REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

CTA CASE NO. 7731

Present:

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

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

3:20 pm

x - x

RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated 14 August 2024)** filed on September 5, 2024, with petitioner's **Comment (on Motion for Reconsideration dated August 29, 2024)** filed on October 14, 2024.

To recall, pursuant to the Supreme Court *En Banc* Decision dated June 15, 2021 in G.R. No. 211303, the present case was remanded to the Court of Tax Appeals (CTA) for the determination of the refundable amount due to petitioner. This Court thus promulgated the Decision on August 14, 2024, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE**, in favor of petitioner, in the reduced amount of **₱80,068,801.04**, representing excise taxes paid by petitioner on

Jet A-1 fuel sold to tax-exempt international air carriers from February to April 2006.

SO ORDERED.

In his Motion, respondent primarily argues that the Court erred in concluding that petitioner erroneously paid the excise taxes on the Jet A-1 fuel it imported. Respondent contends that there was no erroneous payment made since the subject excise taxes was legally and validly collected for the reason that petitioner is liable to pay the said taxes as soon as it imports the said Jet A-1 fuel. He expounds that petitioner may ultimately pass on the burden of paying excise tax, being an indirect tax, to its buyers as it forms part of the purchase price. In the present case, however, since petitioner sold the imported Jet A-1 fuel to tax-exempt international air carriers, petitioner should bear the burden of paying the excise tax since it is precluded from passing it to an exempt entity.

Respondent further argues that Section 135 of the National Internal Revenue Code (NIRC) of 1997, as amended, cannot be the source of petitioner's right to claim refund on excise taxes paid, as it merely provides an enumeration of exempt entities not liable to pay excise taxes. Respondent insists that only exempt entities as buyers can invoke such exemption, and not sellers like the petitioner. To rule otherwise would, in effect, grant a refund based solely on the exemption enjoyed by the exempt entities.

Lastly, respondent submits that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. Taxation is the rule and exemption the exception; hence, petitioner has the burden of proving its entitlement to the said refund.

On the other hand, in its *Comment*, petitioner reiterates that it is the proper party to claim refund pursuant to the case of *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*.[1] Petitioner states that the Supreme Court has already ruled therein that, in refund of indirect taxes, the statutory taxpayer is the one who paid the excise tax upon removal of products from an oil refinery.

Petitioner further asserts that the Decision[2] of the Supreme Court in the instant case already clarified that Section 135 of the NIRC of 1997, as amended, cannot be interpreted as an exemption primarily conferred to the

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[1] G.R. Nos. 171383 & 172379 dated November 14, 2008, G.R. Nos. 184398 dated February 25, 2010, and G.R. No. 166482 dated January 25, 2012.
[2] G.R. No. 211303 dated June 15, 2021.

buyers because they are not under any legal duty to pay the excise tax. The tax immunity can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune therefrom. Thus, there is no basis for respondent to claim that petitioner cannot use Section 135 of the NIRC of 1997, as amended, as its source in claiming refund.

Moreover, petitioner likewise points out that the CTA *En Banc* case of *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue,*[3] relied upon by respondent in his Motion – in claiming that petitioner has no right to claim exemption from payment of excise tax for petroleum products under Section 135 of the NIRC of 1997, as amended, – has already been overruled on its appeal to the Supreme Court in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*.[4] Petitioner continues that, in the said case, the Supreme Court found Chevron Philippines as the statutory taxpayer entitled to refund the excise taxes paid on its importation of petroleum products.

The Court finds respondent's *Motion for Reconsideration* bereft of merit.

Section 135 of the NIRC of 1997, as amended, provides 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;
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> (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.

Respondent insists that the aforecited provision is merely an enumeration of exempt entities not liable to pay excise taxes and, therefore, cannot be the source of petitioner's right to claim refund on excise taxes paid.

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[3] CTA EB No. 964 [CTA Case No. 7939], September 30, 2013
[4] G.R. No. 210836 (Resolution) dated September 1, 2015.

This Court is not convinced.

As will be discussed below, no less than the Supreme Court has settled that the enumeration in Section 135 of the NIRC of 1997, as amended, merely describes the entities to whom the petroleum products must be sold to make the excise tax exemption operative.

In the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation ("2014 Pilipinas Shell* case"*)*,[5] which involved the same parties, the Supreme Court categorically declared that petitioner is the one entitled to refund or credit the excise taxes paid since it is the statutory taxpayer who paid the excise taxes on petroleum products sold to international carriers, pursuant to Section 135 of the NIRC of 1997, as amended, to wit:

> xxx We therefore hold that **respondent [*Pilipinas Shell Petroleum Corporation*], 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 supplied)*

Furthermore, in the Supreme Court's Decision on the appeal of this very case, *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue ("2021 Pilipinas Shell* case"*)*,[6] the Supreme Court expounded on the reason why the tax exemption under Section 135 of the NIRC of1997, as amended, should benefit the one who actually bears the liability to pay the same, *i.e.,* the importers/manufacturers of petroleum products sold to international carriers, and not the buyer who simply bears the economic burden thereof, *i.e.,* international carriers, as follows:

> 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, <u>but rather a levy on certain articles which are manufactured or imported for domestic consumption</u>. It is equally settled that that the accrual or liability to pay the same arises <u>immediately upon importation or as soon as the goods come into existence when manufactured</u>.**
>
> 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).

[5] G.R. No. 188497 (Resolution), February 19, 2014.
[6] G.R. No. 211303, June 15, 2021.

On the one hand, **direct taxes** are 'those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,' which means, the tax incidence and tax burden fall upon the same person.

On the other, **indirect taxes** are 'those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered**.' As jurisprudence explains, 'this **shifting process**, otherwise known as '**passing on**,' is largely a **contractual affair** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the **manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the **owner or importer** (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law**. To this end, **the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**.'

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.**

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:

x x x

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 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.**

x x x

> Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under 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.'
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> 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 and underscoring supplied)*

From the foregoing, Section 135 of the NIRC of 1997, as amended, should be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The said exemption cannot be granted to the buyers (*i.e.*, the entities that are by law exempt from direct and indirect taxes), because they are not under any legal duty to pay the excise tax. As such, the tax exemption 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).

Clearly, there is no merit in respondent's claim that petitioner cannot benefit from the tax exemption provided in the said law.

On a final note, following the principle of *stare decisis et non quieta movere*, which means "to adhere to precedents and not to unsettle things which are established", the principles laid down in the *2021 Pilipinas Shell* case must be applied for the purpose of maintaining consistency in jurisprudence. It bears to emphasize that, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is.

It is the final arbiter of any justiciable controversy. After all, there is only one Supreme Court from whose decisions all other courts should take their bearings.[7]

In fine, the Court finds no compelling reason to reverse or modify the Decision promulgated on August 14, 2024.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated 14 August 2024)* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, citing *Government Service Insurance System vs. Court of Appeals*, G.R. No. 101632, January 13, 1997.