REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FILPRIDE RESOURCES INCORPORATED duly represented by ANIEBETH S. DIONZON,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE and/or COMMISSIONER OF INTERNAL REVENUE,
Respondents.

C.T.A. CASE NO. 6830

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
FEB 20 2007, 2:10 P.M.

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DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review seeking the refund or issuance of a Tax Credit Certificate in the amount of P4,781,311.60 representing alleged overpayment of excise taxes from fuel sold by petitioner to the National Power Corporation (NPC) covering the period January 2002 to July 2002 pursuant to Section 135 (c) of the National Internal Revenue Code of 1997 in relation to Republic Act No. 6395, as amended, otherwise known as the NPC Charter.

Petitioner is a domestic corporation organized and existing under the Philippine Laws with office address at 304 J.P. Rizal St., Mandaluyong City.[1] It is engaged in the business of buying and selling, including importation of oil and other petroleum products for various customers. It is a registered taxpayer with the Bureau of Internal Revenue (BIR) with certificate of registration bearing Taxpayer Identification Number 002-216-589-000.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to refund any internal revenue erroneously or excessively assessed or collected or any penalty claimed to have been collected without authority or any sum alleged to have been excessively or wrongfully collected, with office address at BIR National Office, Agham Rd., Diliman, Quezon City.[3]

In the course of its business operations, petitioner had the opportunity to enter into a sale transaction with NPC for the supply of diesel fuel to its various power plants located in the Philippines[4] by virtue of an "Open Purchase Order" in lieu of the standard 2001-2002 Contract of Supply/Delivery of Oil Based Fuel.[5]

By virtue of the "Open Purchase Order", petitioner caused the importation of 4,667,000. liters of diesel fuel from January to February 2002[6] which was subjected to an excise tax at the rate of P1.63 to a liter and paid the corresponding duties and excise taxes in the total amount of P8,707,459.80,[7] detailed as follows:

> On January 4, 2002, upon full payment of the corresponding customs duties and excise taxes in the amount of P1,581,855.00, the Bureau of Customs released in favor of petitioner the 1st batch of imported diesel fuel consisting of some Eight Hundred Fifty Thousand (850,000) liters;
>
> On January 30, 2002, petitioner paid the Bureau of Customs the amount of P1,520,494.80 representing the corresponding customs duties and excise taxes for the importation of 817,000 liters of diesel products. This volume represented the 2nd batch of imported diesel products;

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[1] Par. 1, Joint Stipulation of Facts and Issues.
[2] Par. 3, Petition for Review.
[3] Paragraph 2, Joint Stipulation of Facts and Issues.
[4] Paragraph 4(c), Joint Stipulation of Facts and Issues.
[5] Exhibit "H".
[6] Exhibits "C-2", "C-4", "C-6" and "C-8".
[7] Exhibits "C-1", "C-3", "C-5" and "C-7".

The 3rd batch of imported diesel products with a volume of 1,000,000 liters was released to petitioner on February 13, 2002 by the Bureau of Customs on upon the former's payment of the amount of P1,868,825.00 for the customs duties and excise taxes due thereon; and

On February 27, 2002, the Bureau of Customs released to petitioner 2,000,000 liters of imported diesel products upon payment of corresponding customs duties and excise taxes in the amount of P3,736,285.00. This volume represented petitioner's 4th batch of imported diesel products.

To summarize:

Batch of Importation	Date of Release by the Bureau of Customs	Volume of Imported Diesel Products (In Liters)	Exhibit	Amount of Customs Duties and Excise Taxes	Exhibit
1st	01/04/02	850,000	C-2	P1,581,855.00	C-1
2nd	01/30/02	817,000	C-4	P1,520,494.80	C-3
3rd	02/13/02	1,000,000	C-6	P1,868,825.00	C-5
4th	02/27/02	2,000,000	C-8	P3,736,285.00	C-7
TOTAL		**4,667,000**		**P8,707,459.80**	

From the foregoing importations of diesel products, petitioner allegedly sold and delivered a total of 2,933,320 liters of diesel fuel to NPC's various power plants on various dates.

On the strength of the statutory exemption from payment of all forms of taxes, duties, fees and imposts granted to NPC pursuant to Republic Act No. 6395, petitioner consequently sought the refund of the alleged overpayment of excise taxes it paid for the diesel products it sold to NPC. It then filed, on separate dates,[8] four (4) administrative claims for the issuance of tax credit certificate arising from the overpayment of excise taxes on sales of fuel to the National Power Corporation covering the period from January 2002 to July 2002. In a letter dated November 8, 2002,[9] petitioner informed BIR of its intention to correct some errors on the volumes declared in its letter-claims and arrived at the total claim of P4,781,311.60 as follows:

[8] May 19, 2002, May 31, 2002, July 5, 2002 and November 5, 2002 (Exhibits "AA", "BB", "CC" and DD).
[9] Exhibit "G".

Application #1	1,010,730 liters @ 1.63/liter	P 1,647,489.90
Application #2	795,060 liters @ 1.63/liter	1,295,947.80
Application #3	859,740 liters @ 1.63/liter	1,401,376.20
Application #4	267,790 liters @ 1.63/liter	436,497.70
Total		**P4,781,311.60**

The above administrative claims for refund remained unresolved at the Bureau of Internal Revenue level. Such inaction prompted petitioner to elevate said claims with this Court on December 4, 2003, in order to toll the running of the two (2)-year prescriptive period.

Respondent, in his Answer filed on February 5, 2004, interposed the following Special and Affirmative Defenses:

> "5. The claim for refund is still under examination by the respondent's Bureau;
>
> 6. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 7. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; and
>
> 8. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

This case was submitted for Decision on August 16, 2006 sans the memorandum of respondent.

The parties jointly stipulated on the foregoing issues for resolution of this Court, to wit:

I.
Whether or not petitioner supplied and delivered fuel to NAPOCOR coming from its importation;

II.
Whether or not petitioner paid the corresponding excise taxes for every liter of imported fuel which the latter sold and delivered to NAPOCOR;

III.
Whether or not the sale transaction between petitioner and NAPOCOR is tax exempt;

IV.
Whether or not petitioner is entitled to a tax credit certificate and/or tax refund or reimbursement for the excise taxes it paid for the imported fuel products sold and delivered to NAPOCOR.

Petitioner bases its cause on Section 135(c) of the National Internal Revenue Code of 1997, as amended, quoted hereunder for easy reference:

> "Section 135. *Petroleum Products Sold to Internal Carriers, and Exempt Entities or Agencies.* – Petroleum products sold to the following are exempt from excise tax:
>
> xxx xxx xxx
>
> (c) Entities which are by law exempt from direct and indirect taxes."

As correctly pointed out by petitioner, entitlement to the claim for refund based on the afore-quoted provision of law is conditioned on the following, *viz:*

(1) That petroleum products were sold to a tax exempt entity or entities; and
(2) That excise taxes were actually paid on these petroleum products.

Tax-Exempt Character of NPC

It has long been settled that NPC is categorically exempt from payment of all taxes, whether direct or indirect, pursuant to its Charter, Republic Act No. 6395, as amended. And the respondent himself does not dispute this fact.[10]

Section 13 of Republic Act No. 6395 (NPC Charter), as amended, reads:

> "*Section 13. Non-profit Character of the Corporation: Exemption from All Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities.*- The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared **exempt from the payment of all forms of taxes, duties, fees, imposts** as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." *(Emphasis Supplied)*

The Supreme Court, in the case of ***Ernesto M. Maceda vs. Catalino Macaraig, et al.,*** 197 SCRA 771, May 31, 1991, has even affirmed NPC's tax exemption, thus:

> "The NPC is a non-profit public corporation created for the general good and welfare wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment to enable the Corporation to pay the indebtedness and obligation and in the furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395 xxx
>
> xxx xxx xxx
>
> It is noted that in the earlier law, R.A. No. 358, the exemption was worded in general terms, as to cover "*all* taxes, duties, fees, imposts, charges, etc., xxx." However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to cover, among others, *both direct and indirect taxes* on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "*all forms of taxes*, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."
>
> The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC 'shall devote all its returns from its capital investments as well as excess revenues from its operation, for expansion. Xxx
>
> xxx xxx xxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including direct taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Evidently, petitioner is the one directly liable for the payment of excise taxes on the importation of petroleum products it sold to NPC. But by the nature of indirect taxation, however, petitioner may then shift the burden of such taxation, by letting such economic burden to pass through the channels of commerce to the user or consumer of the products sold, NPC herein. But since NPC is exempt from both direct and indirect taxation, it must likewise be exempt from absorbing the burden of indirect taxation. This is when Article 135 of the National Internal Revenue Code of 1997, as amended, comes to play and operates to grant tax exemption to petroleum product suppliers who are unable to shift the economic burden of taxation to the end user.

Whether petitioner supplied and delivered fuel to NPC coming from its importations and whether the corresponding excise taxes due thereon were paid

After a careful examination of the records in this case, the Court finds that indeed NPC executed several "Purchase Orders" (PO) dated October 16, 2001[11] as well as three (3) "Open Purchase Orders" (OPO) dated January 2002[12] for the supply of diesel fuel. The sale, release, and delivery of such diesel fuel to NPC was on a staggered basis depending on the required quantity and the name of the NPC power plant site as stated in the PO and OPO, summarized as follows:

Exhibit		OP/PO No.	Delivery Point	Ordered
Purchase Order				
	J	417-SOI	Araceli	45,000
	L	402-SOI	Basco	572,000
	M	414-SOI	Busuanga	700,000
	O	405-SOI	Calayan	33,000
	P	407-SOI	Casiguran	362,000
	Q	415-SOI	Cuilion	89,000
	R	413-SOI	Cuyo	563,000
	S	411- SOI	El Nido	94,000
	T	404- SOI	Itbayat	35,000
	U	409- SOI	Jomalig	24,000
	V	406- SOI	Palanan	26,000
	W	410- SOI	Patnanungan	45,000
	X	408- SOI	Polilio	376,000
	Y	403- SOI	Sabtang	28,000
	Z	412- SOI	San Vicente	56,000
Open Purchase Order				
	I	559 IMG	Plantsite	42,000
	K	265 IMG	Plantsite	42,000
	N	266 IMG	Plantsite	42,000
Total				**3,174,000**

[11] Exhibits "J", "L", "M", "O" to "Z".
[12] Exhibits "I", "K" and "N".

Petitioner made a total importation of 4,667,000 liters of diesel oil[13] and paid the corresponding duties and excise taxes in the total amount of P8,707,459.80,[14] summarized as follows:

1/30/2002	817,000	C-4	8735749	1,520,494.80	C-3
2/13/2002	1,000,000	C-6	8737425	1,868,825.00	C-5
2/27/2002	2,000,000	C-8	8738447	3,736,285.00	C-7
Total	**4,667,000**			**P 8,707,459.80**	

It should be noted that petitioner paid an excise tax of P1.63 per liter of the imported diesel fuel.[15] This fact was even stipulated upon by the parties in their Joint Stipulation of Facts and Issue.[16]

Moreover, records of this case reveal that in the course of its operation, petitioner has sold and delivered a total of 2,932,225 liters of diesel fuel to National Power Corporation on various dates from January to July 2002,[17] detailed as follows:

Exhibit	Invoice No.	Date	Volume (in Liters)
E-1-1	19043	March 19, 2002	42,000
E-1-2	19006	March 4, 2002	42,000
E-1-4	18987	February 19, 2002	19,950
E-1-7	19118	May 2, 2002	19,950
E-1-8	18984	February 19, 2002	42,000
E-1-10	18979	February 7, 2002	68,880
E-1-12	19079	April 12, 2002	68,880
E-1-13	19083	April 16, 2002	68,880
E-1-14	19087	April 16, 2002	68,880
E-1-16	19115	May 2, 2002	68,880
E-1-17	19125	May 13, 2002	68,880
E-1-19	18964	January 11, 2002	105,000
E-1-21	18993	March 6, 2002	105,000
E-1-23	19063	April 1, 2002	105,000
E-1-25	19108	April 19, 2002	105,000
E-1-27	19137	May 22, 2002	105,000
E-1-29	19192	July 20, 2002	62,790
E-1-30	19198	July 12, 2002	16,000
E-1-32	19199	July 12, 2002	25,830
E-1-34	19010	March 5, 2002	42,000
E-1-36	19026	March 18, 2002	10,500
E-1-38	18982	February 7, 2002	14,910

[13] Exhibits "C-2", "C-4", "C-6" and "C-8".
[14] Exhibits "C-1", "C-3", "C-5" and "C-7".
[15] See the rate of tax as shown in the BOC IEIRD in relation to the LBP Official Receipts; Exhibits "C-1" to "C-8".
[16] Paragraph 4(d), Joint Stipulation of Facts and Issues.
[17] Exhibits "E-1-1" to "E-1-123".

E-1-40	19088	April 16, 2002	14,910
E-1-42	18965	January 11, 2002	23,100
E-1-43	19017	March 13, 2002	11,550
E-1-44	19000	March 2, 2002	23,100
E-1-45	19062	April 1, 2002	21,210
E-1-47	19078	April 12, 2002	25,200
E-1-49	19095	April 19, 2002	19,110
E-1-50	19099	April 20, 2002	11,550
E-1-51	19122	May 7, 2002	25,200
E-1-53	19127	May 13, 2002	25,200
E-1-55	19138	May 22, 2002	5,460
E-1-56	19153	May 31, 2002	12,600
E-1-57	19154	May 31, 2002	12,600
E-1-59	19160	May 20, 2002	12,600
E-1-61	19170	June 20, 2002	18,900
E-1-62	19162	June 10, 2002	18,060
E-1-63	19175	June 25, 2002	4,200
E-1-64	19181	July 1, 2002	12,600
E-1-65	19189	July 10, 2002	12,600
E-1-66	19190	July 12, 2002	7,560
E-1-68	19621	July 26, 2002	10,500
E-1-69	19628	July 31, 2002	6,300
E-1-71	18973	January 17, 2002	21,000
E-1-72	18974	February 1, 2002	21,000
E-1-73	19117	May 2, 2002	42,000
E-1-76	18971	January 24, 2002	93,870
E-1-78	19007	March 4, 2002	52,500
E-1-81	19036	March 20, 2002	41,370
E-1-83	19093	April 19, 2002	63,000
E-1-84	19098	April 20, 2002	31,500
E-1-85	19131	May 16, 2002	93,870
E-1-86	19121	May 2, 2002	93,870
E-1-89	19157	May 20, 2002	93,870
E-1-90	18976	February 2, 2002	42,000
E-1-92	19067	April 6, 2002	52,500
E-1-93	18981	February 7, 2002	22,470
E-1-95	19085	April 16, 2002	22,470
E-1-97	19060	March 27, 2002	17,220
E-1-98	19057	April 1, 2002	12,600
E-1-100	19103	April 19, 2002	29,820
E-1-102	19058	April 1, 2002	16,380
E-1-104	19325	June 7, 2002	42,420
E-1-105	19324	July 7, 2002	29,820
E-1-107	19161	May 20, 2002	89,880
E-1-109	19116	May 2, 2002	89,880
E-1-111	19059	March 20, 2002	86,100
E-1-112	19055	April 1, 2002	3,780
E-1-113	19029	March 18, 2002	10,500
E-1-115	19028	March 18, 2002	10,500
E-1-117	18980	February 7, 2002	11,918
E-1-119	19084	April 16, 2002	11,977
E-1-121	19065	April 6, 2002	42,000
E-1-123	18978	February 4, 2002	29,820
Total			**2,932,225**

The aforementioned sales were supported by various official receipts submitted by petitioner.[18]

The claim for refund was filed within the two (2)-year prescriptive provided under Section 229 in relation to Section 130(A)(2) of the National Internal Revenue Code of 1997

Section 229 of the National Internal Revenue Code (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 therefore, 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."

In relation thereto, Section 130(A)(2) of the 1997 NIRC provides:

"SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* -

xxx xxx xxx

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

[18] Part of Exhibits "E-1-1" to "E-1-124".

As per evidence on record, petitioner paid the subject claimed excise taxes on January 4, 2002, January 30, 2002, February 13, 2002 and February 27, 2002.[19] On these excise taxes paid, petitioner filed four (4) separate administrative claims for refund with the BIR on May 30, 2002, June 3, 2002, July 3, 2002 and November 5, 2002.[20] Counting from January 4, 2002, the date when petitioner first paid the excise taxes due on the sale of the subject diesel fuel, the administrative claims for refund as well as the present petition fall within the period allowed by law.

Petitioner's entitlement to the refund of excise taxes it paid on petroleum products it sold to NPC

The removal of diesel fuel as a result of each of the sale transactions, as enumerated above, are reflected in petitioner's "Schedule of Receipts and Removal" covering the period from January 1 to July 31, 2002. From this Schedule, this Court notes that there were overstatements in the recording of the removal/withdrawn liters of diesel fuel as reflected in the "Schedule of Receipts and Removal" when compared with liters of diesel fuel which were actually sold as reflected in the invoices. The details of discrepancies between the recorded removed liters from "Schedule of Receipts and Removal," and the invoices are shown hereunder:

As reflected in the "Schedule of Receipts and Removal" (*Exhibit F*)	**As reflected In the Invoice**	**Exhibit**	**Overstatement**
12,390	11,918	E-1-117	472
12,390	11,977	E-1-119	413
31,900	31,500	**E-1-84**	400
63,000	62,790	**E-1-129**	210
		Total	1,495

[19] Exhibits "C" to "C-8".
[20] *See* Exhibits "G" to "G-2".

In sum, petitioner was able to establish that it made a total importation of 4,667,000 liters of diesel oil; that it paid a total amount of P8,707,459.80 duties and excise taxes on the subject importation; the rate of excise tax paid was P1.63 per liter of imported diesel fuel; that it sold and delivered a total of 2,932,225 liters of diesel fuel to the National Power Corporation covering the period from January to July 31, 2002, as evidenced by various invoices and official receipts;[21] and that it filed its claims within the two (2)-year prescriptive period provided for by law.

Hence, petitioner is entitled to the issuance of a tax credit certificate in the amount of P4,779,526.75, computed as follows:

Amount of claim		P4,781,311.60
Less: Overstatement of the claimed volume of liters sold to NPC or Unsubstantiated claim as per Petition for Review		
(1,010,730+795,060+859,740+267,790) liter	2,933,320	
As per actual sales to NPC	2,932,225	
Difference	1,095	
Multiply by the tax rate of excise tax per liter	1.63	1,784.85
Allowable Amount		**P4,779,526.75**

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **GRANTED** but in the reduced amount of P4,779,526.75. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P4,779,526.75 representing overpaid excise taxes from fuel sold by petitioner to National Power Corporation covering the period January 2002 to July 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[21] Exhibits "E-1-1" to "E-1-124".

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division