, pp. 433 to 473.

<sup>27</sup> Docket – Vol. II, pp. 785 to 787.

<sup>28</sup> Docket – Vol. II, pp. 791 to 794.

<sup>29</sup> Docket – Vol. II, pp. 798 to 803.

<sup>30</sup> Docket – Vol. II, pp. 806 to 809.

<sup>31</sup> Records Verification dated February 5, 2025 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 822.

<sup>32</sup> Docket – Vol. II, pp. 832 to 834.

<sup>33</sup> Docket – Vol. II, pp. 826 to 828.

<sup>34</sup> Docket – Vol. II, pp. 836 to 844.

<sup>35</sup> Docket – Vol. II, pp. 848 to 880.

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 5 of 27

The present case was considered submitted for decision on June 10, 2025.<sup>36</sup>

### THE STIPULATED ISSUE

The issue submitted for this Court's resolution is as follows:

Whether petitioner is entitled to the recovery of excise taxes in the amount of ₱96,494,288.00 paid for the period from November 2020 to February 2021 on imported Jet A-1 fuel sold to international air carriers and exempt entities or agencies for use or consumption outside the Philippines during the period from December 2020 to March 2021.<sup>37</sup>

#### *Petitioner's arguments*

Petitioner argues that it timely filed its claim for refund or credit for excise taxes erroneously, wrongfully, illegally, or excessively collected from excise taxes paid from November 2020 to February 2021, pursuant to Sections 204 and 229 of the NIRC of 1997, as amended; and that, it is entitled to recovery of excise taxes in the amount of ₱96,494,288.00 on Jet A-1 fuel subsequently sold to international air carriers and to tax-exempt entities for use or consumption outside the Philippines, as: (a) its sale of Jet A-1 fuel to international air carriers is exempt from excise tax, and (b) it is clearly entitled to a refund or the issuance of tax credit certificate for excise taxes paid on Jet A-1 fuel sold to international air carriers.

#### *Respondent's counter-arguments*

Respondent contends that petitioner, being an importer of petroleum products allegedly sold to international carriers, is liable to pay excise taxes due thereon; that if petitioner sold fuel to an exempt entity, it is precluded from passing on the excise tax to the said exempt entity; and, that the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

### THE COURT'S RULING

The present *Petition for Review* is meritorious. 4

<sup>36</sup> Minute Resolution dated June 10, 2025, Docket – Vol. II, p. 882.

<sup>37</sup> Stipulation of Issues, JSFI, Docket – Vol. I, pp. 270 to 271.

DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 6 of 27

***Governing provisions for refund claims.***

Sections 204(C) and 229 of the NIRC of 1997, as amended, read as follows:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

XXX

XXX

XXX

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund. *(Emphasis added)*

XXX

XXX

XXX

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. *(Emphases supplied)*

The aforequoted provisions are clear: within two years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with this Court. Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional; and thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 7 of 27

time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two years from payment of the tax “regardless of any supervening cause that may arise after payment.”<sup>38</sup>

Furthermore, the above-quoted provisions allow the recovery of taxes erroneously or illegally collected. An “erroneous or illegal tax” is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.<sup>39</sup>

Consequently, for the present claim for refund or tax credit certificate to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject thereof is an “erroneous or illegal tax”.

***Petitioner timely filed its administrative and judicial claims.***

In general, the excise tax on imported articles is paid by the owner or importer upon importation and prior to removal thereof from the customhouse as provided in Sections 129 and 131 of the NIRC of 1997, as amended, to wit:

SEC. 129. *Goods and Services Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported** as well as services performed in the Philippines. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

xxx                      xxx                      xxx. *(Emphasis and underscoring added)*

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 customs house,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

xxx                      xxx                      xxx. *(Emphasis and underscoring added)*

<sup>38</sup> *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

<sup>39</sup> *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in Black’s Law Dictionary, Fifth Edition, p. 486.

Thus, the two-year period prescribed in Sections 204(C) and 229 of the NIRC of 1997, as amended, must be reckoned from the date of actual payment of excise taxes.

In this case, petitioner allegedly imported Jet A-1 fuel from November 2020 to February 2021, though its refinery in Tabangao, Batangas, and paid the corresponding excise taxes thereof, as follows:

| SAD <sup>40</sup> No.  | SAD Date      | Volume in Liters        | Rate  | Amount of Excise Tax | Payment Date as per SSDT <sup>41</sup> |
|------------------------|---------------|-------------------------|-------|----------------------|----------------------------------------|
| C1021706 <sup>42</sup> | Nov. 26, 2020 | 10,506,010              | ₱4.00 | ₱ 42,024,040.00      | Nov. 27, 2020 <sup>43</sup>            |
| C1022671 <sup>44</sup> | Dec. 15, 2020 | 4,835,319               | ₱4.00 | ₱ 19,341,276.00      | Dec. 17, 2020 <sup>45</sup>            |
| C1022672 <sup>46</sup> | Dec. 15, 2020 | 3,225,012               | ₱4.00 | ₱ 12,900,048.00      | Dec. 17, 2020 <sup>47</sup>            |
| C592 <sup>48</sup>     | Jan. 12, 2021 | 6,446,266               | ₱4.00 | ₱ 25,785,064.00      | Jan. 14, 2021 <sup>49</sup>            |
|                        |               | 14,442                  |       | ₱ 57,768.00          | Mar. 1, 2021 <sup>50</sup>             |
|                        |               | 6,460,708 <sup>51</sup> |       | ₱ 25,842,832.00      |                                        |
| C2172 <sup>52</sup>    | Feb. 17, 2021 | 7,715,600               | ₱4.00 | ₱ 30,862,400.00      | Feb. 18, 2021 <sup>53</sup>            |
| Total                  |               | 32,742,649              | ₱4.00 | ₱130,970,596.00      |                                        |

Thus, counting two years from the earliest payment of excise tax on imported articles on November 27, 2020, petitioner had until November 27, 2022, to file its administrative and judicial claims for refund.

Consequently, petitioner’s administrative claims were timely filed on June 3, 2021 and July 8, 2021,<sup>54</sup> respectively. As for petitioner’s judicial claim for refund, the same was likewise timely filed on November 25, 2022.<sup>55</sup>

In this case, petitioner timely filed both its administrative and judicial claims.

<sup>40</sup> That is, “Single Administrative Document”.  
<sup>41</sup> That is, “Statement of Settlement of Duties and Taxes”.  
<sup>42</sup> Exhibit “P-1-3”, Docket – Vol. II, p. 477.  
<sup>43</sup> Exhibit “P-1-4”, Docket – Vol. II, p. 478.  
<sup>44</sup> Exhibits “P-2-3”, Docket – Vol. II, p. 488.  
<sup>45</sup> Exhibit “P-2-4”, Docket – Vol. II, p. 489.  
<sup>46</sup> Exhibit “P-3-3”, Docket – Vol. II, p. 498.  
<sup>47</sup> Exhibit “P-3-4”, Docket – Vol. II, p. 499.  
<sup>48</sup> Exhibit “P-4-3”, Docket – Vol. II, p. 507.  
<sup>49</sup> Exhibit “P-4-4”, Docket – Vol. II, p. 508.  
<sup>50</sup> Exhibit “P-4-4-1”, Docket – Vol. II, p. 509.  
<sup>51</sup> Exhibit “P-42”, p. 3, USB (Exhibit “P-28-2”).  
<sup>52</sup> Exhibit “P-5-3”, Docket – Vol. II, p. 520.  
<sup>53</sup> Exhibit “P-5-4”, Docket – Vol. II, p. 521.  
<sup>54</sup> Exhibits “P-21”, “P-21-1”, “P-22” and “P-22-1”, Docket – Vol. II, pp. 589 to 596.  
<sup>55</sup> Docket – Vol. I, pp. 6 to 32.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 9 of 27

***The excise taxes paid on imported Jet A-1 fuel sold to international air carriers were erroneously or illegally collected.***

Respondent argues that, on its face, Section 135 of the NIRC of 1997, as amended, does not grant exemption to sellers; rather, it provides for an enumeration wherein petroleum products when sold to international carriers and entities enumerated therein are exempt from excise tax. He notes that petitioner was anchoring its claim for refund on Section 135 of the NIRC of 1997, as amended. However, said provision cannot be a source for petitioner's claim for refund and it cannot be invoked by the sellers, like herein petitioner, but only by the buyers who are exempt entities. For respondent, the petroleum product sold is subject to excise tax for it is a fact that the buyer, as enumerated in Section 135 of the NIRC of 1997, as amended, is an exempt entity. Thus, petitioner cannot invoke the exemption granted to this exempt entity as a ground to claim for refund of the excise tax paid.

The Court disagrees.

Section 135 of the NIRC of 1997, as amended, 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

(c) **Entities which are by law exempt from direct and indirect taxes.** (*Emphases and underscoring added*)

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation* ("2014 Pilipinas Shell case"),<sup>56</sup> which involved the same parties, the Supreme Court categorically declared that petitioner, as the

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<sup>56</sup> G.R. No. 188497, February 19, 2014.

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 10 of 27

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 of 1997, 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.** (*Emphasis added*)

Moreover, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue* (“2015 Chevron case”),<sup>57</sup> the exemption granted in 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.** (*Emphasis added*)

Although the exemption in *2015 Chevron* case was premised on Section 135(c) of the NIRC of 1997, as amended, while the *2014 Pilipinas Shell* case was premised on Section 135(a) of the same law, the Supreme Court held in the *2015 Chevron* case that “[n]otwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC of 1997, as amended, the basic tax principle applicable was the same in both cases – that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC of 1997, as amended, must be construed in favor of the petroleum products on which the excise tax was initially imposed.”

Furthermore, in the *2014 Pilipinas Shell* case, the Supreme Court held therein that “exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent.” In contrast, the Supreme Court held in the *2015 Chevron* case that “Section 135 (c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place.”

Notably, however, in the more recent case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,<sup>58</sup> the

<sup>57</sup> G.R. No. 210836, September 1, 2015.

<sup>58</sup> G.R. No. 211303, June 15, 2021.

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 11 of 27

Supreme Court elucidated on certain conceptual distinctions in the 2014 *Pilipinas Shell* case *vis-à-vis* the Court's subsequent pronouncements in the 2015 *Chevron* case, holding that Section 135 of the NIRC of 1997, as amended, confers an impersonal tax exemption, to wit:

### II

By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a specific rate or *ad valorem*. As case law characterizes, **an excise tax is not a tax on the exercise of a privilege, but rather a levy on certain articles which are manufactured or imported for domestic consumption.** It is equally settled that that the accrual or liability to pay the same arises immediately upon importation or as soon as the goods come into existence when manufactured.

Furthermore, excise taxes are **indirect taxes, as opposed to direct taxes.** Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of **tax incidence** (or the actual liability to pay the tax) and **tax burden** (the economic burden of the tax incident).

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Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. **Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the statutory taxpayer, who must correspondingly benefit from any tax exemption.** In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not *per se* the excise tax liability imposed under Section 129 of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that **'[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers.** The fact that [statutory taxpayer/importer], on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer.' **This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the 'exemption' granted under Section 135 governing excise taxes.**

### III.

At its core, the purpose of a grant of tax exemption is 'some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption.' However, the **object of the grant of tax exemption** is not necessarily a natural person similar to how 'the objects of taxation are either persons,

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 12 of 27

property[,] and property rights within the jurisdiction of the taxing authority.’ As such, generally speaking, the object of tax exemptions may either be **personal or impersonal**. Personal exemptions conceptually pertain to those ‘granted directly in favor of such persons as are within the contemplation of the law granting the exemption.’ On the other hand, an impersonal exemption may be said to exist when a tax exemption is ‘granted directly in favor of a certain class of property.’ If the tax exemption is impersonal in nature, then, regardless of who transacts with the property, the exemption should still apply. This framework of personal and impersonal tax exemptions underpins the exemption granted under Section 135 on excisable articles.

Notably, the Court, in the 2014 *Pilipinas Shell* Resolution, stated that the ‘exemption from payment of excise tax’ under Section 135 is ‘conferred on international carriers who purchased the petroleum products of respondent’; thus, in said case, the tax exemption under Section 135 covering said products was characterized as a grant of a personal tax exemption.

However, in the subsequent case of 2015 *Chevron*, the Court effectively abandoned the foregoing characterization, and instead, correctly categorized that the tax exemption under Section 135 is ‘**in favor of the petroleum products on which the excise tax was levied in the first place**.’ As such, the Court, in 2015 *Chevron*, validated the nature of Section 135 as a provision conferring an impersonal tax exemption, which, in fact, cogently squares with the nature of excise taxes being a tax on property, rather than a tax on persons.

Being an impersonal tax exemption, Section 135 cannot be therefore interpreted as an exemption primarily conferred to the buyers because ‘they are not under any legal duty to pay the excise tax.’ To reiterate, upon the buyers’ purchase of the articles, the ‘excise tax’ they pay, if any, is, in reality, a mere passed-on cost that forms part of the purchase price. Hence, while purchasers bear the economic burden, they do not, by the mere fact of assuming the passed-on costs, become legally regarded as statutory taxpayers. In this regard, Associate Justice Henri Jean Paul B. Inting aptly observed that ‘a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune from therefrom.’

The impersonal nature of the tax exemption is also expressed in the wording itself of Section 135:

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As worded, the object of Section 135 itself is not the enumerated persons but rather, the ‘**petroleum products sold**.’ Palpably, based on Section 135’s phraseology, the enumerated persons are merely descriptive of the petroleum products, i.e., the persons to which the products are sold to. As such, the wording of Section 135 hews more closely with the character of impersonal tax exemptions, which is, in turn, consistent with the nature of excise taxes as taxes not on persons but on the goods/articles. As equally observed by Associate Justice

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 13 of 27

Alfredo Benjamin S. Caguioa, '[t]he succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. **Paragraphs (a), (b)[,] and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative.**'

**IV.**

At this juncture, it is likewise relevant to mention that since an excise tax is in the nature of a property tax, it is thus erroneous to consider the operation of a tax exemption thereto in the same way as a transactional tax, wherein every purchaser and seller may be considered as a statutory taxpayer for every succeeding transaction, only ending with the final consumer. **Rather, the exemption under Section 135 must be reconciled with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation.**

The Court, in the 2015 *Chevron*, had already settled that the true status of the goods, whether ultimately taxable or tax-exempt, is **actually conditional or subject to confirmation** upon the sale of the articles to any of the entities enumerated under Section 135. This conditional taxability can actually be seen in another related provision in the Tax Code, *i.e.*, Section 131 thereof:

Section 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 customs house, 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.**

x x x x (Emphasis and underscoring supplied)

As may be gleaned from Section 131 as above-cited, although certain articles may be free from excise taxes upon importation, they may subsequently become subject to the same depending on the subsequent buyer. This is essentially the same principle of **subsequent confirmation** espoused by the 2015 *Chevron*, and is also a necessary consequence of excise tax being a property tax, and not a tax on persons.

Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 14 of 27

Section 135, any excise taxes which were previously paid thereon would then be considered as ‘erroneously or illegally collected,’ and therefore, subject to refund. In turn, the petroleum products become exempt from excise taxes once it is determined that they are to be sold to, among others, international carriers. This reflects Section 135’s wording, *i.e.*, that the petroleum products are considered as tax-exempt once they are ‘sold to [*inter alia*] x x x [i]nternational carriers.’

Based on (a) the nature of excise taxes as a property tax and an indirect tax, and (b) the principle that a buyer, when shouldering the tax burden, does not become the statutory taxpayer, **it is thus clear that the purchaser of local products (such as international carriers) cannot be deemed to have been conferred a tax exemption when it has not been imposed a tax liability.** In the ordinary course of things, international carriers do not manufacture or import petroleum products and hence, are not statutory taxpayers to which the exemption under Section 135 could pertain. **If anything, international carriers merely bear the tax burden when the costs therefor are passed on to them by the actual manufacturers or importers.** However, as earlier discussed, the ‘passing on’ of the tax burden is largely a contractual affair between the parties and should not determine the tax incidence imposed by law unless the contrary is provided. **As such, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers). (*Emphasis ours*)**

As explained by the High Court, the tax exemption under Section 135 of the NIRC of 1997, as amended, must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).

Applying the foregoing, upon petitioner’s sale of its imported Jet A-1 fuel to various international air carriers, the status of the said sold petroleum product as tax-exempt solidifies. Consequently, the excise taxes it previously paid on the importation of said petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund or credit under Sections 204(C) and 229 of the NIRC of 1997, as amended.

***The excise taxes due on the imported Jet A-1 fuel, subject of the present claim, were duly paid by petitioner.***

Records show that, from November 2020 to February 2021, petitioner imported 32,742,649 liters of Jet A-1 fuel through its Tabangao Import

Facility, and paid the corresponding excise taxes thereon in the aggregate amount of ₱130,970,596.00, detailed as follows:

| Set        | Vessel           | Single Administrative Document (SAD) |                                                      |               | Statement of Settlement of Duties and Taxes (SSDT)     |               | Volume (in Liters) | Excise Tax Paid |
|------------|------------------|--------------------------------------|------------------------------------------------------|---------------|--------------------------------------------------------|---------------|--------------------|-----------------|
|            |                  | Customs Reference No.                | Exh. No.                                             | Date          | Exh. No.                                               | Date          |                    |                 |
| INITIAL    | ORIENTAL DIAMOND | C1021706                             | "P-1-3", <sup>59</sup><br>"P-38", p. 1 <sup>60</sup> | Nov. 26, 2020 | "P-1-4", <sup>61</sup><br>"P-40", p. 1 <sup>62</sup>   | Nov. 27, 2020 | 10,506,010         | ₱42,024,040.00  |
| FINAL      |                  |                                      | "P-44", p. 1 <sup>63</sup>                           | Nov. 26, 2020 | "P-1-4.1", <sup>64</sup><br>"P-45", p. 1 <sup>65</sup> | Jan. 22, 2021 | 10,506,010         | 42,024,040.00   |
| Difference |                  |                                      |                                                      |               |                                                        |               | 0                  | 0               |
| INITIAL    | EL ZORRO         | C1022671                             | "P-2-3", <sup>66</sup><br>"P-38", p. 2 <sup>67</sup> | Dec. 15, 2020 | "P-2-4", <sup>68</sup><br>"P-40", p. 2 <sup>69</sup>   | Dec. 17, 2020 | 4,835,319          | 19,341,276.00   |
| FINAL      |                  |                                      | "P-44", p. 2 <sup>70</sup>                           | Dec. 15, 2020 | "P-2-4.1", <sup>71</sup><br>"P-45", p. 2 <sup>72</sup> | Feb. 4, 2021  | 4,835,319          | 19,341,276.00   |
| Difference |                  |                                      |                                                      |               |                                                        |               | 0                  | 0               |
| INITIAL    | EL ZORRO         | C1022672                             | "P-3-3", <sup>73</sup><br>"P-38", p. 3 <sup>74</sup> | Dec. 15, 2020 | "P-3-4", <sup>75</sup><br>"P-40", p. 3 <sup>76</sup>   | Dec. 17, 2020 | 3,225,012          | 12,900,048.00   |
| FINAL      |                  |                                      | "P-44", p. 3 <sup>77</sup>                           | Dec. 15, 2020 | "P-3-4.1", <sup>78</sup><br>"P-45", p. 3 <sup>79</sup> | Feb. 4, 2021  | 3,225,012          | 12,900,048.00   |
| Difference |                  |                                      |                                                      |               |                                                        |               | 0                  | 0               |
| INITIAL    | QUI CHI          | C592                                 | "P-4-3", <sup>80</sup><br>"P-38", p. 4 <sup>81</sup> | Jan. 12, 2021 | "P-4-4", <sup>82</sup><br>"P-40", p. 4 <sup>83</sup>   | Jan. 14, 2021 | 6,446,266          | 25,785,064.00   |
| FINAL      |                  |                                      | "P-44", p. 4 <sup>84</sup>                           | Jan. 12, 2021 | "P-4-4.1", <sup>85</sup>                               | Mar. 1, 2021  | 6,460,708          | 25,842,832.00   |

<sup>59</sup> Docket – Vol. II, p. 477.  
<sup>60</sup> USB (Exhibit “P-28-2”).  
<sup>61</sup> Docket – Vol. II, p. 478.  
<sup>62</sup> USB (Exhibit “P-28-2”).  
<sup>63</sup> USB (Exhibit “P-28-2”).  
<sup>64</sup> Docket – Vol. II, p. 479.  
<sup>65</sup> USB (Exhibit “P-28-2”).  
<sup>66</sup> Docket – Vol. II, p. 488.  
<sup>67</sup> USB (Exhibit “P-28-2”).  
<sup>68</sup> Docket – Vol. II, p. 489.  
<sup>69</sup> USB (Exhibit “P-28-2”).  
<sup>70</sup> USB (Exhibit “P-28-2”).  
<sup>71</sup> Docket – Vol. II, p. 490.  
<sup>72</sup> USB (Exhibit “P-28-2”).  
<sup>73</sup> Docket – Vol. II, p. 498.  
<sup>74</sup> USB (Exhibit “P-28-2”).  
<sup>75</sup> Docket – Vol. II, p. 499.  
<sup>76</sup> USB (Exhibit “P-28-2”).  
<sup>77</sup> USB (Exhibit “P-28-2”).  
<sup>78</sup> Docket – Vol. II, p. 500.  
<sup>79</sup> USB (Exhibit “P-28-2”).  
<sup>80</sup> Docket – Vol. II, p. 507.  
<sup>81</sup> USB (Exhibit “P-28-2”).  
<sup>82</sup> Docket – Vol. II, p. 508.  
<sup>83</sup> USB (Exhibit “P-28-2”).  
<sup>84</sup> USB (Exhibit “P-28-2”).  
<sup>85</sup> Docket – Vol. II, p. 509.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 16 of 27

| Set                     | Vessel         | Single Administrative Document (SAD) |                                                      |               | Statement of Settlement of Duties and Taxes (SSDT)     |               | Volume (in Liters) | Excise Tax Paid |
|-------------------------|----------------|--------------------------------------|------------------------------------------------------|---------------|--------------------------------------------------------|---------------|--------------------|-----------------|
|                         |                | Customs Reference No.                | Exh. No.                                             | Date          | Exh. No.                                               | Date          |                    |                 |
|                         |                |                                      |                                                      |               | "P-45", p. 4 <sup>86</sup>                             |               |                    |                 |
| Difference              |                |                                      |                                                      |               |                                                        |               | -14,442            | -57,768.00      |
| INITIAL                 | UNIQUE HARMONY | C2172                                | "P-5-3", <sup>87</sup><br>"P-38", p. 5 <sup>88</sup> | Feb. 17, 2021 | "P-5-4", <sup>89</sup><br>"P-40", p. 5 <sup>90</sup>   | Feb. 18, 2021 | 7,715,600          | 30,862,400.00   |
| FINAL                   |                |                                      | "P-44", p. 5 <sup>91</sup>                           | Feb. 17, 2021 | "P-5-4-1", <sup>92</sup><br>"P-45", p. 5 <sup>93</sup> | Apr. 27, 2021 | 7,715,600          | 30,862,400.00   |
| Difference              |                |                                      |                                                      |               |                                                        |               | 0                  | 0               |
| Total initial SAD/SSDTs |                |                                      |                                                      |               |                                                        |               | 32,728,207         | ₱130,912,828.00 |
| Total Final SADs/SSDTs  |                |                                      |                                                      |               |                                                        |               | 32,742,649         | ₱130,970,596.00 |
| Difference              |                |                                      |                                                      |               |                                                        |               | 14,442             | ₱57,768.00      |

The above table shows a discrepancy of 14,442 liters, between the quantity of imported Jet A-1 fuel unloaded for delivery at the Tabangao Import Facility per Certificate of Quantity Received<sup>94</sup> and the quantity declared in the Bill of Lading.<sup>95</sup> This discrepancy resulted in additional taxes of ₱1,679,240.20<sup>96</sup> including excise tax of ₱57,768.00. However, as correctly found by the ICPA, the additional taxes of ₱1,679,240.20 (including the excise tax of ₱57,768.00) were paid by petitioner on March 1, 2021 as evidenced by the corresponding Bureau of Customs (BOC) Official Receipt (OR) and E2M Customs Payment Receipt, thus:

|              | Final SAD <sup>97</sup> | Initial SAD <sup>98</sup> | Additional Taxes/Fees | BOC OR/Customs Payment Receipt |              |
|--------------|-------------------------|---------------------------|-----------------------|--------------------------------|--------------|
|              |                         |                           |                       | Exhibit No.                    | Date         |
| EXCISE TAX   | ₱ 25,842,832.00         | ₱ 25,785,064.00           | ₱ 57,768.00           | "P-47", p. 4; "P-48", p. 4     | Mar. 1, 2021 |
| VAT          | 17,350,503.53           | 15,729,033.33             | 1,621,470.20          |                                |              |
| FIN          | 2.00                    |                           | 2.00                  |                                |              |
| FEES         | 1,280.00                | 1,280.00                  | -                     |                                |              |
| <b>Total</b> | <b>₱43,194,617.53</b>   | <b>₱41,515,377.33</b>     | <b>₱1,679,240.20</b>  |                                |              |

<sup>86</sup> USB (Exhibit "P-28-2").

<sup>87</sup> Docket – Vol. II, p. 520.

<sup>88</sup> USB (Exhibit "P-28-2").

<sup>89</sup> Docket – Vol. II, p. 521.

<sup>90</sup> USB (Exhibit "P-28-2").

<sup>91</sup> USB (Exhibit "P-28-2").

<sup>92</sup> Docket – Vol. II, p. 522.

<sup>93</sup> USB (Exhibit "P-28-2").

<sup>94</sup> Exhibit "P-42", p. 3, USB (Exhibit "P-28-2").

<sup>95</sup> Exhibit "P-36", p. 4, USB (Exhibit "P-28-2").

<sup>96</sup> Exhibit "P-4-8", Docket – Vol. II, p. 514.

<sup>97</sup> Exhibit "P-44", p. 4, USB (Exhibit "P-28-2").

<sup>98</sup> Exhibit "P-38", p. 4, USB (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 17 of 27

The foregoing importations are further substantiated by the following documents, to wit: (1) Bills of Lading,<sup>99</sup> (2) Load Port Survey Reports,<sup>100</sup> (3) Customs/Proforma Invoices,<sup>101</sup> (4) Authority to Release Imported Goods (ATRIG),<sup>102</sup> (5) Tax Invoices,<sup>103</sup> (6) BOC OR/Customs Payment Receipts,<sup>104</sup> (7) Certificates of Quantity Received (CQR),<sup>105</sup> (8) Initial and Final Assessment Notices,<sup>106</sup> and (9) Bank Certification.<sup>107</sup>

Notably, out of the total excise taxes paid in the amount of ₱130,970,596.00 for 32,742,649 liters of Jet A-1 fuel, petitioner seeks a refund of ₱96,494,288.00, representing the excise taxes paid for 24,123,572 liters of Jet A-1 fuel allegedly sold to international air carriers during the period from December 2020 to March 2021.

***Petitioner has sufficiently established that it erroneously paid ₱96,494,288.00 in excise taxes on imported Jet A-1 fuel sold to international air carriers.***

For the sale of petroleum products to an international air carrier to be exempted from excise tax under Section 135(a) of the NIRC of 1997, as amended, petitioner must present the following:

1. proof that the imported Jet A-1 fuel sold to international air carriers was stored in a bonded storage tank and had been disposed of in accordance with the rules and regulations;
2. proof of foreign registry of the international carrier, or in the case Philippine-registered air carrier, the latter's proof of authority to operate international flights; and,
3. proof that the imported Jet A-1 fuel were used or consumed outside the Philippines.

<sup>99</sup> Exhibits "P-1", "P-2", "P-3", "P-4", and "P-5", Docket – Vol. II, pp. 474, 486, 497, 504, and 516, respectively; Exhibit "P-36", USB (Exhibit "P-28-2").

<sup>100</sup> Exhibits "P-1-1", "P-4-1", and "P-5-1", Docket – Vol. II, p. 475, 505, and 517, respectively.

<sup>101</sup> Exhibits "P-1-2", "P-2-2", "P-4-2", "P-5-2", and "P-5-2.1", Docket – Vol. II, p. 476, 487, 506, 518, and 519, respectively; Exhibit "P-35", USB (Exhibit "P-28-2").

<sup>102</sup> Exhibit "P-1-5", "P-2-5", "P-3-5", "P-4-5", and "P-5-5", Docket – Vol. II, p. 480, 491, 501, 510, and 523, respectively; Exhibit "P-39", USB (Exhibit "P-28-2").

<sup>103</sup> Exhibit "P-1-7", "P-2-7", "P-4-7", "P-5-7", and "P-5-7.1", Docket – Vol. II, pp. 481 to 483, 492 to 494, 511 to 513, 524 to 527, and 528 to 531, respectively; Exhibits "P-43", USB (Exhibit "P-28-2").

<sup>104</sup> Exhibit "P-1-8", "P-2-8", "P-3-8", "P-4-8", and "P-5-8", Docket – Vol. II, pp. 484 to 485, 495 to 496, 502 to 503, 514 to 515, and 532 to 533, respectively.

<sup>105</sup> Exhibit "P-42", USB (Exhibit "P-28-2").

<sup>106</sup> Exhibits "P-41" and "P-46", USB (Exhibit "P-28-2").

<sup>107</sup> Exhibit "P-75", USB (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 18 of 27

*First Requisite*

Petitioner complied with the *first* requirement. Its witnesses, Ms. Vergel de Dios, Ms. Flores, Mr. Manalo, and Mr. Juanillo, explained the process and documentation of the receipts and withdrawals of imported Jet A-1 fuel at petitioner's storage tanks in the Tabangao Import Facility through the Tabangao Depot, its subsequent delivery to the Joint Oil Company Aviation Storage Plant (JOCASP) located at the Ninoy Aquino International Airport, Manila, and Clark Aviation Services, Inc. (CASI) facility in Clark International Airport, Pampanga, and eventual sale and delivery to international air carriers.<sup>108</sup>

The witnesses explained that both the receipt and withdrawal of Jet A-1 fuel at the Tabangao Import Facility are recorded and summarized in the Official Register Book (ORB), which is jointly signed by an authorized representative of petitioner and the Revenue Officer on Premises (ROOP). The ORB indicates the "receipts" and "removals" of Jet A-1 fuel for a certain period and the running balance of stored Jet A-1 fuel for that period.<sup>109</sup> The ORBs for each month are submitted to the BIR for monitoring purposes.<sup>110</sup>

In addition to the ORB, removals of Jet A-1 fuel are recorded in the Daily Product Deliveries Report (DPDR), which indicates the date of withdrawal, shipment reference number, corresponding Withdrawal Certificate (WC), and the amount of excise tax paid.<sup>111</sup>

Before any imported Jet A-1 fuel is withdrawn from the Tabangao Import Facility, a WC is prepared and signed by both the ROOP and petitioner's representative. The WC shows the source of the Jet A-1 fuel, its destination, the date of withdrawal, and its volume at the time withdrawn. When the Jet A-1 fuel withdrawn from the Tabangao Import Facility is imported, it is indicated in the WC that the same is "TAX PAID". This means that the Jet A-1 fuel was withdrawn from imported stock and the excise tax thereon has already been paid to the BOC.<sup>112</sup>

Petitioner adopts the first-in, first-out (FIFO) inventory method in withdrawing Jet A-1 fuel from its storage tanks. Under this method, the earliest stocks received into storage are deemed to be the first stocks withdrawn. Consequently, the inventory remaining at the end of any given

<sup>108</sup> Exhibits "P-76", "P-78", "P-79" and "P-80", Docket – Vol. I, pp. 36 to 54, 128 to 141, 332 to 345 and 70 to 76, respectively.

<sup>109</sup> Q&A No. 49, Exhibit "P-76", Docket – Vol. I, p. 51.

<sup>110</sup> Q&A No. 13, Exhibit "P-78", Docket – Vol. I, p. 131.

<sup>111</sup> Q&A No. 14, Exhibit "P-78", Docket – Vol. I, pp. 131 to 132.

<sup>112</sup> *Ibid.*

## DECISION

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 19 of 27

period consists of the most recently imported stocks. Petitioner relies on the ORB maintained at the Tabangao Import Facility in implementing the FIFO method and in determining whether particular withdrawals are attributable to earlier or more recent importations.<sup>113</sup>

The Tabangao Depot also has an ORB where receipts and issues of petroleum products coming from the Tabangao Import Facility, including Jet A-1 fuel, are recorded. The ORBs for each month are submitted to the BIR for monitoring purposes.<sup>114</sup>

A WC and a Bulk Delivery Note (BDN) are prepared evidencing the withdrawal of Jet A-1 fuel from the Tabangao Depot for delivery to JOCASP or CASI. The BDN provides the date of the transfer of the imported Jet A-1 fuel, its volume, its source, and its destination.<sup>115</sup>

Upon arrival of the imported Jet A-1 fuel at JOCASP or CASI, the same is stored in storage tanks located at JOCASP or CASI to await sale and delivery to international air carriers. The Jet A-1 fuel is eventually delivered to customer international air carriers via a specialized vehicle which pumps the Jet A-1 fuel directly into the tank of the air carrier. The specialized vehicle is equipped with a meter that determines the volume of Jet A-1 fuel delivered to the customer.<sup>116</sup>

Sales and deliveries of imported Jet A-1 fuel to international air carriers are supported by Aviation Service Returns (ASRs) and petitioner's invoices. In an ASR, the customer acknowledges receipt from petitioner of a particular volume of Jet A-1 fuel. On the other hand, petitioner's invoice indicates the quantity, unit price, any other charges, and the total amount due for the Jet A-1 fuel sold and delivered to the customer.<sup>117</sup>

In support of the foregoing, petitioner submitted, among others, the related ORBs,<sup>118</sup> WCs,<sup>119</sup> DPDRs,<sup>120</sup> BDNs,<sup>121</sup> Daily Product Movement Report (DPMRs),<sup>122</sup> ASRs,<sup>123</sup> and sales invoices,<sup>124</sup> which were all examined by the Court-commissioned ICPA.

<sup>113</sup> Q&A Nos. 21 and 22, Exhibit "P-78", Docket – Vol. I, pp. 133 to 134.

<sup>114</sup> Q&A No. 15, Exhibit "P-78", Docket – Vol. I, p. 132.

<sup>115</sup> Q&A Nos. 15 and 16, Exhibit "P-78", Docket – Vol. I, p. 132.

<sup>116</sup> Q&A No. 23, Exhibit "P-78", Docket – Vol. I, p. 134.

<sup>117</sup> Q&A No. 24, Exhibit "P-78", Docket – Vol. I, p. 134.

<sup>118</sup> Exhibit "P-49", USB (Exhibit "P-28-2").

<sup>119</sup> Exhibits "P-50", and "P-52", USB (Exhibit "P-28-2").

<sup>120</sup> Exhibit "P-51", USB (Exhibit "P-28-2").

<sup>121</sup> Exhibit "P-53", USB (Exhibit "P-28-2").

<sup>122</sup> Exhibit "P-54", USB (Exhibit "P-28-2").

<sup>123</sup> Exhibit "P-55", USB (Exhibit "P-28-2").

<sup>124</sup> Exhibit "P-68", USB (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 20 of 27

**Movement from Tabangao Import Facility to Tabangao Depot**

To verify that the imported Jet A-1 fuel covered by the present claim was actually received and stored in petitioner's tanks at the Tabangao Import Facility, the Court-commissioned ICPA checked the total quantity received of 32,529,306 liters, as found in the CQR, summarized as follows:<sup>125</sup>

| ORB - Tabangao Import Facility ( <i>Annex J</i> ) <sup>126</sup> |              |               |                     |                      |                            | CQR<br>( <i>Annex B</i> )<br><sup>127</sup> Liters at<br>Air Temp |
|------------------------------------------------------------------|--------------|---------------|---------------------|----------------------|----------------------------|-------------------------------------------------------------------|
| Source                                                           | Product Type | Date Received | Vessel              | Actual Liters at Air | Exhibit No. <sup>128</sup> |                                                                   |
| Imported                                                         | Jet A-1      | Dec. 2, 2020  | MT Oriental Diamond | 10,360,155           | "P-49", p. 1               | 10,360,155                                                        |
| Imported                                                         | Jet A-1      | Dec. 2, 2020  | MT El Zorro         | 8,049,429            | "P-49", p. 1               | 8,049,429                                                         |
| Imported                                                         | Jet A-1      | Jan. 18, 2021 | MT Qui Chi          | 6,460,708            | "P-49", p. 2               | 6,460,708                                                         |
| Imported                                                         | Jet A-1      | Feb. 26, 2021 | MT Unique Harmony   | 7,659,014            | "P-49", p. 3               | 7,659,014                                                         |
| Total                                                            |              |               |                     | 32,529,306           |                            | 32,529,306                                                        |

The foregoing quantities correspond to the entries in the supporting CQR.

Applying the FIFO method, the Court-commissioned ICPA traced the movement of petitioner's imported Jet A-1 fuel as recorded in the ORB of the Tabangao Import Facility for the period from December 2020 to March 2021, as summarized below:<sup>129</sup>

| Particulars                                                                                         | Volume<br>(In Liters) |
|-----------------------------------------------------------------------------------------------------|-----------------------|
| Jet A-1 Fuel, December 1, 2020                                                                      | 2,124,519             |
| Jet A-1 Fuel Receipts (Import/Local), December 1, 2020 to March 31, 2021                            | 33,456,389            |
| Total Available Jet A-1 fuel during period of claim                                                 | 35,580,908            |
| Withdrawal from beginning balance under FIFO                                                        | (2,124,519)           |
| Receipts from Petro Helen not part of imported Jet A-1 fuel per Petition for Review                 | (927,083)             |
| Jet A-1 fuel put into local production, not sold to international carriers                          | (827,999)             |
| Jet A-1 fuel, March 31, 2021                                                                        | (3,752,909)           |
| <b>Total withdrawals of Jet A-1 fuel sourced from the importations covered by the present claim</b> | <b>27,948,398</b>     |

<sup>125</sup> Table III.3, Exhibit "P-28", p. 14.

<sup>126</sup> USB (Exhibit "P-28-2").

<sup>127</sup> USB (Exhibit "P-28-2").

<sup>128</sup> USB (Exhibit "P-28-2").

<sup>129</sup> Table III.5 (with details in Table III.4, pp. 16 to 20), Exhibit "P-28", p. 22.

We find that the total receipts of 33,456,389 liters consist of: (i) 32,529,306 liters of imported Jet A-1 fuel received by petitioner between December 2, 2020 and February 26, 2021, which are covered by the present claim; and, (ii) 927,083 liters of Jet A-1 fuel received from Petro Helen, which are not covered by the present claim.<sup>130</sup>

From the total receipts available of 35,580,908 liters of Jet A-1 fuel, 31,000,000 liters thereof were withdrawn for delivery to Tabangao Depot as shown in the corresponding WCs, summarized as follows:<sup>131</sup>

| Date Withdrawn | Address            | Destination    | Per WCs <sup>132</sup> | Per ORB – Tabangao Import Facility <sup>133</sup> | Difference  | Amount of Specific Tax |
|----------------|--------------------|----------------|------------------------|---------------------------------------------------|-------------|------------------------|
| Dec. 2020      | Tabangao, Batangas | Tabangao Depot | 6,920,000              | 9,760,000                                         | (2,840,000) | Tax Paid               |
| Jan. 2021      | Tabangao, Batangas | Tabangao Depot | 5,920,000              | 5,920,000                                         | 0           | Tax Paid               |
| Feb. 2021      | Tabangao, Batangas | Tabangao Depot | 7,000,000              | 7,000,000                                         | 0           | Tax Paid               |
| Mar. 2021      | Tabangao, Batangas | Tabangao Depot | 8,320,000              | 8,320,000                                         | 0           | Tax Paid               |
| TOTAL          |                    |                | 28,160,000             | 31,000,000                                        | (2,840,000) |                        |

Based on the foregoing, out of the total withdrawals of 31,000,000 liters of Jet A-1 fuel recorded in the Tabangao Import Facility’s ORB for the period December 2020 to March 2021, the Court-commissioned ICPA found that 28,160,000 liters were supported by WCs. Of this quantity, 27,948,398 liters, as established earlier through the FIFO analysis, were attributable to the imported Jet A-1 fuel covered by the present claim.

Moreover, the Court notes that all supporting WCs have a “TAX PAID” remark, indicating that the excise taxes were already paid upon importation.

The Tabangao Depot also has its own ORB that shows its receipts from the Tabangao Import Facility and the subsequent withdrawals to different destinations including JOCASP and CASI.<sup>134</sup> The relevant entries in the Tabangao Depot ORBs are summarized below:<sup>135</sup>

<sup>130</sup> Table III.4, Exhibit “P-28”, p. 16.  
<sup>131</sup> Table III.6, Exhibit “P-28”, p. 22.  
<sup>132</sup> Exhibit “P-50”, USB (Exhibit “P-28-2”).  
<sup>133</sup> Exhibit “P-49”, USB (Exhibit “P-28-2”).  
<sup>134</sup> Q&A No. 49, Exhibit “P-76”, Docket – Vol. I, p. 51.  
<sup>135</sup> Table III.7, Exhibit “P-28”, p. 23.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 22 of 27

| Date Withdrawn | Total Receipts in Refinery | Removals             | Additive in Tabangao Depot | Jet-A1 Total Removal | Exhibit Reference <sup>136</sup> |
|----------------|----------------------------|----------------------|----------------------------|----------------------|----------------------------------|
| December 2020  | 9,759,992.22               | 9,759,992.22         | 7.78                       | 9,760,000.00         | "P-49" p. 5                      |
| January 2021   | 5,919,995.25               | 5,919,995.25         | 4.75                       | 5,920,000.00         | "P-49" pp. 6 to 7                |
| February 2021  | 6,999,994.41               | 6,999,994.41         | 5.59                       | 7,000,000.00         | "P-49" pp. 8 to 9                |
| March 2021     | 8,319,993.35               | 8,319,993.35         | 6.65                       | 8,320,000.00         | "P-49" p. 10                     |
| <b>TOTAL</b>   | <b>30,999,975.23</b>       | <b>30,999,975.23</b> | <b>24.77</b>               | <b>31,000,000.00</b> |                                  |

Apart from the ORBs, the Court-commissioned ICPA likewise examined the DPDRs<sup>137</sup> which contain the summary of the withdrawals from Tabangao Import Facility to Tabangao Depot, and the subsequent withdrawal from the Tabangao Depot to JOCASP and CASI. The Court-commissioned ICPA compared the entries in the ORBs and the DPDRs and found that both records consistently reflected total withdrawals of 31,000,000 liters of Jet A-1 fuel during the period covered by the present claim.<sup>138</sup>

*Delivery to JOCASP and CASI*

As stated earlier, out of the total volume of 31,000,000 liters of Jet A-1 fuel withdrawn from the Tabangao Import Facility and Tabangao Depot as reflected in their respective ORBs, 28,160,000 liters were supported by WCs in Tabangao Import Facility. From this withdrawal of 28,160,000 liters, 27,948,398 liters came from the importations, subject of the present claim and only 25,960,000 liters were withdrawn from Tabangao Depot which are supported by WCs, summarized as follows:<sup>139</sup>

| Date Withdrawn | Address        | Total Volume Withdrawn (In Liters) | Amount of Specific Tax | Exhibit Reference <sup>140</sup> |
|----------------|----------------|------------------------------------|------------------------|----------------------------------|
| December 2020  | Tabangao Depot | 6,600,000                          | Tax Paid               | Exhibit "P-52", pp. 1 to 65      |
| January 2021   | Tabangao Depot | 4,600,000                          | Tax Paid               | Exhibit "P-52", pp. 166 to 280   |
| February 2021  | Tabangao Depot | 6,800,000                          | Tax Paid               | Exhibit "P-52" pp. 281 to 450    |
| March 2021     | Tabangao Depot | 7,960,000                          | Tax Paid               | Exhibit "P-52" pp. 451 to 649    |
| <b>Total</b>   |                | <b>25,960,000</b>                  |                        |                                  |

Along with WCs from Tabangao Depot, each WC is accompanied by a document called BDN which is signed by the driver who delivers the fuel

<sup>136</sup> USB (Exhibit "P-28-2").

<sup>137</sup> Exhibit "P-51", USB (Exhibit "P-28-2").

<sup>138</sup> Par. III(6), Exhibit "P-28", p. 23.

<sup>139</sup> Table III.9, Exhibit "P-28", p. 24.

<sup>140</sup> USB, (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 23 of 27

and the customer (either JOCASP or CASI).<sup>141</sup> Details of the delivery of Jet A-1 fuel to JOCASP or CASI as supported by BDNs are as follows:<sup>142</sup>

| Delivery Date | Product Description | Sold to        | Ordered Qty (Liters) | Delivered Qty (Liters) | Exhibit Reference <sup>143</sup> |
|---------------|---------------------|----------------|----------------------|------------------------|----------------------------------|
| December 2020 | Jet A-1             | JOCASP or CASI | 6,200,000            | 6,200,000              | "P-53", pp. 1 to 155             |
| January 2021  | Jet A-1             | JOCASP or CASI | 4,840,000            | 4,840,000              | "P-53", pp. 156 to 276           |
| February 2021 | Jet A-1             | JOCASP or CASI | 6,760,000            | 6,760,000              | "P-53", pp. 277 to 445           |
| March 2021    | Jet A-1             | JOCASP or CASI | 8,160,000            | 8,160,000              | "P-53", p. 446 to 649            |
| <b>Total</b>  |                     |                | <b>25,960,000</b>    | <b>25,960,000</b>      |                                  |

The movements of Jet A-1 fuel from Tabangao Depot for delivery to JOCASP/CASI are further supported by DPMRs, which show that for the period of December 2020 to March 2021, out of the 25,955,538 liters that were withdrawn from the Tabangao Depot, only 24,123,572 liters were delivered to international air carrier customers, to wit:

| Date Withdrawn | Volume Withdrawn (In Liters) per BDNs | Volume delivered (In Liters) per ASRs | Difference       | Exhibit Reference <sup>144</sup> |
|----------------|---------------------------------------|---------------------------------------|------------------|----------------------------------|
| December 2020  | 6,202,621                             | 4,478,679                             | 1,723,942        | "P-54", pp. 1 to 6               |
| January 2021   | 4,792,917                             | 5,409,405                             | -616,488         | "P-54", pp. 7 to 13              |
| February 2021  | 6,800,000                             | 5,972,161                             | 827,839          | "P-54", pp. 14 to 18             |
| March 2021     | 8,160,000                             | 8,263,327                             | -103,327         | "P-54", pp. 19 to 24             |
| <b>TOTAL</b>   | <b>25,955,538</b>                     | <b>24,123,572</b>                     | <b>1,831,966</b> |                                  |

The ICPA explained the difference of 1,831,966 liters as follows: <sup>145</sup>

| Date                                  | Volume in Liters reported in DPMR [A] | Total Volume in Liters as supported by ASRs [B] | Difference in Liters [A] - [B] = [C] | Remarks                                                                                                                                   |
|---------------------------------------|---------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| December 15, 2020 to January 30, 2021 | 10,000,155                            | 9,888,084                                       | 112,071                              | The difference of 112,071 pertains to volume of Jet A-1 fuel sold to local customer not covered by this review                            |
| February 4, 2021 to March 31, 2021    | 15,955,383                            | 14,235,488                                      | 1,719,895                            | The difference of 1,719,895 liters pertains to volume of Jet A-1 fuel sold to local customer and ending stocks not covered by this review |
| <b>TOTAL</b>                          | <b>25,955,538</b>                     | <b>24,123,572</b>                               | <b>1,831,966</b>                     |                                                                                                                                           |

<sup>141</sup> Par. III(8), Exhibit "P-28", p. 24.

<sup>142</sup> Table III.10, Exhibit "P-28", p. 24.

<sup>143</sup> USB (Exhibit "P-28-2").

<sup>144</sup> USB (Exhibit "P-28-2").

<sup>145</sup> Table III.12, Exhibit "P-28", p. 25.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 24 of 27

In support of its sales, petitioner submitted ASRs<sup>146</sup> that show the customer's name, flight destination, petitioner's representative and customer's signatures and the total volume of Jet A-1 fuel delivered to such international air carrier customers.<sup>147</sup>

The ASRs are system-generated documents owned by petitioner, which are provided to the authorized representative of the international air carrier customers. The representative acknowledges the receipt of Jet A-1 fuel and the volume received by signing the ASRs electronically on a tablet computer available onsite. The said ASRs are generated either through the Data Capture System (DCS) used by petitioner or are manually created in case the system experiences downtime.<sup>148</sup>

From the total volume of 25,955,538 liters of Jet A-1 fuel reported per DPMRs, only 24,215,531 liters are supported by ASRs, summarized as follows:<sup>149</sup>

| <b>Delivery Date</b> | <b>Total actual volume in liters supported by ASRs<br/>[A]</b> | <b>Total volume in liters subject for Excise Tax refund<br/>[B]</b> | <b>Difference<br/>[A] – [B] =<br/>[C]</b> | <b>Exhibit Reference<sup>150</sup></b>    |
|----------------------|----------------------------------------------------------------|---------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| December 2020        | 4,487,601                                                      | 4,478,679                                                           | 8,922                                     | "P-55", pp. 1 to 187                      |
| January 2021         | 5,472,729                                                      | 5,409,405                                                           | 63,324                                    | "P-55", pp. 188 to 468 and pp. 593 to 609 |
| February 2021        | 5,991,874                                                      | 5,972,161                                                           | 19,713                                    | "P-55", pp. 469 to 592 and pp. 610 to 729 |
| March 2021           | 8,263,327                                                      | 8,263,327                                                           | -                                         | "P-55", pp. 730 to 1,055                  |
| <b>TOTAL</b>         | <b>24,215,531</b>                                              | <b>24,123,572</b>                                                   | <b>91,959</b>                             |                                           |

As found by the Court-commissioned ICPA, the difference of 91,959 liters pertains to Jet A-1 fuel coming from other vessels not part of the importations, subject of the present claim.<sup>151</sup>

Petitioner submitted the related sales invoices<sup>152</sup> issued to its customers, ZF2-system extracted information,<sup>153</sup> summary schedule of

<sup>146</sup> Exhibit "P-55", USB (Exhibit "P-28-2").

<sup>147</sup> Par. III(10), Exhibit "P-28", p. 25.

<sup>148</sup> *Ibid.*

<sup>149</sup> Table III. 13, Exhibit "P-28", p. 25.

<sup>150</sup> USB (Exhibit "P-28-2").

<sup>151</sup> Table III.14, Exhibit "P-28", pp. 25 to 26.

<sup>152</sup> Exhibit "P-68", USB (Exhibit "P-28-2").

<sup>153</sup> Exhibit "P-69", USB (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 25 of 27

R759<sup>154</sup> for centrally billed customers, and bank statements,<sup>155</sup> all proving that the 24,123,572 liters of imported Jet A-1 fuel were delivered and sold to the various international air carriers for the period December 2020 to March 2021. Also, the amounts billed by petitioner to the international air carriers were denominated in foreign currency and were net of excise taxes. Petitioner, in turn, received payment for the sale of Jet A-1 fuel in foreign currency, net of excise taxes.

In sum, petitioner was able to establish that it delivered and sold 24,123,572 liters of imported Jet A-1 fuel to international air carriers for the period December 2020 to March 2021 for which it paid the corresponding excise taxes of ₱96,494,288.00, summarized as follows:

|                                     | Total Actual<br>Volume in Liters<br>Supported by<br>ASRs<br>[A] <sup>156</sup> | Volume in<br>Liters Not<br>Part of Claim<br>[B] <sup>157</sup> | Total Volume<br>in Liters<br>Subject for<br>Excise Tax<br>Refund<br>[C] = [A - B] | Excise Taxes Paid<br>@₱4.00/Liter<br>[D = C x ₱4.00] |
|-------------------------------------|--------------------------------------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------|
| Air Niugini Ltd.                    | 939,539                                                                        |                                                                | 939,539                                                                           | ₱ 3,758,156.00                                       |
| AirAsia Berhad                      | 32,467                                                                         |                                                                | 32,467                                                                            | 129,868.00                                           |
| Asiana Airlines Inc.                | 863,236                                                                        |                                                                | 863,236                                                                           | 3,452,944.00                                         |
| China Airlines Ltd.                 | 1,141,651                                                                      |                                                                | 1,141,651                                                                         | 4,566,604.00                                         |
| China Eastern Airlines<br>Co., Ltd. | 1,435,712                                                                      |                                                                | 1,435,712                                                                         | 5,742,848.00                                         |
| Deutsche Lufthansa<br>AG            | 527,285                                                                        | 19,713                                                         | 507,572                                                                           | 2,030,288.00                                         |
| Ethiopian Airlines<br>Enterprise SC | 268,910                                                                        |                                                                | 268,910                                                                           | 1,075,640.00                                         |
| Federal Express Corp.               | 2,728,136                                                                      | 8,922                                                          | 2,719,214                                                                         | 10,876,856.00                                        |
| Jetstar Asia Airways<br>PTE Ltd.    | 5,111                                                                          |                                                                | 5,111                                                                             | 20,444.00                                            |
| Malaysia Airlines<br>Berhad         | 178,266                                                                        |                                                                | 178,266                                                                           | 713,064.00                                           |
| Philippine Air Asia Inc.            | 60,710                                                                         |                                                                | 60,710                                                                            | 242,840.00                                           |
| Philippine Airlines Inc.            | 15,786,034                                                                     | 63,324                                                         | 15,722,710                                                                        | 62,890,840.00                                        |
| Wamos Air                           | 105,617                                                                        |                                                                | 105,617                                                                           | 422,468.00                                           |
| Xiamen Airline Co.<br>Ltd.          | 142,857                                                                        |                                                                | 142,857                                                                           | 571,428.00                                           |
| <b>Total</b>                        | <b>24,215,531</b>                                                              | <b>91,959</b>                                                  | <b>24,123,572</b>                                                                 | <b>₱ 96,494,288.00</b>                               |

*Second requisite*

Anent the *second* requisite, petitioner presented the Certification<sup>158</sup> issued by the Civil Aviation Authority of the Philippines on November 21, 2022, confirming the country of registry of each of the international air carriers to which it sold the Jet A-1 fuel covered by the present claim. 

<sup>154</sup> Exhibit "P-70", USB (Exhibit "P-28-2").

<sup>155</sup> Exhibit "P-71", USB (Exhibit "P-28-2").

<sup>156</sup> Annex Q, USB (Exhibit "P-28-2").

<sup>157</sup> Table III. 13, Exhibit "P-28-2", p. 25.

<sup>158</sup> Exhibit "P-25-1", Docket – Vol. II, p. 622 to 628.

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 26 of 27

With respect to petitioner's international air carrier customers which are of Philippine registry, namely, Philippine Airlines, Inc. and Philippine Airasia, Inc., petitioner presented the Certification<sup>159</sup> from the Civil Aeronautics Board (CAB) dated November 22, 2022 which certifies that:

a. Philippine Airlines, Inc. has been granted a franchise permit through Presidential Decree No. 1590 to operate and maintain air transportation services in the Philippines and between the Philippines and other countries, and that said franchise permit authorizes the airline to operate international flights from June 11, 1978 to present, including the years 2020 to 2021; and

b. Philippines AirAsia, Inc., through its predecessor Asian Spirit, Inc., has been granted a congressional franchise through Republic Act No. 9183 and Certificate of Public Convenience and Necessity through CAB Board Resolution No. 33 & 34 (BM04A-07-13-2017) to operate and maintain air transportation services in the Philippines and between the Philippines and other countries, and that the said permits authorize the airline to operate international flights in the years 2020 and 2021.

Clearly, petitioner has satisfactorily established compliance with the *second* requisite.

*Third requisite*

As to the *third* requisite, the ASRs<sup>160</sup> submitted by petitioner, indicated the details of the Jet A-1 fuel deliveries made by petitioner to international air carriers, including the origin and destination of the international carriers. The ASRs reflect the route of the international air carrier named therein (whether of foreign or Philippine registry), which is only between the Philippines and another country, thereby proving that the sold imported Jet A-1 fuel was used or consumed outside the Philippines. Hence, the *third* requirement was satisfactorily met.

The Court finds that petitioner sufficiently proved that the excise taxes it paid from November 27, 2020 to March 2021, in the amount of ₱96,494,288.00 on 24,123,572 liters of Jet A-1 fuel imported for the period from November 2020 to February 2021, and subsequently sold to international air carriers during the period December 2020 to March 2021, were erroneous and refundable pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended.

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<sup>159</sup> Exhibit "P-27", Docket – Vol. II, p. 784.

<sup>160</sup> Exhibit "P-55", USB (Exhibit "P-28-2").

**DECISION**

CTA Case No. 11041

*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*

Page 27 of 27

**ACCORDINGLY**, in light of the foregoing considerations, the **Petition for Review** filed on November 25, 2022 is **GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the amount of **₱96,494,288.00**, representing petitioner's excise taxes paid from November 2020 to February 2021 on imported aviation Jet A-1 fuel sold and delivered to tax-exempt international air carriers during the period from December 2020 to March 2021.

**SO ORDERED.**

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

**WE CONCUR:**

  
**MA. BELEN M. RINGPIS-LIBAN**  
Presiding Justice

(On Official Business)

**MARIA ROWENA MODESTO-SAN PEDRO**  
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.

  
**MA. BELEN M. RINGPIS-LIBAN**  
Presiding Justice