REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8232

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 06 2015 ; 11:39a.m.

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution is respondent's **Motion for Partial Reconsideration (Re: Decision dated 16 December 2014)**, filed on January 22, 2015, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration (Re: Decision dated 16 December 2014) dated January 22, 2015]**, filed on February 13, 2015. The dispositive portion of the assailed Decision promulgated on December 16, 2014 reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **₱63,161,734.94** to petitioner Pilipinas Shell Petroleum Corporation, representing excise taxes paid by petitioner on petroleum products sold to international carriers from March 1, 2009 to April 7, 2009.

SO ORDERED."

Respondent anchors its argument on petitioner's alleged failure to exhaust administrative remedies before seeking judicial intervention. She argues that petitioner filed the Petition for Review merely fourteen (14) days after it filed an administrative claim which shows lack of intention to pursue the latter. Respondent contends that administrative remedies must not be merely initiated, but also pursued to its appropriate conclusion before seeking judicial intervention.

Petitioner asks for the outright denial of the respondent's motion as it presents no new arguments. It avers that respondent's argument on the reversal of the assailed Decision runs contrary to established laws and jurisprudence. Petitioner stresses its compliance with the requirements under Sections 204 and 229 of the National Internal Revenue Code ("NIRC") of 1997, as amended, for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected.

We DENY respondent's Motion for Partial Reconsideration.

After a careful study of the arguments proffered by both parties in their respective pleadings, the Court finds no compelling reason to reconsider or set aside the assailed Decision dated December 16, 2014.

Respondent's argument on petitioner's alleged violation of the doctrine of exhaustion of administrative remedies, previously interposed in its Memorandum[1] filed on September 9, 2013, was substantially considered and addressed by the Court in the assailed Decision. The pertinent portion of the Decision reads:

> "Records indicate that the earliest importation arrived on February 19, 2009 for which the first payment of excise tax for this importation was made on February 18, 2009. Counting from February 18, 2009, petitioner therefore had until February 18, 2011 within which to file both its administrative and judicial claims.

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[1] Docket (vol. II), pp. 991-994.

> As gleaned from the records of the present case, petitioner filed its administrative claim for refund with the BIR on February 4, 2011 and its judicial claim via Petition for Review on February 18, 2011. Petitioner, therefore, has complied with the mandatory two-year prescriptive period.
>
> Anent respondent's contention that petitioner failed to exhaust administrative remedies since it filed the instant Petition for Review merely fourteen (14) days after filing the administrative claim, the same is untenable.
>
> The taxpayer is given two years from his erroneous payment of tax within which to file his written claim for refund. However, if the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner."

The mandatory two-year prescriptive period provided under Sections 204 and 229 of the NIRC of 1997, as amended, applies both to administrative and judicial claims for refund. In order to preserve its right to claim for refund, the law allows petitioner to file its judicial claim even if merely days after it filed an administrative claim for refund. Otherwise, its right to claim for refund would be barred.

In the case of *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]* [2], the Supreme Court affirmed the granting of a taxpayer's claim for refund or issuance of a tax credit certificate under Sections 204 and 229 of the NIRC of 1997, as amended even though the taxpayer filed its judicial claim for refund merely eight (8) days from filing its administrative claim for refund. In the said case, the administrative claim and petition for review were filed on 19 March 2003 and 27 March 2003, respectively.

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's **Motion for**

[2] G.R. No. 179260, April 2, 2014.

Partial Reconsideration (Re: Decision dated 16 December 2014) filed on January 22, 2015, is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice