REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS SHELL PETROLEUM CORPORATION,	
Petitioner,	**CTA EB No. 841** (CTA Case No. 7421)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUN 2 5 2013 AMApolinario 9:05 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Pilipinas Shell Petroleum Corporation, assailing the *Decision*[1] dated March 30, 2010, and the *Resolution*[2] dated October 17, 2011, of the former Special Second Division of the Court denying petitioner's claim for excise tax refund or issuance of tax credit.

Petitioner seeks the reversal of the said *Decision* and *Resolution* and prays that it be declared entitled to a refund of, or issuance of a tax credit certificate, in the net amount of P38,738,367.19, allegedly representing excise tax paid by petitioner on aviation turbo jet fuel (Jet A-1 fuel) sold to tax-exempt international air carriers, as well as the double

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[1] *Rollo*, CTA EB Case No. 841, pp. 68-78.
[2] *Rollo*, pp. 79-91.

payment of excise taxes on sales to domestic air carriers and in-transit losses, for the period March to April 2004.

The Facts

The facts, as found by the former Special Second Division, are reproduced hereunder:

> "Petitioner, Pilipinas Shell Petroleum Corporation, 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.
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> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.
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> On December 27, 2005, petitioner filed a formal claim for refund or tax credit with the BIR Large Taxpayers Audit and Investigation Division II, seeking the recovery of excise taxes purportedly paid on the Jet A-1 fuel sold to tax-exempt international air carriers, and the double payment of excise taxes on sales to domestic air carriers and in-transit losses, for the period covering March to April 2004 in the aggregate amount of P42,314,358.66, computed as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
1. Sale to international carriers of Philippine or foreign registry pursuant to Sec. 135 of the 1997 NIRC	10,803,436	3.67	39,648,610.12
2. Double payment of excise tax on sales to domestic airlines and in-transit losses pursuant to Sections 130 and 229 of the 1997 NIRC (erroneous payment)	646,930	3.67	2,374,233.10
3. Double payment of excise tax on in-transit losses pursuant to Sections 130 and 229 of the 1997 NIRC (erroneous payment)	79,432	3.67	291,515.44
TOTAL	**11,529,798**		**42,314,358.66**

> Since respondent has not acted upon petitioner's claim for refund or tax credit, petitioner filed the instant Petition for Review on March 22, 2006, in order to toll the running of

the two-year prescriptive period for judicially claiming a tax refund/credit under Section 229 of the National Internal Revenue Code (NIRC) of 1997. The amount sought to be refunded was reduced to P38,738,367.19 in view of the allowed duty drawback in the amount of P3,575,991.47.

On May 31, 2006, respondent filed his Answer, interposing the following defenses:

> '5. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
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> 6. Petitioner must prove the amount of its alleged erroneously paid excise taxes for the period March to April 2004;
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> 7. Petitioner must prove that such alleged excise taxes paid are erroneously paid excise taxes;
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> 8. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the National Internal Revenue Code of 1997;
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> 9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 10. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.'

The parties filed their Joint Stipulation of Facts and Issues on August 15, 2006, which was subsequently approved by this Court in the Resolution dated September 14, 2006.

Trial on the merits then proceeded.

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the tax refund or issuance of a tax credit certificate in the amount of P38,738,367.19.

At the hearing held on February 16, 2009, upon motion of counsel for petitioner, and for failure of respondent's counsel to appear despite an earlier warning, respondent was deemed to have waived his right to present evidence; and counsel for petitioner was granted thirty (30) days from said date or until March 18, 2009 to file its memorandum, while respondent was given twenty (20) days from receipt of notice to file his memorandum.

Upon motion of both parties, the Court granted extension periods for the filing of their respective memorandum in the Order dated March 18, 2009.

On April 2, 2009, the parties filed their respective Memorandum.

In the Resolution promulgated on April 13, 2009, this case was considered submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following stipulated issues to be resolved by the Court:

2.1. Whether or not petitioner paid the amount of alleged erroneously paid excise taxes for the period March to April 2004.

2.2. Whether or not petitioner's alleged excise tax payments were erroneously collected by respondent.

2.3. Whether or not petitioner's claim was filed within the two (2) year period prescribed in Section 229 of the National Internal Revenue Code."[3]

The former Special Second Division, in its *Decision*[4] dated March 30, 2010, denied petitioner's claim for refund or tax credit for lack of merit. The Court in Division held that the withdrawn Jet A-1 fuel from the Tabangao refinery, which were subsequently sold to international and domestic carriers, were not taken from the subject imported Jet A-1 fuels since the sale were made on dates prior to the importation and payment of excise taxes.

The *Motion for Reconsideration*[5] filed by petitioner was denied for insufficiency of evidence in the *Resolution*[6] dated October 17, 2011. The Court in Division held that while petitioner proved that it sold Jet A-1 fuel to international and domestic air carriers in April 2004, petitioner failed to sufficiently prove that such sales were sourced from the

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[3] *Rollo*, pp. 68-72, citations omitted.
[4] *Supra*, Note 1.
[5] *Division Docket*, pp. 1056-1069.
[6] *Supra*, Note 2.

imported tax-paid Jet A-1 fuel covered by Import Entry and Internal Revenue Declaration (IEIRD) Nos. 796-04 and 856-04.

Aggrieved, petitioner filed the subject *Petition for Review*[7].

Respondent was ordered to file her comment within ten (10) days from receipt of the *Resolution*[8] dated February 9, 2012. Records show that respondent failed to file her comment within the period granted, thus, considering the issues raised in the subject *Petition for Review*, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[9].

Petitioner filed a *Motion to Avail of the Provisions of Section 4, Rule 13 of the Revised Rules of The Court of Tax Appeals in Relation to Section 2, Rule 32 of the Rules of Court with Motion to Defer Submission of Memorandum*[10] on May 11, 2012. Petitioner requested to avail of the services of an independent certified public accountant (ICPA) to prepare a Supplemental Report showing the facts sought by this Court in its *Resolution*[11] dated October 17, 2011 denying petitioner's motion for reconsideration, particularly, that the Jet A-1 fuel delivered to the international carriers came from the importation subject of this case.

Respondent was ordered to comment on the above motion in the *Resolution*[12] dated July 12, 2012. Respondent filed its *Comment*[13] opposing the said motion.

Meanwhile, respondent filed its *Motion to Admit Attached Memorandum* together with the *Memorandum*[14] on June 6, 2012.

In the *Resolution*[15] dated August 31, 2012, the Court held that considering the issues raised by petitioner in its *Motion to Avail of the Provisions of Section 4, Rule 13 of the Revised Rules of The Court of Tax Appeals in Relation to Section 2, Rule 32 of the Rules of Court with Motion to Defer Submission of*

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[7] *Rollo*, pp 33-60.
[8] *Rollo*, pp. 396-397.
[9] *Rollo*, pp. 400-401.
[10] *Rollo*, pp. 402-407.
[11] *Supra*, Note 2.
[12] *Rollo*, pp. 438-440.
[13] *Rollo*, pp. 447-452.
[14] *Rollo*, pp. 416-432.
[15] *Rollo*, pp. 460-462.

Memorandum and considering further that respondent already filed its memorandum, petitioner was ordered to submit its memorandum. In the same resolution, the Court granted respondent's *Motion To Admit Attached Memorandum* and accordingly, admitted the attached memorandum.

Petitioner filed its *Memorandum*[16] on October 12, 2012.

The above-captioned case was submitted for decision on October 24, 2012.

The Issue

Petitioner raises the following sole issue:

> "The Honorable Court erred in denying the instant claim on the ground that petitioner failed to sufficiently prove that the Jet A-1 fuel sold to international and domestic carriers were sourced from the imported tax-paid Jet A-1 fuel covered by IEIRD Nos. 796-04 and 856-04."[17]

The Ruling of the Court

The petition has no merit.

Petitioner insists that the evidence it presented already established that the Jet A-1 fuel sold to international and domestic carriers were withdrawn from the imported Jet A-1 fuel covered by IEIRD Nos. 796-04 and 856-04. Petitioner submitted the relevant importation documents, in particular, the Certificate of Quantity Received (CQR) and the IEIRDs showing that the subject importations of Jet A-1 fuel arrived on March 24, 2004 and March 30, 2004. Hence, as of those dates, the subject imported Jet A-1 fuel was already available to petitioner and they were the source of the imported Jet A-1 fuel sold to international and domestic carriers during the relevant sale period of April 2004. Unfortunately, the Court in Division relied on a mere presumption when it held that the same could not be true since the Authority to Release Imported Goods (ATRIG) were released to the Bureau of Customs (BOC) only on March 26, 2004 and April 5, 2004.

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[16] *Rollo*, pp. 463-492.
[17] *Rollo*, p. 47.

A careful review of the instant *Petition for Review* shows that the grounds relied upon by petitioner are but a mere reiteration of the arguments raised in its *Motion for Reconsideration*[18] and *Memorandum*[19] already passed upon and discussed by the former Special Second Division of this Court. Thus, we reiterate the findings of the Court's Division in the *Resolution*[20] dated October 17, 2011, as follows:

> "In the assailed decision, this court concluded that the withdrawn fuels, which were subsequently sold to international and domestic carriers, were not taken from the imported Jet A-1 Fuels since the same were made on dates prior to the importation and payment of excise taxes.
>
> It is petitioner's contention that the said decision is erroneous. Accordingly, while the Import Entry and Internal Revenue Declaration (IEIRD) Nos. 796-04 and 856-04 were dated April 23, 2004 and April 30, 2004, respectively, the release of the goods from custom's custody occurred on March 24, 2004 and March 30, 2004, respectively. It asserts that the Jet A-1 Fuel sold to air carriers were sourced from the importations covered by IEIRD Nos. 796-04 and 856-04. In support thereof, petitioner presented the movement of the said imported fuel from arrival and withdrawals and the subsequent payment of excise taxes upon final liquidation, viz.:

Arrival Date	Withdrawal Date	WC No.	Volumes in Liters	Amount of Excise Taxes Paid (Php)	IEIRD No.	Date of Final Payment
03/24/04			**4,822,469**	17,698,461	796-04	04/23/04
	03/26/04	39468	3,198,998			
	03/31/04	39496	1,623,471			
03/30/04			**6,707,329**	24,615,897	856-04	04/30/04
	03/31/04	39496	2,382,552			
	04/04/04	39566	4,025,081			
	04/08/04	39595	299,696			
TOTAL			**11,529,798**	**42,314,358**		

> According to petitioner, Section 157 of the 1997 National Internal Revenue Code (NIRC) allows the release of imported petroleum products from custom's custody without prepayment of excise taxes if the products are commingled with tax-paid or bonded products of the importer and the appropriate commingling permit is obtained from the Commissioner of Internal Revenue, contrary to the Court's belief that the imported goods are released only upon payment of duties and taxes as shown in the IEIRD. Thus, inasmuch as it previously obtained a Commingling Permit from the BIR, it is allowed to withdraw the imported petroleum products, such as Jet A-1 fuel, from custom's

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[18] *Supra*, Note 5.
[19] *Division Docket*, pp. 1435-1461.
[20] *Supra*, Note 2.

custody without prepayment of excise tax. Petitioner further states that it duly secured the Authority to Release Imported Goods (ATRIG), as required in the Commissioner of Internal Revenue's letter to the Commissioner of Customs attached to Customs Memorandum Circular No. 242-98, which shall serve as the basis for the release of the imported petroleum products without prepayment of excise taxes.

Petitioner also asserts that Sections 1201 and 1301 of the Tariff and Customs Code of the Philippines (TCCP) gives importers a period of thirty (30) days from the date of last discharge from the vessel within which to make its formal entry of the imported articles as well as the final payment of duties and taxes due thereon. Accordingly, the entries to importations of March 24 and March 30, 2004 were finalized under IEIRD No. 796-04 filed on April 23, 2004 and IEIRD No. 856-04 filed on April 30, 2004, for which the corresponding duties, excise taxes and fees were eventually paid to the Bureau of Customs.

Indeed, Section 157 of the NIRC allows the withdrawal of imported petroleum products from customs custody without the prepayment of excise tax, which products may be commingled with the tax-paid or bonded products of the importer after securing a prior permit from the Commissioner. In relation to the aforesaid provision of the NIRC, Customs Memorandum Circular No. 242-98 highlights the requirements before the importer is allowed to withdraw the imported petroleum products without the prepayment of excise tax, viz.:

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> 1. Payment of excise tax on imported petroleum products, in general, is due before release of such goods from customs custody and the said tax shall be paid by the importer to your Bureau. However, **pursuant to Section 157 of the Tax Code, importers of petroleum products who have refinery facilities duly registered with the BIR are allowed to remove from Customs custody imported petroleum products without prepayment of excise tax for commingling with their bonded stocks provided an appropriate Commingling Permit has been from the [sic] secured from the Commissioner of Internal Revenue and these products are to be directly delivered and loaded to the storage tanks at their own refinery premises.**

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> 4. **Prior to release of imported goods from Customs custody, importers are required to apply with this Bureau for an Authority to Release**

> **Imported Goods (ATRIG). The duly notarized application form is accompanied by all the requisite importation documents. These documents would then be the basis for the issuance of an ATRIG wherein the details of each and every importation are indicated including the intended destination of the shipment (i.e., that the shipment will be discharged and commingled with their bonded stocks at their refinery) and the authority to release the articles from Customs custody without the prepayment of excise tax pursuant to Section 157 of the Tax Code.** The ATRIG is being issued for each and every shipment. If the foregoing authority is not reflected in the duly issued ATRIG, the corresponding excise tax due on the importation shall be collected by the Bureau of Customs before release of the articles from customs custody.

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As correctly argued by petitioner, the withdrawals of the subject imported petroleum products without prepayment of excise tax are allowed pursuant to Section 157 of the NIRC as well as Customs Memorandum Circular No. 242-98.

Records disclose that petitioner has been issued by the BIR a Commingling Permit and ATRIGs for the importations subject of the instant claim. However, this Court notes that the ATRIG covering the first importation of 4,822,469 liters of Jet A-1 fuel was dated March 24, 2004 and stamped with "RELEASED TO BOC" on March 26, 2004; and that the ATRIG covering the second importation of 6,707,329 liters of Jet A-1 fuel was dated April 2, 2004 and stamped with "Released to BOC" on April 5, 2004. Evidently, the subject importations were allowed to be released from custom's custody only on March 26 and April 5, 2004. Thus, petitioner could not have received the said importations on the alleged dates of March 24 and March 30, 2004.

Furthermore, the dates of release of the subject importation as reflected in the ATRIGs can be confirmed from the summary of receipts and removals per Official Registry Book (ORB) of petitioner's Tabangao refinery for the months of March and April 2004, which showed the following:

	2004	
JET A-1 (in liters)	**March**	**April**
Opening Balance	5,330,099	2,949,226
Add: Production	19,893,528	25,001,960
Add: Receipts Imports/Locals	4,822,469	6,707,329
Total Available	**30,046,096**	**34,658,515**
Less: Removals from:		

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Tax Paid Fr-Imported	4,822,469	6,707,329
Tax Free	22,274,401	21,142,102
Total Removals	**27,096,870**	**27,849,431**
Ending Balance	**2,949,226**	**6,809,084**

The above tabulation belies petitioner's allegation that both importations were released in March 2004. If this Court is to believe petitioner's assertion that it received the subject importations on March 24 and March 30, 2004, then petitioner should have reflected both importations as receipts in its ORB-Tabangao refinery for the month of March 2004 and no importation should have been shown in its ORB-Tabangao refinery for the month of April 2004.

Therefore, what is clear is that the subject importations covered by IEIRD Nos. 796-04 and 856-04 were allowed to be released on March 26, 2004 and April 5, 2004, respectively. Petitioner's receipts of importations ahead of the dates of the IEIRDs were justified on account of its Commingling Permit and ATRIGs.

At this point, this Court will now determine whether the Jet A-1 Fuel sold to air carriers from March to April 2004, upon which the claimed excise tax is based, came from the importations covered by the aforesaid IEIRDs.

As revealed by petitioner, all throughout the process of withdrawals and delivery of the Jet A-1 Fuel, the same went from one bonded storage tank to another. Upon release from Customs, the imported Jet A-1 Fuel were stored at bonded storage tanks in the Tabangao, Batangas refinery and commingled with the locally-manufactured stocks pursuant to the Commingling Permit. From the Tabangao refinery, the imported Jet A-1 Fuel were transferred to bonded storage tanks at the Pandacan depot. From Pandacan, it went again to bonded storage tanks at the Joint Oil Company Aviation Storage Plant (JOCASP) in the Ninoy Aquino International Airport and UPS Clark in the Diosdado Macapagal International Airport in Pampanga from where the imported Jet A-1 Fuel were delivered to domestic and international carriers.

In its Memorandum dated August 8, 2011, petitioner further narrates the details of the withdrawals and the subsequent sale of Jet A-1 Fuel to international and domestic air carriers, including the occurrence of in-transit losses in support of its claimed excise taxes, viz.:

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> 21. <u>When the imported tax-paid Jet A-1 Fuel subject of this claim were transferred in various batches from the Tabangao Refinery to the Pandacan Depot, the respective **WCs, i.e., WC Nos. 39468,**</u>

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39496, 39566 and 39595, covering each removal erroneously contained the notation "Excise Tax to Be Paid in Pandacan," instead of "tax-paid."

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While the Withdrawal Certificates (WCs) contained the notation "Excise Tax to Be Paid in Pandacan", this Court cannot ascertain whether the Jet A-1 fuel covered by the WCs actually pertain to the imported tax-paid Jet A-1 fuel. It bears stressing that petitioner's imported and locally-manufactured Jet A-1 fuel were commingled and stored in the same storage tank. Thus, in order for the Court to verify the trail of stocks of petitioner's imported and locally-manufactured Jet A-1 fuel at the Tabangao refinery on a first-in, first-out basis, petitioner should have submitted the ORB of the Tabangao refinery showing daily stock balances and daily inventory movement of both locally manufactured and imported Jet A-1 fuels for the months of March and April 2004 and some other documents which would sufficiently establish that the Jet A-1 fuel indicated in the WCs came from the imported stocks.

Moreover, this Court noted a discrepancy upon comparison of the volume of Jet A-1 fuel as indicated in the aforesaid WCs and in the summary of petitioner's receipts and removals per ORB-Tabangao refinery for the months of March and April 2004.

It was observed that part of the 6,707,329 liters of imported tax-paid Jet A-1 fuel was allegedly withdrawn on March 31, 2004 per WC no. 39496 with a volume of 2,382,552 liters. On the other hand, the ORB summary for the month of April 2004 reflected that the entire 6,707,329 liters of imported tax-paid Jet A-1 fuel were received by the Tabangao refinery only in April 2004.

In addition, the Court noticed that per the Tabangao refinery's ORB summary for the month of March 2004, all of the imported Jet A-1 fuels of 4,822,469 liters received in March were also withdrawn by the refinery in the same month. Thus, the refinery's Jet A-1 fuel inventory of 2,949,226 liters as of March 31, 2004 pertains to locally-manufactured Jet A-1 fuels.

While petitioner proved that it sold Jet A-1 fuel to international and domestic air carriers in April 2004, petitioner failed to sufficiently prove that such sales were sourced from the imported tax-paid Jet A-1 fuel covered by IEIRD Nos. 796-04 and 856-04. Although petitioner submitted the detailed ORBs of the Pandacan Depot for the months of March and April 2004 and detailed ORB of JOCASP for April 2004, the receipts and removals recorded therein cannot be ascertained to be coming from the imported tax-paid Jet A-1 fuel without the detailed ORB of the Tabangao refinery for the months of March and April 2004. Further, petitioner failed to present the detailed ORB of UPS Clark Depot for April 2004 and the WCs relating to the deliveries made by JOCASP and UPS Clark Depot to tax-exempt international carriers and taxable domestic air carriers. These WCs are material in determining whether there were indeed erroneous notations therein that made petitioner pay a second round of excise taxes on its deliveries to taxable domestic air carriers." (*Citations omitted*)

In addition to the foregoing, *We* found the following:

First, petitioner contends that it received the subject importations of Jet A-1 fuel on March 24, 2004 and March 30, 2004 supported by the CQR[21] and IEIRDs[22]. However, a close examination of the CQR would reveal that these were merely executed by petitioner. In the Judicial Affidavit of Mr. Garry B. Galvez[23], presently the Supply Operations Manager of petitioner, he narrated that "[U]pon full discharge of the products from the vessel, such that the last batch of the products is fully transferred to the tanks in Tabangao refinery, **PSPC executes a Certificate of Quantity Received ("CQR")**. The CQR indicates the quantity of the products received and date of last discharge of products to Tabangao refinery. The date of last discharge is indicated in the 'Date received' portion of the CQR." The IEIRDs are likewise accomplished by petitioner.

In contrast, the ATRIG, which is required to be secured prior to release of imported goods from Customs custody in accordance with Customs Memorandum Circular No. 242-98, is issued by the BIR and presented to the BOC. Hence, *We* believe it was reasonable for the Court in Division to have relied on the dates indicated in the ATRIG than that indicated on the CQR or the IEIRDs. Moreover, *We* note that petitioner was not able to offer an explanation as to the significance of the stamps "RELEASED TO BOC Date: March 26, 2004" and "RELEASED TO BOC Date: April 5, 2004" appearing on the ATRIGs. Thus, the Court in Division had reason to believe that these are the actual dates when the importations were allowed to be released from custom's custody.

Second, based on the CQR, the second importation was received on March 30, 2004. However, the ORB summary of

[21] *Division Docket*, p. 1321 (*Exhibit "NNNN-3"*) and p. 1330 *(Exhibit "OOOO-3")*.
[22] *Division Docket*, p. 567-568 *(Exhibits "E" and "E-1")*.
[23] *Division Docket*, p. 1397-1406 *(Exhibit "XXXX")*.

the Tabangao refinery for the month of April 2004 reflected that the entire 6,707,329 liters (i.e., the second importation) of Jet A-1 fuel were received by the Tabangao refinery only in April 2004. Petitioner explained that the second importation was included in the April 2004 ORB since the discharge of the Jet A-1 fuel from the vessel was completed only on April 2, 2004. Clearly, there are inconsistencies as to when the second importation of Jet A-1 fuel was received at the Tabangao refinery.

Third, petitioner argues that the former Special Second Division's presumption that the goods could be removed only on or after April 5, 2004 is belied by the fact that petitioner was given a "Special Permit to Discharge"[24] by the BOC, which allowed petitioner to unload and discharge Jet A-1 fuel to the storage tank. Hence, it could not have been physically impossible that the imported Jet A-1 fuel in the second importation was removed earlier than April 5, 2004.

However, a reading of the Special Permit to Discharge will show that it is a letter signed by petitioner dated March 29, 2004 applying for a special permit to discharge 40,000 US barrels of Jet A-1 fuel. It was stamped received by the Office of the District Collector of Customs on March 29, 2004. On the lower right portion of the letter, there is a stamp mark with some unreadable portions which appears to be an approval. Even if *We* were to agree that this stamp is an approval, the same did not indicate the date when the permit was approved.

Fourth, upon examination of the WC Nos. 39468, 39496, 39566 and 39595[25], *We* note that the details contained in WC Nos. 39468, 39496 and 39566 matches the details presented in the table above. However, for WC No. 39595, it contains the following entries:

PRODUCT	VOLUME	AMOUNT OF SPECIFIC TAX
UPM (S247 UPM)	4,366,898	TAX PAID
AVTUR (S248 AVR)	**45,810**	**EXCISE TAX TO BE PAID IN PAND.**

Based on the above, the withdrawn Jet A-1 fuel under WC No. 39595 is only 45,810 liters while in the table presented above, the withdrawn fuel was 299,696 liters. Thus, *We* note another discrepancy.

Lastly, petitioner argues that the Court's presumption disregarded the findings of the court-commissioned ICPA who,

[24] *Rollo*, p. 394, attached as *Annex "W"* to the Petition for Review.
[25] *Division Docket*, pp. 569-572 (*Exhibits "E-2" to "E-5"*).

after having verified each and every document of the voluminous documents examined in the course of his audit, attested to the fact established in his Report.

However, under Rule 13, Section 3 of the Revised Rules of Court of Tax Appeals, the findings and conclusions of the ICPA are not conclusive upon the Court.

But even if *We* were to set aside the above ruling, the instant petition must still fail.

In claiming entitlement to the refund sought, petitioner invokes Section 135 (a) of the National Internal Revenue Code (NIRC) of 1997, to wit:

> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **Petroleum products sold to the following are exempt from excise tax**:
>
> (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; xxx" *(Emphasis supplied)*

However, nothing in the foregoing provision explicitly grants exemption from the payment of excise tax in favor of oil companies selling their imported petroleum products to international carriers.[26]

With regard to the person liable to pay the excise tax, Section 131 of the NIRC of 1997 provides:

> SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers**, conformably with the regulations of the

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[26] *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7939, July 31, 2012, affirmed in the Resolution dated November 20, 2012 and *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8022, August 30, 2012, affirmed in the Resolution dated November 20, 2012.

> Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. xxx xxx

Hence, as the importer of the petroleum products sold to international air carriers, petitioner is liable to pay the excise tax due on the said importation.[27]

In the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[28] (*Shell* case), involving petitioner's claim for excise tax refund for petroleum products sold to international carriers but which covers different periods, the Supreme Court held that the exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the petroleum products sold. The pertinent portion of the ruling reads:

> "Under Chapter II 'Exemption or Conditional Tax-Free Removal of Certain Goods' of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, **Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer.** Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135(a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.
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> **The exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines.** xxx xxx

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[27] *Ibid.*
[28] G.R. No. 188497, April 25, 2012.

On January 22, 2008, or five years after the sale by respondent of the subject petroleum products, then Secretary of Finance Margarito B. Teves issued Revenue Regulations No. 3-2008 "Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment." Said issuance recognized the "tax relief to which the taxpayers are entitled" by availing of the following remedies: (a) a claim for excise tax exemption pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment.

> SEC. 2. IMPOSITION OF EXCISE TAX ON REMOVAL OF EXCISABLE ARTICLES FOR EXPORT OR SALE/DELIVERY TO INTERNATIONAL CARRIERS AND OTHER TAX-EXEMPT ENTITIES/AGENCIES. — **Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment**, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.
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> xxx xxx xxx
>
> (Emphasis supplied.)

In this case, however, the Solicitor General has adopted a position contrary to existing BIR regulations and rulings recognizing the right of oil companies to seek a refund of excise taxes paid on petroleum products they sold to international carriers. It is argued that there is nothing in Sec. 135 (a) which explicitly grants exemption from the payment of excise tax in favor of oil companies selling their petroleum products to international carriers and that the only claim for refund of excise taxes authorized by the NIRC is the payment of excise tax on exported goods, as explicitly provided in Sec. 130 (D), Chapter I under the same Title VI:

> (D) *Credit for Excise Tax on Goods Actually Exported.* — When goods locally produced or manufactured are removed and

> actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

According to the Solicitor General, Sec. 135 (a) in relation to the other provisions on excise tax and from the nature of indirect taxation, may only be construed as prohibiting the manufacturers-sellers of petroleum products from passing on the tax to international carriers by incorporating previously paid excise taxes into the selling price. In other words, respondent cannot shift the tax burden to international carriers who are allowed to purchase its petroleum products without having to pay the added cost of the excise tax.

We agree with the Solicitor General.

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and not a specific provision of law exempting the goods sold from the excise tax. But as already stated, **the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products)**. Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such," there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135 (a) for their purchases of locally manufactured petroleum products. **Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.**

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An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

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Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus 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.** *(Emphasis supplied and citations omitted)*

Accordingly, petitioner is not entitled to any refund or issuance of tax credit certificate on excise taxes paid on Jet A-1 fuel sold to international air carriers pursuant to the doctrine laid down by the Supreme Court in the *Shell* case.

It is well-settled that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings[29].

Petitioner argues that the Court in Division limited the only remaining issue to whether the Jet A-1 fuel sold and delivered to international carriers came from the subject importation. Hence, on the basis of Section 135 of the NIRC, its entitlement to a claim for refund has already been settled.

Contrary to petitioner's argument, paragraph 2, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, states that "[I]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case".

In this case, the determination of whether petitioner, as importer of the Jet A-1 fuel, is exempt from the payment of excise tax sold to international carriers is a primary concern, for thereon would depend the basis of the claim for excise tax refund. Should it be determined that there is no law exempting petitioner from payment of the excise tax, then petitioner's claim for refund would have no leg to stand on.

Petitioner insists that the above-cited *Shell* case cannot be made to apply since it cannot yet be considered an authority or a judicial precedent on the issue. Allegedly, the *Shell* case is still pending with the Supreme Court by way of a Motion for Reconsideration. Moreover, the said case cannot be made to apply on the ground of non-retroactivity of judicial rulings.

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[29] *Commissioner of Internal Revenue vs. Michel J. Lhuiller, G.R. No. 150947, July 15, 2003.*

This Court is not persuaded.

In two cases entitled *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*[30], involving basically the same issues, the Court's former First Division addressed the same argument being posted by petitioner, i.e., the *Shell* case is not yet final and executory. In the said case, the Court in Division held that oil companies who sold their petroleum products to exempt entities are not entitled to a refund of excise taxes reasoning that there is nothing in Section 135 (c)[31] of the 1997 NIRC that explicitly grants exemption from the payment of excise tax in favor of oil companies selling their imported petroleum products to legally exempt entities. Moreover, in the case of *Philippine Acetylene Co. vs. Commissioner of Internal Revenue*[32], the Highest Tribunal held that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. Thus, even though the decision cited the *Shell* case as another basis for its decision, still the same was mainly anchored on the provision of Section 135 (c) of the 1997 NIRC.

We also note that the *Shell* case was likewise applied in CTA Case No. 7731 dated September 7, 2012[33], which involves petitioner's claim for refund or issuance of a tax credit certificate representing excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period covering February to April 2006.

Anent the non-retroactive application of the *Shell* case, the Supreme Court, in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[34], upheld the Court of Tax Appeal's application of the pronouncements in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[35], even though the latter case was promulgated on 22 January 2007 or after Accenture filed its Petition with the Court's Division. The Supreme Court held:

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[30] *Supra*, Note 26.
[31] 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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(c) Entities which are by law exempt from direct and indirect taxes.
[32] 20 SCRA 1056.
[33] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue.*
[34] G.R. No. 190102, July 11, 2012.
[35] G.R. No. 153205, January 22, 2007.

> "Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. **When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one.** When this Court interpreted Section 102 (b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that **the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect**."[36] *(Emphasis supplied)*

Hence, the date of effectivity of the provisions of Sections 135 (a) and 131 (A) of the 1997 NIRC must be the date from which said law must take effect and not from the date of the promulgation of any decision pertinent to said law.

Time and again, *We* have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. 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. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[37]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[36] Citing *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 907-908 (1996) and *Senarillos v. Hermosisima*, 100 Phil. 501 (1956).
[37] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010 citing *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 131-132 (2003).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice