REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

CTA EB No. 1281
(CTA Case No. 8492)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

JUL 25 2016 1:30 p.m.

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DECISION

UY, J.:

In the instant Petition for Review filed before the Court of Tax Appeals *En Banc* on March 26, 2015,[1] the Commissioner of Internal Revenue prays for the recall of the Decision[2] dated November 28, 2014 promulgated by the Second Division of this Court ("Court in Division") in CTA Case No. 8492, entitled *"Pilipinas Shell Petroleum Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, and that a new one be entered denying respondent's claim for refund in its entirety.

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[1] Docket, pp. 8 to 23.

[2] EB Docket, pp. 24 to 43; Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱46,794,180.86** representing petitioner's erroneously paid excise taxes on petroleum products sold to international carriers from May 26 to July 2, 2010, computed as follows:
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> | | |
> |---|---|
> | Claimed Excise Taxes | ₱ 48,570,772.81 |
> | Less: Disallowed Excise Taxes | 1,776,591.95 |
> | **Substantiated Excise Taxes** | **₱ 46,794,180.86** |
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue (CIR) is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. His office is at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Pilipinas Shell Petroleum Corporation (PSPC) 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. 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.

Sometime in May to June 2010, respondent imported Jet A-1 fuel through its refinery in Tabangao, Batangas and paid the corresponding excise taxes to the Bureau of Customs (BOC)-Batangas. Details of the importation and payment of excise taxes are as follows:

Arrival Date	IEIRD No.	Volumes in Liters	Amount of Excise Taxes Paid	Date of Payment
May 13, 2010	C-1001; SN107713767	7,854,564	₱28,826,250.00	June 4, 2010
May 19, 2010	C-1026	6,227,410	₱22,854,595.00	June 10, 2010
TOTAL		**14,081,974**	**₱51,680,845.00**	

Within the same period of June 2010, respondent likewise purchased Jet A-1 fuel from PTT Philippine Trading Corporation

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(PTT) at the Subic Bay Freeport Zone and paid the corresponding excise taxes to the BOC-Subic. Details of the importation and payment of excise taxes are as follows:

Arrival Date	IEIRD No.	Volumes in Liters	Amount of Excise Taxes Paid	Date of Payment
June 14, 2010	C-998; SN107713733	3,179,680	₱11,669,425.00	June 11, 2010

Respondent then allegedly sold the Jet A-1 fuel to various international airlines as follows:

Customers	Total Volume in Liters
Philippine Airlines	3,406,863
Air Hong Kong	190,075
Air China	123,120
Air Asia	330,203
Air Asia X	106,088
China Airlines	627,625
Federal Express	1,260
Japan Airlines	976,916
Jet Star Asia	394,842
Korean Air	1,345,273
Qantas Airlines	530,553
Qatar Airways	3,877,400
Royal Brunei Airlines	183,041
Singapore Airlines	915,454
Tiger Airways	225,830
TOTAL AVIATION SALES	**13,234,543**
Excise Tax Rate	**3.67**
TOTAL EXCISE TAX	**48,570,772.81**

The amounts billed by respondent to the international airlines were denominated in foreign currency and were net of excise taxes. Arguing that the international carriers to which it sold Jet A-1 fuel are exempt from excise taxes, respondent filed, on May 3, 2012, a formal claim for refund or tax credit certificate with the Large Taxpayers Audit & Investigation Division II of the BIR, seeking recovery of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period May 26 to July 2, 2010 in the total amount of ₱48,570,772.81, computed as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
Sale to international carriers of Philippine or foreign registry pursuant to Section 135 of the 1997 Tax Code	13,234,543	3.67	₱48,570,772.81

Claiming inaction on the part of the petitioner, respondent, filed on May 14, 2012, a Petition for Review with the Third Division of this Court.

Petitioner raised special and affirmative defenses in his Answer and stated, among others, that herein respondent's refund claim has no leg to stand on; that its claim for tax exemption, having been rebuffed, its claim for refund must necessarily be denied for lack of cause of action; and that its refund claim representing its excise tax allegedly paid on Jet A-1 fuel sold to tax exempt international air carriers for the period May 26 to July 2, 2010 was not properly documented.

The Third Division of this Court set CTA Case No. 8492 for Pre-Trial Conference on August 9, 2012. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues on September 26, 2012. Finding the Joint Stipulation in order, the Third Division of this Court issued a Pre-Trial Order on October 2, 2012, adopting the parties' stipulations and further declaring the pre-trial terminated.

Meanwhile, pursuant to CTA Administrative Circular No. 01-2013 dated March 26, 2013, the instant case was transferred to the Second Division of this Court on April 5, 2013.

During trial in CTA Case No. 8492, respondent presented five (5) witnesses, to wit: Nicasio Manuel, Tax Compliance Manager; Stephen Michael Reyes Cruz, Supply Operations Manager; Pamela Harder, Terminal Operations Administrative Lead, and Damaso Pastrana, Airport Manager, together with Benjamin P. Valdez, the Court commissioned Independent Certified Public Accountant (ICPA) pursuant to Section 5 of Rule 12, in relation to Sections 1 to 3 of Rule 13 of the RRCTA.

On August 16, 2013, respondent filed its *Formal Offer of Exhibits*, offering exhibits "A" to "NNNN," inclusive of sub-markings. In response, petitioner filed her *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 27, 2013, stating that she has no objection to the admission of said exhibits, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents under Section 4, Rule 12 of the RRCTA. Acting thereon, the Court in Division issued the Resolution dated September 19, 2013, denying most of the exhibits offered by respondent for its failure to submit the original documents for comparison as well as to have them identified.

On October 7, 2013, respondent filed a Motion for Reconsideration (of the Resolution dated September 19, 2013) asking for the Court's leniency and in the interest of substantial justice. On the other hand, petitioner filed her *Comment (Re: Petitioner's Motion for Reconsideration)* on October 24, 2013, asserting that the Court correctly denied the admission of said exhibits.

Meanwhile, respondent filed a *Motion to Suspend Proceedings*, praying for the suspension of the proceedings before the Court in Division as a matter of judicial courtesy and in order not to pre-empt and possibly render moot and academic the Supreme Court's final action on its motion for reconsideration regarding its other refund cases that are still pending with the Supreme Court. On November 8, 2013, petitioner filed her *Comment (Petitioner's Motion to Suspend Proceedings)*, citing the rationale given by the CTA *En Banc* in its resolution to the same motion filed by respondent in another case. The CTA *En Banc* therein ruled that it cannot just sit idly and wait for respondent's appeal to be resolved, to do so would create a vacuum where courts would wait for an issue to be resolved by the Supreme Court before rendering judgment.

In the Resolution dated December 11, 2013, the Court in Division partially granted respondent's motion for reconsideration thereby admitting majority of the exhibits offered by respondent but denied its motion to suspend the proceedings. Furthermore, considering the manifestation made by petitioner during the September 23, 2013 hearing that she will no longer be presenting evidence, the Court in Division ordered both parties to submit, within thirty (30) days, their respective memoranda.

Complying thereon, respondent submitted its *Memorandum* on January 30, 2014, while petitioner submitted her *Memorandum* on February 11, 2014.

Accordingly, with the filing of the parties' memoranda, the Court in Division, in the Resolution dated February 17, 2014, deemed the CTA Case No. 8492 submitted for decision.

Thereafter, respondent filed a Manifestation on March 21, 2014, stating that on March 17, 2014, it received a Notice of Judgment with attached Resolution dated February 19, 2014 from the Supreme Court in the case entitled *Commissioner of Internal Revenue vs.*

Pilipinas Shell Petroleum Corporation,[3] whereby the Supreme Court allowed Pilipinas Shell Petroleum Corporation's claims for refund or issuance of tax credit certificate in the amount of ₱95,014,283.00, representing excise taxes it paid on the petroleum products it sold to international carriers from October 2001 to June 2002.

Finding partial merit in respondent's Petition for Review, the Court in Division rendered the assailed Decision, partially granting the Petition for Review in the reduced amount of ₱46,794,180.86, representing respondent's erroneously paid excise taxes on petroleum products sold to international carriers from May 26 to July 2, 2010.

Aggrieved, petitioner filed a *Motion for Partial Reconsideration (Re: Decision dated 28 November 2014)* on December 16, 2014, to which respondent filed its *Comment/Opposition [To Respondent's Motion for Partial Consideration (Re: Decision dated 28 November 2014) dated December 16, 2014]* on January 20, 2015.

In the Resolution dated February 18, 2015, the said Motion for Partial Reconsideration was denied by the Court in Division for lack of merit.

Consequently, petitioner filed a *Motion for Extension of Time to File Petition for Review*[4] on March 11, 2015 before the Court *En Banc*. The latter, in the Resolution dated March 16, 2015,[5] granted petitioner a final and non-extendible period of fifteen (15) days from March 11, 2015, or until March 26, 2015, within which to file his Petition for Review.

On March 26, 2015, petitioner filed the instant Petition for Review[6] praying for the recall of the Decision dated November 28, 2014 promulgated by the Second Division of this Court ("Court in Division") in CTA Case No. 8492, entitled *"Pilipinas Shell Petroleum Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, and that a new one be entered denying respondent's claim for refund in its entirety.

Without necessarily giving due course to the Petition for Review, respondent was ordered by the Court *En Banc* to file its

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[3] G.R. No. 188497 (CTA EB No. 415; and CTA Case Nos. 6675 and 6839).
[4] Docket, pp. 1 to 5.
[5] Docket, p. 6.
[6] Docket, pp. 8 to 23.

Comment thereon.[7] Pursuant thereto, respondent filed its *Comment [Re: Petition for Review dated March 26, 2015]*[8] on July 3, 2015 alleging, among others, that the instant Petition contains a mere rehash of arguments that were already sufficiently passed upon and discussed by the Second Division of the Honorable CTA in its Decision. Thus the instant Petition should be dismissed.

The instant Petition for Review was submitted for decision on July 28, 2015.[9]

Hence, this Decision.

THE ISSUES

Petitioner, in effect raises this issue: Whether or not respondent is liable for the excise taxes due on the petroleum products under Section 135(A) of the National Internal Revenue Code (NIRC) of 1997.

Petitioner's arguments:

Petitioner argues that respondent is liable for the excise taxes due on the petroleum products as the exemption given in Section 135(A) is given only to international carriers.

Furthermore, petitioner avers that respondent's claim for tax refund cannot be predicated on Section 229 of the NIRC, allowing refund of erroneous or excess payment of tax, in view of the fact that respondent filed its Petition for Review with this Court within eleven (11) days from the filing of its administrative claim with petitioner. According to petitioner, respondent did not give petitioner sufficient time to act upon the claim for refund.

Lastly, petitioner contends that respondent has no clear right for a tax exemption which must be construed *strictissimi juris*.

Respondent's counter-arguments

Respondent counter argues that the Supreme Court already settled respondent's entitlement to claim for refund under Section 135

[7] Resolution dated June 4, 2015, Docket, pp. 101 to 102.
[8] Docket, pp. 103 to 110.
[9] Resolution dated June 28, 2015, Docket, pp. 112 to 113.

of the NIRC; and that the Court in Division correctly ruled, based on evidence presented, that it is entitled to refund in the amount of ₱46,794,180.86.

THE COURT *EN BANC*'S RULING

As correctly pointed out by respondent, the issue before Us has already been settled by the Supreme Court. Thus, the instant Petition for Review lacks merit.

In the very recent case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[10] the Supreme Court said:

> "The Court need not unnecessarily belabor the arguments posed by the parties as these have already been squarely dealt with recently in G.R. No. 188497 entitled *'Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation.'*[11]
>
> In said case, the same respondent in this case, Pilipinas Shell, sought a refund/credit of the excise taxes allegedly paid erroneously on sales and deliveries of gas and fuel oils to various international carriers during the period of October to December 2001. As in the present case, Pilipinas Shell alleged that it was exempt from payment of excise taxes levied on its petroleum products sold and delivered to international carriers of foreign registry. The same petitioner in this case, the CIR, as represented by the Office of the Solicitor General, objected to the tax refund/credit granted by the CTA, also on the same ground raised in the present case — that the excise tax on petroleum products is levied on the manufacturer of the petroleum product regardless of its purchaser or buyer and that the grant of exemption under Section 135 of the NIRC simply means that the manufacturer cannot pass on to the international carrier-buyer the excise taxes it paid on its petroleum products.
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> Initially, the Court sustained CIR's arguments, reversed the CTA ruling and denied Pilipinas Shell's claim for tax refund/credit. In a Decision dated April 25, 2012, the Court concluded that Pilipinas Shell's locally manufactured petroleum products are subject to excise

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[10] G.R. No. 180402, February 10, 2016.
[11] April 25, 2012, 671 SCRA 241.

tax under Section 148 of the NIRC. The Court also ruled that the exemption from excise tax payment on petroleum products under Section 135(a) '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.

In a Resolution dated February 19, 2014, however, the Court addressed the argument of Pilipinas Shell in its motions for reconsideration that Section 135(a) intended the tax exemption to apply to petroleum products at the point of production, among others. The Court found merit in Pilipinas Shell's motions for reconsideration and consequently directed the CIR to issue a tax credit certificate to Pilipinas Shell. The dispositive portion of the resolution reads:

> **WHEREFORE**, the Court hereby resolves to:
>
> (1) **GRANT** the original and supplemental motions for reconsideration filed by respondent Pilipinas Shell Petroleum Corporation; and
>
> (2) **AFFIRM** the Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415; and **DIRECT** petitioner Commissioner of Internal Revenue to refund or to issue a tax credit certificate to Pilipinas Shell Petroleum Corporation in the amount of 95,014,283.00 representing the excise taxes it paid on petroleum products sold to international carriers from October 2001 to June 2002.
>
> **SO ORDERED.**

In granting Pilipinas Shell's motion for reconsideration, the Court ruled:

> We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise

tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, **we agree that there is a need to reexamine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.**

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

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With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give primary consideration to its broad**

> **implications on our commitment under international agreements.**
>
> In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135(a) of the NIRC.** (Citation omitted and emphases ours)

Under the doctrine of *stare decisis*, the Court must adhere to the principle of law laid down in *Pilipinas Shell* and apply the same in the present case, especially since the facts, issues, and even the parties involved are exactly identical. Thus, the Court hereby holds that Pilipinas Shell's claim for refund/credit must be granted pursuant to *Pilipinas Shell*, as its petroleum products sold to international carriers for the period of November 2000 to March 2001 are exempt from excise tax, these international carriers being exempt from payment of excise tax under Section 135(a) of the NIRC.

The Court further notes that during the pendency of this case, the Court, sitting *en banc*, rendered a decision in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*,[12] which likewise involved the refund of excise taxes paid on the importation of petroleum products. Applying the principle enunciated in *Pilipinas Shell*, the Court granted therein petitioner Chevron Philippines, Inc.'s motion for reconsideration and directed therein respondent CIR to refund the excise taxes paid on the petroleum products sold to Clark Development Corporation in the period from August 2007 to December 2007, or to issue a tax credit certificate. The Court stated that while the claims in *Pilipinas Shell* and *Chevron* were premised on different subsections of Section 135 of the NIRC, 'the basic tax principle applicable was the same in both cases — that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed.'" *(Underscoring supplied)*

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[12] G.R. No. 210836, September 1, 2015.

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It is clear from the foregoing pronouncements that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Section 135(a) of the NIRC of 1997. Thus, petitioner's contentions as to the supposed excise tax liability of respondent deserve scant consideration.

There is likewise no merit in petitioner's contention that respondent did not give petitioner sufficient time to act upon the claim for refund, in view of its filing of a Petition for Review with this Court within eleven (11) days from the filing of its administrative claim.

Section 229 of the NIRC of 1997 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." *(Emphases supplied)*

It must be observed that under said provision, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within two (2) years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Commissioner of Internal Revenue is still pending action of the latter.[13] Hence, respondent must judicially file its claim for refund before the expiration of the said 2-year period; otherwise, it will lose its right to claim the same.

Moreover, petitioner cannot validly claim that it was not given sufficient time to act on respondent's claim because he ought to know the records of all taxpayers,[14] and thus, can easily decide whether to grant or deny such claim.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[13] Refer to *College of Oral & Dental Surgery vs. Court of Tax Appeals, et al.*, G.R. No. L-10446, January 28, 1958.
[14] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice