

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM
CORPORATION,

Petitioner,

- versus -

C.T.A. CASE NO. 7421

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

MAR 30 2010 3:50 p.m.
PBFernando

X- ----- X

DECISION

UY, J.:

This Petition for Review seeks the refund or issuance of tax credit certificate in the amount of ₱ 38,738,367.19, allegedly representing excise taxes paid on aviation turbo jet fuel (Jet A-1 fuel) sold to international carriers, and the double payment of excise taxes on sales to domestic air carriers and in-transit losses for the period covering March to April 2004.

THE FACTS

Petitioner, Pilipinas Shell Petroleum Corporation, is a corporation organized and existing under the laws of the Philippines, with office address



at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City.¹ It is engaged, among others, in the business of manufacturing, processing, treating, and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.²

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.³

On December 27, 2005, petitioner filed a formal claim for refund or tax credit with the BIR Large Taxpayers Audit and Investigation Division II, seeking the recovery of excise taxes purportedly paid on the Jet A-1 fuel sold to tax-exempt international air carriers, and the double payment of excise taxes on sales to domestic air carriers and in-transit losses, for the period covering March to April 2004 in the aggregate amount of ₱ 42,314,358.66, computed as follows:⁴

Description	Volume in Liters	Excise Tax Rate	Amount
1. Sale to international carriers of Philippine or foreign registry pursuant to Sec. 135 of the 1997 NIRC	10,803,436	3.67	39,648,610.12
2. Double payment of excise tax on sales to domestic airlines and in-transit losses pursuant to Sections 130 and 229 of the 1997 NIRC (erroneous payment)	646,930	3.67	2,374,233.10
3. Double payment of excise tax on in-transit losses pursuant to Sections 130 and 229 of the 1997 NIRC (erroneous payment)	79,432	3.67	291,515.44
TOTAL	11,529,798		42,314,358.66

¹ Par. 1.1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 123.

² Par. 1.3, Stipulation of Facts, JSFI, Docket, p. 124.

³ Par. 1.2, Stipulation of Facts, JSFI, Docket, p. 123.

⁴ Par. 1.4, Stipulation of Facts, JSFI, Docket, p. 124; Exhibit "G", Docket, pp. 574 to 577.



Since respondent has not acted upon petitioner's claim for refund or tax credit, petitioner filed the instant Petition for Review on March 22, 2006, in order to toll the running of the two-year prescriptive period for judicially claiming a tax refund/credit under Section 229 of the National Internal Revenue Code (NIRC) of 1997.⁵ The amount sought to be refunded was reduced to ₱ 38,738,367.19 in view of the allowed duty drawback in the amount of ₱ 3,575,991.47.⁶

On May 31, 2006, respondent filed his Answer⁷, interposing the following defenses:

“5. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;

6. Petitioner must prove the amount of its alleged erroneously paid excise taxes for the period March to April 2004;

7. Petitioner must prove that such alleged excise taxes paid are erroneously paid excise taxes;

8. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the National Internal Revenue Code of 1997;

9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

10. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.”

The parties filed their Joint Stipulation of Facts and Issues on August 15, 2006, which was subsequently approved by this Court in the Resolution dated September 14, 2006.⁸

⁵ Par. 1.5, Stipulation of Facts, ISFL Docket, pp. 124 to 125.

⁶ Exhibit “S”, Docket, pp. 610 to 612.

⁷ Docket, pp. 51 to 54.



Trial on the merits then proceeded.

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the tax refund or issuance of a tax credit certificate in the amount of ₱ 38,738,367.19.

At the hearing held on February 16, 2009, upon motion of counsel for petitioner, and for failure of respondent's counsel to appear despite an earlier warning, respondent was deemed to have waived his right to present evidence; and counsel for petitioner was granted thirty (30) days from said date or until March 18, 2009 to file its memorandum, while respondent was given twenty (20) days from receipt of notice to file his memorandum.⁹

Upon motion of both parties, the Court granted extension periods for the filing of their respective memorandum in the Order dated March 18, 2009¹⁰.

On April 2, 2009, the parties filed their respective Memorandum.

In the Resolution promulgated on April 13, 2009, this case was considered submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following stipulated issues to be resolved by the Court:

"2.1. Whether or not petitioner paid the amount of alleged erroneously paid excise taxes for the period March to April 2004.

⁸ Docket, p. 128.

⁹ Minutes of Hearing held on February 16, 2009, Docket, p. 987.

¹⁰ Docket, p. 997.



2.2. Whether or not petitioner's alleged excise tax payments were erroneously collected by respondent.

2.3. Whether or not petitioner's claim was filed within the two (2) year period prescribed in Section 229 of the National Internal Revenue Code."¹¹

THE COURT'S RULING

The purported erroneous payment and collection of excise taxes in the present case allegedly arose from the following incidents:

1. Sale of tax-paid Jet A-1 fuel to exempt international carriers;
2. Sale of tax-paid Jet A-1 fuel to domestic carriers and the erroneous double payment of excise taxes thereon; and
3. In-transit losses on tax-paid Jet A-1 fuel and the erroneous payment of excise taxes thereon.

The basis of petitioner's claim for issuance of tax credit certificate or refund of its alleged erroneously paid excise taxes on its sale of Jet A-1 fuel to international carriers is Section 135 of the NIRC of 1997 which provides:

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

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

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

¹¹ Docket, p. 125.



Pursuant to the above-quoted provision, petroleum products sold to: (a) international carriers of Philippine or foreign registry; (b) exempt entities or agencies covered by tax treaties, conventions, and other international agreements; and (c) entities which are by law exempt from direct and indirect taxes, are exempt from the payment of excise taxes.

In the case of petroleum products sold to international carriers, whether of Philippine or foreign registry, petitioner must comply with the following conditions in order that it will be exempt from the payment of excise taxes:

1. That the petroleum is used or consumed outside the Philippines; and
2. That the petroleum is stored in a bonded storage tank disposed of in accordance with the rules and regulations prescribed by the Secretary of Finance, upon the recommendation of the Commissioner.

To prove its compliance with the above-enumerated requisites, petitioner presented the following documents:

- a. Aviation Service Returns;¹²
- b. Letter from the Air Transportation Office indicating the countries of registration of the international carriers;¹³
- c. Letter from the Department of Foreign Affairs with enclosed list of countries granting reciprocal tax exemption to Philippine-registered airlines carriers;¹⁴
- d. Copies of the Air Transport Agreements with those countries;¹⁵
- e. Certification from the Civil Aeronautics Board on the issuance of Foreign Air Carrier's Permit to operate scheduled air services in favor of certain airlines;¹⁶

¹² Exhibits "CCCC-1" to "CCCC-952"

¹³ Exhibits "WW" and "WW-1", Docket, pp. 834 to 838; Exhibit "III".

¹⁴ Exhibits "V" and "F", Docket, pp. 621 and 573; Exhibit "KKKK".

¹⁵ Exhibits "MM" to "UU", Docket, pp. 660 to 831.

¹⁶ Exhibit "VV", Docket, p. 833; Exhibit "JJJ".



- f. Certifications from the international carriers concerned as to their use or consumption of the Jet A-1 fuel purchased from petitioner;¹⁷
- g. Withdrawal Certificates;¹⁸
- h. Schedule of Receipts and Deliveries;¹⁹
- i. Sales Invoices;²⁰ and
- j. Printouts of petitioner's Computerized Accounting System, and documents evidencing payment and showing pricing details.²¹

On the other hand, petitioner asserts that its claim for refund or issuance of tax credit certificate on the alleged double payment of excise taxes on its sale of Jet A-1 fuel to domestic air carriers and in-transit losses is based on the principle of *solutio indebiti* and Section 229 of the NIRC of 1997, which is hereunder quoted, to wit:

“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.”

¹⁷ Exhibits “LLLL-1” to “LLLL-9”.

¹⁸ Exhibits “BBBB-1” to “BBBB-338”.

¹⁹ Exhibits “DDDD-1” to “DDDD-13”.

²⁰ Exhibits “EEEE-1.1” to “EEEE-1.112”.

²¹ Exhibits “FFFF-1” to “FFFF-950”, “GGGG-1” to “GGGG-1.144”, and “GGGG-2.1” to “GGGG-2.2”.



Petitioner maintains that it paid excise taxes to the Bureau of Customs (BOC) at the rate of ₱ 3.67/liter in accordance with Section 148 of the NIRC of 1997. It avers that through inadvertence, the Jet A-1 fuel was erroneously transferred under excise tax-free withdrawal certificates when the imported tax-paid Jet A-1 fuel was transferred from the Tabangao refinery to the Pandacan installation. Likewise, when the Jet A-1 fuel was transferred from the Pandacan installation to Joint Oil Company Aviation Storage Plant (JOCASP) and United Parcel Service (UPS) Clark, the imported tax-paid Jet A-1 fuel was transferred under similar erroneous excise tax-free withdrawal certificates. Thus, petitioner again paid taxes upon the sale and delivery to taxable domestic air carriers at the rate of ₱ 3.67/liter.

Petitioner also contends that when the in-transit losses occurred during the transfer of Jet A-1 fuel from the Tabangao refinery to the Pandacan installation, or from Pandacan installation to JOCASP and UPS Clark, it paid excise taxes at the rate of ₱ 3.67/liter. According to petitioner, it paid excise tax twice on the Jet A-1 fuel sold to domestic air carriers and in-transit losses, in the amounts of ₱ 2,374,233.10 and ₱ 291,515.44, respectively.

Petitioner proffered the following supporting documents:

- a. Withdrawal Certificates;²²
- b. Aviation Service Returns;²³
- c. Schedule of Receipts and Deliveries;²⁴
- d. Sales Invoices;²⁵ and

²² Exhibits "BBBBB-1" to "BBBBB-338".

²³ Exhibits "CCCC-1" to "CCCC-952".

²⁴ Exhibits "DDDD-1" to "DDDD-13".

²⁵ Exhibits "EEEE-1.1" to "EEEE-1.112".



- e. Printouts of petitioner's Computerized Accounting System, and documents evidencing payment and showing pricing details.²⁶

A close scrutiny of the records reveal that the total excise tax claimed for refund in the amount of ₱ 42,314,358.66 pertains to excise taxes paid by petitioner on its importations of Jet A-1 fuel to the Bureau of Customs on April 23, 2004 and April 30, 2004, the breakdown of which are as follows:

Exhibit	IEIRD No.	Date	Specific Tax Due
"E" ²⁷ / "MMMM-1"	796-04	23 April 2004	₱ 17,698,461.00
"E-1" ²⁸ / "MMMM-2"	856-04	30 April 2004	24,615,897.00
TOTAL			₱ 42,314,358.00 ²⁹

The foregoing is corroborated by the Report dated May 21, 2007³⁰ of the Court-commissioned Independent Certified Public Accountant, which states in part as follows:

"xxx. Jet A-1 fuel is ordinarily manufactured in PSPC's refinery in Tabangao, Batangas utilizing crude as raw material. However, there are isolated instances when PSPC imports finished Jet A-1 fuel through its Tabangao refinery. In March 2004 and April 2004, PSPC imported Jet A-1 Fuel through its refinery in Tabangao. **The importation entries were finalized on April 23 and 30, 2004 for which the corresponding duties, excise taxes and fess were paid to the Bureau of Customs.** Excise taxes were paid to the Bureau of Customs in Batangas at the rate of P3.67 per liter in accordance with Section 148 of the 1997 NIRC."³¹ (*Emphasis supplied*)

It is noteworthy that it was only upon payment of the customs duties, taxes, and fees that the imported Jet A-1 fuels were released from Custom's custody. Upon release from Custom's custody, the imported Jet A-1 fuels

²⁶ Exhibits "FFFF-1" to "FFFF-950", "GGGG-1" to "GGGG-1.144", and "GGGG-2.1" to "GGGG-2.2".

²⁷ Docket, p. 567.

²⁸ Docket, p. 568.

²⁹ P0.66 discrepancy is due to rounding off difference.

³⁰ Exhibit "FFF", Docket, pp. 873 to 889.

³¹ Docket, p. 875.

were immediately taken to petitioner's refinery in Tabangao, Batangas where they were initially stored in product tanks.

It may be true that petitioner was able to sell and deliver to exempt international carriers Jet A-1 fuel, however, it bears stressing that the withdrawals of Jet A-1 fuel from the Tabangao refinery, which were also subsequently sold to international and domestic carriers, were made on dates prior to the importation on April 23, 2004 and April 30, 2004, as evidenced by withdrawal certificates³². To prove payment of excise taxes, petitioner presented the Import Entry and Internal Revenue Declarations³³. However, the withdrawals were made earlier than the importation and payment of excise taxes. Therefore, the logical conclusion is that the withdrawn fuels were not taken from the imported Jet A-1 fuels upon which the excise tax payments were based.

There can be no dispute that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund. Consequently, petitioner's failure to discharge its burden will result in the denial of its claim for refund or issuance of tax credit certificate.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.


ERLINDA P. UY
Associate Justice

³² Exhibits "BBBB-1" to "BBBB-5".

³³ Exhibits "MMMM-1" and "MMMM-2".

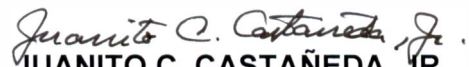
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice