REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, ***Petitioner,***	**C.T.A. CASE NO. 7004**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** OCT 28 2008 10:30 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Sale of petroleum products to international carriers, used and consumed outside of the Philippines, and sale of petroleum products to exempt entities or agencies, are exempt from excise taxes *(Section 135, NIRC of 1997, as amended)*. Pursuant to *Revenue Memorandum Order 19-06*, the seller is entitled to claim for refund or issuance of tax credit certificate of the excise taxes paid. To do so, however, the seller-claimant must comply with the requirements prescribed by law and must be able to show that its claim for refund or credit are properly substantiated. Failure to show proof of proper documentation is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Pilipinas Shell Petroleum Corporation (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate in the amount of P28,531,860.52, representing excise taxes allegedly paid by petitioner on its sales and deliveries of petroleum to various international carriers of Philippine or foreign registry for their use or consumption outside of the Philippines, covering the period July to December 2002.

THE PARTIES

Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines, with principal place of business at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City. It is engaged, among others, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who is duly empowered to perform the duties of her office, including, *inter alia*, the duty to act on and approve claims for refund or tax credit as provided by law, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:

> "3. The instant petition is a claim for refund or tax credit in the amount of P28,531,860.52, representing excise taxes paid by petitioner on its sales and deliveries of petroleum products to various international carriers of Philippine or foreign registry for their use or consumption outside the Philippines.
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> 4. Petitioner is engaged, among others, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.
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> 5. Based on the afore-quoted provisions of Section 229 of the 1997 NIRC, both the formal claim for refund with the BIR and the petition for review with the Honorable Court must be filed within two years from the date of payment of the tax alleged to have been erroneously, wrongfully, illegally or excessively assessed or collected.
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> 6. On February 11, 2004, petitioner filed a formal claim for refund or tax credit with the Large Taxpayers Audit & Investigation Division II of the BIR seeking the recovery of excise taxes paid by petitioner on its sales and deliveries of petroleum products to international carriers during the period from July 2002 to September, 2002 in the total amount of P12,251,649.74.

> 7. On the same date, petitioner filed a formal claim for refund or tax credit with the Large Taxpayers Audit & Investigation Division II of the BIR seeking the recovery of excise taxes paid by petitioner on its sales and deliveries of petroleum products to international carriers during the period from October 2002 to December 2002 in the total amount of P16,280,210.78.
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> 8. Up to this date, however, respondent has not acted upon petitioner's claim for refund or tax credit with finality.
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> xxx xxx."

In her "Answer" filed on August 9, 2004, respondent, by way of special and affirmative defenses, averred the following: petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected; taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit; it is incumbent upon petitioner to show that it has complied with the provisions of *Section 204*, in relation to *Section 229 of the Tax Code, as amended*; and claims for refund are construed strictly against the claimant for the same partake of the nature of tax exemption.

Petitioner presented Jonas Sarmiento, Atty. Javier Miguel Ibazeta, Nicasio Manuel and Benjamin Valdez, the Court-Commissioned Independent Certified Public Accountant ("ICPA"), as witnesses, and documentary evidence, marked as *Exhibits "A" to "HHHH"*, inclusive of their submarkings, which were all admitted by the Court, in a Resolution dated August 13, 2007, after petitioner filed a Motion for Reconsideration (of the Resolution dated June 18, 2007), except for *Exhibit "LL"*, which was denied admission for petitioner's failure to submit the same to this Court.

On the other hand, for the repeated failure of counsel for respondent to appear despite notice at the scheduled initial presentation of the evidence for the respondent, upon motion of counsel for petitioner, respondent was deemed to have waived her right to present evidence. Thereafter, petitioner was granted 30 days from November 12, 2007, within which to file its memorandum, while respondent was granted 20 days from notice; afterwhich the case shall be deemed submitted for decision.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER SOLD AND DELIVERED PETROLEUM PRODUCTS TO INTERNATIONAL CARRIERS OF PHILIPPINE OR FOREIGN REGISTRY FROM JULY 2002 TO DECEMBER 2002.

II

WHETHER OR NOT PETITIONER PAID EXCISE TAXES AMOUNTING TO P28,531,860.52 ON THE PETROLEUM PRODUCTS SOLD AND DELIVERED TO INTERNATIONAL CARRIERS MENTIONED IN PARAGRAPH 1 ABOVE.

III

WHETHER OR NOT PETITIONER IS EXEMPT FROM PAYMENT OF EXCISE TAXES ON PETROLEUM PRODUCTS SOLD AND DELIVERED TO INTERNATIONAL CARRIERS.

3.1 WHETHER OR NOT THE PETROLEUM PRODUCTS WERE USED OR CONSUMED BY INTERNATIONAL CARRIERS OUTSIDE OF THE PHILIPPINES;

3.2 WHETHER OR NOT THE INTERNATIONAL FOREIGN CARRIERS ARE EXEMPTED FROM THE PAYMENT OF EXCISE TAXES

UNDER TAX TREATIES, CONVENTIONS OR OTHER INTERNATIONAL AGREEMENTS;

3.3 WHETHER OR NOT THE COUNTRIES OF REGISTRY OF THE INTERNATIONAL FOREIGN CARRIERS PURCHASING PETITIONER'S PETROLEUM PRODUCTS GRANT PHILIPPINE-REGISTERED VESSELS RECIPROCAL EXEMPTION FROM THE PAYMENT OF EXCISE OR SUCH SIMILAR TAXES.

IV

WHETHER OR NOT PETITIONER IS ENTITLED TO THE RECOVERY OF THE AMOUNT OF P28,531,860.52 REPRESENTING EXCISE TAXES PAID ON THE PETROLEUM PRODUCTS SOLD AND DELIVERED TO INTERNATIONAL CARRIERS.

THE COURT'S RULING

The petition is partly meritorious.

First and Second Issues

Being interrelated, the first and second issues will be discussed jointly.

Petitioner sold and delivered petroleum products to international carriers, and paid the corresponding excise taxes thereof

Petitioner contends that for the period of July to December 2002, it sold and delivered petroleum products to international carriers of Philippine or foreign registry for the international carriers' use and consumption of said petroleum products outside of the Philippines. Petitioner's witness, Nicasio Manuel, on direct examination testified that petitioner sold 23,960,619 liters of petroleum products to various international carriers, broken down as follows:

Month	Product	Volume in Liters
June to July 2002	Gas Oil	4,331,501
	Fuel Oil	2,858,462
August 2002	Gas Oil	2,342,737
	Fuel Oil	316,270
September 2002	Gas Oil	199,760
	Fuel Oil	315,378
October 2002	Gas Oil	2,264,420
	Fuel Oil	171,510
November 2002	Gas Oil	6,079,840
	Fuel Oil	4,219,403
December 2002	Gas Oil	829,712
	Fuel Oil	31,626
Total		23,960,619

(Exhibit "DD")

Petitioner also presented the following documentary evidence: Withdrawal Certificates *(Exhibits "BBBB-1" to "BBBB-25")*, Receipts for Marine Bunker Fuel *(Exhibits "CCCC-1" to "CCCC-121")*, Sales Invoices *(Exhibits "EEEE-1" to "EEEE-102")*, Printout of petitioner's Computerized Accounting System showing "Overview of Billing Items (F2 Display of

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Sales Invoice)" and "Pricing Details" *(Exhibits "FFFF-1.1" to "FFFF-102.3")*, and Official Receipts *(Exhibits "GGGG-1" to "GGGG-96")*. The Withdrawal Certificates show the volume of petroleum products from which the petroleum products sold, subject of the claim, were sourced *(Revenue Memorandum Order ("RMO") No. 19-06)*. The Receipts for Marine Bunker Fuel or Delivery Receipts show the volume of petroleum products delivered to the international carrier, and confirm the fact of delivery to the international carrier *(Revenue Memorandum Order ("RMO") No. 19-06)*. While the Sales Invoice, Official Receipts and Printouts of Overview of Billing Items and Pricing Details show that the amounts billed and collected by petitioner for sale and delivery of petroleum products to international carriers are net of excise taxes.

Based on the foregoing documents presented by petitioner, it is clear that from July to December 2002, petitioner sold and delivered petroleum products to international carriers.

Petitioner also contends that for the 23,960,619 liters of petroleum products it delivered to international carriers from June 2002 to December 2002, petitioner paid the corresponding excise taxes thereof, in the amount of P28,531,860.52. This allegation is confirmed by the Court-Commissioned Independent CPA, who made the following findings in his Report *(Details of Findings, Exhibit "FFF")*:

> "b. We ascertained that upon withdrawal of the petroleum products from its refinery or from customs' custody, in case of petroleum products, as supported by WCs, the company duly paid and remitted the excise tax of P1.63 and P0.30 per liter of gas oil and fuel oil, respectively, due thereon under Section 148(i) and (l) of the NIRC as evidenced by the ETR filed with the BIR and bank official receipts/printout of e-payment confirmation advice covering the excise tax payments.
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> 3. We ascertained that the Company paid the total excise taxes in the amount of P28,531,986 on its withdrawal of petroleum products of 16,047,970 liters of gas oil and 7,912,649 liters of fuel oil for the period of July 2002 to December 2002 sold to international carriers of the Philippines or foreign registry were used or consumed outside the Philippines by ensuring registration of vessels with the letters from MARINA which enumerates the list of registered vessels engaged in international routes, or those which are allowed to enter the Philippine waters as long as they will only unload cargoes and passengers. xxx"

A careful examination of the evidence on record shows that on the following dates, petitioner filed with the BIR Excise Tax Returns and bank receipts/printout of e-payment confirmation advice, covering the excise tax payments for the period June 2002 to December 2002:

Exhibit	Date of Petitioner's Excise Tax Return for Petroleum Products (BIR Form No. 2200-P)
FF	June 19, 2002
GG	June 25, 2002
HH	June 27, 2002
II	July 24, 2002
JJ	July 3, 2002
KK	August 6, 2002
LL	July 26, 2002
MM	July 26, 2002
NN	September 9, 2002
OO	October 2, 2002
PP	October 21, 2002
QQ	October 8, 2002

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RR	October 28, 2002
SS	November 4, 2002
TT	November 6, 2002
UU	November 8, 2002
VV	November 10, 2002
WW	November 19, 2002
XX	July 4, 2002

Based on the testimonial and documentary evidence presented by petitioner, this Court finds that petitioner sold and delivered petroleum products to international carriers and paid the corresponding excise taxes thereof upon withdrawal of the petroleum products from their place of production.

Third and Fourth Issues

The third and fourth issues, being interrelated, will also be discussed jointly. Petitioner contends that since it sold and delivered petroleum products to international carriers that are exempt from the payment of excise taxes, and paid the corresponding excise taxes thereof, petitioner is entitled to a refund of the excise taxes paid. Petitioner further contends that said excise taxes paid partake of the nature of erroneously or illegally collected taxes.

Petroleum Products Sold to International Carriers and Exempt Entities are Exempt from Excise Taxes

Section 135 of the NIRC of 1997, as amended, provides:

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> "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 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
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> (c) Entities which are by law exempt from direct and indirect taxes."

Pursuant to the above provision, petroleum products sold to a) international carriers, and b) exempt entities and agencies covered by tax treaties, conventions and other international agreement are exempt from excise taxes. For an international carrier to be exempt from the payment of excise taxes, *Section 135* expressly provides that the petroleum products purchased by the international carrier shall be used and consumed outside of the Philippines, and the petroleum products sold to international carriers shall be stored in bonded storage tanks. While for

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exempt entities covered by international treaties or international agreement, in order that they will be exempted from payment of excise taxes, the same *Section 135* requires that the country of registry of said foreign international carrier exempts from similar excise taxes petroleum products sold to Philippine carriers or entities.

On direct examination, petitioner's witness, Jonas Sarmiento, testified that petitioner sold petroleum products to international carriers/vessels, the countries of registry of which exempt Philippine vessels and carriers from excise or similar taxes *(Exhibit "O", TSN dated May 9, 2005, pp. 13-14)*. He further testified that such international vessels are not authorized to operate in domestic waters or trade *(Exhibit "O")*. Moreover, the petroleum products purchased by petitioner's client-vessels were being used as fuel to propel the engine of said vessels, as petitioner's delivering barges or trucks usually load said petroleum products in the vessels' fuel tanks, and not in the vessels storage compartments *(Exhibit "O", TSN dated August 24, 2005, pp. 19-20)*.

Said testimony of petitioner's witness was amply corroborated by petitioner's documentary evidence, which were not controverted by the respondent for having waived her right to present evidence. The letter from the Department of Foreign Affairs and communications/confirmation from different embassies declare that the following countries: Panama, Netherlands, Denmark, Korea, and Cyprus grant reciprocal excise tax exemption of petroleum products sold to Philippine registered marine vessels *(Exhibits "L-1"* to *"L-1-d")*.

Also, the exchange of correspondence between petitioner's counsel and the Maritime Industry Authority ("Marina") reveals that the list of petitioner's client-vessels are engaged in international routes, except for ISLAS GAS V288, which is not found in the Philippine Registry of Ships plying international voyages *(Exhibits "K"* to *"K-2")*. The Marina also provides that petitioner's client vessels of Philippine registry were not given Special Permits to operate in domestic waters, except for Asean Explorer and Volvox Hansa *(Exhibit "K-3")*. Considering that petitioner's client-vessels were engaged in international routes and not authorized to operate in domestic waters or trade, except for said Asean Explorer and Volvox Hansa, it is clear that the gas oil and fuel oil purchased by petitioner's client-vessels were used and consumed not within domestic waters, but outside of the Philippines.

In fact, the Bunkering Permits issued by the Bureau of Customs, which indicates the country of registry of the vessel that purchased the petroleum products from petitioner, authorize the loading of petroleum

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products into international vessels for a specific and limited purpose *(Exhibits "DDDD-2" to "DDDD-87").* Said Bunkering Permits were stamped, "FOR THE SHIP'S USE ONLY". Considering that the petroleum products purchased by petitioner's client vessels, with international routes and without permit to operate in domestic waters/trade were used as their own fuel, evidently, said petroleum products were used by the international carriers/vessels not within domestic water/trade, but outside of the Philippines. As such, petitioner's client-vessels are exempt from the payment of excise taxes.

Excise Taxes Paid on Petroleum Products Sold and Delivered to Exempt Entities Partake of the Nature of Erroneously or Illegally Collected Taxes, Hence Refundable.

Having proven that petitioner paid the corresponding excise taxes on petroleum products sold to international carriers and exempt entities, upon withdrawal of said petroleum products from petitioner's depots and refinery, notwithstanding the exemption granted by *Section 135 of the NIRC of 1997, as amended*, said excise taxes paid by petitioner partake of the nature of erroneously or illegally collected taxes.

Section 229 of the NIRC of 1997, as amended, provides:

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> "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."

Pursuant to the foregoing provision, an erroneously or illegally collected tax may be recovered within two years from the date of the payment of the tax, provided an administrative claim for refund has been filed with the Commissioner first.

Record shows that the earliest withdrawal of petroleum products covered by the instant case was made on June 18, 2002 *(Exhibit "BBBB-1")*. Since petitioner filed it administrative claim for refund on February 11, 2004 *(Annexes "G" and "H", Petition for Review)* and the instant petition on

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June 17, 2004, petitioner's claim for refund was seasonably filed within the two-year prescriptive period.

However, as to the amount that petitioner may be entitled for refund, taking into consideration Revenue Memorandum Order No. 19-06, petitioner was able to substantiate the amount of P22,670,578.12 only. This is confirmed by the findings of the examination conducted by the Court-Commissioned Independent CPA, to wit:

> "7. Of the total amount being claimed for or tax credit of P28,531,986, we determined that P22,670,578 was fully supported with complete documents (see Exhibits AAAA-1).
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> xxx xxx.
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> Of the total amount claimed as refund or tax credit amounting to P28,531,986, we determined that P5,861,408 was unsupported or with exceptions (see Exhibit AAAA-2). xxx".

Upon examination of the documentary evidence presented by petitioner, We agree with the findings of the Court-Commissioned Independent CPA that out of P28,531,986.00 being claimed for refund by petitioner, the amount of P5,861,408.68 is hereby disallowed for the following reasons: a) out of the amount of P5,861,408.68, the amount of P1,450,936.05 was sold to international carriers with no reciprocity agreement on exemption from excise taxes of petroleum products, the

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details of which are provided in *Annex "A"*, which is hereto attached and made an integral part of this Decision; b) the amount of P4,237,770.11 is not fully supported with Withdrawal Certificates, Bunkering Permits and Official Receipts, the details of which are provided in the same *Annex "A"*; and c) the amount of P172,701.52 was sold to unregistered vessels, the details of which are also provided in the same *Annex "A"*.

In sum, based on the evidence on record, petitioner is entitled to a refund or issuance of a tax credit certificate, but in the reduced amount of P22,670,578.12 only, computed as follows:

		Volume in Liters			Excise Tax Paid		
	Exhibit	**Gas Oil**	**Fuel Oil**	**Total**	**Gas Oil**	**Fuel Oil**	**Total**
July 2002	AAAA-1.1	3,597,848.00	1,976,175.00	5,574,023.00	P5,864,492.24	P592,852.50	P6,457,344.74
August 2002	AAAA-1.2	2,272,177.00	316,270.00	2,588,447.00	3,703,648.51	94,881.00	3,798,529.51
September 2002	AAAA-1.3	188,000.00	-	188,000.00	306,440.00	-	306,440.00
October 2002	AAAA-1.4	2,164,460.00	171,510.00	2,335,970.00	3,528,069.80	51,453.00	3,579,522.80
November 2002	AAAA-1.5	4,309,792.00	1,191,555.78	5,501,347.78	7,024,960.96	357,466.74	7,382,427.70
December 2002	AAAA-1.6	697,439.00	31,626.00	729,065.00	1,136,825.57	9,487.80	1,146,313.37
TOTAL		**13,229,716.00**	**3,687,136.78**	**16,916,852.78**	**P21,564,437.08**	**P1,106,141.04**	**P22,670,578.12**

WHEREFORE, premises considered, the present Petition For Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Pilipinas Petroleum Shell Corporation the reduced amount of **TWENTY TWO MILLION SIX HUNDRED SEVENTY THOUSAND FIVE HUNDRED SEVENTY EIGHT AND 12/100 PESOS (P22,670,578.12)**, representing excise taxes paid by petitioner on petroleum products sold to international carriers for the period covering July 2002 to December 2002.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

Annex "A"

Details of the Amount of the P5,861,408.68 Disallowed to be Refunded

	Exhibit	Volume in Liters		Excise Tax Paid		
		Gas Oil	Fuel Oil	Gas Oil	Fuel Oil	Total
Without reciprocity						
July 2002	AAAA-2.1	291,033	432,380	P 474,383.79	P 129,714.00	P 604,097.79
August 2002	AAAA-2.1	70,560		115,012.80	-	115,012.80
September 2002	AAAA-2.1	11,760		19,168.80	-	19,168.80
October 2002	AAAA-2.1	99,960		162,934.80	-	162,934.80
November 2002	AAAA-2.1	36,074	1,244,400	58,800.62	373,320.00	432,120.62
December 2002	AAAA-2.1	72,148		117,601.24	-	117,601.24
		581,535	**1,676,780**	**P 947,902.05**	**P 503,034.00**	**P 1,450,936.05**
With Missing Documents						
July 2002	AAAA-2.2	416,620	289,907	P 679,090.60	P 86,972.10	P 766,062.70
September 2002	AAAA-2.2		315,378	-	94,613.40	94,613.40
November 2002	AAAA-2.2	1,683,470	1,783,447	2,744,056.10	535,034.16	3,279,090.26
December 2002	AAAA-2.2	60,125		98,003.75	-	98,003.75
		2,160,215	**2,388,732**	**3,521,150.45**	**716,619.66**	**4,237,770.11**
Unregistered Vessels						
July 2002	AAAA-2.3	26,000	160,000	P 42,380.00	P 48,000.00	P 90,380.00
November 2002	AAAA-2.3	50,504		82,321.52	-	82,321.52
		76,504	**160,000**	**P 124,701.52**	**P 48,000.00**	**P 172,701.52**
TOTAL		**2,818,254**	**4,225,512**	**P4,5 93,754.02**	**P 1,267,653.66**	**P 5,861,407.68**

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