REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

CHEVRON PHILIPPINES, INC.
Petitioner,

CTA EB No. 964
(CTA Case No. 7939)

- versus -

Present:

Del Rosario, *<u>PJ</u>*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *<u>JJ.</u>*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 3 0 2013 9:10 a.m.

x- x

D E C I S I O N

COTANGCO-MANALASTAS, <u>J.</u>:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Chevron Philippines, Inc., assailing the *Decision*[1] dated July 31, 2012, and the *Resolution*[2] dated November 20, 2012, of the former First Division of the Court denying petitioner's claim for refund or issuance of tax credit certificate in the amount of P6,542,400.00 allegedly representing excise taxes paid by petitioner on its importation of petroleum products sold to Clark Development Corporation (CDC).

The Facts

The facts, as narrated in the *Decision*[3], are as follows:

---

[1] *Rollo*, pp. 56-76.
[2] *Rollo*, pp. 78-84.
[3] *Rollo*, pp. 57-65, *citations omitted.*

"Chevron Philippines, Inc. (petitioner) is a duly organized and existing domestic corporation, with address at 6th Floor, 6750 Building, Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a value-added and excise taxpayer with Tax Identification No. 000-349-759-000.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to refund any internal revenue tax erroneously or illegally assessed or collected. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it sold and delivered to CDC the following gasoline products for the period between August to December 2007:

Product	**Volume**	**Price**
Gold 95-ron ("Gold")	570,000 liters	P16,421,207
Silver 93-ron ("Silver")	934,000 liters	P25,348,966

By virtue of the exemption enjoyed by CDC under Section 135(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Republic Act (R.A.) Nos. 9400 and 7916, it allegedly did not pass on or shifted to CDC the excise taxes it paid on the imported petroleum products.

[On] June 26, 2009, petitioner filed with respondent's Large Taxpayers Services-National Office an administrative claim for refund or issuance of tax credit certificate for taxable year 2007 amounting to P6,542,400.00.

On June 29, 2009, petitioner elevated its claim for refund or tax credit to the Court by way of a *Petition for Review* alleging inaction on the part of the respondent.

In her Answer, dated September 2, 2009, respondent diametrically opposes petitioner's contention saying that there is no provision in the NIRC of 1997, as amended[,] that expressly exempt[s] the owner or importers of petroleum products from paying excise tax on its imported products from the time of withdrawal from the customhouse. Under Section 135 of the NIRC, petitioner cannot pass on or shift to international carriers and exempt agencies the excise taxes it paid on its importation of petroleum products in the aggregate amount of P6,542,400.00, which it subsequently sold to Clark Development Corporation (CDC). The exemption from tax is only in favor of international carriers and exempt entities as buyers of petroleum products and not in favor of the owner or importer of petroleum products who is the statutory taxpayer, pursuant to Section 131 of the same Code.

Further, only Section 130 (D) of the NIRC allows the tax credit or refund of excise tax paid to goods which are locally produced or manufactured and subsequently exported. The enumeration in Section 130 (D) excludes all others in accord with the basic principle *expressio unius est exclusio alterius* or the express inclusion of one implies the exclusion of all others. The application of the cited maxim is consistent with the settled rule that claims for refund, being in the nature of a claim for exemption, should be construed in *strictissimi juris* against the taxpayer. Since petitioner's claim does not fall within the ambit of Section 130 (D), its tax refund prayed for cannot be granted.

In support of her position, respondent cites the cases of *Maceda v. Macaraig, Jr.* and *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue.*

On March 19, 2010, the parties filed their *Joint Stipulation of Facts and Simplification of Issues*, which the Court approved in the Resolution dated March 30, 2010.

Trial ensued during which petitioner presented four (4) witnesses, namely, Ericson S. Inocensio, Josephine San Juan-Macatingrao, Emmanuel R. Estacion, and 4) [*sic*] Martin C. Pacatang.

Witness Ericson S. Inocencio, by way of a Judicial Affidavit, testified that as the District Manager, Northern Luzon, Commercial and Industrial, of Chevron Philippines, Inc., he was familiar with the instant case as the transactions with CDC was within the [*sic* his] competence. The instant case involves the refund of excise taxes amounting to Php6,542,400.00, which petitioner paid for the period June to December, 2007, on its imported petroleum products which it subsequently sold to CDC.

CDC is a government-owned and controlled corporation established under Executive Order (EO) No. 80, Series of 1993 as the operating and implementing arm of the Bases Conversion and Development Authority (BCDA). It manages the Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). It is a duly registered CSEZ enterprise operating within the CFZ, thus it enjoys, under Section 5 of EO No. 80, all the applicable incentives in the Subic Special Economic and Free Port Zone under Republic Act (RA) No. 7227 as well as those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may thereafter be enacted.

The witness opined that since [*sic*] CDC was legally exempt from payment of direct and indirect taxes, [thus] precluding petitioner from passing on to CDC the excise taxes it paid on the imported petroleum products sold to the latter. Thus, the petroleum products sold to CDC were exclusive of indirect taxes such as value-added and excise taxes.

Petitioner also presented its Tax Accountant Josephine San Juan-Macatingrao, who also executed a Judicial affidavit. She testified that her duties include the payment and filing of various national taxes, preparation of reports and other documents required by the Bureau of Internal Revenue (BIR) as well as the Bureau of Customs (BOC), safekeeping of all documents related to tax cases/claims of petitioner and all importation related documents, and coordinating with the concerned business units/tax counsel of the company with regard to the various reportorial requirements related to petitioner's tax cases/claims.

The petroleum products sold to CDC were imported by petitioner between June and December 2007. In compliance with Section 1301 of the Tariff and Customs Code of the Philippines, as amended, petitioner filed the corresponding Import Entry Declarations (IEDs) and paid in advance ninety percent (90%) of the approximate taxes and duties due on the imported petroleum products. Thereafter, petitioner filed Import Entry and Internal Revenue Declarations (IEIRDs) to fully pay the taxes and duties.

She further testified that CDC was legally exempt from payment of direct and indirect taxes. As a Philippine Economic Zone Authority (PEZA) registered entity, CDC had the option to choose between two (2) fiscal incentives, namely, 1) 5% preferential tax rate on gross income earned in lieu of national and local taxes (P.D. No. 66, as amended, and Section 24 of R.A. No. 7916); and 2) income tax holiday of four (4) or six (6) years depending on whether an entity is registered as a pioneer or non-pioneer enterprise (Book VI of E.O. No. 226, in relation to Rule VI of its Implementing Rules and Regulations). CDC opted for the first for taxable year 2007.

On recall on July 8, 2010, witness Josephine San Juan-Macatingrao explained that only photocopies of the purchase invoices were presented in court as the originals of the said documents were submitted to the BOC for the processing of the IEIRDs for the release of the shipments in compliance with Customs Memorandum Order No. 127-88.

For his part Emmanuel R. Estacion testified that he is familiar with petitioner's transactions with CDC being its

> Business Consultant for Northern Luzon, Commercial and Industrial. Petitioner generally passes indirect taxes to customers but not with CDC. The prices of the petroleum products sold to the latter were exclusive of indirect taxes such as value-added and excise taxes which petitioner paid upon importation, as indicated in the sales invoices it issued to CDC.
>
> Petitioner's last witness Martin Pacatang, an employee of Facilities Managers, Inc., assigned at petitioner's Beata Warehouse in Pandacan, testified that he managed the inactive files from petitioner's Makati office kept in Beata Warehouse. Sometime in May, 2010, upon request of Ericson Inocencio and Emmanuel Estacion, he was able to retrieve the original sales invoices pertaining to the petroleum products sold by petitioner to CDC in 2007 except Exhibits E-67 to E-99, despite efforts. The loss of the documents could be attributed to the flooding at the Beata Warehouse brought about by Typhoon Ondoy sometime in September 2009.
>
> All the evidence presented by petitioner were admitted except Exhibits W-1 to W-9 and X-1 to X-8, due its failure to prove the loss, destruction, or unavailability of their originals which it claimed to be in the possession of the BOC.
>
> On the other hand, respondent was deemed to have waived her right to present evidence for non-appearance of her counsel during the scheduled presentation of her evidence, despite due notice.
>
> On September 21, 2011, the instant petition was submitted for decision."

The former First Division, in its *Decision*[4] dated July 31, 2012, denied petitioner's claim for refund or issuance of tax credit certificate. The Court in Division held that there is nothing in Section 135(c) of the NIRC of 1997, as amended, that explicitly grants petitioner, as seller of imported petroleum products to legally exempt entities, exemption from the payment of excise taxes thereon.

The Court in Division denied petitioner's Motion for Reconsideration in the *Resolution*[5] dated November 20, 2012.

Aggrieved, petitioner filed the instant *Petition for Review*[6] on December 28, 2012.

---
[4] *Supra*, Note 1.
[5] *Supra*, Note 2.

Respondent was ordered to file her comment within ten (10) days from receipt of the Resolution[7] dated January 14, 2013. Respondent filed her Comment (Re: Petition for Review dated December 27, 2012)[8] on February 28, 2013.

Considering the issues raised by both parties in their respective pleadings, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[9].

Respondent filed her Memorandum[10] on April 19, 2013 while petitioner failed to file its Memorandum despite due notice. Thus, the above-captioned case was submitted for decision on July 3, 2013.

The Issues

The petitioner raises the following grounds for its petition[11]:

I. The First Division of this Honorable Court erred in ruling that petitioner is not entitled to a refund of excise taxes paid on importation of fuel sold to CDC amounting to P6,542,400.00.

II. The First Division of this Honorable Court erred in ruling that Section 135(c) of the Tax Code does not apply to fuel sales made by petitioner to CDC.

III. The reliance of the First Division of this Honorable Court on Philippine Acetylene Co., Inc. vs. CIR is misplaced.

IV. The Decision and Resolution of the First Division of this Honorable Court render Section 135 of the Tax Code inoperable.

V. The First Division of this Honorable Court erred in applying the principles laid down in Commissioner

---

[6] *Rollo*, pp 15-49.
[7] *Rollo*, pp. 116-117.
[8] *Rollo*, pp. 125-133.
[9] *Rollo*, pp. 136-137, Resolution dated March 18, 2013.
[10] *Rollo*, pp. 138-147.
[11] *Rollo*, pp. 25-26.

of Internal Revenue vs. Pilipinas Shell Petroleum Corporation to the case at bar.

VI. The Decision and Resolution of the First Division of this Honorable Court are a departure from well settled jurisprudence and administrative rulings/ practices.

The Ruling of the Court

The Petition for Review has no merit.

It should be noted that the arguments raised by the petitioner are a mere rehash of the arguments already discussed, resolved, and settled by the Court in Division in its assailed *Decision* and *Resolution*. Nevertheless, the Court *En Banc* will discuss the same.

Excise taxes apply to certain specified goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines.[12]

Section 131 of the NIRC of 1997, as amended, identifies the person liable to pay excise taxes on imported articles, *to wit*:

> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers**, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, **or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption**. xxx xxx" *(Emphasis supplied)*

Clearly, from the foregoing, petitioner, being the importer of the petroleum products, is liable to pay the excise taxes due on such importation. However, petitioner contends that it is entitled to a refund or issuance of tax credit certificate for excise taxes paid on its importation of petroleum products

[12] Section 129, NIRC of 1997, as amended.

subsequently sold to CDC pursuant to Section 135(c) of the NIRC of 1997, as amended, *to wit*:

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

Petitioner argues that since its sales to CDC falls squarely within the ambit of Section 135(c) of the NIRC of 1997, as amended, the petroleum products subject of the transaction are exempt from excise tax. The Court does not agree.

Contrary to petitioner's argument, there is nothing in the foregoing provision that explicitly grants it, as seller of imported petroleum products to tax-exempt entities, exemption from payment of excise taxes thereon. The exemption in the provision is explicit and petitioner does not fall in any of the categories enumerated therein.

Hence, as the importer of the petroleum products sold to tax-exempt entities, petitioner is liable to pay the excise tax due on the said importation.

In the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue*[13], the Supreme Court held

---

[13] G.R. No. L-19707, August 17, 1967 (20 SCRA 1056).

that petitioner, the manufacturer and seller of oxygen and acetylene gases, who sold its products to National Power Corporation (NPC), a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its purchaser, NPC, is exempt from taxation. The Court explained that the percentage tax on sales of articles imposed by the old Tax Code is due from the manufacturer or producer and not from the purchaser.

Applying the foregoing, the excise tax imposed on the importation of petroleum products under Section 131 of the NIRC of 1997, as amended, is the direct liability of the importer who cannot thus invoke the excise tax exemption granted to its buyers who are entities which are by law exempt from direct and indirect taxes.

Considering that an excise tax is in the nature of an indirect tax where the tax burden can be shifted, Section 135(c) of the NIRC of 1997, as amended, should be construed as prohibiting the shifting of the burden of the excise tax to tax-exempt entities who buys petroleum products from the manufacturer/seller by incorporating the excise tax component as an added cost in the price fixed by the manufacturer/seller.

As pointed out by respondent, the only claim for refund of excise taxes authorized by the NIRC is the payment of excise tax on exported goods, as explicitly provided in Sec. 130(D) thereof, *to wit*:

> "(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."

Since the petroleum products sold to CDC were not locally produced or manufactured but were rather imported, petitioner cannot claim a refund or credit based on the above provision.

The above discussion is in line with the pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[14] (*Shell* case), involving Shell's claim for excise tax refund for petroleum products sold to international carriers. The Supreme Court held that the exemption from excise tax payment on petroleum products under Section 135(a) of the NIRC of 1997, as amended, is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the petroleum products sold. The pertinent portion of the ruling reads:

> "Under Chapter II 'Exemption or Conditional Tax-Free Removal of Certain Goods' of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, **Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer.** Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135(a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.
>
> xxx xxx xxx
>
> In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[,] this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.
>
> Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and not a specific provision of law exempting the goods sold from the excise

[14] G.R. No. 188497, April 25, 2012.

tax. But as already stated, **the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products)**. Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

.... **Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller.** The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

xxx xxx xxx

An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

xxx xxx xxx

Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or

> **distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.** *(Emphasis supplied and citations omitted)*

Accordingly, petitioner is not entitled to any refund or issuance of tax credit certificate on excise taxes paid on its importation of petroleum products sold to CDC pursuant to the doctrine laid down by the Supreme Court in the *Shell* case.

Petitioner argues that the *Shell* case is not yet final and executory. The said case is still pending with the Supreme Court by way of a Motion for Reconsideration.

Let it be stressed that in the determination of the instant case, the Court principally relied on the provision of Section 135(c) of the NIRC of 1997, as amended.

Time and again, *We* have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[15]

Finding no reversible error, *We* affirm the assailed *Decision* dated July 31, 2012 and *Resolution* dated November 20, 2012 of the former First Division.

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

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[15] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010 citing *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 131-132 (2003).

WE CONCUR:

Roman G. Del Rosario
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice