REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9104

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 27 2018 3:30 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review[1], petitioner Pilipinas Shell Petroleum Corporation seeks to refund the total amount of ₱61,469,094.24, allegedly representing excise taxes it paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period August 12 to December 31, 2013.

The following are the facts as alleged by the parties.

Petitioner is a domestic corporation, with office address at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City.[2] It is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable petroleum products and by-products and the subsequent sale thereof. Petitioner manufactures aviation turbo jet fuel (Jet A-1 fuel) primarily

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[1] Docket, pp. 10-23.
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 319.

for sale and delivery to foreign and domestic air carriers and other customers. In certain instances, petitioner also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas,[3] where it has a commingling permit for its imported and locally-manufactured Jet A-1 fuel.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In August and November 2013, petitioner imported Jet A-1 fuel through its refinery in Tabangao, Batangas. It paid excise taxes for the said importations to the Bureau of Customs (BOC) in Batangas at the rate of ₱3.67 per liter in accordance with Section 148 of the NIRC of 1997, as amended. The details of the said importation and payment of excise taxes are as follows:

Arrival Date	**IEIRD No.**	**Date**	**Volume in Liters**	**Amount of Excise Taxes Paid**	**Date of Payment**
August 6, 2013	C1782	August 6, 2013	6,543,923	₱24,016,197.41	August 6, 2013
November 21, 2013	C2824	November 21, 2013	8,068,512	29,611,439.04	November 21, 2013
November 25, 2013	C2896	November 27, 2013	8,444,641	30,991,832.47	November 27, 2013
TOTAL			**23,057,076**	**₱84,619,468.92**	

From Tabangao, Batangas, the said imported Jet A-1 fuel were subsequently stored in petitioner's Pandacan installation and thereafter transferred to storage tanks at the Joint Oil Company Aviation Storage Plant (JOCASP) at the Ninoy Aquino International Airport, and to the Clark Aviation Services, Inc. (CASI) located at the Diosdado Macapagal International Airport, for sale and delivery to international and domestic air carriers.

[3] Par. 2, Stipulation of Facts, JSFI, docket, p. 319.

During the period August 12, 2013 to December 31, 2013, petitioner sold Jet A-1 fuel to various international airlines for their use or consumption outside the Philippines, net of excise taxes, as follows:

CUSTOMERS	TOTAL VOLUME IN LITERS
Air Asia, Inc.	10,912
Air China Ltd.	233,056
All Nippon Airways Company Ltd.	430,912
Asiana Airlines, Inc.	850,665
Capiteq Ltd.	8,728
Cebu Air, Inc.	3,563,397
China Airlines Ltd.	458,801
China Southern Airlines Co. Ltd.	295,949
Dragon Air	3,326
Japan Airlines Int'l Co. Ltd.	881,926
Jetstar Airways Pty Ltd.	253,767
Jetstar Asia Airways Pte Ltd.	628,043
Jin Air Co. Ltd.	48,396
Korean Airlines Co. Ltd.	1,349,547
Philippine Airlines, Inc.	5,222,355
Qantas Airways Ltd.	646,473
Singapore Airlines Ltd.	1,601,885
Southeast Asian Airlines	226,655
Starflyer	34,279
TOTAL AVIATION SALES	**16,749,072**
Excise Tax Rate	₱3.67
TOTAL EXCISE TAX	**₱61,469,094.24**

On August 18, 2014, petitioner filed a claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the BIR, to recover the excise taxes paid on the sale of petroleum products to international air carriers for the period August 12 to December 31, 2013, in the aggregate amount of ₱61,469,094.24.[4]

Due to inaction of respondent, petitioner filed the instant Petition for Review with the Court on July 24, 2015.

In his Answer[5] filed on October 9, 2015, respondent submits that petitioner's claim for refund lacks merit. According to respondent, Section 135 of the NIRC of 1997, as amended, does not automatically exempt from excise tax

[4] Exhibits P-46 and P-47, docket, pp. 697-704.
[5] Docket, pp. 63-70.

petroleum products sold to international carriers and exempt entities and agencies. Petitioner must first establish that it has complied with the provision of the law granting tax exemption, for which petitioner failed.

Further, petitioner's reliance on Section 135 of the NIRC of 1997, as amended, to support its claim for refund or issuance of tax credit certificate is misplaced. The invoked provision merely states that petroleum products sold to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines are exempt from excise taxes. There is nothing in the said law stating that petitioner is entitled to a refund or the issuance of tax credit certificate for the excise taxes it paid on its imported Jet A-1 fuel.

Lastly, respondent invokes the principle that taxes paid and collected are presumed to have been made in accordance with laws and regulations, and failure on the part of the claimant to present clear and convincing evidence showing that taxes were erroneously or illegally collected is fatal to its claim for refund.

After the pre-trial conference, a Pre-Trial Order[6] was issued on March 22, 2016 based on the parties' Joint Stipulation of Facts and Issues[7] (JSFI) filed with the Court.

To prove its case, petitioner presented (1) its Tax Reporting Manager Maycel Barata; (2) its Import and Export Scheduler for Trading and Supply James Gonzales; (3) its Operations Manager Damaso Pastrana; (4) its Country Tax Manager Nimfa Dimailig; (5) the Head Librarian at the Carlos P. Romulo Library of the Department of Foreign Affairs – Foreign Service Institute Maria Luz Salting-Verdejo; and (6) the Court-commissioned Independent Certified Public Accountant (ICPA) Edward D. Roguel.

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[6] Docket, pp. 346-352.
[7] Docket, pp. 319-330.

Witness **Maycel Barata**, testified[8] that she is familiar with the present case as she has been working with petitioner since March 2007. The instant case involves petitioner's claim for refund or tax credit under Section 135 of the NIRC of 1997, as amended, in the aggregate amount of ₱61,469,094.24, representing excise taxes it paid on aviation turbo jet fuel (Jet A-1 fuel) it sold to international carriers exempt from excise taxes for the period August 12 to December 31, 2013.

She reviewed the documents required for the filing of the present claim for refund such as those pertaining to the subject importation of Jet A-1 fuel, withdrawal and release of Jet A-1 fuel from the Tabangao refinery, payment of taxes and duties on the importation, and eventual sale of Jet A-1 fuel to international carriers. She was the signatory in letter application for refund or tax credit of excise taxes filed with the BIR.

The general procedure of petitioner's withdrawal of imported Jet A-1 fuel for sale and delivery to tax-exempt international carriers are as follows: Upon arrival of the imported Jet A-1 fuel at the Tabangao refinery, it shall be commingled with the locally-manufactured Jet A-1 fuel as authorized under a commingling permit issued by the BIR and then stored in a product tank at the Tabangao refinery from where it shall be withdrawn either for direct delivery to JOCASP or CASI, or for intermediate storage at the Pandacan installation. The arrival and withdrawal of Jet A-1 fuel at Tabangao refinery are recorded in a Daily Product Movement Report (DPMR) which shows the delivery ticket number and volume of the imported Jet A-1 fuel at the refinery, the Product Transfer Advice (PTA) number, destination, and volume of the Jet A-1 fuel withdrawn from Tabangao refinery. Before the removal of the imported Jet A-1 fuel from the Tabangao refinery, a Withdrawal Certificate (WC) is prepared and signed by the Revenue Officer on Premises (ROOP) and a representative of petitioner. The WC shows the source of the Jet A-1 fuel, its destination, the date of withdrawal, and the volume withdrawn. When the Jet A-1 fuel withdrawn from the Tabangao refinery is imported, the WC will indicate that it is

[8] Exhibit P-60, docket, pp. 855-864.

"tax-paid" because it was withdrawn from imported stock and the excise tax thereof has already been paid to the BOC.

As regards locally produced Jet A-1 fuel commingled with imported Jet A-1 in the storage tanks in Tabangao refinery, petitioner maintains an Official Register Book (ORB) which records the receipts and withdrawals of Jet A-1 fuel from the storage tanks. The ORB indicates, among others, the source of the Jet A-1 fuel. Petitioner uses the ORB maintained in Tabangao refinery to determine whether the withdrawal from the storage tanks pertains to imported or locally produced Jet A-1 fuel.

On the other hand, sales and deliveries of imported Jet A-1 fuel to international air carriers are supported by Aviation Service Returns (ASRs) and petitioner's Invoices. The customer air carrier acknowledges receipt from petitioner of a particular volume of Jet A-1 fuel in the ASR. The 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. If the imported Jet A-1 fuel is sold and delivered to a domestic air carrier, the sale price includes the excise and duty components of the Jet A-1 fuel which is for the account of the domestic air carrier. In contrast, if the imported Jet A-1 fuel is sold and delivered to an international air carrier, the sale price excludes the excise and duty components of the Jet A-1 fuel.

In conclusion, the witness declared that petitioner filed a claim for refund of the excise taxes paid on its imported Jet A-1 fuel sold to tax-exempt international air carriers during the period August 12 to December 31, 2013 on August 18, 2014, with the BIR through the Excise Large Taxpayers Audit Division II.

Petitioner's Import and Export Scheduler for Trading and Supply **James Gonzales** testified[9] that he is familiar with the present petition as he was asked to supply relevant information and documents pertaining to the importation,

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[9] Exhibit P-61, docket, pp. 866-879.

payment of duties, excise tax and fees on the importation, and release from customs custody of the imported Jet A-1 fuel received through petitioner's Tabangao refinery in August and November 2013.

According to him, petitioner follows specific process and document flows with respect to the importation of Jet A-1 fuel, particularly in the following stages: (1) requisition of goods and importation, (2) arrival and discharge of imported goods, and (3) payment of taxes and import duties.

The importation of Jet A-1 fuel by petitioner starts when its Trading and Supply Department, after determining the need and requirements for importation, contacts its regular suppliers and gives the volume requirements for the Jet A-1 fuel it intends to import. If the prospective supplier expresses interest in meeting petitioner's volume requirements, the Trading and Supply Department shall commence negotiations as to price of Jet A-1 fuel. As soon as petitioner and the supplier agree on the price, petitioner places an order for the purchase of Jet A-1 fuel.

To facilitate the shipment of the imported Jet A-1 fuel, the shipper prepares a Bill of Lading furnishing petitioner and the supplier with a copy thereof together with other documents such as cargo manifest, certificate of origin, and certificate of quantity received. Petitioner will also receive the Tax Invoice indicating the quantity of Jet A-1 fuel purchased. Following the shipment of imported Jet A-1 fuel, petitioner applies for a Special Permit to Discharge (SPD) with the District Collector of Customs, and an Authority to release Imported Goods (ATRIG) with the BIR.

The Statement of Settlement of Duties and Taxes (SSDT) is issued by the BOC to petitioner proves the payment of taxes and duties on the importation. The SSDT names petitioner as the company which settled the taxes and duties, and provides, among others, the assessment reference number, the receipt number and date, the mode of payment, and the total amount of taxes and duties paid. The assessment reference number and total amount paid appearing in the SSDT corresponds to the assessment reference number and total assessed amount in the Temporary Assessment Notice. Since the payment of taxes and duties is based on a Temporary Assessment Notice, such payment has to be finalized by way of payment of the taxes and duties on the price differential, which is usually minimal, if there is any. The final payment of taxes and duties for the importation is evidenced by the machine validation of the amount paid on the right portion of the Import Entry and Internal Revenue Declaration (IEIRD) itself and by the Invoice issued by the BOC. The official receipts (ORs) are likewise issued to corroborate the final payment of duties and taxes.

Witness Gonzales also declared that after the imported Jet A-1 fuel are unloaded and stored in petitioner's Tabangao refinery, they are subsequently withdrawn and delivered either to the JOCASP or CASI, or to the Pandacan installation for immediate storage.

Witness **Damaso Pastrana**, petitioner's Operations Manager centered his testimony[10] on the receipts and withdrawals of imported Jet A-1 fuel at the JOCASP and CASI, their eventual sale and delivery to petitioner's customers and payments thereto.

He explains that upon receipt of imported Jet A-1 fuel either from Tabangao refinery or the Pandacan installation, JOCASP or CASI records the transaction in the DPMR indicating such receipt and its volume. The withdrawal of the imported Jet A-1 fuel from JOCASP or CASI is likewise recorded in the DPMR as well as its volume and destination.

Upon delivery of the Jet A-1 fuel to the international or domestic air carrier, petitioner presents to the authorized representative of the customer air carrier the Aviation Service Return (ASR) in which the customer air carrier acknowledges receipt of the delivery. The ASR also bears the flight number and the destination of the aircraft to show that the fuel received is for international flight consumption.

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[10] Exhibit P-62, Judicial Affidavit of Damaso Pastrana, docket, pp. 881-892.

Ms. Nimfa Dimailig, on the other hand, testified[11] that she caused the filing of petitioner's claim for refund and took active part in the preparation of the documents that will prove petitioner's entitlement to the refund.

Witness Dimailig stated that the basis of petitioner's present claim is Section 135 of the NIRC of 1997, as amended, in relation to Sections 204 and 229 of the same Code. However, for purposes of determining which sale of Jet A-1 fuel by petitioner to international carrier is exempt from excise tax, the witness claimed that petitioner relied on the provision of Section 135 of the NIRC of 1997, as amended, which provides the conditions for such exemption as follows: (1) the international air carrier is registered in a country which grants a reciprocal tax exemption to a Philippine-registered air carrier; and (2) the Jet A-1 fuel sold is used or consumed outside the Philippines. In the case of Philippine Airlines, its exemption from excise tax is based on its legislative franchise, i.e., Presidential Decree No. 1590, specifically Section 13 thereof.

The witness further testified that upon its request, petitioner was furnished by the Department of Foreign Affairs (DFA) with a list of countries granting reciprocal tax exemptions to Philippine-Registered/Designated Air Carriers based on the air transport agreements executed by the Philippines with those countries. The said list indicates that the countries to which petitioner sold its imported Jet A-1 fuel grant tax exemptions to Philippine registered air carriers based on Air Transport Agreements they executed during the relevant period. As to whether the Jet A-1 fuel sold is used or consumed outside the Philippines, petitioner requires its international airline customer to present a Foreign Air Carrier's Permit (FACP) to fly international route. The price indicated in the sales invoice of the Jet A-1 fuel sold and delivered to the tax exempt international air carrier is net of excise tax.

Witness **Maria Luz Salting-Verdejo** is the Head Librarian at the Carlos P. Romulo Library of the Department

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[11] Exhibit P-63, Judicial Affidavit of Nimfa Dimailig, docket, pp. 894-899.

of Foreign Affairs - Foreign Service Institute (Romulo Library), and the custodian of the agreements entered into by the Philippine Government.

She testified[12] that she informed petitioner that she could not provide it with the formally requested certified true copy of the Air Services Agreement Between the Governments of Japan and the Philippines (RP-Japan Agreement) as the Romulo Library was not in possession of the original document. Nevertheless, she provided petitioner with a photo-copy of the said RP-Japan Agreement that was available in Romulo Library. Upon further request, she issued in favor of petitioner a Certification dated February 18, 2016 to the effect that Romulo Library is the repository of the originals of bilateral agreements entered into by the Philippine Government, however, it is not in possession of the original of the RP-Japan Agreement.

The last witness for petitioner **ICPA Edward Roguel** testified[13] that out of the total claim of ₱61,469,094.24, representing excise taxes it paid on petroleum products sold and delivered to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines for the period August 12 to December 31, 2013, only the amount of ₱54,95,113.61 was properly supported by relevant documents.

In the Resolutions dated March 21, 2017[14] and June 23, 2017[15], all the documents formally offered by petitioner[16] were admitted.

With respondent's manifestation that he would not present evidence for his defense as no report of investigation was submitted by the assigned revenue officer[17], followed by the submission of the parties' respective memoranda, the

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[12] Exhibit P-64, Judicial Affidavit of Maria Luz Salting-Verdejo, docket, pp. 901-904.
[13] Exhibit P-70, Judicial Affidavit of Edward Roguel, docket, pp. 550-554.
[14] Docket, pp. 923-925.
[15] Docket, pp. 973-978.
[16] Docket, pp. 575-653.
[17] Minutes of the hearing dated July 17, 2017, docket, p. 992.

case was deemed submitted for decision in the Resolution dated August 31, 2017[18].

THE ISSUE

The parties submitted but one issue for the Court's disposition, to wit:

> WHETHER PETITIONER IS ENTITLED TO THE RECOVERY OF EXCISE TAXES IN THE AMOUNT OF SIXTY-ONE MILLION FOUR HUNDRED SIXTY-NINE THOUSAND NINETY-FOUR PESOS AND (₱61,469,094.24) PAID ON JET A-1 FUEL SOLD TO TAX-EXEMPT INTERNATIONAL AIR CARRIERS FOR THE PERIOD AUGUST 12 TO DECEMBER 31, 2013.

THE COURT'S RULING

Sections 204 (C) and 229 of the NIRC of 1997, as amended, pertinently provides, thus:

> 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**

[18] Docket, p. 1063.

> **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 supplied)*
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> 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. *(Emphasis supplied)*

Pursuant to the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied and established:

1. that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been

excessively or in any manner wrongfully collected; and

2. that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

As in other refund cases, the Court must first determine the timeliness of the filing of petitioner's administrative and judicial claims for refund.

Both Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229, to judicial claims for refund. In both instances, the claim must be filed within two (2) years from the date of payment of the tax or penalty. Note that Section 229 further requires that an administrative claim for refund must first be lodged with the CIR before the taxpayer may seek judicial intervention for the claim for refund or credit.[19] The two (2)-year prescriptive period is mandatory regardless of any supervening cause that may arise after payment.[20]

In other words, the filing of the claim for refund with respondent is a pre-requisite to the filing of the Petition for Review with this Court. However, both actions must be filed within two (2) years from the payment of the tax being refunded.

Petitioner's administrative and judicial claims for refund were filed within the 2-year prescriptive period.

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[19] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015 and *Commissioner of Internal Revenue vs. CBK Power Company Limited*, G.R. Nos. 193407-08.

[20] *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO)*, G.R. No. 181459, June 9, 2014.

Evident from the record that petitioner made the first payment of excise tax on the importation of Jet A-1 fuel subject of the instant case on August 6, 2013[21]. Counting two years therefrom, petitioner had until August 6, 2015, at the earliest, within which to file its claim for refund both with the CIR and this Court. In fine, petitioner seasonably filed its administrative and judicial claims for refund/credit on August 18, 2014[22] and July 24, 2015, respectively.

The excise taxes paid on the imported Jet A-1 fuel sold to tax-exempt international air carriers are erroneously or illegally collected.

Petitioner claims that its imported Jet A-1 fuel sold to international air carriers are exempt from excise tax pursuant to Section 135 of the NIRC of 1997, as amended, which reads:

> 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

[21] Exhibit P-9, docket, p. 662.
[22] Exhibit P-46.1, docket, p. 697.

> similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
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> (c) Entities which are by law exempt from direct and indirect taxes.

The disquisition of the Supreme Court on Section 135 of the NIRC of 1997, as amended, which is petitioner's legal basis for its claim for refund, is enlightening, thus:

> 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.[23] (*Emphases supplied*)

Very clearly, petitioner as the statutory taxpayer, who paid the excise taxes on petroleum products sold to international carriers for their use or consumption outside the Philippines, is entitled to claim refund of the subject excise taxes paid based on Section 135 of the NIRC, as amended, as the payment thereof is deemed illegal or erroneous.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[24] which involved the same parties, the Supreme Court categorically declared that Pilipinas Shell Petroleum Corporation, the entity which paid excise taxes on

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[23] *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 210836, September 01, 2015.
[24] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014.

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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, to wit:

> 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 supplied*)

On petitioner's alleged entitlement to refund or issuance of tax credit sought in the aggregate amount of ₱61,469,094.24, it has been established that petitioner is engaged, among others, in the business of manufacturing, processing, treating, and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof; that it manufactures aviation turbo jet fuel primarily for sale and delivery to foreign and domestic air carriers and other customers; and that in certain instances, it also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas.

For the period August to November 2013, petitioner imported 6,543,923 liters (the "First Importation"), 8,068,512 liters (the "Second Importation"), and 8,444,641 liters (the "Third Importation") of Jet A-1 fuel, which arrived at the port of Batangas, and paid to the BOC in Batangas the corresponding duties, taxes and fees, including excise tax at the rate of ₱3.67 per liter. The details of petitioner's importation and payment of excise taxes are as follows:

	Import Entry Date	**IEIRD No.**	**Volume in Liters**	**Excise Tax Paid**	**Payment Date**
First Importation	August 6, 2013	C1782/SN 129808944	6,543,923	₱ 24,016,197.00	August 6, 2013
Second Importation	November 21, 2013	C2824/ SN 131980755	8,068,512	29,611,439.00	November 21, 2013

Third importation	November 27, 2013	C2896/ SN 132527936	8,444,641	30,991,832.00	November 27, 2013
			23,057,076	**₱84,619,468.00**	

The foregoing importations of Jet A-1 fuel are supported by the following documents:

	Exhibit Reference *(Docket, Vol. 2, pp. 656-679)*		
	First Importation	*Second Importation*	*Third Importation*
a. Bills of Lading (BL)	P-1	P-12	P-23
b. Special Permits to Discharge (SPD)	P-3	P-14	P-25
c. Intertek Load Port Survey Reports (LPSR)	P-4	P-15	P-26
d. Authority to Release Imported Goods (ATRIG)	P-5	P-16	P-27
e. Proforma Invoices	P-7	P-18	P-29
f. Assessment Notices	P-8	P-19	P-30
g. Statements of Settlement of Duties and Taxes (SSDT)	P-9	P-20	P-31
h. Import Entry and Internal Revenue Declarations (IEIRD)	P-10	P-21	P-32

Out of the 23,057,076 liters of imported Jet A-1 fuel, petitioner claims that it sold 16,749,072 liters, with corresponding excise tax payments of ₱61,469,094.24, to various international airline carriers for the period August 12 to December 31, 2013 for their use or consumption outside the Philippines, as follows:

Customers	**Volume in Liters**
Air Asia, Inc.	10,912
Air China Ltd.	233,056
All Nippon Airways Company Ltd.	430,912
Asiana Airlines, Inc.	850,665
Capiteq Ltd.	8,728
Cebu Air, Inc.	3,563,397
China Airlines Ltd.	458,801
China Southern Airlines Co. Ltd.	295,949
Dragon Air	3,326
Japan Airlines Int'l Co. Ltd.	881,926

Jetstar Airways Pty Ltd.	253,767
Jetstar Asia Airways Pte Ltd.	628,043
Jin Air Co. Ltd.	48,396
Korean Airlines Co. Ltd.	1,349,547
Philippine Airlines, Inc.	5,222,355
Qantas Airways Ltd.	646,473
Singapore Airlines Ltd.	1,601,885
Southeast Asian Airlines	226,655
Starflyer	34,279
Total Aviation Sales	**16,749,072**
Excise Tax Rate	₱ 3.67
Total Excise Tax	**₱ 61,469,094.24**

To prove that the airlines which purchased the Jet A-1 fuel were registered in the countries that grant reciprocal tax exemption to Philippine-registered airline carriers, petitioner secured from the DFA a list[25] of countries granting such exemptions with their corresponding dates of effectivity, as well as Air Transport/Service Agreements[26] executed by the Philippines with such countries relative to the grant of such reciprocal tax exemptions. Likewise, petitioner presented Certifications[27] issued by the Civil Aviation Authority of the Philippines (CAAP) indicating the nationality and country of registration of the aircrafts of these airlines; and Certifications[28] issued by the Civil Aeronautics Board (CAB) to prove that the said airline companies to which petitioner sold the Jet A-1 fuel during the subject period had been issued FACP by the CAB allowing them to operate on international route.

Petitioner also adduced the following additional documentary evidence to prove the sale and delivery of Jet A-1 fuel to international carriers, which were duly examined and verified by the ICPA:

1. **Official Register Books (ORBs)**[29], which indicate the receipts and removals of Jet A-1 fuel at Tabangao Refinery, Pandacan installation, Joint Oil Company Aviation Storage Plant (JOCASP) and Clark

[25] Exhibits P-58 and P-58.1, docket, pp. 734-735.
[26] Exhibits P-59 to P-59.6, docket, pp. 736-853.
[27] Exhibits P-57 and P-128, docket, pp. 720-733 and 951.
[28] Exhibits P-56 and P-127, docket, pp. 719 and 949.
[29] Exhibits P-38, P-40, and P-103 to P-107.

Aviation Services, Inc. (CASI) as prepared by both the Revenue Officer on Premises (ROOP) and petitioner's representative;

2. **Withdrawal Certificates (WCs)**[30], which show the removal of imported Jet A-1 fuel from Tabangao Refinery to Pandacan installation for intermediate storage or directly to Joint Oil Company Aviation Storage plant (JOCASP) or Clark Aviation Services, Inc. (CASI) for eventual sale and delivery to international and domestic air carriers;

3. **Delivery Notes (DNs)**[31], which show the transfers of Jet A-1 fuel from Tabangao Refinery or Pandacan installation to JOCASP or CASI;

4. **Daily Stock/Product Movement Report (DSMR/DPMR)**[32], which show the recording, summary and monitoring of opening and ending balances of imported Jet A-1 fuel at JOCASP and CASI;

5. **Daily Product Deliveries Report (DPDR)**[33], which show the withdrawals of imported Jet A-1 fuel from Tabangao Depot, with the corresponding WCs and amount of tax paid indicated therein;

6. **Aviation Service Returns (ASR)**[34], which states the details of the delivery of Jet A-1 fuel to international carriers;

7. **Sales Invoices**[35], which show petitioner's sale and delivery of Jet A-1 fuel to international carriers; and

8. **Printouts of PSPC's Global Computerized Accounting System (GSAP) Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts)**[36], which show the reports generated under petitioner's computerized accounting system to support sales and deliveries to various customers;

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[30] Exhibits P-34 and P-92-1 to P-92-18.
[31] Exhibits P-93-1 to P-93-422 and P-94-1 to P-94-11.
[32] Exhibits P-41 and P-45.
[33] Exhibits P-37, P-95-1 to P-95-6, and P-96-1 to P-96-11.
[34] Exhibits P-42, P-43, and P-97-1 to P-97-877.
[35] Exhibits P-44 and P-98-1 to P-98-95.
[36] Exhibits P-99-1 to P-99-96.

9. **Bank Statements and Advices**[37], which show the receipt of payment by petitioner (through fund transfer or inward remittances) for the sale and delivery of Jet A-1 fuel to international carriers.

As ascertained by the ICPA and further verified by the Court, out of the total claim of ₱61,469,094.24, only the amount of ₱56,762,554.12 were properly substantiated by relevant documents, to wit:

	Volume in Liters		
Customers	**Original Report**[38]	**Supplemental Report**[39]	**Total**
Air China Ltd.	221,422		221,422
Airasia, Inc.	10,912		10,912
All Nippon Airways Co. Ltd.	377,746		377,746
Asiana Airlines, Inc.	850,665		850,665
Capiteq Ltd.	8,728		8,728
Cebu Air, Inc.	2,839,660	493,853	3,333,513
China Airlines Ltd.	443,403		443,403
China Southern Airlines Co. Ltd.	279,249		279,249
Dragon Air	3,326		3,326
Japan Airlines Intl Co. Ltd.	774,148		774,148
Jetstar Airways Pty Ltd.	228,179		228,179
Jetstar Asia Airways Pte Ltd.	583,876		583,876
Jin Air Co. Ltd.	48,396		48,396
Korean Airlines Co. Ltd.	1,211,052		1,211,052
Philippine Airlines, Inc.	4,696,247		4,696,247
Qantas Airways Ltd.	622,497		622,497
Singapore Airlines Ltd.	1,512,343		1,512,343
Southeast Asian Airlines	226,655		226,655
Star Flyer, Inc.	34,279		34,279

[37] Exhibits P-51, P-52, and P-100-1 to P-100-24.
[38] See Exhibit P-112 of the ICPA Report (Exhibit P-71) for details.
[39] See Exhibit P-112-1 of the Supplemental ICPA Report (Exhibit P-72) for details.

Total Aviation Sales in Liters	**14,972,783**	**493,853**	**15,466,636**
Excise Tax Rate	₱ 3.67	₱ 3.67	₱ 3.67
Total Excise Taxes Paid	**₱ 54,950,113.61**	**₱ 1,812,440.51**	**₱56,762,554.12**

The remaining ₱4,706,540.12, which is equivalent to 1,282,436 liters of Jet A-1 fuel, should be denied for the following reasons:

Findings	**Exhibit**	**Volume in Liters**	**Specific Tax at ₱3.67 per Liter**
Sales to international carriers but the source cannot be determined whether imported or locally produced Jet A-1 fuel	P-113	1,195,332	₱ 4,386,868.44
Aircraft registration not found in CAAP list	P-114-1	87,104	319,671.68
Total		**1,282,436**	**₱4,706,540.12**

Plain from the foregoing that within the period of August 12, 2013 to December 31, 2013, petitioner imported then sold and delivered Jet A-1 fuel to international carriers, for which the corresponding excise taxes were paid upon importation.

Thus, petitioner proved its entitlement to a refund or issuance of tax credit certificate but in the reduced amount of ₱56,762,554.12, representing excise taxes paid on petroleum products sold to international carriers from August 12, 2013 to December 31, 2013, computed as follows:

Claimed Excise Taxes	₱ 61,469,094.24
Less: Disallowed Excise Taxes	4,706,540.12
Substantiated Excise Taxes	**₱ 56,762,554.12**

WHEREFORE, the Petition for Review filed by Pilipinas Shell Petroleum Corporation on July 24, 2015, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT**

CERTIFICATE in favor of Pilipinas Shell Petroleum Corporation the amount of ₱56,762,554.12, representing excise taxes erroneously collected on its imported Jet A-1 fuel sold to international carriers for the period August 12, 2013 to December 31, 2013.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice