CTA Form No. 8

19-000611-0094

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NOS. 10232, 10266 & 10267

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **August 15, 2024,** Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 21, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PETRON CORPORATION,
Petitioner,

CTA Case Nos. **10232, 10266 and 10267**

Present:

\- versus -

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 15 2024 2:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court are the consolidated Petitions for Review filed by petitioner Petron Corporation (**petitioner/Petron**) pursuant to Section 3(a)[1], Rule 8, in relation to Section 3(a)(2)[2], Rule 4, of the Revised Rules

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1 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the **inaction** of the **Commissioner of Internal Revenue** on disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Emphasis and underscoring supplied)

2 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation

of the Court of Tax Appeals[3] (**RRCTA**). They seek a declaration from the Court that petitioner is entitled to a refund or issuance of a tax credit certificate (**TCC**) for alleged erroneously or illegally paid excise taxes on locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to Micro Dragon Petroleum, Inc. (**MDPI**), an alleged tax-exempt entity, during the periods **from 01 January 2018 to 31 March 2018** (or the first [1st] Quarter of the taxable year [**TY**] 2018), **from 01 April 2018 to 30 June 2018** (or the second [2nd] Quarter of TY 2018), and from **01 July 2018 to 30 September 2018** (or the third [3rd] Quarter of TY 2018), in the amount of **₱122,393,970.50**, **₱290,317,255.00**, and **₱361,188,996.50**, respectively, or in the aggregate amount of **₱773,900,222.00**.[4] Previously, the petitions have been separately and respectively docketed as CTA Case Nos. 10232[5], 10267[6], and 10266.[7]

In <u>**CTA Case No. 10232**</u>, petitioner seeks to be entitled to a refund or issuance of a TCC in the amount of **₱122,393,970.50**, representing the excise tax it allegedly erroneously paid to respondent on its locally-produced unleaded gasoline fuel and diesel fuel oil that were sold and delivered to MDPI during the **1st Quarter of TY 2018**. It also prays for respondent Commissioner of Internal Revenue (**respondent/CIR**) to be ordered to grant petitioner a refund or tax credit in the said amount of ₱122,393,970.50.

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thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis and underscoring supplied)

...

3 A.M. No. 05-11-07-CTA dated 22 November 2005.

4 Summary of the Cases, Pre-Trial Order dated 24 February 2021, Division Docket (CTA Case No. 10232), Volume II, p. 753.

5 Filed on 26 December 2019, Division Docket (CTA Case No. 10232), Volume I, pp. 6-62, with annexes.

6 Filed on 11 March 2020, Division Docket (CTA Case No. 10267), pp. 6-69, with annexes.

7 Filed on 11 March 2020, Division Docket (CTA Case No. 10266), pp. 6-69, with annexes.

In **CTA Case No. 10267**, petitioner requests to be declared entitled to a refund of or issuance of a TCC amounting to **₱290,317,255.00**. This amount represents the excise tax allegedly erroneously paid to respondent on locally-produced unleaded gasoline fuel and diesel fuel oil sold and delivered to MDPI during the **2nd Quarter of TY 2018**. Petitioner also asks the Court to order respondent to grant a refund or tax credit in the same amount of ₱290,317,255.00.

In **CTA Case No. 10266**, petitioner asks to be declared entitled to a refund of or issuance of a TCC amounting to **₱361,188,996.50**. This amount represents the excise tax paid on locally-produced unleaded gasoline fuel and diesel fuel oil sold and delivered to MDPI during the **3rd Quarter of TY 2018**, which petitioner claims was erroneously paid to respondent. Petitioner also seeks a Court order directing respondent to grant a refund or tax credit in the same amount of ₱361,188,996.50.

PARTIES TO THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at San Miguel Head Office Complex, 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[8] It is registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. 31171.[9] It is also registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer Identification No. (**TIN**) 000-168-801-00000[10] and authorized to use Point of Sale (**POS**) Machines linked to Computerized Accounting System (**CAS**) with Permit No. 1709_0124_PTU_CAS_000172 dated 29 September 2017.[11]

Pursuant to its Amended Articles of Incorporation (**AOI**)[12], petitioner is engaged in the business of acquiring, refining, manufacturing, and trading petroleum and various mineral products. It operates the Petron Bataan Refinery (**PBR**), where crude oil is processed

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8 See Amended Articles of Incorporation (AOI), Exhibit "P-2", Division Docket (CTA Case No. 10232), Volume III, pp. 1043-1058.
9 See Certificate of Filing of Amended AOI, Exhibit "P-1", id., p. 1042.
10 See Bureau of Internal Revenue (BIR) Certificate of Registration, Exhibit "P-3", id., pp. 1059-1060.
11 Exhibit "P-4", id., pp. 1061-1075, with Annex "A".
12 Exhibit "P-2", supra at note 8.

into a full range of petroleum products, including unleaded gasoline fuel and diesel fuel oil.[13]

Respondent, on the other hand, is sued in his official capacity, having been duly appointed and empowered to perform the duties of his or her office, including, among others, the duty to act on and approve claims for refund as provided by law. He or she may be served with summons, notices and other court processes at the BIR National Office Building, Diliman, Quezon City.[14]

FACTS OF THE CASE

Petitioner produces unleaded gasoline fuel and diesel fuel oil, which are stored and commingled with imported unleaded gasoline and diesel fuel oil, as allowed by Commingling Permit No. (P)-028-01-18-22867 dated 19 January 2018[15], with validity until 31 December 2018.

Petitioner pays excise taxes on the locally-produced unleaded gasoline fuel and diesel fuel oil before their removal from the PBR and delivered either directly to its customers or to its various depots for eventual sale and delivery to various customers, including tax-exempt entities.[16]

During the period from 01 January 2018 to 30 September 2018, petitioner locally-produced unleaded gasoline fuel and diesel fuel oil. Pursuant to Section 130(A)(2)[17], in relation to Section 148(f) and (i)[18] of

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13 Paragraph 7, III Facts, Petition for Review, supra at note 5, p. 8.

14 Par. 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket (CTA Case No. 10232), Volume II, p. 743.

15 Exhibit "P-5", id., Volume III, p. 1076.

16 Par. 9, III Facts, Petition for Review, supra at notes 5, 6 and 7, p. 8.

17 **SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* —
(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* —
...
(2) *Time for Filing of Return and Payment of the Tax.* — ...

18 **SEC. 148.** *Manufactured Oils and Other Fuels.* — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
...
(f) Unleaded premium gasoline, per liter of volume capacity, Seven pesos (₱7.00);
...
(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Two pesos and fifty centavos (₱2.50)[.]

the National Internal Revenue Code (**NIRC**) of 1997, as amended, petitioner allegedly paid the corresponding excise taxes to the BIR.[19]

The earliest removal, with the corresponding payment of excise taxes on locally-produced unleaded gasoline fuel and diesel fuel oil, from the PBR for the subject periods of claim, occurred as follows:

Period	**Earliest Removal of Unleaded Gasoline Fuel and Diesel Fuel Oil**	**Date of Payment of Excise Taxes**
01 January 2018 to 31 March 2018 (**1st Quarter of TY 2018**)	17 January 2018[20]	17 January 2018[21]
01 April 2018 to 30 June 2018 (**2nd Quarter of TY 2018**)	06 April 2018[22]	06 April 2018[23]
01 July 2018 to 30 September 2018 (**3rd Quarter of TY 2018**)	05 July 2018[24]	05 July 2018[25]

From the said local production of unleaded gasoline fuel during the 1st to 3rd Quarters of TY 2018, petitioner sold a total of **96,818,286 liters** with excise tax payments amounting to **₱677,728,002.00**[26] to MDPI, an entity that is exempt from direct and indirect taxes by law[27], broken down as follows:

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19 Par. 10, III Facts, Petition for Review, supra at notes 5, 6 and 7, p. 8.

20 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00066381, Exhibit "P-940", USB (Exhibit "P-124-B"); See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-116", Division Docket (CTA Case No. 10232), Volume II, p. 546.

21 Id.

22 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00983226, Exhibit "P-946", USB (Exhibit "P-124-B"); See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, supra at note 20.

23 Id.

24 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00984150, Exhibit "P-959", USB (Exhibit "P-124-B"); See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, supra at note 20.

25 Id.

26 See Excise Tax Returns, Exhibits "P-201" to "P-785", USB (Exhibit "P-124-B"); See Annex "A" to ICPA Report 20 May 2021, Separate Binder, p. 14.

27 See Certificate of Registration and Tax Exemption No. 2006-0048 issued by Subic Bay Metropolitan Authority (SBMA) to Micro Dragon Petroleum, Inc. (MDPI) dated 27 October 2018 and 27 October 2016, Exhibits "P-14" and "P-111", Division Docket (CTA Case No. 10232), Volume III, pp. 1175 and 1270, respectively; See Q&A Nos. 10 to 12 of the Supplemental Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-117", Division Docket (CTA Case No. 10232), Volume II, pp. 794-795.

Period	Volume of Unleaded Gasoline Fuel Sold in Liters	Amount of Excise Tax Payments
1st Quarter of TY 2018	15,233,629	₱106,635,403.00
2nd Quarter of TY 2018	34,166,970	239,168,790.00
3rd Quarter of TY 2018	47,417,687	331,923,809.00
Total	**96,818,286**	**₱677,728,002.00**

Further, from the said local production of diesel fuel oil during the 1st to 3rd Quarters of TY 2018, petitioner sold a total of **38,468,888 liters** with excise tax payments amounting to **₱96,172,220.00**[28] to MDPI, an entity that is exempt from direct and indirect taxes by law[29], broken down as follows:

Period	Volume of Diesel Fuel Oil Sold in Liters	Amount of Excise Tax Payments
1st Quarter of TY 2018	6,303,427	₱15,758,567.50
2nd Quarter of TY 2018	20,459,386	51,148,465.00
3rd Quarter of TY 2018	11,706,075	29,265,187.50
Total	**38,468,888**	**₱96,172,220.00**

In sum, the excise tax payments from the sale of locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI, an entity that is exempt from direct and indirect taxes by law, during the 1st to 3rd Quarters of TY 2018, are as follows:

Period	Excise Tax Payments		
	Unleaded Gasoline Fuel	Diesel Fuel Oil	Total
1st Quarter of TY 2018	₱106,635,403.00	₱15,758,567.50	₱122,393,970.50
2nd Quarter of TY 2018	239,168,790.00	51,148,465.00	290,317,255.00
3rd Quarter of TY 2018	331,923,809.00	29,265,187.50	361,188,996.50
Total	**₱677,728,002.00**	**₱96,172,220.00**	**₱773,900,222.00**

28 See Excise Tax Returns, Exhibits "P-201" to "P-785", supra at note 26; See Annex "A" to ICPA Report 20 May 2021, supra at note 26.

29 See Certificate of Registration and Tax Exemption No. 2006-0048 issued by SBMA to MDPI dated 27 October 2018 and 27 October 2016, Exhibits "P-14" and "P-111", supra at note 27; See Q&A Nos. 10 to 12 of the Supplemental Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-117", supra at note 27.

Since the excise taxes paid on locally-produced unleaded gasoline fuel and diesel fuel oil during the 1st to 3rd Quarters of TY 2018 pertain to those sold to MDPI, a tax-exempt entity, the total amount of ₱773,900,222.00 was allegedly paid erroneously or illegally.

Petitioner then filed three (3) separate Applications for Tax Credits/Refunds (BIR Form No. 1914) with the BIR, along with accompanying Letter-Requests for the refund or issuance of a TCC for the excise taxes paid on its locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to MDPI (collectively, **administrative claims**), for the following periods and respective amounts, to wit:

Period	Filing Date	Excise Tax
1st Quarter of TY 2018	18 July 2018[30]	₱122,393,970.50
2nd Quarter of TY 2018	14 September 2018[31]	290,317,255.00
3rd Quarter of TY 2018	21 December 2018[32]	361,188,996.50

Considering respondent's inaction on its administrative claims for refund or tax credit and since the two (2)-year period under Section 229[33] of the NIRC of 1997, as amended, was about to lapse, petitioner filed the instant Petitions for Review with this Court on 26 December 2019[34] and 11 March 2020.[35]

However, during the pendency of petitioner's judicial claims before this Court, the BIR denied petitioner's administrative claims through the following Denial Letters:

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30 See Exhibits "P-8" and "P-9", id., Volume III, pp. 1077-1084 and 1085, respectively.

31 See Exhibits "P-45" and "P-46", id., pp. 1189-1196 and 1319, respectively.

32 See Exhibits "P-47" and "P-48", id., pp. 1198-1204 and 1205, respectively.

33 **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)

34 Supra at note 5.

35 Supra at notes 6 and 7.

Denial Letter Date	Period	Petitioner's Receipt Date (of the Denial Letter)
20 January 2020[36]	1st Quarter of TY 2018	14 February 2020
20 January 2020[37]	2nd Quarter of TY 2018	14 February 2020
19 November 2019[38]	3rd Quarter of TY 2018	12 February 2020

PROCEEDINGS BEFORE THE COURT

CTA CASE NO. 10232

Alleging respondent's inaction on its claim for refund or issuance of a TCC, on 26 December 2019, petitioner filed its Petition for Review, praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱122,393,970.50, representing excise taxes paid by petitioner during the 1st Quarter of TY 2018 on locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to MDPI. The case was docketed as CTA Case No. 10232 and raffled to this Court's Second Division.[39]

On 06 January 2020, the Second Division issued Summons[40] to respondent.

On 20 January 2020, respondent filed his or her Answer.[41] There, respondent cited the following special and affirmative defenses: (1) petitioner is liable for excise tax on locally-produced unleaded gasoline fuel and diesel fuel oil sold and delivered to MDPI, making the total payment of ₱122,393,970.50 for the 1st Quarter of TY 2018 not erroneous or illegal; (2) refund claims for excise taxes paid are authorized only by Section 130(D)[42] of the NIRC of 1997, as amended,

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36 See First Denial Letter dated 20 January 2020, Exhibits "P-113", Division Docket (CTA Case No. 10232), pp. 1281-1282; See Exhibit "R-4", BIR Records (CTA Case No. 10232), pp. 365-366.

37 See Second Denial Letter dated 20 January 2020, Exhibit "P-114", id., pp. 1283-1284; See Exhibit "R-7", BIR Records (CTA Case No. 10267), pp. 461-462.

38 See Third Denial Letter dated 19 November 2019, Exhibit "P-115", id., pp. 1285-1286; See Exhibit "R-3", BIR Records (CTA Case No. 10266), pp. 389-390.

39 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, Associate Justice Cielito N. Mindaro-Grulla (Ret.) and Associate Justice Jean Marie A. Bacorro-Villena, as Members.

40 Division Docket (CTA Case No. 10232), Volume I, p. 63.

41 Id., pp. 64-72.

42 **SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* —

not by Section 135(c)[43] of the NIRC of 1997, as amended; and, (3) tax refunds are in the nature of tax exemptions and, therefore, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

On 23 January 2020, the Second Division issued a Notice of Pre-Trial Conference[44] and set the case for Pre-Trial Conference on 27 February 2020. In compliance with the Court's order therein, respondent filed his or her Pre-Trial Brief[45] on 07 February 2020, while petitioner filed its Pre-Trial Brief[46] on 20 February 2020.

Meanwhile, on 30 January 2020, respondent transmitted to the Second Division the BIR Records of CTA Case No. 10232 consisting of one (1) folder with 364 pages.[47] The Second Division noted the same in a Minute Resolution dated 31 January 2020.[48]

On 20 February 2020, petitioner filed a "Motion to Defer Pre-Trial Conference"[49] (**Motion to Defer**), requesting that the Pre-Trial Conference be moved to 28 April 2020. During the 27 February 2020 hearing, the Second Division granted petitioner's Motion to Defer, reset the Pre-Trial Conference to 23 April 2020, and ordered the parties to submit the affidavits of their witnesses by 08 March 2020.[50] Later, on 08 June 2020, the Second Division issued a Notice of Hearing[51], further resetting the Pre-Trial Conference to 08 July 2020.

...

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

43 **SEC. 135.** *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — Petroleum products sold to the following are exempt from excise tax:

...

(c) Entities which are by law exempt from direct and indirect taxes.

44 Division Docket (CTA Case No. 10232), Volume I, pp. 74-75.

45 Id., pp. 82-85.

46 Id., pp. 87-99.

47 See Compliance filed by petitioner on 30 January 2020, id., pp. 77-79.

48 Id., p. 81.

49 Id., pp. 101-104.

50 See Minutes of the Hearing and Order, both dated 27 February 2020, id., pp. 108 and 109, respectively.

51 Id., p. 251.

On 19 June 2020, respondent filed anew his or her Pre-Trial Brief.[52] Petitioner, on the other hand, filed an Amended Pre-Trial Brief[53] on 02 July 2020.

During the 08 July 2020 Pre-Trial Conference, the Second Division granted the parties a period of thirty (30) days, or until 07 August 2020, within which to file their Joint Stipulation of Facts and Issues (**JSFI**) and for petitioner to file a Motion to Commission an Independent Certified Public Accountant (**ICPA**). At the same hearing, the Second Division also set the presentation of the first and second witnesses for petitioner and the hearing for the possible commissioning of the ICPA on 07 September 2020 and the presentation of the other witnesses for petitioner, including the ICPA, on 09 November 2020. Commissioner's hearings were also set on the 3rd and 5th of August 2020 for the comparison of petitioner's exhibits.[54]

Subsequently, on 22 July 2020, petitioner filed a "Motion to Consolidate (with Motion to Defer Filing of [JSFI] and Motion to Defer Filing of Motion to Commission an [ICPA])"[55] (**First Motion for Consolidation**), praying for the consolidation of CTA Case No. 10232 with CTA Case Nos. 10266 and 10267. In the Resolution dated 03 August 2020[56], the Second Division ordered respondent to comment on petitioner's First Motion for Consolidation. Pending the resolution thereof, in an Order dated 04 September 2020[57], the Second Division cancelled the hearing for the initial presentation of petitioner's evidence and the commissioning of an ICPA previously set on 07 September 2020 until further orders. However, respondent failed to file a comment despite due notice.[58]

In the Resolution dated 07 October 2020[59], the Second Division granted petitioner's First Motion for Consolidation, in conformity with

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52 Id., pp. 252-255.
53 Id., pp. 257-272.
54 See Minutes of the Hearing and Order, both dated 08 July 2020, id., pp. 312 and 313, respectively.
55 Id., pp. 314-323.
56 Id., p. 332.
57 Id., p. 333.
58 *Per* Records Verification dated 05 October 2020, id., p. 337.
59 Id., pp. 339-340.

the Resolution dated 22 September 2020[60] of the First Division[61] that earlier granted the consolidation of CTA Case No. 10266 with CTA Case No. 10232 (the case bearing the lowest docket number).

CTA CASE NO. 10267

Again, claiming inaction on respondent's part, on 11 March 2020, petitioner filed a Petition for Review[62], praying that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱290,317,255.00, representing excise taxes paid by petitioner during the 2nd Quarter of TY 2018 on locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to MDPI. The case was docketed as CTA Case No. 10267 and raffled to this Court's Second Division.

On 16 March 2020, the Second Division issued Summons[63] to respondent.

After the Second Division twice granted an extension of time to respondent[64], the Answer[65] was filed on 18 August 2020. There, respondent cited the following special and affirmative defenses: (1) petitioner cannot present additional evidence not presented during the investigation done in the administrative level; (2) petitioner is liable for excise taxes amounting to ₱290,317,255.00, and therefore, the BIR correctly denied petitioner's refund claim; and, (3) petitioner was not able to prove its entitlement to the refund sought.

Earlier, on 22 July 2020, petitioner filed a "Motion to Consolidate"[66] (**Second Motion for Consolidation**), requesting the consolidation of CTA Case No. 10267 with CTA Case Nos. 10232 and

60 Division Docket (CTA Case No. 10266), pp. 140-141.
61 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, and Associate Justice Maria Rowena Modesto-San Pedro, as Member. Associate Justice Catherine T. Manahan voluntarily recused herself from participating in the case in the interest of impartial administration of justice.
62 Supra at note 6.
63 Division Docket (CTA Case No. 10267), p. 70.
64 See Orders dated 19 June 2020 and 17 July 2020, id., pp. 77 and 85, respectively.
65 Id., pp. 105-114.
66 Id., pp. 87-95.

10266. Respondent also failed to file a comment thereon despite due notice[67] of the Second Division's directive.[68]

On 24 August 2020, respondent transmitted to the Second Division the BIR Records of CTA Case No. 10267 consisting of one (1) folder with 469 pages.[69] The Second Division noted the same in a Minute Resolution dated 25 August 2020.[70]

On 07 September 2020, the Second Division issued a Notice of Pre-Trial Conference[71] and set the case for Pre-Trial Conference on 28 October 2020.

In the Resolution dated 07 October 2020[72], the Second Division granted petitioner's Second Motion for Consolidation (resolved jointly with its First Motion for Consolidation) and thereby, consolidated CTA Case No. 10267 with CTA Case No. 10232, the case bearing the lower docket number, and cancelled the Pre-Trial Conference previously set on 28 October 2020.

<u>CTA CASE NO. 10266</u>

On 11 March 2020, petitioner also filed a Petition for Review[73], praying that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱361,188,996.50, representing excise taxes paid by petitioner on locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to MDPI. The case was docketed CTA Case No. 10266 and raffled to this Court's First Division.[74]

On 17 June 2020, the First Division issued Summons[75] to respondent.

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67 *Per* Records Verification dated 05 October 2020, id., p. 176.
68 See Resolution dated 03 August 2020, id., p. 98.
69 See Compliance filed by petitioner on 24 August 2020, id., pp. 99-102.
70 Id., p. 104.
71 Id., pp. 174-175.
72 Supra at note 59.
73 Supra at note 7.
74 Supra at note 61.
75 Division Docket (CTA Case No. 10266), p. 70.

After the First Division granted an extension of time to respondent[76], the Answer[77] was filed on 18 August 2020. There, respondent cited the following special and affirmative defenses: (1) petitioner cannot present additional evidence not presented during the investigation done in the administrative level; (2) petitioner is liable for excise taxes amounting to ₱361,188,996.50, and therefore, the BIR correctly denied petitioner's refund claim; and, (3) petitioner was not able to prove its entitlement to the refund sought.

Earlier, on 22 July 2020, petitioner filed a "Motion to Consolidate"[78] (**Third Motion for Consolidation**), requesting the consolidation of CTA Case No. 10266 with CTA Case Nos. 10232 and 10267. Respondent file his or her Comment[79] thereto on 04 September 2020.

On 24 August 2020, respondent transmitted to the First Division the BIR Records of CTA Case No. 10266 consisting of one (1) folder with 398 pages.[80] The First Division noted the same, along with the Answer filed on 18 August 2020, in a Minute Resolution dated 10 September 2020.[81]

In the Resolution dated 22 September 2020[82], the First Division granted petitioner's Third Motion for Consolidation and thereby, consolidated CTA Case No. 10266 with CTA Case No. 10232, the case bearing the lower docket numbers, subject to the conformity of the Second Division.

CONSOLIDATED CASES

In the Resolution dated 07 October 2020[83], which granted the consolidation of the instant cases, the Second Division also ordered the parties to submit their Consolidated Pre-Trial Briefs, directed respondent to forward the entire BIR Records of these consolidated

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76 See Order dated 24 August 2020, id., p. 88.
77 Id., pp. 96-105.
78 Id., pp. 78-86.
79 Id., pp. 134-136.
80 See Compliance filed by respondent on 24 August 2020, id., pp. 92-94.
81 Id., p. 138.
82 Supra at note 60.
83 Supra at note 59.

cases and set the Pre-Trial Conference therefor on 25 November 2020.[84] However, the Second Division later reset the Pre-Trial Conference to 20 January 2021.[85]

On 06 November 2020, respondent filed his or her Consolidated Pre-Trial Brief.[86] Petitioner, on the other hand, filed its Consolidated Pre-Trial Brief[87] on 21 December 2020.

During the 20 January 2021 Pre-Trial Conference[88], the Second Division granted the parties a period of 30 days, or until 19 February 2020, to file their JSFI and to file petitioner's Motion to Commission an ICPA. At the same hearing, the Second Division set anew the presentation of the first witness for petitioner and the hearing for the possible commissioning of the ICPA on 17 March 2021. Commissioner's hearings were also set on the 3rd and 8th of February 2021 for the comparison of petitioner's exhibits.[89]

On 18 February 2021, petitioner filed a "Motion to Avail of the Provisions of Rule 13 of the [RRCTA]"[90], requesting the appointment of Normita L. Villaruz (**Villaruz**) as the ICPA. The Second Division granted this request during the 17 March 2021 hearing and ordered ICPA Villaruz to submit her ICPA Report and Judicial Affidavit by 01 May 2021.[91] The continuation of petitioner's presentation of evidence was set for 31 May 2021, the presentation of ICPA Villaruz's testimony for 21 June 2021, and the commissioner's hearing for 12 April 2021.[92] Following the Court's directive, petitioner filed a "Compliance (with attached ICPA Report and Supporting Documents)"[93] on 24 May 2021. ICPA Villaruz's Report dated 20 May 2021[94], along with annexes, was contained in a separate binder. Soft copies of the ICPA Report and the relevant documentary

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84 Id.
85 See Notice of Resetting dated 09 November 2020, Division Docket (CTA Case No. 10232), Volume I, p. 341.
86 Id., pp. 343-346.
87 Id., pp. 348-368.
88 See Minutes of the Hearing and Order, both dated 20 January 2021, id., Volume II, pp. 709 and 742, respectively.
89 Id.
90 Id., pp. 718-721.
91 See Minutes of the Hearing and Order, both dated 17 March 2021, id., pp. 839 and 841, respectively.
92 Id.
93 Id., pp. 856-859.
94 Exhibit "P-124".

exhibits were saved on a USB[95], which was also submitted to this Court on 24 May 2021.

Meanwhile, on 19 February 2021, the parties submitted their JSFI.[96] The Second Division then issued the Pre-Trial Order dated 24 February 2021[97], approving the parties' JSFI and thereby terminating the pre-trial.

On 05 March 2021, filed a "Motion to Amend Pre-Trial Order"[98] (**Motion to Amend**), praying that the Pre-Trial Order be amended to reorder the schedule for presentation of its witnesses and include additional exhibits therein and made part of the case records. In the Resolution dated 10 March 2021[99], the Second Division granted petitioner's Motion to Amend and thereby, issued an Amended Pre-Trial Order.

On 26 March 2021, petitioner filed a "Manifestation (with Motion to Conduct the Presentation of Petitioner's Witnesses through Videoconferencing)"[100], asking the Second Division to note its intent to present its remaining witnesses on 31 May 2021, and to conduct the presentation of its witnesses through videoconferencing.

Since the Second Division had not yet received its First Manifestation with Motion for Videoconferencing, petitioner filed another "Manifestation (with Motion to Conduct the Presentation of Petitioner's Witnesses through Videoconferencing)"[101] on 21 May 2021.

In the Resolution dated 27 May 2021[102], the Second Division granted petitioner's motion to conduct the presentation of its two (2) remaining witnesses through videoconferencing and set the requested videoconference hearing for 02 June 2021 (thereby cancelling the previously set open court hearing on 31 May 2021). However, the Second Division later reset the said videoconference hearing to 07 July 2021.[103]

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95 Exhibit "P-124-B".
96 Division Docket (CTA Case No. 10232), Volume II, pp. 743-751.
97 Id., pp. 753-768.
98 Id., pp. 769-774.
99 Id., p. 785.
100 Id., pp. 842-848.
101 Id., pp. 850-854.
102 Id., p. 862.
103 See Notice of Resetting dated 01 June 2021, id., p. 863.

On 17 June 2021, petitioner filed a "Motion for Leave to File Supplemental [ICPA] Report (with attached Supplemental ICPA Report dated June 11, 2021, and Supporting Documents)"[104] (**Motion to File a Supplemental ICPA Report**), requesting the Second Division to admit ICPA Villaruz's Supplemental ICPA Report dated 11 June 2021[105], together with supporting documents. The said Supplemental ICPA Report, along with annexes, was contained in a separate binder. Soft copies thereof and the relevant documentary exhibits were saved on a USB[106], which was also submitted to this Court on 17 June 2021.

During the 21 June 2021 hearing[107], the Second Division granted petitioner's Motion to File a Supplemental ICPA Report. At the same hearing, the Second Division set a commissioner's hearing for 28 June 2021, to compare petitioner's exhibits, and scheduled the continuation of petitioner's presentation of evidence for 07 July 2021.[108]

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses, namely: (1) Atty. Ma. Clarissa C. Arguelles (**Atty. Arguelles**), petitioner's Tax Manager; (2) Ryan Kris B. Rebong (**Rebong**), petitioner's Stock and Depot Finance Supervisor; (3) Ronald Q. Chiong (**Chiong**), petitioner's Research and Development Manager; (4) ICPA Villaruz; (5) Allan V. Peczon (**Peczon**), petitioner's Area Sales Manager-Mindanao, Industrial Trade; and, (6), Ronaldo A. Tadena (**Tadena**), petitioner's Oil Movement & Storage (**OM&S**) and Terminalling Manager.

On 17 March 2021, petitioner presented the testimonies of its witnesses, Atty. Arguelles, Rebong and Chiong.[109]

Atty. Arguelles' testimony, as contained in her Judicial Affidavit dated 15 January 2021[110] and Supplemental Judicial Affidavit dated

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104 Id., pp. 864-867.
105 Exhibit "P-125".
106 Exhibit "P-125-B".
107 See Minutes of the Hearing and Order, both dated 21 June 2021, Division Docket (CTA Case No. 10232), Volume II, pp. 900 and 901, respectively.
108 Id.
109 See Minutes of the Hearing and Order, both dated 17 March 2021, supra at note 91.
110 Exhibit "P-116", Division Docket (CTA Case No. 10232), Volume II, pp. 541-649, with attachments.

10 March 2021[111], was offered to prove, among others, that: (1) petitioner is authorized to import and manufacture petroleum and petroleum products and is registered with the BIR as an excise taxpayer; (2) petitioner paid excise taxes totaling ₱773,900,222.00 for the 1st to 3rd Quarters of TY 2018 for locally-produced unleaded gasoline fuel and diesel fuel oil sold to MDPI, a tax-exempt entity; (3) under the SBMA-issued Certificate of Registration and Tax Exemption No. 2006-0048[112], MDPI is granted a tax incentive consisting of the payment of 5% tax on gross income earned in lieu of national and local taxes; (4) accordingly, the sales to MDPI are exempt from excise taxes, and petitioner timely filed administrative claims and judicial claims for a refund of the erroneously paid taxes; and, (5) petitioner did not apply for product replenishment for the tax-paid locally manufactured unleaded gasoline fuel and diesel fuel oil in question and is entitled to a refund under Section 135(c)[113] of the NIRC of 1997, as amended.

Respondent did not conduct any cross-examination.[114]

Rebong's testimony, on the other hand, as contained in his Judicial Affidavit dated 15 January 2021[115], was offered to prove mainly that petitioner locally manufactures unleaded gasoline fuel and diesel fuel oil during the 1st to 3rd Quarters of TY 2018. He also declared that: (1) as petitioner's Stock and Depot Finance Supervisor, it is his duty to monitor inventory movements and he has access to petitioner's Official Register Books (**ORB**) in petitioner's CAS or the SAP-generated ORB, and the ORB signed by the BIR Revenue Officer On Premise (**ROOP**); and, (2) based on the corresponding monthly PBR ORBs signed by the ROOP for the taxable periods in question, the total volume of petitioner's locally manufactured tax-paid unleaded gasoline fuel is 1,886,278,508 liters, while that for diesel fuel oil is 2,519,107,097 liters.

Respondent did not conduct any cross-examination.[116]

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111 Exhibit "P-117", id., pp. 792-833, with attachments.

112 See Certificate of Registration and Tax Exemption No. 2006-0048 dated 27 October 2017, Exhibit "P-884", USB (Exhibit "P-124-B"); Included under Exhibit "R-5", BIR Records (CTA Case No. 10232), pp. 3-4/Exhibit "R-8", BIR Records (CTA Case No. 10267), pp. 3-4/Exhibit "R-4", BIR Records (CTA Case No. 10266), pp. 304-305.

113 Supra at note 43.

114 TSN dated 17 March 2021, p. 13.

115 Exhibit "P-118", Division Docket (CTA Case No. 10232), Volume II, pp. 490-534, with attachments.

116 TSN dated 17 March 2021, p. 16.

Chiong testified next. In his Judicial Affidavit dated 18 January 2021[117], he declared, among others, that: (1) as petitioner's Research and Development Manager, his responsibilities include determining specifications and production costs of petroleum products, developing new products, and evaluating existing ones for functionality and compliance with market and regulatory demands; (2) he is a member of the Technical Committee on Petroleum and Petroleum Additives under the Department of Energy (**DOE**) and the Department of Environment and Natural Resources (**DENR**), whose function is to set the country's specifications for all types of fuels; (3) he has custody of documents relating to the classification and specification petitioner's fuel products; (4) the product name "R92" is derivative of unleaded gasoline fuel; and, (5) the product names Automotive Diesel Oil (**ADO**) Neat, ADO 0.05% and ADO with Coconut Methyl Ester (**CME**) are derivative of diesel fuel oil.

Respondent did not conduct any cross-examination.[118]

On 21 June 2021[119], petitioner presented ICPA Villaruz, whose testimony, as contained in her Judicial Affidavit dated 17 June 2021[120], aimed to prove that: (1) petitioner paid excise taxes totaling ₱773,900,222.00 for the 1st to 3rd Quarters of TY 2018 on locally-produced unleaded gasoline and diesel fuel oil sold to MDPI, a tax-exempt entity; (2) these locally-produced unleaded gasoline and diesel fuel oil were actually received by MDPI and are exempt from excise taxes; (3) petitioner billed and collected amounts net of excise tax for these sales to MDPI; and, (4) petitioner is entitled to a refund of the erroneously paid excise taxes pursuant to Section 135(c)[121] of the NIRC of 1997, as amended.

On cross-examination, ICPA Villaruz noted that her Supplemental ICPA Report[122] was executed to improve her original ICPA Report.[123] She clarified that the former report did not alter the findings and conclusions contained in the latter report. Specifically, the

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117 Exhibit "P-119", Division Docket (CTA Case No. 10232), Volume II, pp. 655-700, with attachments.
118 TSN dated 17 March 2021, p. 19.
119 Minutes of the Hearing and Order, both dated 21 June 2021, supra at note 107.
120 Exhibit "P-126", Division Docket (CTA Case No. 10232), Volume II, pp. 875-898.
121 Supra at note 43.
122 Exhibit "P-125", Separate Binder.
123 Exhibit "P-124", Separate Binder.

Supplemental ICPA Report merely enhanced the presentation of the exhibits and annexes.[124]

Petitioner did not conduct any redirect examination.[125]

During the 07 July 2021 videoconference hearing, petitioner presented the testimonies of its remaining witnesses, Peczon and Tadena.[126]

Peczon declared, through his Judicial Affidavit dated 21 December 2020[127] and Supplemental Judicial Affidavit dated 02 July 2021[128], that: (1) as petitioner's Area Sales Manager for Industrial Trade, his duties and responsibilities include negotiating and selling locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI; (2) as part of the negotiation, he oversees the preparation and submission of bids to MDPI, ensures the execution of the contract under the same commercial terms and conditions as the accepted bid, ensures that orders are properly invoiced, and monitors collection of payments by accessing petitioner's CAS; (3) petitioner sold and delivered locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI, a tax-exempt entity; (4) the amounts billed and collected for these sales were net of excise tax; and, (5) petitioner is entitled to a refund of the erroneously paid excise taxes pursuant to Section 135(c)[129] of the NIRC of 1997, as amended.

Respondent did not conduct any cross-examination.[130]

Tadena, on the other hand, testified *via* his Judicial Affidavit dated 21 December 2020[131], where he declared essentially that: (1) as petitioner's OM&S and Terminalling Manager, it is his duty to monitor product inventory movements from production in the PBR up to its removal for deliver to petitioner's clients; (2) he has access to documents

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124 TSN dated 21 June 2021, p. 11.
125 Id., p. 12.
126 See Order dated 07 July 2021, Division Docket (CTA Case No. 10232), Volume III, pp. 1007-1008.
127 Exhibit "P-121", id., Volume I, pp. 435-484, with attached exhibits.
128 Exhibit "P-138", id., Volume III, pp. 921-1003, with attached exhibits.
129 Supra at note 43.
130 TSN dated 07 July 2021, p. 8.
131 Exhibit "P-123", Division Docket (CTA Case No. 10232), Volume I, pp. 376-429, with attached exhibits.

relating to petitioner's inventory, including but not limited to the Shipment Schedule[132], Meter Reading Sheet[133], Meter Batch Report[134], Withdrawal Certificate (**WC**)[135] and Cargo Outturn Certificate (**COC**)[136], which collectively prove that the locally-manufactured tax-paid unleaded gasoline fuel and diesel fuel oil were withdrawn and loaded onto a vessel chartered by MDPI; (3) petitioner sold and delivered locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI, a tax-exempt entity, and that these products were actually received by MDPI; (4) the products sold to MDPI were locally-produced and billed net of excise tax; and, (5) petitioner is entitled to a refund of the erroneously paid excise taxes pursuant to Section 135(c)[137] of the NIRC of 1997, as amended.

Respondent did not conduct any cross-examination.[138]

On 26 October 2021, petitioner filed its "Formal Offer of Evidence"[139] (**FOE**). Respondent filed his or her "Comment (Re: Formal Offer of Evidence)" thereto on 28 October 2021.[140]

On 02 November 2021, petitioner filed an "Urgent Motion to Defer the Resolution of Petitioner's Formal Offer of Evidence and to Set

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132 The Shipment Schedule shows that there is an order posted in SAP for the product lifting. SAP is petitioner's accounting system. The Shipment Schedule also serves as a notice that a vessel will be arriving to load a petroleum product, and the consignee to whom the petroleum product will be delivered. (See Q&A No. 11 of Ronaldo A. Tadena's Judicial Affidavit dated 21 December 2020, Exhibit "P-123", id., pp. 378-379.)

133 The Meter Reading Sheet shows the opening and closing readings of Custody Flow Meter (CFM) used to load petroleum product to the vessel, duly acknowledged by petitioner's representative, a vessel representative and an independent surveyor. (See Q&A No. 11 of Ronaldo A. Tadena's Judicial Affidavit dated 21 December 2020, Exhibit "P-123", id., pp. 378-379.)

134 The Meter Batch Report was the generated report of CFM, which shows the complete details of the transfer of the petroleum product from the Petron Bataan Refinery (PBR) to a vessel, including the conversion of the petroleum product delivered based on different unit of measurement. (See Q&A No. 11 of Ronaldo A. Tadena's Judicial Affidavit dated 21 December 2020, Exhibit "P-123", id., pp. 378-379.)

135 The Withdrawal Certificate shows the amount of tax imposed on the petroleum product delivered, duly acknowledged by a Revenue Officer (RO) and petitioner's representative. (See Q&A No. 11 of Ronaldo A. Tadena's Judicial Affidavit dated 21 December 2020, Exhibit "P-123", id., pp. 378-379.)

136 The Cargo Outturn Certificate (**COC**) was generated after delivery confirmation in SAP. Generated COC shows the complete details of the shipment including the amount of tax paid on the petroleum product delivered. (See Q&A No. 11 of Ronaldo A. Tadena's Judicial Affidavit dated 21 December 2020, Exhibit "P-123", id., pp. 378-379.)

137 Supra at note 43.

138 TSN dated 07 July 2021, p. 12.

139 Division Docket (CTA Case No. 10232), Volume III, pp. 1018-1040.

140 Id., pp. 1302-1304.

Additional Commissioner's Hearing"[141] (**Urgent Motion**), asking the Second Division to defer the resolution of its FOE until the correction of the sub-markings is executed during the requested Commissioner's Hearing, to be set at a date and time most convenient to the Court, and the submission of the newly marked exhibits.

In the Resolution dated 01 December 2021[142], the Second Division granted petitioner's Urgent Motion, setting a Commissioner's Hearing to correct the sub-markings of the affected exhibits for 26 January 2022, thereby holding in abeyance the resolution of petitioner's FOE. However, the Second Division rescheduled the hearing to 25 April 2022, due to the physical closure of the Court caused by the surge of COVID-19 cases.[143]

Following the Commissioner's Hearing held on 25 April 2022, the Second Division acted on petitioner's FOE in the Resolution dated 05 July 2022[144] (**FOE Resolution**). It admitted petitioner's exhibits, but denied Exhibits "P-1007", "P-1008", "P-1010" and "P-1018"[145] (collectively, "**Denied Exhibits**") for not being found in the records. The Second Division also set the initial presentation of respondent's evidence for 12 September 2022.

On 22 July 2022, petitioner filed a "Motion for Reconsideration (with Manifestation)"[146] (**MR on the FOE Resolution**), requesting the Second Division to reconsider its FOE Resolution regarding the Denied Exhibits. Petitioner argued that these were already submitted when the ICPA Report was filed on 24 May 2021 and when the ICPA Villaruz's Judicial Affidavit was filed on 17 June 2021. Additionally, petitioner requested the Second Division to note that it will adopt the description of Exhibit "P-108"[147] based on the actual document (and not what was indicated in its FOE) and that Exhibits "P-121", "P-121-A", "P-123", "P-123-

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141 Id., pp. 1306-1310.
142 Id., pp. 1313-1314.
143 See Resolution dated 14 March 2022, id., p. 1316.
144 Id., pp. 1322-1324.
145

Exhibit No.	Description
"P-1007", "P-1008", "P-1010" and "P-1018"	Daily SAP-generated ORB.

146 Division Docket (CTA Case No. 10232), Volume III, pp. 1325-1329.
147 Philippine National Standard – PNS/DOE QS 008:2018 "Petroleum products – E-Gasoline fuel – Specification."

A", "P-138" and "P-138-A"[148] were officially marked during the 07 July 2021 videoconference hearing. Respondent failed to file a comment on petitioner's MR on the FOE Resolution despite due notice.[149]

In the Resolution dated 07 September 2022[150], the Second Division granted petitioner's MR on the FOE Resolution, thereby admitting the previously Denied Exhibits and noting petitioner's manifestations. The Second Division likewise set the initial presentation of respondent's evidence for 12 September 2022, as previously scheduled.

During the 12 September 2022 hearing, respondent presented the testimonies of his or her witnesses, Revenue Officers (**ROs**) Melinda M. Rugayan (**Rugayan**) (for CTA Case Nos. 10232 and 10267) and Ma. Cecilia Tan (**Tan**) (for CTA Case No. 10266).[151]

RO Rugayan's testified through her Judicial Affidavit dated 05 March 2021[152] (for CTA Case No. 10232) and Judicial Affidavit dated 13 August 2020[153] (for CTA Case No. 10267), where she declared essentially that: (1) she is an RO III, previously assigned at Excise Large Taxpayers Audit Division II (**ELTAD II**) and then at Revenue District Office (**RDO**) No. 31-Sta. Cruz, Revenue Region No. 6, Manila; (2) Memorandum of Assignment (**MOA**) Nos. RC-ELTADII-07-18-013 dated 23 July 2018[154] and RC-ELTADII-09-18-015 dated 14 September 2018[155] were issued to her and her Group Supervisor, Samuel C. Reyes (**GS Reyes**), authorizing them to investigate petitioner refund claim for the 1st and 2nd Quarters of TY 2018 amounting to ₱122,393,970.50 and ₱290,317,255.00,

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Exhibit No.	Description
"P-121"	Judicial Affidavit of Allan V. Peczon dated 21 December 2020.
"P-121-A"	Signature of Allan V. Peczon in his Judicial Affidavit dated 21 December 2020.
"P-123"	Judicial Affidavit of Ronaldo A. Tadena dated 21 December 2020.
"P-123-A"	Signature of Ronaldo A. Tadena in his Judicial Affidavit dated 21 December 2020.
"P-138"	Supplemental Judicial Affidavit of Allan V. Peczon dated 21 December 2020.
"P-138-A"	Signature of Allan V. Peczon in his Supplemental Judicial Affidavit dated 30 June 2021.

149 See Records Verification dated 18 August 2022, Division Docket (CTA Case No. 10232), Volume III, p. 1333.
150 Id., pp. 1335-1336.
151 See Minutes of the Hearing and Order, both dated 12 September 2022, id., pp. 1339 and 1340-1341, respectively.
152 Exhibit "R-6", id., Volume II, pp. 780-783.
153 Exhibit "R-9", Division Docket (CTA Case No. 10267), pp. 119-172, with attached exhibits.
154 Exhibit "R-1", BIR Records (CTA Case No. 10232), p. 2.
155 Exhibit "R-2", BIR Records (CTA Case No. 10267), p. 2.

respectively; (3) Tax Verification Notice (**TVN**) Nos. TVN201700023563 dated 23 July 2018[156] and TVN201700023566 dated 14 September 2018[157] were also issued to her to verify petitioner's refund claim for the 1st Quarter of TY 2018; (4) as stated in the Memorandum dated 29 October 2018[158], her team recommended the approval of petitioner's refund claim for the 2nd Quarter of TY 2018; (6) however, the Large Taxpayers Service - Excise (**LTS-Excise**) issued a Briefer[159], recommending a re-evaluation of the submissions for any overlooked details; (7) after their review, her team reversed their previous findings and recommended the denial of the entire claim; and, (8) as stated in the Memorandum dated 20 January 2020[160] and Memorandum dated 24 May 2019[161], in the Analysis of MDPI's Sales for TYs 2017[162] and 2018[163], and in the First[164] and Second[165] Denial Letters, both dated 20 January 2020, petitioner's refund claim for the 1st and 2nd Quarters of TY 2018 were denied because MDPI's VAT declarations for TYs 2017 and 2018 showed sales within the customs territory at 61.83% and 78.16% of total sales, respectively, exceeding the 30% threshold set under the terms and conditions of its tax incentives entitlement.

On cross-examination for CTA Case No. 10232, RO Rugayan confirmed that the BIR Records includes MDPI's Certificate of Registration and Tax Exemption[166], which states on Article 3 thereof that MDPI shall enjoy, among other incentives, an exemption from all local and national taxes, including but not limited to customs and import duties and national internal revenue taxes such as value-added tax (**VAT**), excise and *ad valorem* taxes on foreign articles. She also confirmed that the said Certificate covers the period from 27 October 2017 to 26 October 2018 and that petitioner's refund claim falls within that validity period.[167]

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156 Exhibit "R-2", BIR Records (CTA Case No. 10232), p. 1.
157 Exhibit "R-3", BIR Records (CTA Case No. 10267), p. 1.
158 Exhibit "R-4", BIR Records (CTA Case No. 10267), pp. 315-321.
159 Exhibit "R-5", id., p. 418.
160 Exhibit "R-3", BIR Records (CTA Case No. 10232), pp. 362-363.
161 Exhibit "R-6", BIR Records (CTA Case No. 10267), pp. 419-456.
162 Exhibit "R-3-a", BIR Records (CTA Case No. 10232), p. 361.
163 Exhibit "R-3-b", id., p. 360.
164 Exhibit "R-4", id., pp. 365-366; Exhibit "P-113", supra at note 36.
165 Exhibit "R-7", BIR Records (CTA Case No. 10267), pp. 461-462; Exhibit "P-114", supra at note 37.
166 Included under Exhibit "R-5", BIR Records (CTA Case No. 10232), supra at note 112/Exhibit "R-8", BIR Records (CTA Case No. 10267), supra at note 112.
167 TSN dated 12 September 2022, pp. 10-11.

On cross-examination for CTA Case No. 10267, RO Rugayan similarly confirmed that the aforesaid Certificate of Registration and Tax Exemption grants MDPI an exemption from all local and national taxes, including excise tax, and that petitioner's refund claim also falls within the validity period thereof.[168]

Then, on redirect examination, RO Rugayan stated that notwithstanding MDPI's Certificate of Registration and Tax Exemption, the BIR still recommended the denial of petitioner's refund claims subject of CTA Case Nos. 10232 and 10267. This recommendation was based on the evaluation of MDPI's VAT returns for TYs 2017 and 2018, which showed that MDPI had VATable and zero-rated sales. Since the excise tax is based on a *per* data basis, the volume (in liters) *per* product corresponding to the amount of zero-rated sales cannot be properly determined, as the relevant documents belong to MDPI. Additionally, MDPI had sales within or inside the customs territory that allegedly exceeded the 30% threshold set under the terms and conditions of each tax incentive entitlement.[169]

On re-cross examination, RO Rugayan insisted that while the Subic Bay Metropolitan Authority (**SBMA**) issued MDPI's Certificate of Registration and Tax Exemption, the BIR may unilaterally deny the tax incentive granted therein. This is because the Certificate itself provides a condition for MDPI to be exempt from excise tax.[170]

In response to the Court's clarificatory question regarding her statement that MDPI's sales within or inside the customs territory exceeded the 30% threshold, RO Rugayan noted that, as detailed in her Memorandum dated 20 January 2020[171], out of the total sales, sales within or inside the customs territory accounted for 61.83%[172] and 78.16%[173] for TYs 2017 and 2018, respectively.[174]

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168 Id., pp. 11-12.
169 Id., pp. 12-13.
170 Id., pp. 13-15.
171 Exhibit "R-3" (CTA Case No. 10232), supra at note 160.
172 Computation: (VATable Sales of ₱5,530,506,676.33 + Sales to Government of ₱4,791,056.99) / Total Sales of ₱8,952,142,793.32 for TY 2017.
173 Computation: (VATable Sales of ₱10,352,450,599.09 + Sales to Government of ₱2,811,378.38) / Total Sales of ₱13,248,629,457.47 for TY 2018.
174 TSN dated 12 September 2022, pp. 15-17.

RO Tan, on the other hand, testified *via* her Judicial Affidavit dated 14 August 2020[175], that: (1) she is an RO III, tasked with reviewing initial investigations pertaining to tax credit or refund cases, among others; (2) Letter of Authority (**LOA**) No. LOA-124-2019-00000103 dated 06 March 2019[176] was issued to her, fellow ROs, Fiona Margarita Aytona (**Aytona**), Ma. Socorro Concepcion (**Concepcion**) and Jessie Lumba (**Lumba**) and their GS Aurelio Agustin Zamora (**GS Zamora**), authorizing them to examine petitioner's books of accounts and other accounting records for excise tax for the 3rd Quarter of TY 2018; and, (3) as stated in the Memorandum dated 19 November 2019[177] and in the Third Denial Letter dated 19 November 2019[178], petitioner's refund claim for the 3rd Quarter of TY 2018 was denied since their verification disclosed that MDPI is subject to regular income tax and VAT, and while petitioner did not bill MDPI for excise tax, the total amount indicated in the sales invoices issued to MDPI included 12% VAT (thereby, contradicting petitioner's claim that MDPI is exempt from all local and national taxes including VAT and excise tax).

On cross-examination, RO Tan likewise confirmed that the BIR Records includes MDPI's Certificate of Registration and Tax Exemption, which provides an exemption from payment of excise tax, among others. Like RO Rugayan, she attested that petitioner's refund claim falls within the validity period of the said Certificate.[179]

RO Tan answered in the affirmative when asked to verify whether one of the reasons cited for the denial of petitioner's refund claim was that input VAT was passed on by petitioner to MDPI. She noted that this finding was based on petitioner's representations in its refund application. Moreover, they considered existing regulations, including those introduced by Republic Act (**RA**) No. 10963, or the Tax Reform for Acceleration and Inclusion (**TRAIN Law**), which amended the NIRC, in evaluating the merits petitioner's refund claim.[180]

On redirect examination, RO Tan explained that the subject refund claim was denied despite the tax incentive granted to MDPI

175 Exhibit "R-5", Division Docket (CTA Case No. 10266), pp. 110-128, with attachments.
176 Exhibit "R-1", BIR Records (CTA Case No. 10266), p. 318.
177 Exhibit "R-2", id., pp. 386-387.
178 Exhibit "R-3", id., pp. 389-390.
179 TSN dated 12 September 2022, pp. 22-23.
180 Id., pp. 23-24.

because MDPI itself is not claiming an exemption under its Certificate of Registration and Tax Exemption. She mentioned that the BIR did not consider MDPI as claiming an exemption under the said Certificate as MDPI paid regular taxes, including VAT.[181]

On re-cross examination, RO Tan reiterated that MDPI did not claim a tax exemption. She admitted, however, that there is no communication from SBMA either expressly denying or revoking the tax exemption granted to MDPI.[182]

On 19 September 2022, respondent filed his or her FOE.[183] Petitioner filed its "Comment to Respondent's [FOE] dated September 19, 2022 (with Motion to Present Rebuttal Evidence)"[184] (**Comment with Motion to Present Rebuttal Evidence**) thereto on 10 October 2022. In the Resolution dated 05 December 2022[185], the Second Division admitted all of respondent's offered exhibits, and granted petitioner's Motion to Present Rebuttal Evidence set for 25 January 2023.

During the 25 January 2023 hearing, petitioner presented the testimony of Atty. Arguelles for its rebuttal evidence.[186]

On the witness stand, Atty. Arguelles identified her Amended Supplemental Judicial Affidavit dated 23 January 2023[187], where she declared that: (1) MDPI is a tax-exempt entity based on its SBMA-issued Certificates of Registration and Tax Exemption, which are valid for the taxable periods in question; (2) the passed-on VAT in petitioner's sales invoices to MDPI was requested by the latter to comply with the TRAIN Law's provisions; and, (3) respondent's presumption that MDPI's VATable sales were made within the customs territory was incorrect, and that the Denial Letters[188] for the 1st to 3rd Quarters of TY 2018 lacked factual and legal basis.

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181 Id., p. 25.
182 Id., p. 26.
183 Division Docket (CTA Case No. 10232), Volume III, pp. 1342-1348.
184 Id., pp. 1353-1358.
185 Id., pp. 1362-1364.
186 See Minutes of the Hearing and Order, both dated 25 January 2023, id., pp. 1439 and Volume IV, pp. 1440-1441, respectively.
187 Exhibit "P-10-57", id., Volume III, pp. 1427-1436.
188 Supra at notes 36, 37 and 38.

On cross-examination, Atty. Arguelles stated that MDPI's SBMA-issued Certificates of Registration and Tax Exemption No. 2006-0048 serve as proof that it is a tax-exempt entity. She was unsure whether there is any other document that can serve as the basis for such tax exemption. She also attested that petitioner passed on VAT to MDPI because of a letter from MDPI indicating that, despite their incentives and benefits, they should still be subject to VAT. In other words, petitioner passed on VAT to MDPI in fulfillment of this request.[189]

Petitioner did not conduct any redirect examination.[190]

Responding to the Court's clarificatory question, Atty. Arguelles said that she is not in any way related to MDPI. When asked how she learned that the BIR only presumed that the VATable sales declared by MDPI were made within the customs territory, she stated that she found out only upon receiving the Denial Letters, all of which indicated that MDPI was not qualified for excise tax exemption. She insisted that petitioner's transactions with MDPI are exempt based solely on the aforesaid SBMA-issued Certificates of Registration and Tax Exemption.[191]

Furthermore, Atty. Arguelles admitted that they failed to verify from MDPI whether its sales within or inside the customs territory exceeded the 30% threshold. Regrettably, petitioner did not find it necessary to do so, despite being granted the opportunity to present rebuttal evidence to counter respondent's claim that MDPI supposedly breached the said threshold.[192]

On 03 February 2023, petitioner filed its Supplemental FOE.[193] Respondent filed his or her Comment[194] thereto on 06 February 2023. In the Resolution dated 30 March 2023[195] (**Supplemental FOE Resolution**), the Court admitted all of petitioner's exhibits, *except* Exhibit "P-13"[196], for not being found in the records.

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[189] TSN dated 25 January 2023, pp. 9-11.
[190] Id., p. 11.
[191] Id., pp. 11-15.
[192] Id., pp. 15-17.
[193] Division Docket (CTA Case No. 10232), Volume IV, pp. 1442-1448.
[194] Id., pp. 1453-1455.
[195] Id., pp. 1458-1459.
[196] Certificate of Registration and Tax Exemption No. 2006-0048 issued by SBMA to MDPI dated 27 October 2017.

On 26 April 2023, petitioner filed an MR[197] on the Supplemental FOE Resolution, requesting that Exhibit "P-13" be noted, as it is the same as Exhibit "P-884"[198], and that it be allowed to adopt Exhibit "P-884" as Exhibit "P-13". Respondent failed to file a comment thereto despite due notice.[199]

On 10 May 2023, respondent filed his or her Memorandum[200], while petitioner's filed its Memorandum[201] on 11 May 2023.

Thereafter, on 29 May 2023, the consolidated cases were transferred to the First Division, pursuant to Administrative Circular (**AC**) No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[202]

In the Resolution dated 15 August 2023[203], the First Division: (1) granted petitioner's MR on the Supplemental FOE Resolution, and accordingly adopted Exhibit "P-884" as Exhibit "P-13"; and, (2) deemed the consolidated cases submitted for decision.

ISSUES

As the parties so stipulated in their JSFI[204], the sole issue for the Court's determination is —

> WHETHER PETITIONER PETRON CORPORATION IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF ₱122,393,970.50 FOR THE 1ST QUARTER OF THE TAXABLE YEAR (TY) 2018; ₱290,317,255.00 FOR THE 2ND QUARTER OF TY 2018; AND ₱361,188,996.50 FOR THE 3RD QUARTER OF TY 2018, OR IN THE TOTAL AMOUNT OF ₱773,900,222.00), REPRESENTING EXCISE TAXES PAID DURING THE PERIOD FROM 01 JANUARY 2018 TO 30 SEPTEMBER 2018 ON LOCALLY-PRODUCED UNLEADED GASOLINE FUEL AND DIESEL FUEL OIL,

197 Division Docket (CTA Case No. 10232), Volume IV, pp. 1460-1464.
198 Certified True Copy of MDPI's Certificate of Registration Tax Exemption.
199 See Records Verification dated 05 July 2023, Division Docket (CTA Case No. 10232), Volume IV, p. 1536.
200 Id., pp. 1468-1476.
201 Id., pp. 1480-1532.
202 See Notice dated 29 May 2023, id., p. 1534.
203 Id., pp. 1541-1543.
204 II. Stipulation of Issues, JSFI, supra at note 96, pp. 743-744.

WHICH WERE SUBSEQUENTLY SOLD AND DELIVERED TO MICRO DRAGON PETROLEUM, INC. (MDPI), A TAX-EXEMPT ENTITY.

ARGUMENTS

First, petitioner contends that both its administrative and judicial claims for refund or tax credit were timely filed.

Second, petitioner asserts that its locally-produced unleaded gasoline fuel and diesel fuel oil sold and delivered to MDPI, a tax-exempt entity, are exempt from excise tax, and any excise tax paid on such removal was erroneously paid.

Third, petitioner notes that the advance excise tax deposits made for the period covered are sufficient to cover the total excise taxes due and paid on the actual removals of all petroleum products from the PBR, including those subsequently sold and delivered to MDPI. Accordingly, excise taxes paid on the volume of unleaded gasoline fuel and diesel fuel oil removed from the PBR and sold to MDPI were erroneously paid.

Fourth, petitioner argues that the valid SBMA-issued Certificate of Registration and Tax Exemption is the appropriate basis for MDPI's excise tax exemption, and the BIR cannot unilaterally revoke the same.

Fifth, petitioner claims that the imposition of VAT was at the express request of MDPI itself. The apparent inconsistency that arose when VAT was imposed on the same sales of unleaded gasoline fuel and diesel fuel oil to MDPI was not due to the invalidity of the SBMA-issued Certificate of Registration and Tax Exemption but only upon the request of MDPI that should not operate to invalidate the tax exemption.

Sixth, petitioner argues that respondent's denial of its refund claim cannot rest on a mere presumption or on unreasonable and impossible expectations.

Petitioner thus concludes that it is entitled to a refund of erroneously paid excise taxes amounting to ₱122,393,970.50 for the 1st

Quarter of TY 2018, ₱290,317,255.00 for the 2nd Quarter of TY 2018, and ₱361,188,996.50 for the 3rd Quarter of TY 2018, totaling ₱773,900,222.00, pursuant to Section 135(c)[205] of the NIRC of 1997, as amended.

On the other hand, respondent counter-argues that petitioner is liable to pay excise tax on locally-produced unleaded gasoline fuel and diesel fuel oil subsequently sold and delivered to MDPI. This liability arises because MDPI failed to meet the conditions prescribed in its SBMA-issued Certificate of Registration and Tax Exemption, particularly that MDPI's sales within the customs territory exceeded the 30% threshold. Therefore, the excise taxes paid were not erroneously or illegally paid.

Respondent also asserts that claims for refund of excise taxes paid are authorized only by Section 130(D)[206] of the NIRC of 1997, as amended, and not by Section 135(c) of the NIRC of 1997, as amended.

<u>RULING OF THE COURT</u>

After a careful review of the case records and the parties' contrasting arguments, this Court finds partial merit in the instant consolidated Petitions for Review.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[207] Thus:

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (c) Credit or refund taxes **<u>erroneously</u>** 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

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205 Supra at note 43.

206 Supra at note 42.

207 *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015.

> 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 <u>with the Commissioner</u> a claim for credit or refund <u>within two (2) years after the payment of the tax or penalty</u>**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.[208]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides:

> ...
>
> 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.[209]
>
> ...

From the foregoing, it is clear that in cases of recovery of erroneously paid or illegally collected tax, *both* the administrative claim for refund and the filing of the suit or the judicial claim for refund should be made before the expiration of two (2) years from the *date of payment* of the tax. 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 time. It is worthy to stress that as for the judicial claim, tax law even explicitly

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208 Italics in the original text, emphasis and underscoring supplied.

209 Emphasis supplied and italics in the original text.

provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[210]

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production. Hence, the date of payment of excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production.[211]

Moreover, the foregoing 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.[212]

PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND.

Under Section 130(A)(2) of the NIRC of 1997, as amended, it is the manufacturer or producer of locally manufactured petroleum products who bears the obligation to file the excise tax return (**ETR**) and to pay the corresponding excise tax thereon, prior to the removal of the domestic product from the place of production, *viz*:

> ...
> **SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.*
> ...
>
> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* —
>
> (1) *Persons Liable to File a Return.* — ...

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210 See *Commissioner of Internal Revenue v. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, 11 November 2019.
211 Id.
212 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

(2) *Time for Filing of Return and Payment of the Tax.* — **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**[.][213]

...

Accordingly, under the pertinent provisions of Sections 204(C)[214] and 229[215] of the NIRC of 1997, as amended, in relation to Section 130(A)(2)[216] of the NIRC of 1997, as amended, petitioner's administrative and judicial claims should be filed within two (2) years from the earliest date of removal of the locally-produced petroleum products from the place of production.

The case records show that the earliest removal of petitioner's locally-produced unleaded gasoline fuel and diesel fuel oil was made on 17 January 2018[217], 06 April 2018[218], and 05 July 2018[219], for which the corresponding excise taxes were paid on even date, *viz*:

Earliest Date of Removal and Payment of Excise Tax	End of Two(2)-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
17 January 2018 (for the 1st Quarter of TY 2018)	17 January 2020	18 July 2018[220]	26 December 2019[221]
06 April 2018 (for the 2nd Quarter of TY 2018)	06 April 2020	14 September 2018[222]	11 March 2020[223]
05 July 2018 (for the 3rd Quarter of TY 2018)	05 July 2020	21 December 2018[224]	11 March 2020[225]

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213 Emphasis supplied and italics in the original text.
214 Supra at pp. 30-31.
215 Supra at p. 31.
216 Supra at pp. 32-33.
217 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00066381, Exhibit "P-940", supra at note 20; See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, Exhibit "P-116", supra at note 20.
218 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00983226, Exhibit "P-946", supra at note 22; See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, supra at note 20.
219 See Withdrawal Certificate (BIR Form No. 2231) No. WCP2017-00984150, Exhibit "P-959", supra at note 24; See Q&A No. 23 of the Judicial Affidavit of Ma. Clarissa C. Arguelles, supra at note 20.
220 See Exhibits "P-8" and "P-9", supra at note 30.
221 See Petition for Review (CTA Case No. 10232), supra at note 5.
222 See Exhibits "P-45" and "P-46", supra at note 31.
223 See Petition for Review (CTA Case No. 10267), supra at note 6.
224 See Exhibits "P-47" and "P-48", supra at note 32.
225 See Petition for Review (CTA Case No. 10266), supra at note 7.

Based on the foregoing, petitioner has two (2) years from 17 January 2018, 06 April 2018, and 05 July 2018 or until 17 January 2020, 06 April 2020 and 05 July 2020, respectively, within which to file both its administrative and judicial claims for refund. As such, the filing of petitioner's administrative claims on 18 July 2018, 14 September 2018, and 21 December 2018, as well as the filing of its judicial claims for refund on 26 December 2019 and 11 March 2020 were within the two (2)-year reglementary period from the date of payment of the excise taxes, in accordance with Sections 204(C)[226] and 229[227] of the NIRC of 1997.

THE EXCISE TAXES PAID ON FUEL SOLD TO MICRO DRAGON PETROLEUM, INC. (MDPI) ARE ERRONEOUSLY OR ILLEGALLY COLLECTED.

In relation to the afore-quoted Sections 204(C) and 229 of the NIRC of 1997, as amended, the present claims for refund or issuance of a TCC are governed by the following provisions of the NIRC of 1997, as amended, *viz*:

> ...
>
> SEC. 129. *Goods and Services Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition** and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'
>
> ...
>
> 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

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[226] Supra at pp. 30-31.
[227] Supra at p. 31.

> 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.**[228]
>
> ...

In *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*[229], the Supreme Court held that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC of 1997, as amended, and exempt from excise tax, is **deemed illegal or erroneous**, to wit:

> ...
>
> 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.**
>
> ...

Relevantly, as the Supreme Court clarified in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[230], "[c]onsidering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135 [of the NIRC of 1997, as amended], any excise taxes which

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228 Italics in the original text, emphasis and underscoring supplied.

229 G.R. No. 210836, 01 September 2015; Italics in the original text and emphasis supplied.

230 G.R. No. 211303, 15 June 2021.

were previously paid thereon would then be considered as '**erroneously or illegally collected**,' and therefore, subject to refund." Moreover, the High Court explained that "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)."

Pursuant to Section 135(c) of the NIRC of 1997, as amended[231], petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase "which are by law exempt from direct and indirect taxes" describes the entities to whom the petroleum products must be sold to render the exemption operative. Section 135(c) of the NIRC of 1997, as amended, should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied. The 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.[232]

Clearly, upon petitioner's sale of petroleum products to entities that are by law exempt from direct and indirect taxes, the status of the sold petroleum products as tax-exempt solidifies. Consequently, the excise taxes previously paid on these petroleum products become erroneously or illegally collected taxes. These taxes are then the proper subject of a claim for refund or credit under Sections 204 and 229 of the NIRC of 1997, as amended.

As can be gleaned from the above disquisitions, to be entitled to a refund or the issuance of a TCC, the following must be demonstrated: (1) the entity to which the taxpayer-claimant sold the petroleum products is an entity exempt by law from both direct and indirect taxes; and, (2) the taxpayer-claimant, as the statutory taxpayer, paid the excise taxes claimed on the petroleum products sold to the exempt entity.

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231 Supra at pp. 34-35.
232 See *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 229.

Relative thereto, Section 12(c) of RA 7227[233], as amended by RA 9400[234], provides:

> ...
>
> SEC. 12. *Subic Special Economic Zone.* —
>
> ...
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone[.][235]
>
> ...

Moreover, Sections 3(h) and 21 of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone (**SSEFZ**) and the SBMA under RA 7227 (**IRR of RA 7227**), provide:

> ...
>
> Sec. 3. *Definitions.* For purposes of these Rules, these terms shall be understood to have the following meanings:
>
> ...
>
> h. ***Certificate of Registration*** **– refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> ...
>
> Sec. 21. *Effect of Issuance of Certificates.* **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, **<u>shall entitle and subject</u> the business enterprise or resident <u>to all the benefits</u> and obligations under the Act and**

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233 AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE.

234 AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

235 Emphasis supplied.

these Rules, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.[236]

...

Thus, Section 12(c) of RA 7227[237], as amended by RA 9400[238], recognizes national and local tax exemptions for business enterprises within the Subic Special Economic Zone (**SSEZ**). Furthermore, the local and national tax exemption in Section 12(c) of RA 7227, as amended by RA 9400, takes effect only upon the issuance by the SBMA of the Certificate of Registration and Tax Exemption to a business enterprise within the SSEZ. In other words, a business enterprise is entitled to the tax exemption granted under RA 7227, as amended by RA 9400, only from the date of issuance of the Certificate of Registration and Tax Exemption, which represents the registration of the concerned business enterprise.

In this case, petitioner presented the SBMA-issued Certificates of Registration and Tax Exemption to prove that its customer, MDPI, is registered with the SBMA as a Freeport Enterprise. The registration is valid from 27 October 2016 to 26 October 2021, as detailed below:

Customer	SBMA Certificate of Registration and Tax Exemption No.	Validity Period
MDPI	2006-0048	27 October 2016 to 26 October 2017[239]
		27 October 2017 to 26 October 2018[240]
		27 October 2018 to 26 October 2021[241]

Under Article III(c), which is a common provision in the aforementioned SBMA-issued Certificates of Registration and Tax Exemption, MDPI is exempt "from all local and national taxes, including but not limited to ... internal revenue taxes, such as VAT, *ad valorem* and **excise** taxes." In *lieu* of these taxes, MDPI shall pay a final tax of 5% of its gross income earned.

236 Italics in the original text, emphasis and underscoring supplied.
237 Supra at note 233.
238 Supra at note 234.
239 Exhibit "P-111", supra at note 27.
240 Exhibit "P-884", supra at note 112.
241 Exhibit "P-14", supra at note 27.

Regarding respondent's allegation that MDPI failed to meet the condition also mentioned under Article III(c) of the SBMA-issued Certificates of Registration and Tax Exemption, *i.e.*, "that should [petitioner's] income from source within the Customs Territory exceed [30%] of its total income from all sources, then [petitioner] shall be subject to the income tax laws of the Customs Territory", this does not strip petitioner of its exemption from excise tax.

The *proviso* explicitly subjects petitioner to the **income tax laws** of the customs territory if its income from sources within the customs territory exceeds 30% of its total income. As it is worded, the said *proviso* does not extend to other types of taxes, such as excise tax, which are distinct from income tax. Excise tax is typically imposed on specific goods[242], such as petroleum products, and is related to the production, sale, or consumption of these goods rather than the taxpayer's income.

It is also worth noting that Section 43, Chapter V(A) of the IRR of RA 7227 categorized the national and local taxes from which a Subic Bay Freeport (**SBF**) Enterprise, such as MDPI, is exempt. Specifically, it lists national internal revenue taxes, such as VAT, excise, and *ad valorem* taxes, separately from income tax, as follows, *viz*:

> ...
> Sec. 43. *Tax Exemption*. SBF Enterprises shall be exempted from all national and local taxes, including but not limited to the following:
>
> a. Customs and import duties and national internal revenue taxes, such as VAT, excise and ad valorem taxes on foreign articles;
>
> b. Internal revenue taxes, such as VAT, ad valorem and excise taxes on their sales of goods and services for which they are directly liable;
>
> c. Income tax on all income from sources within the SBF and foreign countries, Export Processing Zones, Bonded Warehouses and other Special Economic Zones within the Philippines, as well as all other areas that may now or hereafter be considered to be outside the Customs Territory, whether or not payment of such income is actually received; made or collected within such areas; provided, that SBF Enterprises shall, as withholding agents for the National Government, withhold tax on compensation and income payments to persons or individuals subject to expanded withholding tax; and

242 See *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, supra at note 230.

> d. Franchise, common carrier or value added taxes and other percentage taxes on public and service utilities and enterprises within the SBF. In lieu of paying taxes, all SBF Enterprises shall pay a final tax of five (5%) percent of gross income earned in accordance to the breakdown specified and defined under Section 57 hereunder.
>
> ...

As can be gleaned from the foregoing, the income threshold condition pertains specifically to income tax and does not imply a revocation of exemptions from other types of taxes such as excise tax.

Accordingly, petitioner remains exempt from excise tax even if it becomes subject to income tax laws due to exceeding the 30% income threshold from sources within the customs territory. The *proviso* solely addresses the conditions under which a taxpayer would be subject to income tax laws based on the proportion of its income derived from within the customs territory, without affecting other tax exemptions like those for excise tax.

Clearly from the foregoing, MDPI is indeed an entity exempt by law from direct and indirect taxes, pursuant to Section 12(c)[243] of RA 7227[244], as amended by RA 9400[245], and as implemented by Sections 3(h)[246] and 21[247] of the IRR of RA 7227. Thus, the excise taxes paid by petitioner to the government, as the statutory taxpayer, on petroleum products sold to MDPI are considered erroneously or illegally collected and may be refunded to petitioner.

THE EXCISE TAXES DUE ON LOCALLY-PRODUCED UNLEADED GASOLINE FUEL AND DIESEL FUEL OIL, IN THE TOTAL AMOUNT OF ₱727,332,597.00, WERE DULY PAID.

The Court shall now determine whether petitioner has substantiated its refund claims with sufficient evidence. Specifically, the Court will examine: (1) whether the excise taxes on the petroleum

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243 Supra at p. 37.
244 Supra at note 233.
245 Supra at note 234.
246 Supra at p. 37.
247 Supra at pp. 37-38.

products (*i.e.*, unleaded gasoline fuel and diesel fuel oil), which are the subject of the present refund claims, were duly paid; and, (2) whether there was a sale and delivery of the said petroleum products to the concerned tax-exempt entity, MDPI.

Petitioner operates the PBR, where crude oil is processed into a full range of petroleum products, including, but not limited to, unleaded gasoline fuel and diesel fuel oil.[248] The locally-produced unleaded gasoline fuel and diesel fuel oil are then withdrawn from the PBR and delivered either directly to petitioner's customers or to petitioner's various depots for eventual sale and delivery to various customers, including tax-exempt entities.[249]

Relevantly, petitioner's witness, Tadena, in his capacity as OM&S and Terminalling Manager, explained that the locally-produced unleaded gasoline fuel and diesel fuel oil are stored in product tanks after production in the PBR. These products remain in storage until they are withdrawn for loading onto a vessel chartered by MDPI.[250]

The following documents, among others, serve as petitioner's proof that the locally-produced unleaded gasoline fuel and diesel fuel oil are withdrawn from the PBR and subsequently sold and delivered to petitioner's clients, including MDPI:

1. **SAP-generated ORBs;**[251]

2. **ETRs**[252] **with Summary of Removals and Excise Tax Due on Petroleum Products Chargeable against Payments;**[253]

3. **COCs**[254], which are SAP-generated internal documents prepared at the PBR that support the recording of removals of petroleum and other petroleum products from the PBR in the ORB and in the General Ledger[255] and show the complete

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248 Par. 9, Petitioner's Memorandum, supra at note 201, p. 1483.
249 Par. 11, id.
250 See Q&A No. 10, Exhibit "P-123", supra at note 131, p. 378.
251 Official Register Books, Exhibits "P-1007" to "P-1038", USB (Exhibit "P-124-B").
252 Excise Tax Returns.
253 Exhibits "P-201" to "P-883", USB (Exhibit "P-124-B").
254 Cargo Outturn Certificates, Exhibits "P-973" to "P-1006", id.
255 See Q&A No. 24, Exhibit "P-118", supra at note 115, p. 497.

details of the shipment, including the amount of tax paid on the petroleum products delivered;[256]

4. **WCs**[257], which show the amount of tax imposed on the petroleum products delivered, duly acknowledged by an RO and petitioner's representative;[258]

5. **Sales Invoices (SIs)**;[259]

6. **Delivery Notes (DNs)**;[260] and,

7. **Cash Receipts.**[261]

Petitioner claims that the excise taxes on locally-produced unleaded gasoline fuel and diesel fuel oil are paid by petitioner on a daily basis upon removal from the PBR[262], at the rate of ₱7.00 *per* liter for unleaded gasoline fuel, and ₱2.50 *per* liter for diesel fuel oil, pursuant to Section 148(f) and (i)[263] of the NIRC of 1997, as amended.[264]

As testified by petitioner's witness, Atty. Arguelles, in her capacity as Tax Manager, petitioner's ETRs are filed electronically through the BIR Electronic Filing and Payment System (**eFPS**). On the other hand, excise tax payments are made through one (1) of two (2) methods: (1) product replenishment scheme; or, (2) payment through eFPS by filing of BIR Form No. 2200-P.[265] She noted that for the present claims, petitioner opted to file for an excise tax credit/refund instead of applying for product replenishment.[266]

Initially, petitioner estimates the daily volume of fuel products which are to be removed from the PBR, and then, prepares a summary of estimated required daily volume of fuel products for the following two (2) to three (3) days or for the same period with allowance of around

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256 See Q&A No. 11, Exhibit "P-123", supra at note 131, pp. 378-379.
257 Withdrawal Certificates, Exhibits "P-940" to "P-972", USB (Exhibit "P-124-B").
258 See Q&A No. 11, Exhibit "P-123", supra at note 131, pp. 378-379.
259 Exhibits "P-885" to "P-906", USB (Exhibit "P-124-B").
260 Exhibits "P-907" to "P-939", id.
261 Exhibits "P-1040" to "P-1054", id.
262 See Q&A No. 24, Exhibit "P-116", supra at note 110, pp. 546-547.
263 Supra at note 18.
264 Par. 10, Petitioner's Memorandum, supra at note 201, p. 1483.
265 See Q&A No. 24, Exhibit "P-116", supra at note 110, pp. 546-547.
266 See Q&A Nos. 39 and 40, id., pp. 552-553.

₱5 million *per* day. These fuel products, including unleaded gasoline fuel and diesel fuel oil, are scheduled for removal within the next two (2) to three (3) days.[267]

Thereafter, petitioner files the application for payment of excise tax due through the BIR eFPS, in accordance with the actual product removals from the PBR.[268]

The submitted estimated computation is compared to the excess payments under "Balance Carried Over from Previous Return"[269] reported in the ETR. This ensures that there are sufficient excess payments to cover the estimated tax due *per* computation for the next two (2) to three (3) days.[270]

Atty. Arguelles added that petitioner will make an advance deposit to the BIR through eFPS in instances when the actual balance of excess payments reflected in the ETR is not sufficient to cover the amount of excise tax required to be maintained based on the computations made.[271]

An examination by the Court-commissioned ICPA, as verified by this Court, shows that the total amount of excise taxes due, filed and paid, *per* ETRs through eFPS, for *all* petroleum products removed from the PBR for the period covering 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018, amounted to ₱18,159,527,309.53, to wit:[272]

	01 January 2018 to 31 March 2018	01 April 2018 to 30 June 2018	01 July 2018 to 30 September 2018	Total Excise Taxes Due, Filed and Paid *per* ETR *via* eFPS
On Unleaded Premium Gasoline Fuel at ₱7.00	₱3,773,436,863.00	₱4,033,476,720.00	₱3,734,276,112.00	₱11,541,189,695.00
On Diesel Fuel Oil at ₱2.50	2,069,466,605.00	2,117,197,695.00	1,952,574,582.50	6,139,238,882.50
Subtotal	**₱5,842,903,468.00**	**₱6,150,674,415.00**	**₱5,686,850,694.50**	**₱17,680,428,577.50**

267 See Q&A No. 24, id., pp. 546-547.
268 Id.
269 Line 17 of ETR for Petroleum Products (BIR Form No. 2200-P).
270 See Q&A No. 24, Exhibit "P-116", supra at note 110, pp. 546-547.
271 Id.
272 Table 4.1, Annexes C and D of the ICPA Report, Exhibit "P-124", pp. 6, 19 and 32, respectively.

	01 January 2018 to 31 March 2018	01 April 2018 to 30 June 2018	01 July 2018 to 30 September 2018	Total Excise Taxes Due, Filed and Paid *per* ETR *via* eFPS
On other petroleum products	201,005,470.56	139,742,417.62	138,350,843.85	479,098,732.03
Total[273]	**₱6,043,908,938.56**	**₱6,290,416,832.62**	**₱5,825,201,538.35**	**₱18,159,527,309.53**

Moreover, the Court-commissioned ICPA noted that the Advance Excise Tax Deposits made by petitioner for *all* petroleum products from the PBR amounting to ₱19,026,719,701.75[274], are sufficient to cover the total amount of ₱18,159,527,309.53, representing excise taxes due, filed and paid on the actual removals of all petroleum products *per* ETRs from the PBR for the period covering 01 January 2018 to 30 September 2018[275], thereby resulting to an excess of Advance Payments of Excise Tax Deposits of ₱867,192,392.22, computed as follows:[276]

	Annex	Amount
Advance payments of excise tax deposits of the PBR for the period covered from 01 January 2018 to 30 September 2018	B & K	₱19,026,719,701.75
Less: Excise taxes due on *all* petroleum products of PBR for the period covered 01 January 2018 to 30 September 2018 *per* ETRs duly filed thru eFPS	C, D & K	18,159,527,309.53
Excess of Advance Payment of Excise Tax Deposits over Excise Taxes Due for the period covered 01 January 2018 to 30 September 2018		**₱867,192,392.22**

Furthermore, an examination of petitioner's ETRs and corresponding Schedule 1 (Summary of Removals and Excise Tax due on Petroleum Products Chargeable Against Payments)[277], in relation to petitioner's daily SAP-generated ORBs[278], COCs[279], and WCs[280], shows that out of ₱18,159,527,309.53[281] in excise taxes due and paid for *all* petroleum products removed from the PBR, ₱2,434,365,736.50[282]

[273] Annexes C_1 to $C_{3.3}$ of the ICPA Report, Exhibit "P-124", pp. 20-31.
[274] Annexes B to B_3 and K to K_3 of the Supplemental ICPA Report, Exhibit "P-125", pp. 30-33 and 18-29, respectively.
[275] Annexes C to D of the ICPA Report, Exhibit "P-124", pp. 19 to 32; Annexes K to K_3 of the Supplemental ICPA Report, Exhibit "P-125", pp. 18-29.
[276] Table 3.1 of the ICPA Report, Exhibit "P-124", p. 5.
[277] Exhibits "P-201" to "P-883", supra at note 253.
[278] Official Register Books, Exhibits "P-1007" to "P-1038", supra at note 251.
[279] Cargo Outturn Certificates, Exhibits "P-973" to "P-1006", supra at note 254.
[280] Withdrawal Certificates, Exhibits "P-940" to "P-972", supra at note 257.
[281] Annexes C to D of the ICPA Report, Exhibit "P-124", pp. 19 to 32; Annexes K to K_3 of the Supplemental ICPA Report, Exhibit "P-125", pp. 18-29.
[282] Annex D_1 of the ICPA Report, Exhibit "P-124", p. 33.

pertains to the excise tax due and paid for *all* locally-produced unleaded gasoline fuel and diesel fuel oil. This includes the excise taxes due and paid on the unleaded gasoline fuel and diesel oil sold and delivered to MDPI, amounting to ₱773,902,402.00[283] for the period covering 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018, as summarized below:[284]

Period Covered (2018)	Adjusted Amount of Excise Taxes *per* daily SAP-generated ORB[285] [A]	Coconut Methyl Ester (CME) not subject to Excise Tax[286] [B]	Total Excise Taxes Due, Filed and Paid *per* ETR for *All* Petroleum Products for the Identified specific period[287] [C] = [A] + [B]	Excise Taxes Due and Paid on *Unleaded Gasoline Fuel and Diesel Fuel Oil per* ETR for the identified specific period[288]	Excise Taxes Due and Paid on Sales made to MDPI *per* daily SAP-Generated ORB[289]
1st Quarter	₱440,916,508.58	(₱800,125.00)	₱440,116,383.58	₱429,047,225.50	₱122,393,970.50
2nd Quarter	1,008,484,437.71	(2,613,907.50)	1,005,870,530.21	986,698,769.00	290,319,435.00
3rd Quarter	1,047,965,182.41	(864,410.00)	1,047,100,772.41	1,018,619,742.00	361,188,996.50
Total	**₱2,497,366,128.70**	**₱(4,278,442.50)**	**₱2,493,087,686.20**	**₱2,434,365,736.50**	**₱773,902,402.00**

Based on the Court-commissioned ICPA's comparison of petitioner's ETRs and corresponding Schedule 1[290], daily SAP-generated ORBs[291], COCs[292], and WCs[293], the excise tax due on the locally-produced unleaded gasoline fuel oil and diesel fuel oil sold to MDPI, amounting to ₱773,902,402.00, were paid before its removal from the PBR, to wit:

I. 1st Quarter of TY 2018 (01 January 2018 to 31 March 2018)									
Exhibit No.				Unleaded Gasoline Fuel		Diesel Fuel Oil		Total Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil Removed from the PBR for Sale & Delivery to MDPI	
ETR	SAP-Generated ORB	COC	WC	Volume (in L @ air)	Excise Tax Paid at ₱7.00	Volume (in L @ air)	Excise Tax Paid at ₱2.50	Volume (in L @ air)	Excise Tax
"P-233"	"P-1007"	"P-973"	"P- 940"	3,010,443	₱21,073,101.00	-	-	3,010,443	₱21,073,101.00
"P-301"	"P-1008"	"P-974"	"P- 941"	3,818,288	26,728,016.00	-	-	3,818,288	26,728,016.00
"P-309"	"P-1009"	"P-975"	"P- 942"	3,837,673	26,863,711.00	-	-	3,837,673	26,863,711.00
"P-353"	"P-1010"	"P-976"	"P- 943"	4,567,225	31,970,575.00	-	-	4,567,225	31,970,575.00
"P-359"	"P-1011"	"P-977"	"P- 944"	-	-	4,480,520	₱11,201,300.00	4,480,520	11,201,300.00
"P-373"	"P-1012"	"P-978"	"P- 945"	-	-	1,822,907	4,557,267.50	1,822,907	4,557,267.50
Subtotal - 1st Quarter of TY 2018				15,233,629	₱106,635,403.00	6,303,427	₱15,758,567.50	21,537,056	₱122,393,970.50

283 Annex E of the Supplemental ICPA Report, Exhibit "P-125", p. 34.
284 Table 5.1 of the ICPA Report, Exhibit "P-124", p. 7.
285 Annexes D_2 to D_4 of the ICPA Report, id., pp. 34-36.
286 CME is not subject to excise tax pursuant to Section 148 of the NIRC of 1997, as amended, thus, the ICPA treated it as a downward adjustment in the computation of the total excise tax due.
287 Annexes D_1 to D_4 of the ICPA Report, Exhibit "P-124", pp. 33-36.
288 Annex D_1 of the ICPA Report, id., p. 33.
289 Annexes E and F of the Supplemental ICPA Report, Exhibit "P-125", pp. 34 and 38, respectively.
290 Shows the excise tax due and paid for *all* petroleum products removed from the PBR.
291 Shows the excise tax due and paid for *all* petroleum products removed from the PBR and the breakdown of the corresponding consignee or customer.
292 Shows the volume, amount of tax paid, and the movement of the petroleum product (removal from the PBR "loading port" and subsequent sale and delivery to MDPI "consignee").
293 Shows the amount of tax imposed on the petroleum product delivered, duly acknowledged by an RO and petitioner's representative.

II. 2nd Quarter of TY 2018 (01 April 2018 to 30 June 2018)									
Exhibit No.				Unleaded Gasoline Fuel		Diesel Fuel Oil		Total Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil Removed from the PBR for Sale & Delivery to MDPI	
ETR	SAP-Generated ORB	COC	WC	Volume (in L @ air)	Excise Tax Paid at ₱7.00	Volume (in L @ air)	Excise Tax Paid at ₱2.50	Volume (in L @ air)	Excise Tax
"P-393"	"P-1013"	"P-979"	"P- 946"	4,541,019	₱31,787,133.00	-	-	4,541,019	₱31,787,133.00
"P-393"	"P-1013"	"P-980"	"P- 947"	-	-	1,833,208	4,583,020.00	1,833,208	4,583,020.00
"P-407"	"P-1014"	"P-981"	"P- 948"	3,778,564	26,449,948.00	-	-	3,778,564	26,449,948.00
"P-425"	"P-1015"	"P-982"	"P- 949"	4,543,504	31,804,528.00	-	-	4,543,504	31,804,528.00
"P-399"	"P-1016"	"P-983"	"P- 950"	-	-	4,508,850	₱11,272,125.00	4,508,850	11,272,125.00
"P-460"	"P-1017"	"P-984"	"P- 951"	-	-	3,011,360	7,528,400.00	3,011,360	7,528,400.00
"P-470"	"P-1018"	"P-986"	"P- 952"	8,490,657	59,434,599.00	-	-	8,490,657	59,434,599.00
"P-474"	"P-1019"	"P-985"	"P- 953"	-	-	3,007,951	7,519,877.50	3,007,951	7,519,877.50
"P-489"	"P-1020"	"P-987"	"P- 954"	-	-	8,098,889	20,247,222.50	8,098,889	20,247,222.50
"P-512"	"P-1021"	"P-988"	"P- 955"	3,018,191	21,127,337.00	-	-	3,018,191	21,127,337.00
"P-530"	"P-1022"	"P-989"	"P- 956"	3,778,621	26,450,347.00	-	-	3,778,621	26,450,347.00
"P-558"	"P-1023"	"P-990"	"P- 957"	3,015,812	21,110,684.00	-	-	3,015,812	21,110,684.00
"P-570"	"P-1024"	"P-991"	"P- 958"	3,000,602	21,004,214.00	-	-	3,000,602	21,004,214.00
Subtotal - 2nd Quarter of TY 2018				34,166,970	₱239,168,790.00	20,460,258	₱51,150,645.00	54,627,228	₱290,319,435.00

III. 3rd Quarter of TY 2018 (01 July 2018 to 30 September 2018)									
Exhibit No.				Unleaded Gasoline Fuel		Diesel Fuel Oil		Total Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil Removed from the PBR for Sale & Delivery to MDPI	
ETR	SAP-Generated ORB	COC	WC	Volume (in L @ air)	SAP-Generated ORB	Volume (in L @ air)	Excise Tax Paid at ₱2.50	Volume (in L @ air)	Excise Tax
"P-639"	"P-1028"	"P-995"	"P- 962"	-	-	3,001,607	₱7,504,017.50	3,001,607	₱7,504,017.50
"P-598"	"P-1025"	"P-992"	"P- 959"	3,016,890	₱21,118,230.00	-	-	3,016,890	21,118,230.00
"P-621"	"P-1026"	"P-993"	"P- 960"	3,013,162	21,092,134.00	-	-	3,013,162	21,092,134.00
"P-629"	"P-1027"	"P-994"	"P- 961"	3,020,235	21,141,645.00	-	-	3,020,235	21,141,645.00
"P-675"	"P-1029"	"P-996"	"P-963"	6,390,978	44,736,846.00	-	-	6,390,978	44,736,846.00
		"P-997"		-	-	2,069,463	5,173,657.50	2,069,463	5,173,657.50
"P-682"	"P-1030"	"P-998"	"P- 964"	2,999,135	20,993,945.00	-	-	2,999,135	20,993,945.00
"P-696"	"P-1031"	"P-999"	"P- 965"	3,016,565	21,115,955.00	-	-	3,016,565	21,115,955.00
"P-710"	"P-1032"	"P-1000"	"P- 966"	3,026,582	21,186,074.00	-	-	3,026,582	21,186,074.00
"P-712"	"P-1033"	"P-1001"	"P- 967"	8,475,979	59,331,853.00	-	-	8,475,979	59,331,853.00
"P-736"	"P-1034"	"P-1002"	"P- 968"	3,017,234	21,120,638.00	-	-	3,017,234	21,120,638.00
"P-744"	"P-1035"	"P-1003"	"P- 969"	8,422,755	58,959,285.00	-	-	8,422,755	58,959,285.00
"P-764"	"P-1036"	"P-1004"	"P- 970"	-	-	3,312,789	8,281,972.50	3,312,789	8,281,972.50
"P-770"	"P-1037"	"P-1005"	"P- 971"	3,018,172	21,127,204.00	-	-	3,018,172	21,127,204.00
"P-772"	"P-1038"	"P-1006"	"P- 972"	-	-	3,322,216	8,305,540.00	3,322,216	8,305,540.00
Subtotal - 3rd Quarter of TY 2018				47,417,687	₱331,923,809.00	11,706,075	₱29,265,187.50	59,123,762	₱361,188,996.50
TOTAL				96,818,286	₱677,728,002.00	38,469,760	₱96,174,400.00	135,288,046	₱773,902,402.00

The Court-commissioned ICPA noted a difference of 872 L @ air between the total volume removed from the PBR *per* petitioner's claims for refund (135,287,174 L @ air)[294] and the total volume removed from the PBR subsequently sold to MDPI based on SAP-generated ORBs, COCs and WCs, as shown in the table above (135,288,046 L @ air).

The Court-commissioned ICPA then accounted the 872 L @ air difference as shrinkage and adjusted the total removals to 135,287,174 L

294 Annex A of the ICPA Report, Exhibit "P-124", p. 14.

@ air with corresponding excise tax payment amounting to ₱773,900,222.00, computed as follows:[295]

	Annex	Equivalent Volume in L @ air	Total Excise Taxes Due
Volume of Liter and equivalent Excise Taxes due of Unleaded Gasoline Fuel and Diesel Fuel Oil per SIs, DN, COC, WC and daily SAP-Generated ORB	F, G and H	135,288,046	₱773,902,402.00
Less: Adjustment 1. Diesel Fuel Oil – due to shrinkage Quantity in liters 872 Excise tax per liter ₱ 2.50 Adjustment ₱2,180.00	G	(872)	(2,180.00)
Total Excise Taxes Due on the removals of Unleaded Gasoline Fuel and Diesel Fuel Oil as reconciled with the amount of Claim per CTA Petition for Review		135,287,174	**₱773,900,222.00**

However, upon further verification, this Court finds that the following removals of locally-produced diesel fuel oil with the total volume of 18,627,050 L @ air and corresponding alleged excise tax payments in the aggregate amount of ₱46,567,625.00 should be disallowed, to wit:

Exhibit No.				Date Withdrawn	Total Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil Removed from the PBR for Sale & Delivery to MDPI	
ETR	SAP-generated ORB	COC	WC		Volume (in L @ air)	Excise Tax
"P-399"	"P-1016"	"P-983"	"P- 950"	25 April 2018	4,508,850	₱11,272,125.00
"P-460"	"P-1017"	"P-984"	"P- 951"	02 May 2018	3,011,360	7,528,400.00
"P-474"	"P-1019"	"P-985"	"P- 953"	17 May 2018	3,007,951	7,519,877.50
"P-489"	"P-1020"	"P-987"	"P- 954"	26 May 2018	8,098,889	20,247,222.50
				Total	**18,627,050**	**₱46,567,625.00**

The said removals of 18,627,050 L @ air from the PBR that were subsequently sold to MDPI cannot be verified by reconciling petitioner's

[295] Table I.1 of the ICPA Report, id., p. 9.

ETRs with its SAP-generated ORBs.[296] Specifically, the aforementioned removals of locally-produced diesel fuel oil cannot be found in or traced within the detailed transaction listings in the corresponding SAP-generated ORBs, which reflect the breakdown of the amounts paid *per* ETR. This observation, coupled with the fact that the amounts paid *per* the corresponding ETRs tied up with the SAP-generated ORBs[297], suggests that these removals fall outside the scope of the subject refund claims. As a result, the Court cannot ascertain whether these removals were indeed part of the excise tax payments totalling ₱773,902,402.00 (with an adjusted amount of ₱773,900,222.00), which are the subject of the present refund claims.

Proof of payment of the subject taxes is essential in refund cases. While the collection of taxes may theoretically be found to be illegal or erroneous, the claimant cannot be refunded amounts that were not actually paid or remitted to the government.

THE LOCALLY-PRODUCED UNLEADED GASOLINE FUEL AND DIESEL FUEL OIL, SUBJECT OF THE PRESENT REFUND CLAIMS, WERE SOLD AND DELIVERED TO MICRO DRAGON PETROLEUM, INC. (MDPI), A TAX-EXEMPT ENTITY.

Petitioner sold and delivered locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI, a tax-exempt entity, by virtue of the Petron-MDPI Fuel Supply Agreement (January to December 2018)[298] and the Amendment to the Fuel Supply Agreement.[299]

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296 See Annex D_3 of the ICPA Report, id., p. 35; Annex E_2 of the Supplemental ICPA Report, Exhibit "P-125", p. 36.

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Excise Tax Payments *per* ETR [a]	Exhibit No.	Excise Tax Payments *per* SAP-generated ORB [b]	Exhibit No.	Net Adjustments [c]	Net Amount Filed and Paid [d] = [b] – [c]	Difference [e] = [a] – [d]
₱103,776,249.50	"P-399"	₱107,596,184.00	"P-1016"	(₱3,819,934.50)	₱103,776,249.50	₱–
76,746,540.52	"P-460"	74,393,008.03	"P-1017"	₱2,353,532.50	76,746,540.53	(0.01)
81,671,341.00	"P-474"	97,464,420.00	"P-1019"	(₱15,793,079.00)	81,671,341.00	–
93,464,773.80	"P-489"	101,503,961.80	"P-1020"	(₱8,039,188.00)	93,464,773.80	–

298 Pars. 36 (CTA Case No. 10232), 41 (CTA Case No. 10267) and 41 (CTA Case No. 10266), Discussion, Petition for Review, supra at notes 5, 6 and 7, pp. 20 and 22 (CTA Case Nos. 10267 and 10266), respectively; Q&A Nos. 10 and 12, Supplemental Judicial Affidavit of Allan V. Peczon dated 21 December 2020, Exhibit "P-138", supra at note 128, pp. 923-924; Exhibits "P-112" and "P-112-A", Division Docket (CTA Case No. 10232), Volume III, pp. 1271-1280.

299 Exhibit "P-122", Division Docket (CTA Case No. 10232), Volume III, p. 1287.

The Court-commissioned ICPA verified that 132,761,338 liters (L15)[300], which is also equivalent to 135,288,046 L @ air[301], locally-produced unleaded gasoline fuel (R92 Base Gasoline) and diesel fuel oil (ADO Neat) were sold and delivered to MDPI for the period covering 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018, broken down as follows:[302]

TY 2018	Exhibit No.		Quantity Sold				Total Quantity Sold *per* SI		Total Gross Sales *per* SI
	SI	DN	Unleaded Premium Gasoline Fuel (R92 Base Gasoline)		Diesel Fuel Oil (ADO Neat)		Unleaded Premium Gasoline Fuel (R92 Base Gasoline)	Diesel Fuel Oil (ADO Neat)	
			L @ air	L @ 15	L @ air	L @ 15	L @ air	L @ 15	
			(A)	(D)	(B)	(E)	(C=A+B)	(F=D+E)	
January 1 to March 31	"P-885" to "P-889"	"P-907" to "P-912"	15,233,629	14,932,875	6,303,427	6,188,750	21,537,056	21,121,625	₱603,061,204.93
April 1 to June 30	"P-890" to "P-895"	"P-913" to "P-925"	34,166,970	33,463,266	20,460,258	20,085,944	54,627,228	53,549,210	1,669,804,534.24
July 1 to September 30	"P-896" to "P-906"	"P-926" to "P-939"	47,417,687	46,592,023	11,706,075	11,498,480	59,123,762	58,090,503	1,916,076,382.62
		Total	96,818,286	94,988,164	38,469,760	37,773,174	135,288,046	132,761,338	₱4,188,942,121.79

According to Peczon, who testified as petitioner's Area Sales Manager – Mindanao, Industrial Trade, no excise taxes were billed and collected on petitioner's sales of locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI.[303] He noted that there is a notation stating "No Excise Tax Billed" in the SIs issued by petitioner for its sales of locally-produced unleaded gasoline and diesel fuel oil. This indicates that no excise tax was billed to MDPI.[304]

An examination of the SIs[305] adduced before this Court also shows that all of the supporting SIs were for sales to MDPI and include the notation "No Excise Tax Billed."

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300 L15 is the volume unit of measure used in petitioner's SIs and DNs.

301 L @ air is the volume unit of measure used in petitioner's ETR and WC; KL @ air and KL @ 15C are the volume units of measure used in COC; L @ air and KL @ 15C are the volume units of measure used in SAP-Generated ORB.

302 Table, Annexes F_1 to F_3 and Annex I_1, pp. 1, 39 to 41 and 10 of the Supplemental ICPA Report (Exhibit "P-125"), respectively.

303 See Q&A No. 13, Exhibit "P-121", supra at note 127, p. 438.

304 See Q&A Nos. 16 and 25, id., pp. 439 and 442, respectively.

305 Exhibits "P-885" to "P-906", supra at note 259.

Moreover, the total amount of collections, verified by the ICPA, amounts to ₱4,855,678,781.32.[306] This figure is based on petitioner's BIR-registered Cash Receipts[307] issued from 21 February 2018 to 10 October 2018. Of this amount, ₱4,649,725,754.95[308] pertains to collections from sales of locally-produced unleaded gasoline fuel and diesel fuel oil to MDPI for the period covering 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018. The difference or remainder of ₱205,953,026.37[309] pertains to the amount of cash collections not included in the present refund claims.

A comparison of the total sales *per* SIs, net of creditable withholding tax (**CWT**), amounting to ₱4,649,725,755.17, and the total collections based on cash receipts amounting to ₱4,649,725,754.95, clearly shows that there is no excise tax billed and collected from MDPI, as shown below:[310]

Period Covered (TY 2018)	Total Quantity Sold (L @ air)[311]	Total Amount of Sales *per* SI (exclusive of VAT)	Total Gross Amount *per* SI (inclusive of VAT) [A]	Total CWT [B]	Total Net Amount of Collections, as recomputed [C] = [A] – [B]	Total Amount of Collections *per* Cash Receipts
January 1 to March 31	21,537,056	₱603,061,204.93	₱675,428,549.53	₱6,030,612.05	₱669,397,937.48	₱669,397,937.48
April 1 to June 30	54,627,228	1,669,804,534.24	1,870,181,078.34	16,698,045.34	1,853,483,033.00	1,853,483,033.00
July 1 to September 30	59,123,762	1,916,076,382.62	2,146,005,548.52	19,160,763.83	2,126,844,784.69	2,126,844,784.47
Total	**135,288,046**	**₱4,188,942,121.79**	**₱4,691,615,176.39**	**₱41,889,421.22**	**₱4,649,725,755.17**	**₱4,649,725,754.95**[312]

In any event, as discussed earlier, this Court finds that the removals of locally-produced diesel fuel oil with the total volume of 18,627,050 L @ air and the corresponding excise tax in the aggregate amount of ₱46,567,625.00 should be disallowed.

306 Annex I of the Supplemental ICPA Report, Exhibit "P-125", p. 9.
307 Exhibits "P-1040" to "P-1054", supra at note 261.
308 Annexes I_1 to $I_{1.3}$ of the Supplemental ICPA Report, Exhibit "P-125", pp. 10-13.
309 Annex I of the Supplemental ICPA Report, id., p. 9.
310 Annex I_1 of the Supplemental ICPA Report, id., p. 10.
311 Refer to Annex F of the Supplemental ICPA Report (Exhibit "P-125", p. 38) for the equivalent conversion of L15 to L @ air.
312 With rounding-off difference of ₱0.22 between the Net Collections, as recomputed, of ₱4,469,725,755.17 and Collections *per* Cash Receipts of ₱4,649,725,754.95; See Table 1.2 of the Supplemental ICPA Report, Exhibit "P-125", p. 4.

In fine, out of the total claim for refund or issuance of a TCC amounting to ₱773,900,222.00, petitioner sufficiently proved that the total volume of 116,660,124 L @ air with equivalent excise tax payments amounting to ₱727,332,597.00 for the locally-produced unleaded gasoline fuel and diesel fuel oil for the period from 01 January 2018 to 30 September 2018, or the 1^{st} to 3^{rd} Quarters of TY 2018, and subsequently sold to MDPI, a tax-exempt entity, was erroneous and refundable pursuant to Sections 204(C)[313] and 229[314] of the NIRC of 1997, as amended, computed as follows:

	Volume (in L @ air)	Excise Tax Paid
Total locally-produced unleaded gasoline fuel and diesel fuel oil removed from the PBR and subsequently sold to MDPI	135,288,046	₱773,902,402.00
Less: Adjustment due to shrinkage	(872)	(2,180.00)
Adjusted Total Excise Taxes Due on the removals of Unleaded Gasoline Fuel and Diesel Fuel Oil	**135,287,174**	**₱773,900,222.00**
Less: Removals that cannot be verified by reconciling ETRs with SAP-generated ORBs	18,627,050	₱46,567,625.00
Total Refundable Excise Tax Paid on Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil	**116,660,124**	**₱727,332,597.00**

Substantial justice dictates that the government should not keep money that does not belong to it.[315] Taking all the above circumstances together, it is evident that petitioner was able to sufficiently establish, by preponderance of evidence, that it is entitled to the refund or credit of the total amount of ₱727,332,597.00, representing the erroneously or illegally paid excise taxes on locally-produced unleaded gasoline fuel and diesel fuel oil, which were subsequently sold and delivered to MDPI, a tax-exempt entity.

WHEREFORE, with the foregoing premises, the consolidated Petitions for Review filed by petitioner Petron Corporation on 26 December 2019 (CTA Case No. 10232), 11 March 2020 (CTA Case No. 10267), and 11 March 2020 (CTA Case No. 10266), respectively, are hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱727,332,597.00**, representing petitioner's erroneously

313 Supra at pp. 30-31.
314 Supra at p. 31.
315 See *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.

paid excise taxes for its locally-produced unleaded gasoline fuel and diesel fuel oil sold to Micro Dragon Petroleum, Inc., a tax-exempt entity, for the period from 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON OFFICIAL BUSINESS
LANEE S. CUI-DAVID
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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice