REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10279

Members:

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

Promulgated:
MAY 30 2024 3:22 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before the Court are the following:

1) Petitioner's **Motion for Partial Reconsideration (of the Decision dated January 8, 2024)** filed on February 1, 2024, with respondent's **Comment (on Petitioner's Motion for Partial Reconsideration)** filed on February 21, 2024; and

2) Respondent's **Motion for Partial Reconsideration (Re: Decision dated 08 January 2024)** filed through registered mail on February 2, 2024, and received by the Court on February 8, 2024, with petitioner's **Comment [On Motion for Partial Reconsideration (Re: Decision dated 08 January 2024)]** filed on February 28, 2024.

On January 8, 2024, the Court promulgated a Decision partially granting petitioner's claim for refund of excise taxes paid on its imported Jet A-1 fuel that were sold to tax-exempt international air carriers during the period April to May 2018, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Php15,501,712.00**, representing petitioner's erroneously paid excise taxes for its imported Jet A-1 fuel for the period covering April to May, 2018.
>
> **SO ORDERED**."

Undaunted, both parties filed their respective Motions for Partial Reconsideration of the above Decision.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner primarily prays that the Court reconsider the following disallowances that were deducted from its total claim for refund, to wit:

a) Disallowed amount of Php1,759,256.00 for <u>unreadable</u> Aviation Service Returns (ASR) supporting the deliveries of 439,814 liters of Jet A-1 fuel.

To recall, the Court disallowed petitioner's excise tax payment in the amount of Php1,759,256.00 because the Court cannot ascertain the correctness of relevant details in the ASR such as destination, customer name, and volume that would support the deliveries of 439,814 liters of Jet A-1 fuel. In particular, the Court deemed Exhibits "P-80.10", "P-80.79", "P-80.80", "P-80.89", "P-80.90", "P-80.302", "P-80.303", "P-80.304", "P-80.309", and "P-80.347" as unreadable.

Petitioner manifests that per Supplemental Certification letter of the Independent Certified Public Accountant ("ICPA"), attached to the Motion as Annex "A", the ICPA is re-submitting clear and readable copies of the foregoing exhibits that were duly marked by the same. Petitioner explains that the said exhibits were inadvertently improperly scanned by the ICPA due to time constraints and the voluminous nature of the documents.

As such, petitioner begs the indulgence of the Court to admit the foregoing exhibits and consider the same in the interest of substantial justice, so as to elicit the truth and to fully allow petitioner to substantiate its claim for refund, considering that the failure to submit readable copies of the exhibits was by mere inadvertence and is not motivated by any ill will or malice or purpose to delay the proceedings. In any case, petitioner claims that the ICPA's resubmission of the attached clear copies of the exhibits will not in any way prejudice respondent as they will merely reflect the actual documents that were already previously examined and marked.

b) Disallowed amount of Php11,132,948.00 for the sales of Jet A-1 fuel made to international carriers <u>prior</u> to the importation and payment of excise taxes.

In the same vein, the Court also disallowed the amount of Php11,132,948.00 covering 2,783,237 liters of Jet A-1 fuel because the supporting *Certificates of Quantity Delivered* ("CQD") upon which the claimed deliveries to international air carriers were sourced, were all dated earlier than April 26, 2018. The Court held that considering the date indicated in the *Authority to Release Imported Goods* ("ATRIG") and *Statement of Settlement of Duties and Taxes* ("SSDT") is April 26, 2018, any withdrawal from the Tabangao Refinery which is earlier than the said date should not be covered by the importation.

Petitioner asserts that the fact that the CQD of the subject fuels were dated earlier than the ATRIG does not automatically mean that the excise tax on the subject fuels are not exempt from excise tax pursuant to Section 135 of the National Internal Revenue Code ("NIRC") of 1997, as amended. Petitioner argues that a plain reading of said Section 135 shows that the petroleum products sold to the entities listed therein were not further qualified before it can be exempt from excise tax. Petitioner expounds that as long as the petroleum products are sold to any of the entities listed therein, and the conditions under subparagraphs (a) to (c) are fulfilled, any corresponding excise tax paid thereon, which can be proven by various documents such as Single Administrative Document (SAD) and SSDT becomes erroneously or illegally collected taxes that are the proper subject of a claim for refund under Sections 204(C) and 229 of the same tax code. Simply put, regardless of the date when the excise tax on said petroleum product was paid, the said tax remains erroneously or illegally collected as long as long as the date upon which the said petroleum product was sold to an exempt entity falls within the prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended.

Thus, petitioner prays that in the greater interest of substantial justice, the Court reconsiders the Decision dated January 8, 2024 and hold petitioner entitled to the claimed refund.

On the other hand, in his Comment, respondent counters that the bare invocation of the line "in the interest of substantial justice" is not some magic wand that should automatically compel this Court to suspend procedural rules. Also, respondent stresses that the Court is not bound by the findings of the ICPA. The ICPA is commissioned merely to assist the Court in the determination of merit of petitioner's claim for refund. Respondent agrees that the Court correctly ruled in denying the amount of Php1,759,256.00 pertaining to ASR for failure to present clear and readable copies for the Court's appreciation.

Respondent further asserts that on its face, Section 135 of the NIRC of 1997, as amended, does not grant exemption to sellers but rather provides for an enumeration wherein petroleum products when sold to the enumerated international carriers and entities therein are exempt from excise tax. Respondent reiterates that Section 135 cannot be a source for petitioner's claim for refund and it cannot be invoked by the sellers, like herein petitioner, but only by the buyers who are deemed as exempt entities.

Moreover, respondent likewise agrees that the Court correctly ruled that an examination of the *Daily Product Movement Report Subject to Excise Tax Claim* in relation to the *Summary of Aviation Turbo (Jet A-1) Fuel Deliveries*, shows that there were discrepancies with regard to the date when the importation of the Jet A-1 fuel was made and the date of withdrawals from Tabangao Refinery up to its eventual sale and delivery to international carriers. Hence, respondent concludes that the Court correctly disallowed the amount of Php11,132,948.00 as supported by CQD that were dated earlier than April 26, 2018.

After due consideration of the arguments proffered by both parties, the Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

Verily, the Court finds no compelling reason to reconsider and admit the ASR in USB flash drive, listed in the Supplemental Certification letter of the ICPA in place of the unreadable ASR. Albeit Section 8 of Republic Act ("RA") No. 1125,[1] as amended by RA No. 9282, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence, the same should still be balanced considering that application of technical rules may be relaxed only in the interest of substantial justice and to benefit the deserving.

In the case of *Republic of the Philippines v. Sandiganbayan (Fourth Division), et al.*,[2] the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify as a good reason for reopening the case and N

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1 "An Act Creating the Court of Tax Appeals", June 16, 1954.
2 G.R. No. 152375, December 13, 2011.

would serve the interest of justice, the Court may allow the reception of additional evidence.

Here, petitioner failed to discharge this burden. Petitioner claims that as per the ICPA, the foregoing exhibits were inadvertently improperly scanned due to time constraints and voluminous nature of documents. However, there is nothing in the Supplemental Certification letter dated January 31, 2024 by the ICPA which state such claim.

More so, in the Resolution dated May 02, 2022,[3] the Court already noted, in resolving petitioner's Formal Offer of Evidence, that Exhibits "P-80.79", "P-80.80", "P-80.89", "P-80.90", "P-80.302", "P-80.303", "P-80.304", "P-80.309", and "P-80.347" are partly or entirely blurred, unreadable, or not properly scanned. As such, **petitioner could have easily corrected these unreadable exhibits <u>as early as May 2022</u>, and in doing so, the Court could have received the corrected exhibits and considered the same before the case was submitted for decision.** This, Petitioner did not do. It is already too late in the day for these pieces of evidence to be introduced or considered. Trial has long been over.

In *Lolita R. Alamayri v. Rommel Pabale, et al.*,[4] the Supreme Court reminded that the parties must diligently and conscientiously present all arguments and available evidence in support of their respective positions to the court *before* the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence.

Herein, what is apparent is that petitioner failed to carefully examine and scrutinize all of its supporting evidence before submitting the same to the Court during the trial stage. By exercising reasonable diligence, petitioner could have immediately corrected said unreadable exhibits in a timely manner. Absent such valid explanation, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[5]

Procedural rules are not to be belittled or dismissed simply because their nonobservance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Nor should the rules of procedure be held to be for the

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[3] Docket, pp. 1098-1101.
[4] G.R. No. 151243, April 30, 2008.
[5] *Commissioner of Internal Revenue v. A. Soriano Corporation, et al.*, G.R. No. 113703, January 31, 1997.

benefit of only one side of the litigation, for they have been instituted for the sake of all.[6]

With regard to the second disallowed amount of Php11,132,948.00 covering 2,783,237 liters of Jet A-1 fuel, petitioner mainly argues that while the subject fuels were withdrawn from petitioner's customs bonded warehouses in Tabangao Refinery and/or Joint Oil Company Aviation Storage Plant (JOCASP) at the Ninoy Aquino International Airport (NAIA) prior to the date of ATRIG, April 26, 2018, the fact remains that petitioner still erroneously or illegally paid excise taxes on these subject fuels sold to international carriers, which should have been exempt under Section 135.

The Court finds the said argument untenable.

Verily Section 135 of NIRC of 1997, as amended, 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:
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> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
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> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of 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
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> (c) Entities which are by law exempt from direct and indirect taxes."

From the above, it should however be noted that to be entitled to refund pursuant to Section 135, in relation to Sections 204(C) and 229 of the same tax code, petitioner must prove that the imported Jet A-1 fuel it sold to international air carriers were indeed sourced from the same imported Jet A-1 fuel upon which the claimed excise taxes were paid.

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6 *Juanito Magsino v. Elena de Ocampo, et al.*, G.R. No. 166944, August 18, 2014.

To reiterate, petitioner is seeking a refund of the excises taxes it paid on imported Jet A-1 fuel covered by the ATRIG dated April 26, 2018. Being an excisable article, as explained by petitioner's witness, Ms. Carla Angelica T. Peralta, the said Jet A-1 fuel cannot be withdrawn by petitioner without the ATRIG. As such, it follows that fuels withdrawn from the Tabangao Refinery prior to the date indicated in the ATRIG, and thereafter sold to international air carriers, were obviously not taken or sourced from the imported Jet A-1 fuel subject of the present claim since the same were made on dates prior to the release of the subject imported Jet A-1 fuel to petitioner.

Time and again, the Court has held that the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor allowed solely on the ground of equity. 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. To reiterate, actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven**. Taxation is the rule and exemption is the exception. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.[7]

Correspondingly, the Court maintains the disallowances in the amounts of Php1,759,256.00 and Php11,132,948.00, corresponding to 439,814 liters and 2,783,237 liters, respectively, of Jet A-1 fuel.

That having being settled, the Court shall now proceed to determine the merits of respondent's motion.

Respondent's Motion for Partial Reconsideration

In his motion, respondent prays that Court reconsider its Decision dated January 08, 2024 and a new one be rendered denying in its entirety petitioner's claim for refund. Respondent argues that Section 135 of the NIRC of 1997, as amended, unequivocally provides exemption from excise tax payment on petroleum products to buyers, international carriers, and tax-exempt entities who purchased the same for their use or consumption outside the Philippines. Nowhere in the provision was it stated that the exemption extends to the benefit of the manufacturers, sellers, and importers of petroleum products.

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7 *Philippine Amusement and Gaming Corporation (PAGCOR) v. Bureau of Internal Revenue, et al.*, G.R. No. 172087, March 15, 2011.

Respondent stresses that since indirect taxes including excise tax are paid for by the buyers as it forms part of the purchase price, petitioner became liable to pay excise tax from the time it manufactured the subject fuel. He avers that Section 135 cannot be a source for petitioner's claim for refund but only by the buyers who are exempt entities. Respondent continues that the petroleum product sold is subject to excise tax for it is a fact that the buyers as enumerated in Section 135 are the exempt entities. Thus, he contends that petitioner being the seller-importer cannot invoke the exemption granted to these exempt entities as a ground to claim for refund of the excise tax paid.

Moreover, respondent also claims that there is nothing in the tax code which provided for the refund of excise tax except as provided in Section 130(D) of the NIRC of 1997, as amended. Respondent asserts that petitioner is not entitled to its claim based on the said section.

Lastly, respondent firmly believes in the strength of his arguments, more so that in the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[8] (*"2021 Pilipinas Shell"*, hereafter for brevity) which involves similarly the same parties and issues as in the present case, five (5) Supreme Court Justices rendered its dissenting opinion.

On the other hand, in its Comment, petitioner counters that in the *2021 Pilipinas Shell* case cited by respondent, the Supreme Court has already clarified that Section 135 cannot be interpreted as an exemption primarily conferred to the buyers because they are not under any legal duty to pay the excise tax. The tax immunity can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune therefrom. Also, in the *2021 Pilipinas Shell* case, the Supreme Court has already squarely addressed the particular arguments of the respondent.

Also, petitioner reiterates that respondent's argument that Section 135 prohibits manufacturers, sellers and importers from passing on the burden of paying excise taxes to tax-exempt buyers and forces the manufacturers, sellers and importers to shoulder the burden of excise tax, the majority in *2021 Pilipinas Shell* case has already refuted the same for being anathema to the intent behind the tax exemption in relation to the country's fulfillment of a treaty obligation.

Petitioner likewise points out that the basis of respondent's arguments in his Motion are the dissenting opinions in the *2021 Pilipinas Shell* case. Petitioner stresses that a dissenting opinion does not affirm nor overrule any claim, right, or obligation, and neither disposes of, nor awards, anything. It merely expresses the views of the dissenter. Hence, respondent cannot claim such arguments as legal bases in support of his position.

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

Lastly, petitioner insists that Section 130(D) of the NIRC of 1997, as amended, is not applicable to the present case. Section 130(D) pertains to the refund of excise taxes paid on locally produced or manufactured goods or products that were removed and actually exported without returning to the Philippines. Herein, as can be clearly seen in the proven facts thereof, petitioner asserts that it did not manufacture locally-produced Jet A-1 fuel during April to May 2018. It was not even allowed to locally produce Jet A-1 fuel during said period and all Jet A-1 fuel stored in its Tabangao product storage tanks were imported from abroad.

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

As correctly stated by respondent, a cursory reading of the present Motion would readily show that the arguments raised therein are a rehash of the same arguments enumerated in his *Answer* dated September 7, 2020[9] and *Memorandum* dated December 05, 2022,[10] including the dissenting opinions in the *2021 Pilipinas Shell* case.

However, as pointed out by petitioner, a dissenting opinion does not affirm nor overrule any claim, right, or obligation, and neither disposes of, nor awards, anything; it merely expresses the views of the dissenter.[11] In other words, dissenting opinions are not binding precedents.

Nonetheless, it must be stressed that the Supreme Court had already squarely addressed respondent's argument in the *2021 Pilipinas Shell* case, which was even quoted by the Court in the Decision dated January 08, 2024. Furthermore, the Supreme Court also elucidated certain conceptual distinctions in the similar case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation (2014)*[12] vis-à-vis the Court's subsequent pronouncements in the case of *Chevron Philippines Inc. v. Commissioner of Internal Revenue (2015)*.[13]

According to the doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) as embodied in Article 8[14] of the Civil Code of the Philippines, courts are required to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a

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9 Docket, pp. 67-73.
10 *Id.*, pp. 1150-1160.
11 *Esperidion Tolentino v. Adela Ongsiako, et al.*, G.R. No. L-17938, April 30, 1963.
12 G.R. No. 188497 (Resolution), February 19, 2014.
13 G.R. No. 210836, September 01, 2015.
14 "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

question of law has been examined and decided, it should be deemed settled and closed to further argument.[15]

Considering that the arguments raised in respondent's motion have been exhaustively addressed to and passed upon by the Court in the Decision he assails, to discuss them anew would be mere superfluity. To stress, respondent failed to submit any compelling argument to warrant a reversal of the Court's finding that upon petitioner's sale of its imported Jet A-1 fuel to various international air carriers, the status of the said sold petroleum product as tax-exempt solidifies. Consequently, the excise taxes it previously paid on the importation of said petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund or credit under Sections 204 and 229 of the NIRC of 1997.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on January 08, 2024.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (of the Decision dated January 8, 2024) and respondent's Motion for Partial Reconsideration (Re: Decision dated 08 January 2024) are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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15 *Carmelo F. Lazatin, et al. v. Hon. Aniano A. Desierto, et al.,* G.R. No. 147097, June 05, 2009.