CTA Form No. 8

22-000331-0069

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10914

PILIPINAS SHELL PETROLEUM,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LAYUG CELICIOUS-SY & VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Avenue, Ortigas Center
1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **January 19, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 21, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10914**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 19 2026; 4:20PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner Pilipinas Shell Petroleum Corporation (**petitioner/PSPC**) pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(2)[3], Rule 4, of the

[1] Filed on 12 July 2022, Division Docket, pp. 6-414, with annexes.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the **inaction** of the **Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Emphasis and underscoring supplied)

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or

Revised Rules of the Court of Tax Appeals[4] (**RRCTA**). It seeks a refund in the aggregate amount of ₱18,908,370.00, which allegedly represents excise taxes paid on petroleum products sold to Shell Philippines Exploration, B.V. (**SPEX**), an entity exempt from excise tax, covering the period from July to November 2020.[5]

PARTIES TO THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Brgy. Fort Bonifacio, Taguig City, Metro Manila, 1635.[6] 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.[7]

Through its own refinery in Tabangao, Batangas (the "**Tabangao Refinery**"), petitioner generally produces, and sometimes imports, various petroleum products, including automotive diesel oil (**ADO**), which petitioner sells and delivers to different customers, such as SPEX.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), who is tasked to assess and collect all national internal revenue taxes, fees, charges, and enforce all forfeitures, penalties, and fines connected therewith. He or she holds office at the Bureau of Internal Revenue (**BIR**)

other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis and underscoring supplied)

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Summary of the Case, Pre-Trial Order dated May 26, 2023, Division Docket, Volume I, p. 523.

6 See Certificate of Filing of Amended Articles of Incorporation (**AOI**) dated 25 January 2019 (with attached Amended AOI), Exhibit "P-23", id., Volume II, pp. 1077-1091.

7 Paragraph 4, Statement of Facts, Petition for Review, supra at note 1, p. 7.

National Office Building, Agham Road (now, Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City.[8]

FACTS OF THE CASE

From July to November 2020, petitioner imported ADO through its Tabangao Refinery, paying the corresponding excise taxes therefor, as follows:

Vessel	Single Administrative Document (SAD) No.	SAD Date	Volume Paid	Amount of Excise Tax	Payment Date
Mt. Silver Ebalina	C 1015182[9]	10 July 2020	48,353,795	₱290,122,770.00	13 July 2020
Mt. CSC Amethyst	C 1015645[10]	21 July 2020	48,428,434	290,570,604.00	24 July 2020
Mt. Oriental Gold	C 1016087[11]	03 August 2020	48,521,325	291,127,950.00	04 August 2020
Mt. Songa Diamond	C 1016551[12]	11 August 2020	16,413,202	98,479,212.00	12 August 2020
Mt. Everhard Schulte	C 1016951[13]	19 August 2020	16,160,837	96,965,022.00	20 August 2020
Mt. Silver Hannah	C 1017284[14]	26 August 2020	48,956,142	293,736,852.00	27 August 2020
Mt. Jason	C 1018385[15]	17 September 2020	46,548,029	279,288,174.00	18 September 2020
Mt. CSC Peace	C 1018899[16]	29 September 2020	31,428,200	188,569,200.00	30 September 2020
Mt. Nave Atria	C 1019604[17]	13 October 2020	49,597,058	297,582,348.00	14 October 2020
Mt. BW Yangtze	C 1020524[18]	04 November 2020	50,680,348	304,082,088.00	06 November 2020
Mt. MR Leo	C 1020989[19]	13 November 2020	26,786,123	160,716,738.00	16 November 2020

Petitioner alleges that a portion of imported and excise tax-paid ADO was subsequently sold and delivered to SPEX during the period from July to November 2020. Petitioner withdrew said ADO from the Tabangao Refinery and delivered it to SPEX pursuant to these transactions.

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8 Par. 1, I. Stipulation of Facts, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, Volume I, p. 507.
9 Exhibit "P-1-3", id., Volume II, p. 841.
10 Exhibit "P-2-3", id., p. 853.
11 Exhibit "P-3-3", id., p. 866.
12 Exhibit "P-4-3", id., p. 878.
13 Exhibit "P-5-3", id., p. 890.
14 Exhibit "P-6-3", id., p. 902.
15 Exhibit "P-7-3", id., p. 912.
16 Exhibit "P-8-3", id., p. 924.
17 Exhibit "P-9-3", id., p. 936.
18 Exhibit "P-10-3", id., p. 948.
19 Exhibit "P-11-3", id., p. 960.

Since SPEX enjoys exemption from excise tax on purchases of ADO as a petroleum service contractor of the government under Service Contract No. 38[20] ("**SC 38**"), petitioner further alleges that sales and deliveries of ADO to SPEX excluded excise taxes and were made net of such taxes. Petitioner accordingly received payment from SPEX for ADO sold net of excise taxes. Petitioner nonetheless paid excise taxes on ADO sold to SPEX.

Thus, on 08 July 2021, petitioner filed a letter-application for refund or tax credit dated 27 May 2021[21], together with the corresponding Application for Tax Credit/Refund (BIR Form No. 1914)[22] (**administrative claim**), with the BIR's Excise Large Taxpayers Audit Division II (**ELTAD II**). Petitioner sought the recovery of excise taxes allegedly paid from July to November 2020 on ADO sold to SPEX, in the aggregate amount of ₱18,908,370.00, computed as follows:

Period	Volume in Liters	Excise Tax Paid
July 2020	411,600	₱2,469,600.00
August 2020	596,232	3,577,392.00
September 2020	646,824	3,880,944.00
October 2020	411,752	2,470,512.00
November 2020	1,084,987	6,509,922.00
TOTAL	**3,151,395**	**₱18,908,370.00**

PROCEEDINGS BEFORE THE COURT

Alleging respondent's inaction on its claim for refund or issuance of a tax credit certificate (**TCC**), on 12 July 2022, petitioner filed its Petition for Review[23], praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱18,908,370.00. The amount represents the excise taxes that petitioner paid on ADO sold to a tax-exempt entity,

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20 Exhibits "P-17" (Original Computer Printout) and "P-17-1" (Certified True Copy), id., pp. 978-998 and 999-1064, respectively.
21 Exhibit "P-22", id., Volume II, pp. 1074-1075.
22 Exhibit "P-22-1", id., p. 1076.
23 Supra at note 1.

i.e., SPEX, from July to November 2020. The case was docketed as CTA Case No. 10914 and raffled to the Second Division.[24]

On 17 August 2022, the Second Division issued Summons[25] to respondent directing him or her to submit an Answer within 30 days from service. Respondent received the said Summons on 25 August 2022.[26]

After the Second Division granted an extension of time[27], respondent filed his or her Answer.[28] There, respondent cited the following special and affirmative defenses: (1) petitioner is not entitled to the refund of the subject excise taxes paid from July to November 2020 on its imported and locally-produced ADO that were allegedly subsequently sold and delivered to a tax-exempt entity; and (2) a claim for refund of excise taxes paid is authorized only under Section 130(D)[29] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

On 27 October 2022, the Second Division issued a Notice of Pre-Trial Conference[30], setting the Pre-Trial Conference on 09 March 2023. Accordingly, on 06 March 2023, petitioner filed its Pre-Trial Brief[31], while respondent filed his or her Pre-Trial Brief[32] on 09 March 2023. Meanwhile, on 27 January 2023, respondent transmitted to the Second Division the present case's BIR Records, consisting of 392 pages

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24 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

25 Division Docket, Volume I, p. 417.

26 See Summons dated 17 August 2022, id.

27 See Order dated 29 September 2022, id., p. 424.

28 Filed on 20 October 2022, id., pp. 425-436.

29 SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* —

...

(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. (Emphasis supplied)

30 Division Docket, Volume I, pp. 438-439.

31 Id., pp. 445-457.

32 Id., pp. 458-461.

in one (1) folder.[33] The Second Division noted the same in the Minute Resolution dated 30 January 2023.[34]

At the scheduled Pre-Trial Conference on 09 March 2023, the Second Division granted the parties a thirty (30)-day period to file their Joint Stipulation of Facts and Issues (**JSFI**).[35] Within the extended period granted by the Second Division[36], on 20 April 2023, the parties filed their JSFI.[37]

On 11 April 2023, petitioner filed a "Motion to Avail of the Provisions of Section 5, Rule 12 of the [RRCTA]"[38] (**Motion for Commissioning**), requesting the appointment of Hazel D. Pangandian-Tabamo (**Pangandian-Tabamo**) of Roxas Cruz Tagle and Co., as the Independent Certified Public Accountant (**ICPA**).

In the Resolution dated 11 May 2023[39], the Second Division approved the parties' JSFI, declared the pre-trial terminated, and set the possible commissioning of petitioner's ICPA and the initial presentation of petitioner's evidence on 11 July 2023 and 27 July 2023, respectively. Subsequently, on 26 May 2023, the Second Division issued a Pre-Trial Order[40], again confirming its approval of the JSFI and formally declaring the pre-trial proceedings terminated.

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023[41], the present case was transferred to the First Division.[42]

In the trial that ensued thereafter, petitioner presented its testimonial and documentary evidence. It offered the testimonies of

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33 See Compliance dated 27 January 2023, id., pp. 440-442.
34 Id., p. 444.
35 See Minutes of the Hearing and Order, both dated 09 March 2023, id., pp. 463 and 464-465, respectively.
36 See Resolution dated 20 April 2023, id., p. 506.
37 Id., pp. 507-519.
38 Id., pp. 472-484, with annexes.
39 Id., p. 521.
40 Id., pp. 523-529.
41 See Notice dated 29 May 2023, id., p. 530.
42 The First Division is composed of Presiding Justice Roman G. Del Rosario (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

the following witnesses: (1) Anna Beatriz M. Vergel De Dios (**De Dios**), petitioner's Import/Additives Scheduler; (2) Alfonso Paolo F. Dela Cruz (**Dela Cruz**), petitioner's Supply Scheduler; (3) Berenice Angelique L. Flores (**Flores**) petitioner's Senior Tax Adviser; (4) Atty. Farida Nimfa G. Dimailig (**Atty. Dimailig**) petitioner's Country Tax Manager; and (5) ICPA Pangandian-Tabamo.

During the 05 September 2023 hearing, petitioner presented the testimonies of its witnesses, De Dios and Dela Cruz.[43]

De Dios' testimony was offered to prove the following: (1) the process and document flow in connection with petitioner's importation of ADO from July to November 2020, the payment of taxes thereon, the withdrawal of such imported ADO from petitioner's Tabangao Refinery, and the sale and delivery thereof to various customers, including SPEX; (2) the circumstances relating to petitioner's importation of ADO for the period from July to November 2020; (3) payment of the corresponding customs duties, excise taxes and fees on said importations and withdrawals of ADO; (4) correlation between the arrival of ADO importations during period from July to November 2020 and the withdrawals or removals of ADO sold and delivered to SPEX during the same period; and (5) that imported ADO sold and delivered to SPEX during the period from July to November 2020 originated from importations subject of the instant refund claim.[44]

On cross-examination, De Dios noted that petroleum products stored in the product tanks at petitioner's Tabangao Refinery are mixed together and there is no specific designation for each importation.[45]

Petitioner did not conduct any redirect examination.[46]

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[43] See Minutes of the Hearing and Order, both dated 05 September 2023, Division Docket, Volume II, pp. 586-A to 586-E and 586-G to 586-J.

[44] See Judicial Affidavit of Anna Beatriz Vergel de Dios dated 09 July 2022, Exhibit "P-25", id., Volume I, pp. 130-296, with attached exhibits.

[45] TSN dated 05 September 2023, pp. 22-23.

[46] Id., p. 23.

Petitioner's next witness, Dela Cruz, testified to establish the following: (1) process and documentation governing withdrawals of ADO from petitioner's Tabangao Refinery and the subsequent sale and delivery thereof to SPEX; and (2) that ADO imported through and withdrawn from the Tabangao Refinery during the period from July to November 2020 was assessed excise taxes that petitioner paid and that ADO subsequently sold and delivered to SPEX originated from imported petroleum products subject of the instant refund claim.[47]

On cross-examination, Dela Cruz confirmed that once petroleum products are stored in tanks, Coco Methyl Ester (**CME**) is thereafter added. However, when asked how he informed the Bureau of Customs (**BOC**) of specific petroleum products withdrawn when individual importations become commingled with other importations, he stated that he did not know.[48]

Petitioner did not conduct any redirect examination.[49]

In another hearing held on 14 September 2023, petitioner presented the testimonies of its witnesses, Flores and Atty. Dimailig.[50]

Flores testified to prove the following: (1) petitioner's general procedure and flow of documents on the importation and withdrawals of petroleum products, particularly ADO, for sale and delivery to various customers, including SPEX, as well as the payment of excise taxes thereon; (2) its general procedure and the flow of documents on its claim for refund or tax credit of excise taxes paid on the sale and delivery of ADO to tax-exempt entities like SPEX; (3) correlation between the withdrawals or removals of ADO imported for the period from July to November 2020 through petitioner's Tabangao Refinery and the sale and delivery thereof to SPEX within the same period; (4) ADO sold and delivered to SPEX from July to November 2020 originated from imported ADO on which taxes were paid during the same period; (5) prices of ADO billed to tax-exempt entities like SPEX are net of excise taxes; and (6) filing with the BIR, through the ELTAD

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[47] See Judicial Affidavit of Alfonso Paolo F. Dela Cruz dated 12 April 2023, Exhibit "P-26", Division Docket, Volume I, pp. 494-504, with attached exhibits.

[48] TSN dated 05 September 2023, pp. 27-28.

[49] Id., p. 28.

[50] Minutes of the Hearing and Order, both dated 14 September 2023, Division Docket, Volume II, pp. 732-735 and 736-738, respectively.

II, on 08 July 2021, of the administrative claim for refund or tax credit of excise taxes paid on ADO imported during the period from July to November 2020 and sold and delivered to SPEX during the same period.[51]

Petitioner did not conduct any cross-examination.[52]

As for Atty. Dimailig, she testified to the following: (1) petitioner is entitled to the instant claim for refund or tax credit of excise taxes paid on the ADO's importations and withdrawals for the period from July to November 2020, which ADO was subsequently sold to SPEX during the same period; and (2) the sale of ADO to SPEX for use in its petroleum operations in the Philippines is exempt from excise tax pursuant to Presidential Decree (**PD**) No. 87[53], as amended, in relation to Section 135[54] of the NIRC of 1997, as amended.[55]

Petitioner did not conduct any cross-examination.[56]

On 20 October 2023, the First Division received ICPA Pangandian-Tabamo's Report[57] of even date, along with a USB[58]

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[51] See Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", id., Volume I, pp. 308-366, with attached exhibits; Supplemental Judicial Affidavit of Berenice Angelique L. Flores dated 08 September 2023, Exhibit "P-27-2", id., Volume II, pp. 591-661, with attached exhibit.

[52] TSN dated 14 September 2023, p. 11.

[53] THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972.

[54] **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.

(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

(c) Entities which are by law exempt from direct and indirect taxes. (Emphasis supplied)

[55] See Judicial Affidavit of Farida Nimfa G. Dimailig dated 12 July 2022, Exhibit "P-28", Division Docket, Volume I, pp. 367-414, with attached exhibits; Supplemental Judicial Affidavit of Farida Nimfa G. Dimailig dated 08 September 2023, Exhibit "P-28-2", Division Docket, Volume II, pp. 662-731, with attached exhibit.

[56] TSN dated 14 September 2023, p. 17.

[57] Exhibit "P-67", Division Docket, Volume II, pp. 740-776.

[58] Exhibit "P-67-2".

containing related exhibits and annexes. The First Division noted this submission in a Minute Resolution dated 27 October 2023.[59]

On 08 November 2023, petitioner presented the testimony of its last witness, ICPA Pangandian-Tabamo.[60] She attested to the following: (1) performance of her functions as an officer of the Court appointed to conduct an audit examination in relation to these consolidated cases, pursuant to Section 5, Rule 12 and Rule 13 of the RRCTA; (2) as ICPA, she examined petitioner's supporting documents and summarized her findings in her ICPA Report dated 20 October 2023; (3) petitioner imported ADO from July to November 2020 and sold them to SPEX within the same period; (4) petitioner paid the excise tax for the subject ADO sold to SPEX; and (5) the subject ADO was actually sold to SPEX for the period from July to November 2020 in relation to the contract of SPEX as a service contractor of the government under SC 38.[61]

During cross-examination, ICPA Pangandian-Tabamo explained that Proforma Invoices serve merely as proof of purchase that initially triggered importations of ADO which, in turn, became the basis for the claim for excise tax refund. She clarified that the ADO's supplier issued these invoices. When asked about her declaration that screenshots of General Ledger (**GL**) postings supported the Statements of Settlement of Duties and Taxes (**SSDTs**), she confirmed that she personally reviewed the GL postings in the accounting system and verified that these matched descriptions reflected in printed copies by comparing them against system records.[62]

Petitioner did not conduct any redirect examination.[63]

On 04 December 2023, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[64] (**FOE**) consisting of Exhibits "P-1" to "P-67-2", inclusive of

59 Division Docket, Volume II, p. 793.
60 See Order dated 08 November 2023, id., pp. 796-798.
61 See Judicial Affidavit of Hazel D. Pangandian-Tabamo dated 20 October 2023, Exhibit "P-66", id., pp. 781-787.
62 TSN dated 08 November 2023, p. 9.
63 Id.
64 Division Docket, Volume II, pp. 807-837.

sub-markings. On 07 December 2023, respondent filed his or her Comment[65] thereto.

In the Resolution dated 19 February 2024[66] (**FOE Resolution**), the First Division admitted petitioner's exhibits, *except* Exhibit "P-20"[67], for failure to correspond with the description in the FOE. Additionally, the Court noted that Exhibits "P-17" and "P-17-1"[68] lack specific indications that they pertain to SC 38 and that Exhibits "P-29" and "P-67" both pertain to the ICPA Report, and scheduled the initial presentation of respondent's evidence on 16 April 2024.

On 14 March 2024, petitioner filed a Motion for Reconsideration[69] (**MR**) of the FOE Resolution[70], requesting the reconsideration of the denial of, or the admission of, Exhibit "P-20". Respondent filed his or her Comment[71] thereto on 01 April 2024.

In the Resolution 13 June 2024[72], the First Division granted petitioner's MR after finding sufficient basis to confirm that the payment details in Exhibit "P-20" relate to petitioner's sale of ADO to SPEX.

On 06 August 2024, respondent presented his or her lone witness, Revenue Officer (**RO**) Angelika Arugay (**Arugay**).[73]

RO Arugay testified to the following: (1) she holds the position of RO I and was then assigned to the BIR's ELTAD II; (2) her duties include the investigation or examination of all internal revenue tax cases; (3) she reviewed and evaluated petitioner's claim for refund on imported and locally-produced ADO allegedly sold and delivered to

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65 Id., pp. 1092-1094.
66 Id., pp. 1101-1103.
67 Although the FOE describes this exhibit as a "Sample of reports generated through SAP showing payment details on ADO sold to SPEX," the marked document fails to show that posting date, amount, and bank order reference pertain to payments for ADO sold to SPEX, as the document contains no reference to either ADO or SPEX.
68 Supra at note 20.
69 Division Docket, Volume II, pp. 1104-1107.
70 Supra at note 66.
71 Division Docket, Volume II, pp. 1109-1111.
72 Id., Volume III, pp. 1117-1120.
73 See Minutes of the Hearing and Order, both dated 06 August 2024, id., pp. 1143-1145 and 1146-1147, respectively.

SPEX, a tax-exempt entity, in the total amount of ₱18,908,370.00; (4) Letter of Authority (**LOA**) SN: eLA202000003894 / LOA-124-2022-00000046 dated 01 April 2022[74] authorized the audit of petitioner's excise tax refund claim, and she was part of the team assigned to conduct said audit; (5) in the Memorandum Report dated 16 November 2022[75], his team recommended the denial of petitioner's refund claim for failure to comply with the mandatory requirements prescribed under the provisions of Section 135[76] of the NIRC of 1997, as amended; and (6) Officer-In-Charge Assistant Commissioner for Large Taxpayers Service Jethro M. Sabariaga (**OIC-ACIR Sabariaga**) approved her team's recommendation, leading to the issuance of the Denial Letter dated 26 January 2026[77], which was served on petitioner through registered mail[78] on 02 February 2023.[79]

On cross-examination, RO Simon confirmed that the list of supporting documents enumerated under Revenue Memorandum Order (**RMO**) No. 19-2006[80] does not constitute an exhaustive list. She answered in the affirmative when asked to clarify if this would mean that petitioner may submit other documents to establish that petroleum products delivered to international or tax-exempt carriers were sold net of excise tax. She further attested that she examined importation documents submitted by petitioner, sales invoices issued to SPEX, and proofs of payment made by SPEX. She likewise acknowledged that ADO subject of this case was sold to and paid for by SPEX.[81]

Petitioner did not conduct any redirect examination.[82]

On 07 August 2024, respondent filed his or her FOE[83], consisting of Exhibits "R-1" to "R-4", inclusive of a sub-marking. Petitioner filed a Comment[84] thereto on 12 August 2024.

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74 Exhibit "R-1", BIR Records, Folder 2, p. 375.
75 Exhibit "R-2", id., pp. 389-398.
76 Supra at note 54.
77 Exhibit "R-3", BIR Records, Folder 2, pp. 425-426.
78 Exhibit "R-3-1", id., pp. 423-424.
79 See Judicial Affidavit of Revenue Officer Angelika Arugay dated 12 July 2024, Exhibit "R-5", Division Docket, Volume III, pp. 1128-1137.
80 Prescribing the Guidelines and Procedures for the Processing of Pending Claims for Tax Credit/Refund of Excise Tax paid on Petroleum Products.
81 TSN dated 06 August 2024, pp. 8-10.
82 Id., p. 10.
83 Division Docket, Volume III, pp. 1152-1156.

In the Resolution dated 13 November 2024[85], the First Division admitted all of respondent's exhibits and granted both parties a period of 30 days from notice within which to file their respective memoranda.

In compliance with the Court's directive, on 16 December 2024, respondent filed his or her Memorandum[86], while petitioner filed its Memorandum[87] on 23 December 2024.

In a Minute Resolution dated 17 January 2025, the First Division considered the instant case submitted for decision.[88]

ISSUES

As the parties so stipulated, the sole issue for this Court's resolution is —

> WHETHER PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF ₱18,908,370.00 FOR THE ALLEGED EXCISE TAXES PAID ON PETROLEUM PRODUCTS SOLD TO SHELL PHILIPPINES EXPLORATION, B.V. FOR THE PERIOD FROM JULY TO NOVEMBER 2020.[89]

ARGUMENTS

Petitioner asserts that it timely filed a claim for refund or tax credit of excise taxes erroneously, wrongfully, illegally, or excessively collected for excise taxes paid during the period from July to November 2020, pursuant to Sections 204(C)[90] and 229[91] of the NIRC of 1997, as

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84 Id., pp. 1160-1162.
85 Id., pp. 1167-1168.
86 Id., pp. 1169-1190.
87 Id., pp. 1192-1221.
88 Id., p. 1223.
89 Par. 2, II. Stipulation of Issues, JSFI, supra at note 37, p. 508.
90 **SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

...

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered amended. Petitioner further argues that it is entitled to recovery of excise taxes in amount of ₱18,908,370.00 paid during the period from July to November 2020 on ADO sold to SPEX, on grounds that: (**a**) petitioner previously paid excise taxes on petroleum products (*i.e.*, imported ADO) sold to a tax-exempt entity, particularly SPEX; (**b**) petitioner sold excise tax-paid imported ADO to a tax-exempt entity free or net of excise tax; and (**c**) petitioner's sale of imported ADO to SPEX enjoys exemption from excise tax.

Respondent, on the other hand, contends that petitioner is not entitled to the refund of excise taxes allegedly paid during the period from July to November 2020 on imported and locally produced ADO that petitioner allegedly sold and delivered to a tax-exempt entity, particularly SPEX, in amount of ₱18,908,370.00. Respondent further asserts that denial of petitioner's administrative claim for refund rests on sound factual and legal grounds. Respondent likewise maintains that the authority to grant refund of excise taxes arises only under Section 130(D)[92] of the NIRC of 1997, as amended.

RULING OF THE COURT

After a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant petition meritorious.

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unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

91 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.

92 Supra at note 29.

Both Sections 204(C) and 229 of the NIRC of 1997, as amended, deal with the refund of erroneously or illegally collected taxes. Particularly, Section 204(C) applies to administrative claims, while Section 229 to judicial claims.[93] Section 204(C) of the NIRC of 1997, as amended, provides:

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> ...
>
> (c) Credit or refund taxes **erroneously or illegally** received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.[94]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, reads:

> ...
>
> **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

[93] See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, 14 January 2015.

[94] Emphasis supplied and italics in the original text.

> 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.[95]
>
> ...

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[96], the Supreme Court ruled as follows:

> ...
>
> Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.
>
> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.
>
> ...

The afore-quoted provisions are clear. Within two (2) years from the date of payment of the tax or penalty, the taxpayer-claimant must first file an administrative claim with respondent before filing a judicial claim before this Court. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional; hence, this Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[97] Thus, so long as the judicial claim was filed within two (2) years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not

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95 Emphasis supplied and italics in the original text.

96 G.R. No. 226592, 27 July 2021; Citation omitted and italics in the original text.

97 *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. Nos. 180740 & 180910, 11 November 2019.

subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[98]

Thus, for the subject claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, but it must also prove that the subject excise tax paid is an "erroneous or illegal tax."

PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.

The case records show that, from July to November 2020, petitioner imported ADO through the Tabangao Refinery and paid the corresponding excise taxes thereon, as follows:

Vessel	SAD No.	SAD Date	Volume Paid (in Liters)	Rate	Amount of Excise Tax	Payment Date
Mt. Silver Ebalina	C1015182[99]	10 July 2020	48,353,795	₱6.00	₱290,122,770.00	13 July 2020[100]
Mt. CSC Amethyst	C1015645[101]	21 July 2020	48,428,434	6.00	₱290,570,604.00	24 July 2020[102]
Mt. Oriental Gold	C1016087[103]	03 August 2020	48,521,325	6.00	291,107,202.00	04 August 2020[104]
					20,748.00	18 September 2020[105]
					₱291,127,950.00	
Mt. Songa Diamond	C1016551[106]	11 August 2020	16,413,202	6.00	98,469,300.00	12 August 2020[107]
					9,912.00	06 October 2020[108]
					₱98,479,212.00	
Mt. Everhard Schulte	C1016951[109]	19 August 2020	16,160,837	6.00	96,747,624.00	20 August 2020[110]

98 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

99 Exhibit "P-1-3", supra at note 9.

100 See Statement of Settlement of Duties and Taxes (**SSDT**) with Customs Reference No. C1015182, Exhibit "P-1-4", Division Docket, Volume II, p. 842.

101 Exhibit "P-2-3", supra at note 10.

102 See SSDT with Customs Reference No. C1015645, Exhibit "P-2-4", Division Docket, Volume II, p. 854.

103 Exhibit "P-3-3", supra at note 11; Exhibit "P-46", Page 3 of 10, USB (Exhibit "P-67-2").

104 See SSDT with Customs Reference No. C1016087, Exhibit "P-3-4", Division Docket, Volume II, p. 867.

105 See Official Receipt (**OR**) dated 18 September 2020, Exhibit "P-3-9", id., p. 874.

106 Exhibit "P-4-3", supra at note 12; Exhibit "P-46", Page 4 of 10, USB (Exhibit "P-67-2").

107 See SSDT with Customs Reference No. C1016551, Exhibit "P-4-4", Division Docket, Volume II, p. 879.

108 See OR dated 06 October 2020, Exhibit "P-4-9", id., p. 886; Exhibit "P-47" Page 4 of 10, USB (Exhibit "P-67-2").

109 Exhibit "P-5-3", supra at note 13; Exhibit "P-46", Page 5 of 10, USB (Exhibit "P-67-2").

110 See SSDT with Customs Reference No. C1016951, Exhibit "P-5-4", Division Docket, Volume II, p. 891.

Vessel	SAD No.	SAD Date	Volume Paid (in Liters)	Rate	Amount of Excise Tax	Payment Date
					217,398.00	06 October 2020[111]
					₱96,965,022.00	
Mt. Silver Hannah	C1017284[112]	26 August 2020	48,956,142	6.00	293,736,852.00	27 August 2020[113]
Mt. Jason	C1018385[114]	17 September 2020	46,548,029	6.00	279,177,474.00	18 September 2020[115]
					110,700.00	17 November 2020[116]
					₱279,288,174.00	
Mt. CSC Peace	C1018899[117]	29 September 2020	31,428,200	6.00	₱188,569,200.00	30 September 2020[118]
Mt. Nave Atria	C1019604[119]	13 October 2020	49,597,058	6.00	294,499,356.00	14 October 2020[120]
					3,082,992.00	02 December 2020[121]
					₱297,582,348.00	
Mt. BW Yangtze	C1020524[122]	04 November 2020	50,680,348	6.00	₱304,082,088.00	06 November 2020[123]
Mt. MR Leo	C1020989[124]	13 November 2020	26,786,123	6.00	₱160,716,738.00	16 November 2020[125]
Total			431,873,493		₱2,591,240,958.00	

The following are the pertinent dates relative to petitioner's claim for refund or tax credit, *viz*:

Date of Payment	Two (2)-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
13 July 2020	13 July 2022	08 July 2021[126]	12 July 2022[127]
24 July 2020	24 July 2022		
04 August 2020	04 August 2022		
18 September 2020	18 September 2022		
12 August 2020	12 August 2022		

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111 See OR dated 06 October 2020, Exhibit "P-5-9", id., p. 898.
112 Exhibit "P-6-3", supra at note 14.
113 See SSDT with Customs Reference No. C1017284, Exhibit "P-6-4", Division Docket, Volume II, p. 903.
114 Exhibit "P-7-3", supra at note 15; Exhibit "P-46", Page 6 of 10, USB (Exhibit "P-67-2").
115 See SSDT with Customs Reference No. C1018385, Exhibit "P-7-4", Division Docket, Volume II, p. 913.
116 See OR dated 17 November 2020, Exhibit "P-7-9", id., p. 920; Exhibit "P-47" Page 6 of 10, USB (Exhibit "P-67-2").
117 Exhibit "P-8-3", supra at note 16.
118 See SSDT with Customs Reference No. C1018899, Exhibit "P-8-4", Division Docket, Volume II, p. 925.
119 Exhibit "P-9-3", supra at note 17; Exhibit "P-46", Page 8 of 10, USB (Exhibit "P-67-2").
120 See SSDT with Customs Reference No. C1019604, Exhibit "P-9-4", Division Docket, Volume II, p. 937.
121 See OR dated 02 December 2020, Exhibit "P-9-9", id., p. 944.
122 Exhibit "P-10-3", supra at note 18.
123 See SSDT with Customs Reference No. C1020524, Exhibit "P-10-4", Division Docket, Volume II, p. 949.
124 Exhibit "P-11-3", supra at note 19.
125 See SSDT with Customs Reference No. C1020989, Exhibit "P-11-4", Division Docket, Volume II, p. 961.
126 Exhibits "P-22" to "P-22-1", supra at notes 21 and 22.
127 Supra at note 1.

Date of Payment	Two (2)-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
06 October 2020	06 October 2022		
20 August 2020	20 August 2022		
06 October 2020	06 October 2022		
27 August 2020	27 August 2022		
18 September 2020	18 September 2022		
17 November 2020	17 November 2022		
30 September 2020	30 September 2022		
14 October 2020	14 October 2022		
02 December 2020	02 December 2022		
06 November 2020	06 November 2022		
16 November 2020	16 November 2022		

Based on the foregoing, petitioner's earliest excise tax payment for importations made during the period from July to November 2020 occurred on 13 July 2020. Counting two (2) years therefrom, the last day for petitioner to file its administrative and judicial claims for refund fell on 13 July 2022. Accordingly, petitioner timely filed its administrative and judicial claims on 08 July 2021 and 12 July 2022, respectively.

EXCISE TAXES PAID ON IMPORTED PETROLEUM PRODUCTS SOLD TO A TAX-EXEMPT ENTITY, PARTICULARLY SHELL PHILIPPINES EXPLORATION, B.V. (SPEX), WERE ERRONEOUSLY OR ILLEGALLY COLLECTED.

Petitioner alleges that it sold ADO to a tax-exempt entity, specifically SPEX, which enjoys exemption from both direct and indirect taxes pursuant to Section 135(c)[128] of the NIRC of 1997, as amended.

Respondent, invoking Section 135 of the NIRC of 1997, as amended, also argues that the excise tax due on the subject transactions cannot be included in the purchase price because the buyer already holds a tax-exempt status.

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128 Supra at note 54.

Respondent further maintains that Section 135 of the NIRC of 1997, as amended, does not grant exemption to sellers. Instead, said provision enumerates specific instances where petroleum products, when sold to international carriers and other entities listed therein, enjoy excise tax exemption. Respondent asserts that Section 135 cannot serve as a legal basis for petitioner's claim for refund and cannot be invoked by sellers such as petitioner, but only by buyers that qualify as exempt entities. Thus, respondent concludes that petitioner cannot rely on the exemption granted to such entities as a ground to recover excise taxes paid.

We cannot sustain respondent.

In relation to the afore-quoted Sections 204(C)[129] and 229[130] of the NIRC of 1997, as amended, the present claims for refund or issuance of a TCC are governed by the following provisions of the NIRC of 1997, as amended, *viz*:

> ...
>
> SEC. 129. *Goods and Services Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported** as well as services performed in the Philippines. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good or service performed shall be referred to as '*ad valorem* tax.'
>
> ...
>
> SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be <u>paid by the owner or importer</u> to the Customs Officers, conformably with the regulations of the Department of Finance and <u>before the release of such articles from the customshouse</u>**, or by the person who is found in possession of articles which are

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[129] Supra at p. 15.
[130] Supra at pp. 15-16.

exempt from excise taxes other than those legally entitled to exemption.

...

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;

(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

(c) **Entities which are by law exempt from direct and indirect taxes.**[131]

...

In *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*[132], the Supreme Court held that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC of 1997, as amended, and exempt from excise tax, is **deemed illegal or erroneous**, to wit:

...

Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous; and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC**

131 Italics in the original text, emphasis and underscoring supplied.

132 G.R. No. 210836, 01 September 2015; Italics in the original text, emphasis and underscoring supplied.

> **must be construed in favor of the property itself, that is, the petroleum products.**
>
> ...

Relevantly, as the Supreme Court clarified in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[133], "[c]onsidering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135 [of the NIRC of 1997, as amended], any excise taxes which were previously paid thereon would then be considered as '**erroneously or illegally collected**,' and therefore, subject to refund." Moreover, the High Court explained that "the tax exemption under Section 135 [of the NIRC of 1997, as amended] must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers)."

Pursuant to Section 135(c) of the NIRC of 1997, as amended[134], petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase "which are by law exempt from direct and indirect taxes" describes the entities to whom the petroleum products must be sold to render the exemption operative. Section 135(c) of the NIRC of 1997, as amended, should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied. The exemption cannot be granted to the buyers, *i.e.*, the entities that are by law exempt from direct and indirect taxes, because they are not under any legal duty to pay the excise tax.[135]

Clearly, upon petitioner's sale of petroleum products to entities that are by law exempt from direct and indirect taxes, the status of the sold petroleum products as tax-exempt solidifies. Consequently, the excise taxes previously paid on these petroleum products become erroneously or illegally collected taxes. These taxes are then the proper

133 G.R. No. 211303, 15 June 2021.
134 Supra at p. 21.
135 See *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 132.

subject of a claim for refund or credit under Sections 204(C)[136] and 229[137] of the NIRC of 1997, as amended.

As can be gleaned from the above disquisitions, to be entitled to a refund or the issuance of a TCC, the following must be demonstrated: (1) the entity to which the taxpayer-claimant sold the petroleum products is an entity exempt by law from both direct and indirect taxes; and, (2) the taxpayer-claimant, as the statutory taxpayer, paid the excise taxes claimed on the petroleum products sold to the exempt entity.

Section 12(a) of PD 87, or "THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972," provides that contractors operating under a service contract executed with the Government for petroleum exploration and production enjoy exemption from all taxes, except income tax, to wit:

> ...
>
> SEC. 12. *Privileges of contractor.* — The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the Contractor shall have the following privileges:
>
> (a) **Exemption from all taxes except income tax.**[138]
>
> ...

To establish that petitioner sold petroleum products to a tax-exempt entity, petitioner offered in evidence the SC 38[139], by and between the Government of the Republic of the Philippines and Occidental Philippines, Inc. and SPEX, which the contract identifies as Contractor.

Under SC 38, the Contractor shall have the right of exemption from all taxes except income tax, to wit:

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136 Supra at p. 15.
137 Supra at pp. 15-16.
138 Emphasis supplied.
139 See Exhibits "P-17" and "P-17-1", supra at note 20.

...

SECTION VI
RIGHTS AND OBLIGATIONS OF THE PARTIES

...

6.2 CONTRACTOR shall have the following rights:

(a) **Exemption from all taxes except income tax**[.][140]

...

Petitioner further offered in evidence "Amending Agreement # 1" dated 15 July 2019[141] between SPEX and petitioner, which states that the parties entered into a purchase contract for the "Supply of Marine Gas Oil" dated 30 July 2014 identified by agreement number UI47079. Likewise, petitioner presented a Certification[142] issued by SPEX, which states that SPEX used ADO purchased from petitioner during period from July to November 2020 for the operation of its marine vessels.

Correspondingly, as a petroleum service contractor under PD 87, SPEX qualifies as an entity exempt by law from direct and indirect taxes. Thus, the excise taxes that petitioner paid to the Government, as statutory taxpayer, on petroleum products sold to SPEX constitute taxes erroneously or illegally collected and may be subject to refund in favor of petitioner.

The Court shall now determine whether petitioner has sufficiently substantiated its claim by presenting sufficient evidence to establish that: (**a**) the excise taxes on the imported petroleum product (*i.e.*, ADO), which is the subject of the present claim, were duly paid; and (**b**) the said imported ADO were sold and delivered to a tax-exempt entity.

As a preliminary matter, and to properly appreciate the subject transactions, the Court shall first discuss the process flow and documentation involved in the importation of ADO, its removal from the Tabangao Refinery, and its subsequent sale and delivery to SPEX, a tax-exempt entity.

140 Emphasis supplied.
141 Exhibit "P-62", USB (Exhibit "P-67-2").
142 Exhibit "P-63", id.

PROCESS FLOW OF THE IMPORTATION, REMOVAL FROM THE TABANGAO REFINERY, AND SUBSEQUENT SALE AND DELIVERY OF AUTOMOTIVE DIESEL OIL (ADO) TO SHELL PHILIPPINES EXPLORATION, B.V. (SPEX), A TAX-EXEMPT ENTITY.

i. IMPORTATION

In her Judicial Affidavit[143], De Dios, petitioner's Import/Additives Scheduler, detailed the process flow governing the importation of ADO. According to her, petitioner's process and document flow for the importation of ADO consists of the following stages: (1) requisition of goods and importation; (2) arrival and discharge of imported goods; and (3) payment of taxes and import duties.[144]

De Dios further explained that the importation process for petroleum products, particularly ADO, commences when petitioner's Trading and Supply Department determines the necessity and volume requirements for importation and thereafter coordinates with regular suppliers to communicate the required volume of petroleum products to be imported.[145] Once a prospective supplier expresses willingness to meet required volume, the Trading and Supply Department commences negotiations on the price of ADO. Upon agreement on the price, petitioner places an order for the purchase of ADO.[146]

De Dios added that in facilitating shipments of imported ADO, the shipper prepares a Bill of Lading (**BL**) and furnishes copies to both petitioner and supplier, together with other supporting documents such as the Load Port Survey Report (**LPSR**), among others. The supplier thereafter issues a Proforma Invoice to petitioner, indicating the quantity of ADO purchased, which petitioner submits to the BIR and the BOC.[147] Thereafter, petitioner's Trading and Supply Department issues an internal advice to the Tax Department and the

[143] Q&A Nos. 11 to 39, Judicial Affidavit of Anna Beatriz Vergel de Dios dated 09 July 2022, Exhibit "P-25", supra at note 44, pp. 133-139.
[144] Q&A No. 11, Exhibit "P-25", supra at note 44, p. 133.
[145] Q&A No. 12, id.
[146] Q&A No. 13, Exhibit "P-25", supra at note 44, p. 134.
[147] Q&A No. 14, id.

Finance Department of the Tabangao Refinery, informing them of the estimated time of arrival of the imported ADO at the Batangas Port.[148]

De Dios detailed further that upon receipt of the internal advice and prior to the imported ADO's arrival, petitioner, through its broker, lodges the importation details, such as the name of importer, name of vessel, port of destination, terms of delivery, and quantity of ADO, and uploads the corresponding supporting documents, including the BL, LPSR, and Proforma Invoice, through the BOC's Electronic-to-Mobile (**E2M**) System.[149] Petitioner, through its broker, thereafter generates the Single Administrative Document (**SAD**), which contains all information encoded through the E2M System, including the assessment of taxes and duties payable on a particular importation.[150] Once generated, petitioner's representative and the BOC's representative sign the SAD. The SAD then serves as basis for petitioner's payment of assessed taxes and duties to the BOC under a tentative liquidation.[151] Moreover, based on the SAD, petitioner's Accounts Payable Team issues an internal advice to the Global Payment Team to initiate the transfer of funds to the BOC's account through Security Bank's Pass 5 System. Witness De Dios explained that Security Bank's Pass 5 System integrates with the BOC's E2M System; thus, any payment made and verified through Security Bank's Pass 5 System automatically reflects in the BOC's E2M System.[152]

De Dios narrated further that after petitioner pays the taxes and duties under its tentative liquidation[153] through Security Bank's Pass 5 System, the BOC generates an SSDT[154] *via* the BOC's E2M System.[155] She explained that if the importation is taxable, the BOC requires

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148 Q&A No. 15, id.

149 Q&A Nos. 16 and 17, Exhibit "P-25", supra at note 44, pp. 134-135.

150 Q&A No. 21, Exhibit "P-25", supra at note 44, p. 135.

151 Q&A No. 22, Exhibit "P-25", supra at note 44, p. 136.

152 Q&A No. 23, id.

153 There are times when the price of ADO at the date of issuance of *Customs Invoice* differs from its price at the date of arrival of the importation as will be shown in the Final *Invoice* issued by the supplier. Since the payment of taxes and duties as shown on the SAD is based on the tentative price shown in the *Customs Invoice*, such payment has to be finalized by way of payment of the taxes and duties on the price differential, which is usually minimal, if there is any; Q&A No. 33, Exhibit "P-25", supra at note 44, p. 138.

154 The SSDT names petitioner as the company that settled the taxes and duties, and provides, among others, the assessment reference number, the receipt number and date, the mode of payment, and the total amount of taxes and duties paid. The assessment reference number and total amount paid appearing in the SSDT correspond to the assessment reference number and total assessed amount in the SAD; Q&A No. 24, Exhibit "P-25", supra at note 44, p. 136.

155 Q&A No. 24, id.

petitioner to secure and present the BIR's Authority to Release Imported Goods (**ATRIG**)[156] before the BOC actually releases the SSDT to the importer or broker.[157] Upon receipt of the internal advice, petitioner applies for an ATRIG with the BIR and submits the required supporting documents, including the BL, Customs Invoice, and SAD.[158]

According to De Dios, once the vessel arrives at a Philippine port, petitioner presents the SSDT to the port authorities, which then authorizes the discharge of imported ADO into the storage tanks at the Tabangao Refinery. Upon completion of full discharge, meaning complete transfer of the final batch of ADO into the storage tanks at the Tabangao Refinery, petitioner issues a Certificate of Quantity Received[159] (**CQR**).[160]After the final discharge of imported ADO from the vessel, petitioner undertakes a final liquidation of the importation by filing a "Request for Correction of Data in SAD" and attaching the Final Invoice (or Tax Invoice)[161] issued by the supplier. The date of last discharge is based on the "date received" as shown in the CQR.[162] Subsequently, the BOC generates page two (2) of the SAD and manually computes the revised charges and final liquidation amount. If the computation shows an additional amount due, the BOC issues an Assessment Notice to the importer.[163]

De Dios also explained that the BOC confirms the final payment of taxes and duties through issuance of an Official Receipt (**OR**). However, when taxes and duties paid under tentative liquidation equal or exceed amount computed during final liquidation, the BOC does not issue an Assessment Notice or OR. In such instances, the BOC issues only one (1) SSDT for the subject importation.[164]

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156 An ATRIG constitutes permission from the BIR to withdraw the ADO from the Tabangao Refinery, but only after the importer settles the applicable taxes and duties. For taxable importations, **the ADO cannot be withdrawn by petitioner without the ATRIG**. If the imported article to be imported is subject to excise tax, the ATRIG shows the amount of excise taxes to be paid. Since ADO is an excisable article, the ATRIG for imported ADO indicates the amount of excise taxes to be paid thereon, Q&A No. 26, Exhibit "P-25", supra at note 44, p. 136.

157 Q&A No. 25, id.

158 Q&A No. 27, Exhibit "P-25", supra at note 44, p. 137.

159 The CQR indicates the quantity of the products received and their last discharge at the Tabangao Refinery. Since ADO is usually discharged over the course of several days depending on the volume, the date of last discharge is indicated as the "Date Received" in the CQR; Q&A No. 31, Exhibit "P-25", supra at note 44, p. 137.

160 Q&A No. 31, id.

161 Q&A No. 36, Exhibit "P-25", supra at note 44, p. 138.

162 Q&A No. 34, id.

163 Q&A No. 35, id.

164 Q&A No. 38, Exhibit "P-25", supra at note 44, p. 139.

ii. REMOVAL FROM THE TABANGAO REFINERY

Petitioner's Tax Advisor, Flores, and its Supply Scheduler, Dela Cruz, also discussed the removal of imported ADO from the Tabangao Refinery and the subsequent sale and delivery of such imported ADO to SPEX in their respective Judicial Affidavits.[165]

Both Flores and Dela Cruz detailed that upon arrival of the imported ADO at the Tabangao Refinery (now called Import Facility), it is stored in the product storage tanks located therein. Petitioner then adds an additive, CME, to improve the quality of ADO before the sale and delivery to SPEX. In this case, petitioner loaded ADO onto SPEX vessels berthing at petitioner's jetty in Tabangao, Batangas.[166] According to them, petitioner thereafter records ADO's receipts, similar to other petroleum products received in the Official Register Book (**ORB**) of the Tabangao Refinery. Petitioner then submits the ORBs for each month to the BIR for monitoring purposes.[167] Petitioner likewise records removals of ADO from the Tabangao Refinery in same ORB.[168]

Flores noted that petitioner adopts a first-in, first-out (**FIFO**) method[169] in withdrawing or removing ADO from the storage tanks at the Tabangao Refinery.[170] Aside from the ORB entries, petitioner records removals of ADO in the Daily Product Deliveries Report

165 See Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51; Judicial Affidavit of Alfonso Paolo F. Dela Cruz dated 12 April 2023, Exhibit "P-26", supra at note 47.

166 Q&A No. 12, Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51, p. 311; Q&A No. 11, Judicial Affidavit of Alfonso Paolo F. Dela Cruz dated 12 April 2023, Exhibit "P-26", supra at note 47.

167 Q&A No. 13, Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51, p. 311.

168 Q&A No. 14, Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51, p. 312.

169 According to Ms. Flores, under the FIFO method, the earliest ADOs stored in the tanks are also the first ones removed therefrom. She illustrates that if petitioner stored imported ADO in a tank on January 1, then, on January 15, petitioner stored locally manufactured ADO in the same tank. When petitioner removes ADO from the storage tank, it first withdraws from the imported stock stored on January 1. Petitioner must exhaust the imported ADO stored on January 1 before it can withdraw the locally manufactured stock stored on January 15. As a result, the ADOs remaining at the end of a certain period consist of the stocks most recently stored in a particular tank, Q&A No. 21, Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51, p. 314.

170 Q&A No. 20, id.

(**DPDR**).[171] In addition, petitioner prepares a report denominated as "Daily Removals and Excise Tax Due," which reflects the removal of petroleum products, including ADO, and the corresponding excise tax due thereon.[172] Before the removal of the imported ADO from the Tabangao Refinery, petitioner prepares a Withdrawal Certificate[173] (**WC**), which the BIR's Revenue Officer on Premises (**ROOP**) and petitioner's representative sign.[174] Petitioner accompanies the withdrawal of ADO from the Tabangao Refinery for sale and delivery to SPEX with a Bulk Delivery Note[175] (**BDN**) and a Certificate of Bunker Deliveries (**CBD**).[176] Petitioner also maintains a Liquidation Report (**LR**)[177] that specifically monitors the ADO sold and delivered to customers, including SPEX. Through this LR, petitioner tracks the volume of ADO sold and delivered to SPEX and traces such volumes to the corresponding source importations.[178]

iii. SALE AND DELIVERY TO SPEX

It was further detailed that once delivery of ADO to SPEX, petitioner's SAP program, which serves as its computerized accounting system, immediately captures the details and information relating to the ADO sold and delivered to SPEX. Unit prices of petroleum products and other applicable charges already reside in the SAP system, which automatically generates the corresponding Sales

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171 The DPRD shows the date of removal, its shipment reference number, the *Withdrawal Certificate* covering the same, and the amount of excise tax paid thereon, Q&A No. 14, Judicial Affidavit of Berenice Angelique L. Flores dated 09 July 2022, Exhibit "P-27", supra at note 51, p. 312.

172 Q&A No. 14, id.

173 The WC shows the source of the ADO, its destination, the date of its withdrawal, and its volume at the time withdrawn. When the ADO withdrawn from the Tabangao Refinery is imported, it is indicated in the WC that the same is "tax-paid". This means that the ADO was drawn from imported stock and the excise tax thereon has already been paid to the BOC; Q&A No. 14, id.

174 Q&A No. 14, id.

175 The BDN shows where the product comes from, the buyer, and where the product is delivered. It likewise indicates the load date, product description, and the delivered quantity. The vessel to which the ADO is loaded is likewise indicated, Q&A No. 15, id.

176 Certificate of Bunker Deliveries shows the delivery date, the product, the name of the vessel, the corresponding WC number, and the volume delivered. It is signed by a representative of petitioner and of the vessel to which the ADO is located, Q&A No. 15, id.

177 Among others, the *Liquidation Report* summarizes the excise taxes on the ADO sold and delivered to SPEX and the document under which the excise taxes were paid, which consists of the corresponding importation document if the ADO is imported. The *Liquidation Report* also shows the deliveries of ADO to SPEX, the WC and BDN accompanying the deliveries of ADO from the Tabangao Refinery to SPEX, the petitioner's *Invoice* through which petitioner bills SPEX for the ADO sold and delivered, and the payment received by petitioner from SPEX for the ADO thus sold and delivered, Q&A No. 22, Exhibit "P-27", supra at note 51, p. 314.

178 Q&A No. 22, id.

Invoice[179] (**SI**) reflecting the amount due from the customer. SAP also enables generation of various reports based on the data encoded in system.[180] Flores explained that when the sales price reflected in the SI includes the excise tax, the individual line items in the SI show an "Excise Duty Element" line, which represents the excise tax imposed on the ADO sold. Conversely, when the sales price reflected in the SI excludes the excise tax, the SI does not contain an "Excise Duty Element" line.[181]

Flores further stated that petitioner retrieves the details of any SI through the SAP program by entering the corresponding SI number. Upon entry, the system displays the price components of each billed item through the "G. Standard Invoice (ZF2) Display: Item Data" screen[182], which allows the determination of whether the sales price reflected in the SI includes the excise tax.[183] She also explained that SPEX's payments for the ADO purchased from petitioner appear on the bank statements.[184]

Lastly, Flores clarified that SPEX applies 8% final withholding tax (**FWT**) on its payments to petitioner because petitioner qualifies as a petroleum service contractor under PD 1354.[185] To prove the withholding and remittance of tax, SPEX issues the corresponding BIR Form No. 2306, or Certificate of Final Tax Withheld at Source. Flores added that the 8% FWT constitutes full and final payment of income tax on earnings derived by petitioner from transactions with SPEX.[186]

PETITIONER DULY PAID EXCISE TAXES DUE ON IMPORTED AUTOMOTIVE DIESEL OIL (ADO), SUBJECT OF THE PRESENT CLAIM.

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179 *Sales Invoice* indicates, among others, the quantity, unit price, any other charges, and the total amount due for the ADO sold and delivered to SPEX. Since SPEX is an excise tax-exempt entity, the sales price does not include an excise tax component. Otherwise, the sales price would have included excise tax; Q&A No. 37, Exhibit "P-27", supra at note 51, pp. 317-318.

180 Q&A No. 28, Exhibit "P-27", supra at note 51, p. 316.

181 Q&A No. 39, Exhibit "P-27", supra at note 51, p. 318.

182 The "G. Standard Invoice (ZF2) Display: Item Data" shows the details of every item billed under an invoice such as the sales price of the fuel, the excise tax, and VAT; Q&A No. 40, id.

183 Q&A No. 40, id.

184 Q&A No. 43, Exhibit "P-27", supra at note 51, p. 320.

185 IMPOSING FINAL INCOME TAX ON SUBCONTRACTORS AND ALIEN EMPLOYEES OF SERVICE CONTRACTORS AND SUBCONTRACTORS ENGAGED IN PETROLEUM OPERATIONS IN THE PHILIPPINES UNDER PRESIDENTIAL DECREE NO. 87.

186 Q&A No. 45, Exhibit "P-27", supra at note 51, p. 321.

Proof of payment of the subject taxes constitutes an essential requirement in refund cases because, while the collection of taxes may be found to be illegal or erroneous in theory, a taxpayer-claimant cannot recover amounts that it did not actually pay or remit to the Government.

Witness De Dios testified that eleven (11) ADO importations arrived at petitioner's Tabangao Refinery for the period from July to November 2020, detailed as follows:[187]

Vessel	SAD No.	SAD Date	Volume Paid	Amount of Excise Tax	Payment Date
Mt. Silver Ebalina	C1015182	10 July 2020[188]	48,353,795	₱290,122,770.00	13 July 2020
Mt. CSC Amethyst	C1015645	21 July 2020	48,428,434	290,570,604.00	24 July 2020
Mt. Oriental Gold	C1016087	03 August 2020	48,521,325	291,127,950.00	04 August 2020
Mt. Songa Diamond	C1016551	11 August 2020	16,413,202	98,479,212.00	12 August 2020
Mt. Everhard Schulte	C1016951	19 August 2020	16,160,837	96,965,022.00	20 August 2020
Mt. Silver Hannah	C1017284	26 August 2020	48,956,142	293,736,852.00	27 August 2020
Mt. Jason	C1018385	17 September 2020	48,548,029[189]	279,288,174.00	18 September 2020
Mt. CSC Peace	C1018899	29 September 2020	31,428,200	188,569,200.00	30 September 2020
Mt. Nave Atria	C1019604	13 October 2020	49,597,058	297,582,348.00	14 October 2020
Mt BW Yangtze	C1020524	04 November 2020	50,680,348	304,082,088.00	06 November 2020
Mt. MR Leo	C1020989	13 November 2020	26,786,123	160,716,738.00	16 November 2020
Total				**₱2,591,240,958.00**	

To substantiate foregoing importations, petitioner presented before this Court the following documentary evidence, all of which witness Pangandian-Tabamo, the Court-commissioned ICPA, examined, as follows:[190]

Documents Presented for Importations	Exhibit No.[191]	Annexed to the ICPA Report[192]	Description
Proforma Invoice/ Customs Invoice	"P-36"	A	Billing documents based on BL volume and global pricing standards issued by Shell International Eastern Trading Company (**SIETCO**).
BL	"P-35"	B	Issued by the carrier to the shipper that detail the type, quantity and destination of the goods being

187 Q&A No. 40, Exhibit "P-25", supra at note 44, pp. 139-140.
188 Corrected from 10 June 2020 to 10 July 2020, Order dated 05 September 2023, supra at note 43.
189 It should be 46,548,029, Exhibit "P-46" (p. 6), USB (Exhibit "P-67-2").
190 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 749.
191 USB (Exhibit "P-67-2").
192 Id.

Documents Presented for Importations	Exhibit No.[191]	Annexed to the ICPA Report[192]	Description
			carried. These serve as a shipment receipt when the carrier delivers the goods at destination.
LPSR	"P-37"	C	Reports which contain the volume, consignor, and consignee details, proforma invoice price, and destination, issued by the attending port surveyor at the load port.
SGS Philippines, Inc. Certificate	"P-37"	C	Certificates, which has the same purpose as the LPSR, issued by SGS Philippines as attending port surveyor.
Initial SAD	"P-40"	E	Provide information on the details of import declaration based on BL.
ATRIG	"P-38"	F	Clearance from the BIR once tentative liquidation to BOC is settled.
Bank Certification	"P-41"	G	Issued by the bank as proof of payment for initial SAD.
Initial SSDT	"P-42"	H	Proofs of payment of tentative SAD.
Initial Assessment Notice (**AN**)	"P-39"	I	Provide information on taxes and duties due for settlement on tentative liquidation.
Final Invoice/Tax Invoice	"P-44"	A	Billing document based on actual volume received and global pricing standards issued by SIETCO.
CQR	"P-43"	B	Report which contains the actual volume received by the import terminal issued by the attending port surveyor.
Final SAD	"P-46"	E	Provide updated information on the details of import declaration based on actual volume received per CQR, if higher than the volume declared in the BL. If actual volume received is lower than the volume declared in the BL, no re-computation is done and the initial/tentative SAD becomes the final SAD.
Final SSDT	"P-47"	H	Proofs of payment of final SAD.
Final Assessment Notice (**FAN**)	"P-45"	I	Provide information on taxes and duties due for settlement on final liquidation.
BOC OR	"P-48"	J	Issued by the BOC after settlement/liquidation of the additional duties and taxes for an import entry, if there was any adjustment.
E2M Customs Payment Receipt	"P-49"	J	Receipt generated from E2M System after settlement/liquidation of the additional duties and taxes for an import entry, if there was any adjustment.

Based on the ICPA's review[193], as verified by the Court, the excise tax totalling ₱2,591,240,958.00 with respect to the subject 11 ADO importations was duly paid. Documentary evidence, including BLs, CQRs, SADs, SSDTs, among others, properly supports such total payment, as summarized below:

Set	US Barrels at 60 Farenheit	Volume (Liters at Observed Temperature)	Excise Tax at ₱6.00[194]	BL Date	Exhibit No.				
					BL	CQR	SAD	SSDT	ATRIG
First Importation (MT Silver Ebalina)									
Initial	300,000	48,353,795	₱290,122,770.00	08 July 2020	"P-35", p. 1[195]; "P-1"[196]	-	"P-40", p. 1[197]; "P-1-3"[198]	"P-42", p. 1[199]; "P-1-4"[200]	"P-38", p. 1[201]; "P-1-5"[202]
Final	300,000	48,353,795	290,122,770.00		-	"P-43", p. 1[203]	"P-46, p. 1"[204]	"P-47", p. 1[205]	-
Difference		-	-						
Second Importation (MT CSC Amethyst)									
Initial	299,998	48,428,434	₱290,570,604.00	19 July 2020	"P-35", p. 2[206]; "P-2"[207]	-	"P-40", p. 2[208]; "P-2-3"[209]	"P-42", p. 2[210]; "P-2-4"[211]	"P-38", p. 2[212]; "P-2-5"[213]
Final	299,998	48,428,434	290,570,604.00		-	"P-43", p. 2[214]	"P-46", p. 2[215]	"P-47", p. 2[216]	-
Difference		-	-						
Third Importation (MT Oriental Gold)									
Initial	300,499	48,517,867	₱291,107,202.00	30 July 2020	"P-35", p. 3[217]; "P-3"[218]	-	"P-40", p. 3[219]; "P-3-3"[220]	"P-42", p. 3[221]; "P-3-4"[222]	"P-38", p. 3[223]; "P-3-5"[224]

193 Annexes A to J, id.
194 The ICPA noted that for the purpose of computing the excise tax, the volume in Liters at Observed (Obs) Temperature indicated in the BL was used as the excise tax base at a rate of ₱6.00; See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 753.
195 USB (Exhibit "P-67-2").
196 Division Docket, Volume II, p. 838.
197 USB (Exhibit "P-67-2").
198 Division Docket, Volume II, p. 841
199 USB (Exhibit "P-67-2").
200 Division Docket, Volume II, p. 842.
201 USB (Exhibit "P-67-2").
202 Division Docket, Volume II, p. 843.
203 USB (Exhibit "P-67-2").
204 USB (Exhibit "P-67-2").
205 USB (Exhibit "P-67-2").
206 USB (Exhibit "P-67-2").
207 Division Docket, Volume II, p. 850.
208 USB (Exhibit "P-67-2").
209 Division Docket, Volume II, p. 853.
210 USB (Exhibit "P-67-2").
211 Division Docket, Volume II, p. 854.
212 USB (Exhibit "P-67-2").
213 Division Docket, Volume II, p. 855.
214 USB (Exhibit "P-67-2").
215 USB (Exhibit "P-67-2").
216 USB (Exhibit "P-67-2").
217 USB (Exhibit "P-67-2").
218 Division Docket, Volume II, p. 862.
219 USB (Exhibit "P-67-2").
220 Division Docket, Volume II, p. 866.
221 USB (Exhibit "P-67-2").

Set	US Barrels at 60 Farenheit	Volume (Liters at Observed Temperature)	Excise Tax at ₱6.00[194]	BL Date	Exhibit No.				
					BL	CQR	SAD	SSDT	ATRIG
Final	300,499	48,521,325	291,127,950.00		-	"P-43", p. 3[225]	"P-46", p. 3[226]	"P-47", p. 3[227]	-
Difference		(3,458)	(₱20,748.00)						
Fourth Importation (MT Songa Diamond)									
Initial	101,760	16,411,550	₱98,469,300.00	10 August 2020	"P-35", p. 4[228]; "P-4"[229]	-	"P-40", p. 4[230]; "P-4-3"[231]	"P-42", p. 4[232]; "P-4-4"[233]	"P-38", p. 4[234]; "P-4-5"[235]
Final	101,760	16,413,202	98,479,212.00		-	"P-43", p. 4[236]	"P-46", p. 4[237]	"P-47", p. 4[238]	-
Difference		(1,652)	(₱9,912.00)						
Fifth Importation (MT Everhard Schulte)									
Initial	100,005	16,124,604	₱96,747,624.00	16 August 2020	"P-35, p. 5[239]; "P-5"[240]	-	"P-40", p. 5[241]; "P-5-3"[242]	"P-42", p. 5[243]; "P-5-4"[244]	"P-38", p. 5[245]; "P-5-5"[246]
Final	100,005	16,160,837	96,965,022.00		-	"P-43", p. 5[247]	"P-46", p. 5[248]	"P-47", p. 5[249]	-
Difference		(36,233)	(₱217,398.00)						
Sixth Importation (MT Silver Hannah)									
Initial	301,070.58	48,956,142	₱293,736,852.00	18 August 2020	"P-35", p. 6[250]; "P-6"[251]	-	"P-40", p. 6[252]; "P-6-3"[253]	"P-42", p. 6[254]; "P-6-4"[255]	"P-38, p. 6[256]; "P-6-5"[257]
Final	301,070.58	48,956,142	293,736,852.00		-	"P43", p. 6[258]	No Final	-	-

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222 Division Docket, Volume II, p. 867.
223 USB (Exhibit "P-67-2").
224 Division Docket, Volume II, p. 868.
225 USB (Exhibit "P-67-2").
226 USB (Exhibit "P-67-2").
227 USB (Exhibit "P-67-2").
228 USB (Exhibit "P-67-2").
229 Division Docket, Volume II, p. 875.
230 USB (Exhibit "P-67-2").
231 Division Docket, Volume II, p. 878.
232 USB (Exhibit "P-67-2").
233 Division Docket, Volume II, p. 879.
234 USB (Exhibit "P-67-2").
235 Division Docket, Volume II, p. 880.
236 USB (Exhibit "P-67-2").
237 USB (Exhibit "P-67-2").
238 USB (Exhibit "P-67-2").
239 USB (Exhibit "P-67-2").
240 Division Docket, Volume II, p. 887.
241 USB (Exhibit "P-67-2").
242 Division Docket, Volume II, p. 890.
243 USB (Exhibit "P-67-2").
244 Division Docket, Volume II, p. 891.
245 USB (Exhibit "P-67-2").
246 Division Docket, Volume II, p. 892.
247 USB (Exhibit "P-67-2").
248 USB (Exhibit "P-67-2").
249 USB (Exhibit "P-67-2").
250 USB (Exhibit "P-67-2").
251 Division Docket, Volume II, p. 899.
252 USB (Exhibit "P-67-2").
253 Division Docket, Volume II, p. 902.
254 USB (Exhibit "P-67-2").
255 Division Docket, Volume II, p. 903.
256 USB (Exhibit "P-67-2").
257 Division Docket, Volume II, p. 904.
258 USB (Exhibit "P-67-2").

Set	US Barrels at 60 Farenheit	Volume (Liters at Observed Temperature)	Excise Tax at ₱6.00[194]	BL Date	Exhibit No.				
					BL	CQR	SAD	SSDT	ATRIG
							SAD[259]		
Difference		-	-						
Seventh Importation (MT Jason)									
Initial	289,402.53	46,529,579	₱279,177,474.00	14 September 2020	"P-35", p. 7[260]; "P-7"[261]	-	"P-40", p. 7[262]; "P-7-3"[263]	"P-42", p. 7[264]; "P-7-4"[265]	"P-38", p. 7[266]; "P-7-5"[267]
Final	289,402.53	46,548,029	279,288,174.00		-	"P-43", p. 7[268]	"P-46", p. 6[269]	"P-47", p. 6[270]	-
Difference		(18,450)	(₱110,700.00)						
Eighth Importation (MT CSC Peace)									
Initial	195,345	31,428,200	₱188,569,200.00	27 September 2020	"P-35", p. 8[271]; "P-8"[272]	-	"P-40", p. 8[273]; "P-8-3"[274]	"P-42", p. 8[275]; "P-8-4"[276]	"P-38", p. 8[277]; "P-8-5"[278]
Final	195,345	31,428,200	188,569,200.00		-	"P-43", p. 8[279]	"P-46", p. 7[280]	"P-47", p. 7[281]	-
Difference		-	-						
Ninth Importation (MT Nave Atria)									
Initial	308,090.71	49,083,226	₱294,499,356.00	12 October 2020	"P-35", p. 9[282]; "P-9"[283]	-	"P-40", p. 9[284]; "P-9-3"[285]	"P-42", p. 9[286]; "P-9-4"[287]	"P-38", p. 9[288]; "P-9-5"[289]
Final	308,090.71	49,597,058	297,582,348.00		-	"P-43", p. 9[290]	"P-46", p. 8[291]	"P-47", p. 8[292]	-
Difference		(513,832)	(₱3,082,992.00)						

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259 As noted by the ICPA, no final SAD was generated as the unit price per proforma invoice and volume per BL was higher than the final invoice and CQR, thus, the initial SAD became the final SAD; See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 758.
260 USB (Exhibit "P-67-2").
261 Division Docket, Volume II, p. 909.
262 USB (Exhibit "P-67-2").
263 Division Docket, Volume II, p. 912.
264 USB (Exhibit "P-67-2").
265 Division Docket, Volume II, p. 913.
266 USB (Exhibit "P-67-2").
267 Division Docket, Volume II, p. 914.
268 USB (Exhibit "P-67-2").
269 Id.
270 Id.
271 Id.
272 Division Docket, Volume II, p. 921.
273 USB (Exhibit "P-67-2").
274 Division Docket, Volume II, p. 924.
275 USB (Exhibit "P-67-2").
276 Division Docket, Volume II, p. 925.
277 USB (Exhibit "P-67-2").
278 Division Docket, Volume II, p. 926.
279 USB (Exhibit "P-67-2").
280 Id.
281 Id.
282 Id.
283 Division Docket, Volume II, p. 933.
284 USB (Exhibit "P-67-2").
285 Division Docket, Volume II, p. 936.
286 USB (Exhibit "P-67-2").
287 Division Docket, Volume II, p. 937.
288 USB (Exhibit "P-67-2").
289 Division Docket, Volume II, p. 938.
290 USB (Exhibit "P-67-2").
291 Id.
292 Id.

Set	US Barrels at 60 Farenheit	Volume (Liters at Observed Temperature)	Excise Tax at ₱6.00[194]	BL Date	Exhibit No.				
					BL	CQR	SAD	SSDT	ATRIG
Tenth Importation (MT BW Yangtze)									
Initial	314,919	50,680,348	₱304,082,088.00	03 November 2020	"P-35", p. 10[293]; "P-10"[294]	-	"P-40", p. 10[295]; "P-10-3"[296]	"P-42", p. 10[297]; "P-10-4"[298]	"P-38", p. 10[299]; "P-10-5"[300]
Final	314,919	50,680,348	304,082,088.00		-	"P-43", p. 10[301]	"P-46", p. 9[302]	"P-47", p. 9[303]	-
Difference		-	-						
Eleventh Importation (MT MR Leo)									
Initial	167,144	26,786,123	₱160,716,738.00	08 November 2020	"P-35", p. 11[304]; "P-11"[305]	-	"P-40", p. 11[306]; "P-11-3"[307]	"P-42", p. 11[308]; "P-11-4"[309]	"P-38", p. 11[310]; "P-11-5"[311]
Final	167,144	26,786,123	160,716,738.00		-	"P-43", p. 11[312]	"P-46", p. 10[313]	"P-47", p. 10[314]	-
Difference		-	-						
Total – Initial	**2,678,233.82**	**431,299,868**	**₱2,587,799,208.00**						
Total – Final	**2,678,233.82**	**431,873,493**	**2,591,240,958.00**						
Total - Difference	-	(573,625)	**(₱3,441,750.00)**						

The table above shows a total discrepancy of 573,625 liters between the quantity of imported ADO unloaded for delivery at the Tabangao Refinery, as indicated in the CQR, and the quantity declared in the BL.[315] This discrepancy resulted in the assessment and payment of additional taxes amounting to ₱45,378,917.97[316], inclusive of excise tax of ₱3,441,750.00.[317]

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293 Id.
294 Division Docket, Volume II, p. 945.
295 USB (Exhibit "P-67-2").
296 Division Docket, Volume II, p. 948.
297 USB (Exhibit "P-67-2").
298 Division Docket, Volume II, p. 949.
299 USB (Exhibit "P-67-2").
300 Division Docket, Volume II, p. 950.
301 USB (Exhibit "P-67-2").
302 Id.
303 Id.
304 Id.
305 Division Docket, Volume II, p. 957.
306 USB (Exhibit "P-67-2").
307 Division Docket, Volume II, p. 960.
308 USB (Exhibit "P-67-2").
309 Division Docket, Volume II, p. 961.
310 USB (Exhibit "P-67-2").
311 Division Docket, Volume II, p. 962.
312 USB (Exhibit "P-67-2").
313 Id.
314 Id.
315 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 756.
316 Table II.16, ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 759.
317 573,625 liters at ₱6.00 excise tax rate.

The ICPA found that the additional taxes of ₱45,378,917.97 (including the excise tax of ₱3,441,750.00) were paid as evidenced by BOC ORs and E2M Customs Payment Receipts, to wit:[318]

Set	VAT (a)	FMF (b)	Amount of Fees (c)	Amount of Excise Tax (d)	Total Items Taxes (e=a+b+c+d)	Global Taxes (f)	Total Assessed Amount for the Declaration (g=e+f)	Assessment Notice	BOC OR Exhibit No.[319]/ E2M Customs Payment Receipt[320]
First Importation (MT Silver Ebalina)									
Initial	₱124,035,336.70	-	-	₱290,122,770.00	₱414,158,106.70	₱1,280.00	₱414,159,386.70		
Final	129,234,843.27	-	₱1.00	290,122,770.00	419,357,614.27	1,280.00	419,358,894.27		
Difference	**(₱5,199,506.57)**	-	**(₱1.00)**	-	**(₱5,199,507.57)**		**(₱5,199,507.57)**	"P-1-8"[321]	"P-1-9"[322]
Second Importation (MT CSC Amethyst)									
Initial	₱123,609,383.81	-	-	₱290,570,604.00	₱414,179,987.81	₱1,280.00	₱414,181,267.81		
Final	128,638,777.93	-	-	290,570,604.00	419,209,381.93	1,280.00	419,210,661.93		
Difference	**(₱5,029,394.12)**	-	-	-	**(₱5,029,394.12)**		**(₱5,029,394.12)**	"P-2-8"[323]	"P-2-9"[324]
Third Importation (MT Oriental Gold)									
Initial	₱122,922,351.15	-	-	₱291,107,202.00	₱414,029,553.15	₱1,280.00	₱414,030,833.15		
Final	127,503,845.03	-	-	291,127,950.00	418,631,795.03	1,280.00	418,633,075.03		
Difference	**(₱4,581,493.88)**	-	-	**(₱20,748.00)**	**(₱4,602,241.88)**		**(₱4,602,241.88)**	"P-3-8"[325]	"P-3-9"[326]
Fourth Importation (MT Songa Diamond)									
Initial	₱42,376,637.18	-	-	₱98,469,300.00	₱140,845,937.18	₱1,280.00	₱140,847,217.18		
Final	43,820,304.36	-	-	98,479,212.00	142,299,516.36	1,280.00	142,300,796.36		
Difference	**(₱1,443,667.18)**	-	-	**(₱9,912.00)**	**(₱1,453,579.18)**		**(₱1,453,579.18)**	-	"P-4-9"[327]
Fifth Importation (MT Everhard Schulte)									
Initial	₱41,581,322.01	-	-	₱96,747,624.00	₱138,328,946.01	₱1,280.00	₱138,330,226.01		
Final	43,083,732.29	-	₱0.01	96,965,022.00	140,048,754.30	1,280.00	140,050,034.30		
Difference	**(₱1,502,410.28)**	-	**(₱0.01)**	**(₱217,398.00)**	**(₱1,719,808.29)**		**(₱1,719,808.29)**	"P-5-8"[328]	"P-5-9"[329]
Sixth Importation (MT Silver Hannah)									
Initial	₱121,246,290.66	-	-	₱293,736,852.00	₱414,983,142.66	₱1,280.00	₱414,984,422.66		
Final	121,246,290.00	-	-	293,736,852.00	414,983,142.66	1,280.00	414,984,422.66		
Difference	-	-	-	-	-		-	-[330]	-
Seventh Importation (MT Jason)									
Initial	₱105,300,965.10	₱2,917,105.48	-	₱279,177,474.00	₱387,395,544.58	₱1,280.00	₱387,396,824.58		
Final	112,714,538.90	2,918,262.18	-	279,288,174.00	394,920,975.08	1,280.00	394,922,255.08		
Difference	**(₱7,413,573.80)**	**(₱1,156.70)**	-	**(₱110,700.00)**	**(₱7,525,430.50)**		**(₱7,525,430.50)**	"P-7-8"[331]	"P-7-9"[332]
Eighth Importation (MT CSC Peace)									
Initial	₱71,747,921.71	₱1,970,346.10	-	₱188,569,200.00	₱262,287,467.81	₱1,280.00	₱262,288,747.81		
Final	75,790,457.39	1,970,346.10	₱0.01	188,569,200.00	266,330,003.50	1,280.00	266,331,283.50		

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318 Annex J, Exhibit "P-67", USB (Exhibit "P-67-2").
319 Exhibit "P-48", USB (Exhibit "P-67-2").
320 Exhibit "P-49", id.
321 Division Docket, Volume II, p. 848.
322 Id., p. 849.
323 Id., p. 860.
324 Id., p. 861.
325 Id., p. 873.
326 Id., p. 874.
327 Id., p. 886.
328 Id., p. 897.
329 Id., p. 898.
330 The ICPA noted that for importation MT Silver Hannah, no additional excise tax was paid since it has a higher unit price and volume per initial assessment than the final assessment; See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 759.
331 Division Docket, Volume II, p. 919.
332 Id., p. 920.

Set	VAT (a)	FMF (b)	Amount of Fees (c)	Amount of Excise Tax (d)	Total Items Taxes (e=a+b+c+d)	Global Taxes (f)	Total Assessed Amount for the Declaration (g=e+f)	Assessment Notice	BOC OR Exhibit No.[319]/ E2M Customs Payment Receipt[320]
Difference	(₱4,042,535.68)	-	(₱0.01)	-	(₱4,042,535.69)		(₱4,042,535.69)	"P-8-8"[333]	"P-8-9"[334]
Ninth Importation (MT Nave Atria)									
Initial	₱114,704,709.05	₱3,077,202.73	-	₱294,499,356.00	₱412,281,267.78	₱1,280.00	₱412,282,547.78		
Final	116,110,412.13	3,109,416.70	-	297,582,348.00	416,802,176.83	1,280.00	416,803,456.83		
Difference	(₱1,405,703.08)	(₱32,213.97)	-	(₱3,082,992.00)	(₱4,520,909.05)		(₱4,520,909.05)	"P-9-8"[335]	"P-9-9"[336]
Tenth Importation (MT BW Yangtze)									
Initial	₱111,908,831.58	₱3,177,332.02		₱304,082,088.00	₱419,168,251.60	₱1,280.00	₱419,169,531.60		
Final	117,215,988.10	3,177,332.02	2.00	304,082,088.00	424,475,410.12	1,280.00	424,476,690.12		
Difference	(₱5,307,156.52)	-	(₱2.00)	-	(₱5,307,158.52)		(₱5,307,158.52)	"P-10-8"[337]	"P-10-9"[338]
Eleventh Importation (MT MR Leo)									
Initial	₱60,023,158.47	₱1,679,317.72	-	₱160,716,738.00	₱222,419,214.19	₱1,280.00	₱222,420,494.19		
Final	66,001,510.64	1,679,317.72	₱1.00	160,716,738.00	228,397,567.36	1,280.00	228,398,847.36		
Difference	(₱5,978,352.17)	-	(₱1.00)	-	(₱5,978,353.17)		(₱5,978,353.17)	"P-11-8"[339]	"P-11-9"[340]
Total-Initial	₱1,039,456,907.42	₱12,821,304.05	-	₱2,587,799,208.00	₱3,640,077,419.47	₱14,080.00	₱3,640,091,499.47		
Total-Final	1,081,360,700.70	12,854,674.72	₱4.02	2,591,240,958.00	3,685,456,337.44	14,080.00	3,685,456,337.44		
Total Difference	(₱41,903,793,28)	(₱33,370.67)	(₱4.02)	(₱3,441,750.00)	(₱45,378,917.97)	-	(₱45,378,917.97)		

Based on the foregoing, petitioner duly paid total excise taxes amounting to ₱2,591,240,958.00, which corresponding importation documents properly support. Said amount includes excise taxes of ₱18,908,370.00 paid on the ADO importations that form the subject of the present claim for refund.[341]

To prove that the imported ADO, for which petitioner claims an excise tax refund of ₱18,908,370.00, was duly withdrawn from importations made during period from July to November 2020 — on which petitioner paid total excise taxes amounting to ₱2,591,240,958.00 — petitioner submitted the following documentary evidence before this Court:

Documents Presented for Withdrawals	Exhibit No.[342]	Annexed to the ICPA Report[343]	Description
ORB	"P-54"[344]	K to L	A monthly terminal report showing all the received quantity and

333 Id., p. 931.
334 Id., p. 932.
335 Id., p. 943.
336 Id., p. 944.
337 Id., p. 955.
338 Id., p. 956.
339 Id., p. 967.
340 Id., p. 968; There is a ₱1.00 difference between the additional VAT due of ₱5,978,353.17 and the amount paid as reflected in the BOC OR, which is ₱5,978,352.17.
341 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 759.
342 USB (Exhibit "P-67-2").
343 Id.
344 Division Docket, Volume II, pp. 788-792.

Documents Presented for Withdrawals	Exhibit No.[342]	Annexed to the ICPA Report[343]	Description
			withdrawn quantity of each petroleum product prepared by the terminal operators of petitioner.
DPDR	"P-55"	M	Daily report showing the daily removals of each petroleum product from Tabangao Refinery.
WCs	"P-51"	N	Certificate that shows the source of the ADO, its destination, the date of its withdrawal, and its volume at the time withdrawn. The WC also indicates the composition of ADO B2 in volume, which is 98% Base Diesel and 2% CME. The WC is prepared and signed by the ROOP of the BIR and a petitioner's representative.
BDNs	"P-52"	P	System-generated document issued by petitioner signifying proof of delivery. The BDN shows where the product is delivered. It likewise indicates the load date, product description, the delivered quantity, and the vessel to which the ADO is loaded.
CBDs	"P-53"	Q	Serve as petitioner's delivery document, signed by petitioner and the vessel's authorized representatives, and issued to support the WC and Delivery Note. The CBD shows the delivery date, the product, and the name of the vessel, the corresponding WC number, and the volume delivered.

As the Court verified, ICPA found that 11 importations were duly lodged in the ORB[345], and that the actual volumes recorded in the ORB and the total volumes received, as reflected in the corresponding CQR[346], are identical.[347] Details appear below:

Set	Date Received	Product Type	Actual/CQR		Invoice/BL		(Surplus)/ Loss Liters (A-B)
			Barrels	Liters at Air (A)	Barrels	Liters at Air (B)	
First Importation (MT Silver Ebalina)	19 July 2020	ADO Bo	299,771.36	48,266,162	300,000	48,353,795	(87,633)
Second Importation (MT CSC Amethyst)	31 July 2020	ADO Bo	245,761.06	39,608,133	299,998	48,428,434	(8,820,301)
	01 August 2020		53,960.38	8,696,839	-	-	8,696,839
Third Importation (MT Oriental Gold)	07 August 2020	ADO Bo	300,772.82	48,521,325	300,499	48,517,867	3,458
Fourth Importation (MT Songa Diamond)	15 August 2020	ADO Bo	101,793.68	16,413,202	101,760	16,411,550	1,652
Fifth Importation (MT Everhard Schulte)	26 August 2020	ADO Bo	100,295.61	16,160,837	100,005	16,124,604	36,233
Sixth Importation (MT Silver Hannah)	07 September 2020	ADO Bo	300,329.97	48,512,135	301,070.58	48,956,142	(444,007)
Seventh	24 September 2020	ADO Bo	289,455.25	46,548,029	289,402.53	46,529,579	18,450

[345] See Official Register Book (**ORB**), Exhibit "P-54", id., pp. 788-792.
[346] Exhibit "P-43", USB (Exhibit "P-67-2").
[347] See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 761.

Set	Date Received	Product Type	Actual/CQR		Invoice/BL		(Surplus)/ Loss Liters (A-B)
			Barrels	Liters at Air (A)	Barrels	Liters at Air (B)	
Importation (MT Jason)							
Eighth Importation (MT CSC Peace)	04 October 2020	ADO Bo	194,812.15	31,384,706	195,345	31,428,200	(43,494)
Ninth Importation (MT Nave Atria)	21 October 2020	ADO Bo	307,396.26	49,597,058	308,090.71	49,083,226	513,832
Tenth Importation (MT BW Yangtze)	10 November 2020	ADO Bo	314,505.70	50,592,914	314,919	50,680,348	(87,434)
Eleventh Importation (MT MR Leo)	20 November 2020	ADO Bo	166,505.14	26,722,238	167,144	26,786,123	(63,885)
Total			2,675,359.40	431,023,578	2,678,233.83	431,299,868	(276,290)

Petitioner subsequently unloaded and stored 2,675,359.40 barrels of imported ADO, equivalent to 431,023,578 liters at air, in designated product tanks at the Tabangao Refinery. Thereafter, in compliance with Republic Act (**RA**) No. 9367, otherwise known as the "Biofuels Act of 2006," petitioner added a locally produced additive, CME, to ADO to improve its quality prior to sale and delivery to SPEX.[348]

As a result of the CME addition, the final product, now referred to as "ADO B2", consisted of 2% CME and 98% original ADO (**ADO Bo**). Petitioner thereafter loaded finished product, ADO B2, onto various vessels for delivery to SPEX.[349]

A review of the ORB[350] confirms movement of ADO Bo and ADO B2 during period from July to November 2020. The ICPA's examination corroborates these movements, as reflected below:

Table III.3 – Movement of ADO Bo[351]						
Period (Taxable Year 2020)	ADO Bo Opening Balance (in liters) [A]	ADO Bo Importations not covered by review (in liters) [B]	ADO Bo Importations covered by review (in liters) [C]	ADO Bo Volume sent to production of ADO B2 (in liters) [D]	ADO Bo Volume Withdrawn (in liters) [E]	ADO Bo Ending Balance (in liters) [F=A+B+C-D-E]
July	23,188,533	50,832,094	87,874,295	131,270,601	-	30,624,321[352]

348 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, pp. 761-762.
349 Id., p. 762.
350 See ORB, Exhibit "P-54", supra at note 345; USB (Exhibit "P-67-2").
351 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 763.

Table III.3 - Movement of ADO Bo[352]						
Period (Taxable Year 2020)	ADO Bo Opening Balance (in liters) [A]	ADO Bo Importations not covered by review (in liters) [B]	ADO Bo Importations covered by review (in liters) [C]	ADO Bo Volume sent to production of ADO B2 (in liters) [D]	ADO Bo Volume Withdrawn (in liters) [E]	ADO Bo Ending Balance (in liters) [F=A+B+C-D-E]
August	30,624,322	-	89,792,203	100,743,280	-	19,673,245
September	19,673,245	-	95,060,164	87,749,764	4,515,565	22,468,080
October	22,468,080	-	80,981,763	74,750,687	-	28,699,156
November	28,699,156	49,678,389	77,315,153	128,432,894	-	27,259,804
Total		100,510,483	431,023,578	522,947,226	4,515,565	

Table III.4 - Movement of ADO B2[353]				
Period (Taxable Year 2020)	ADO B2 Opening Balance (in liters) [A]	ADO B2 Volume Produced from ADO Bo sent to Production (in liters) [B]	ADO Bo2 Volume Withdrawn for delivery to customers, including SPEX (in liters) [C]	ADO B2 Ending Balance (in liters) [D=A+B-C]
July	18,469,195	132,176,211	122,695,243	27,950,163
August	27,950,163	102,406,240	111,691,554	18,664,849
September	18,664,849	89,120,210	84,888,374	22,896,685
October	22,896,685	75,668,674	85,285,428	13,279,931
November	13,279,931	130,392,018	123,315,896	20,356,053
Total		529,763,353	527,876,495	

Based on Table III.3, the ICPA noted that 426,508,013[354] liters of ADO Bo, out of the total 522,947,226 liters used in the production of ADO B2, originated from importations made during the period from July to November 2020.[355] On the other hand, based on Table III.4, the ICPA verified that production yielded a total of 529,763,353 liters, of which 98%, or 519,168,085.94[356] liters, consisted of ADO Bo. The ICPA likewise verified total withdrawals of 527,876,495 liters, of which 98%, or 517,318,965.10[357] liters, consisted of ADO Bo.[358]

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352 There is a discrepancy of 1 liter; The ICPA Report indicates 30,624,322 liters, but upon recomputation, the correct volume should be 30,624,321 liters.
353 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 764.
354 ADO B0 Importations covered by review of 431,023,578 liters less ADO B0 Withdrawn not related to the claim for refund of 4,515,565 liters.
355 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 764.
356 98% of 529,763,353 liters.
357 98% of 527,876,495 liters.
358 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 764.

In a Letter dated 24 August 2020[359], which respondent received on 03 September 2020, petitioner informed respondent of its decision to discontinue its refinery operations and shift to full importation.

It should be noted that a portion of the period covered by the present claim coincided with the time prior to the cessation of petitioner's refinery operations in August 2020. Consequently, petitioner adopted the FIFO[360] method for withdrawal or removal of ADO from the storage tanks at the Tabangao Refinery.

As the records yield, to trace the withdrawals of ADO B2 to the corresponding importations of ADO B0, the ICPA computed ADO B0 component representing 98% of ADO B2 opening balance and withdrawals and applied this computation against the running balance of ADO B0 using the FIFO method.[361] An analysis of Annex O[362] of the ICPA Report shows that the first withdrawal of 420,000 liters of ADO B2, as well as the subsequent withdrawals for sale and delivery to SPEX, originated from importations made during the period from July to November 2020, as shown below:

Particulars	Volume
Beginning Balance	41,288,344.10[363]
Add: Importation not related to the subject claim for refund (Navig8 Strength)	50,832,094.46
Less: 98% of ADO B2 Withdrawals before the withdrawal of 420,000 liters for sale and delivery to SPEX	
July 1 to 6, 2020	22,428,163.38
July 7 to 18, 2020	44,836,335.74
July 19 to 27, 2020	31,946,980.80
Deficit	(7,091,041.36)

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359 Exhibit "P-65", USB (Exhibit "P-67-2").

360 According to Ms. Flores, under the FIFO method, the earliest ADOs stored in the tanks are also the first ones removed therefrom. She illustrates that if petitioner stored imported ADO in a tank on January 1, then, on January 15, petitioner stored locally manufactured ADO in the same tank. When petitioner removes ADO from the storage tank, it first withdraws from the imported stock stored on January 1. Petitioner must exhaust the imported ADO stored on January 1 before it can withdraw the locally manufactured stock stored on January 15. As a result, the ADOs remaining at the end of a certain period consist of the stocks most recently stored in a particular tank; Q&A No. 21, Exhibit "P-27", supra at note 51, p. 314.

361 Table III.5, ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, pp. 766-767, in relation to Annex O, USB (Exhibit "P-67-2").

362 USB (Exhibit "P-67-2").

363 Sum of ADO B0 opening balance of 23,188,533 liters and 18,099,811.10 which represents 98% of ADO B2 opening balance of 18,469,195 liters; Exhibit "P-54", supra at note 345, p. 788.

Particulars	Volume
Add: First Importation (MT Silver Ebalina)	48,266,162
Ending Balance, before the first withdrawal of 420,000 liters for sale and delivery to SPEX on July 27, 2020	**41,175,120.64**

Based on the foregoing table above, a deficit of 7,091,041.36 liters existed before the first withdrawal of 420,000 liters on 27 July 2020. The first importation received on 19 July 2020 covered this deficit.

As the ICPA noted, the running balance of ADO Bo prior to the first withdrawal for sale and delivery to SPEX amounted to 41,175,120.64 liters, which remained less than the total importation volume of 48,266,162 liters delivered by MT Silver Ebalina. Consequently, the first withdrawal, along with the subsequent withdrawals for sale and delivery to SPEX, originated from the importations that form subject of the present refund claim.[364]

On the other hand, the total available ADO B2 recorded in the ORBs from July to November 2020 amounted to 548,232,548 liters, comprising an opening balance of 18,469,195 liters and 529,763,353 liters produced during the period.[365] Of this total, 537,267,897.04[366] liters represented ADO Bo. Total withdrawals reflected in the monthly ORBs[367] corresponded with the withdrawals recorded in the DPDR[368], as summarized below:

Table III.6					
Taxable Year 2020	**Volume of Withdrawals of ADO B2 (in Liters)**				**ADO Bo Component in Liters (98% of ADO B2)**
Month	**ORB (Annex L)**	**Exhibit Reference**	**DPDR (Annex M)**	**Exhibit Reference**	
July	122,695,243	"P-54", p. 1	122,695,243	"P-55", pp. 1 to 4	120,241,338.14
August	111,691,554	"P-54", p. 2	111,691,554	"P-55", pp. 5 to 7	109,457,722.92
September	84,888,374	"P-54", p. 3	84,888,374	"P-55", pp. 8 to 20	83,190,606.52
October	85,285,428	"P-54", p. 4	85,285,428	"P-55", pp. 21 to 28	83,579,719.44
November	123,315,896	"P-54", p. 5	123,315,896	"P-55", pp. 29 to 44	120,849,578.08
Total	**527,876,495**		**527,876,495**		**517,318,965.10**

364 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 768.
365 See Table III.4, ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 764.
366 98% of 548,232,548 liters.
367 Annex L, USB (Exhibit "P-67-2").
368 Annex M, id.

The ICPA found that, from July to November 2020, petitioner had withdrawn a total of 527,876,495[369] liters of ADO B2 for sale and delivery to its customers, including SPEX. Of this volume, 426,508,013[370] liters of ADO B0 originated from importations covered by the subject refund claim.[371] From this amount, the ICPA traced 3,151,395 liters as specifically attributable to sales and deliveries to SPEX[372], itemized as follows:[373]

Date Withdrawn	Exhibit No.[374]	Volume of Base Diesel (ADO B0[375]) [A]	Volume of CME	Total Volume (ADO B2[376])	Specific Tax [A] x ₱6.00
27 July 2020	"P-51", p. 1	411,600	8,400	420,000	₱2,469,600.00
27 August 2020	"P-51", p. 2	596,232	12,168	608,400	3,577,392.00
06 September 2020	"P-51", p. 3	450,800	9,200	460,000	2,704,800.00
11 September 2020	"P-51", p. 4	98,059	2,001	100,060	588,354.00
24 September 2020	"P-51", p. 5	97,965	1,999	99,964	587,790.00
12 October 2020	"P-51", p. 6	313,896	6,406	320,302	1,883,376.00
16 October 2020	"P-51", p. 7	97,856	1,997	99,853	587,136.00
13 November 2020	"P-51", p. 8	98,326	2,007	100,333	589,956.00
25 November 2020	"P-51", p. 9	539,000	11,000	550,000	3,234,000.00
26 November 2020	"P-51", p. 10	97,874	1,997	99,871	587,244.00
28 November 2020	"P-51", p. 11	349,787	7,139	356,926	2,098,722.00
Total		**3,151,395**	**64,314**	**3,215,709**	**₱18,908,370.00**

Examination of the WCs shows that the ADO B0 (Base Diesel) bore the notation "Tax Paid", which indicates that excise tax on imported ADO had already been paid to the BOC. The ICPA further noted that, when ADO was intended for delivery to SPEX, the destination appeared either as "SPEX Bunkering" or simply "Bunkering."[377]

369 Annex L, id.; See ORB, Exhibit "P-54", supra at note 345.
370 See Table III.3, ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 763; Total ADO B0 Importations covered by review of 431,023,578 liters less ADO B0 Withdrawn without going through production of 4,515,565 liters; The ICPA traced the withdrawal covered by WC No. 2018609486 and found that it was not among the WCs related to deliveries to SPEX (see ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 764).
371 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 768.
372 Annex O, USB (Exhibit "P-67-2").
373 Annex N, id.
374 Id.
375 98% of ADO B2 (Base Diesel).
376 Base diesel and CME.
377 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 769.

In sum, petitioner successfully proved that it withdrew 431,023,578[378] liters of ADO from importations made during the period of July to November 2020. Of this total volume, 3,151,395 liters were withdrawn from the Tabangao Refinery for sale and delivery to SPEX, a tax-exempt entity.

THE IMPORTED AUTOMOTIVE DIESEL OIL (ADO), SUBJECT OF THE PRESENT REFUND CLAIM, WERE SOLD AND DELIVERED TO SHELL PHILIPPINES EXPLORATION, B.V. (SPEX).

Petitioner sold and delivered imported ADO to SPEX, a tax-exempt entity, pursuant to the Service Contract dated 11 December 1990, or SC 38[379], executed between the Government of the Republic of the Philippines and Occidental Philippines, Inc. and SPEX, which contract designates SPEX as Contractor, as well as the Amending Agreement # 1 dated 15 July 2019[380], and the Certification issued by SPEX.[381]

To establish that petitioner sold and delivered excise tax-paid ADO to SPEX and that it billed and collected payment for such sales net of excise tax, petitioner presented following documentary evidence:

Documents Presented for Sales and Invoicing	Exhibit No.[382]	Annexed to the ICPA Report[383]	Description
SI	"P-56"	R	Billing document generated from petitioner's SAP system, a computerized accounting system, once product has been delivered.
ZF2 Display	"P-57"	T	Screenshot of pricing details from the G. Standard Invoice (ZF2 Display) feature of petitioner's SAP program via transaction code VF03. ZF2 system is sorted by date of delivery.

378 See Table III.3, ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, p. 763.
379 See Exhibits "P-17" and "P-17-1", supra at note 20.
380 Exhibit "P-62", supra at note 141.
381 Exhibit "P-63", USB (Exhibit "P-67-2").
382 Id.
383 Id.

Documents Presented for Sales and Invoicing	Exhibit No.[382]	Annexed to the ICPA Report[383]	Description
Proof of Payments	"P-58"	U	Proof of payments of the customer which are online screenshots of bank statement.
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2306)	"P-59"	V	Proof of withholding of final tax on customer's payments.
LR	"P-60"	-	A Report prepared by petitioner to support the claim documentation and submitted with supporting documents to tax authority. The LR accounts the stock movements by FIFO method from the importation of ADO B0 to sale of ADO B2.

The ICPA verified petitioner sold and delivered 3,151,395 liters of ADO withdrawn from the Tabangao Refinery to SPEX during the period from 27 July 2020 to 28 November 2020, broken down as follows:

Date Withdrawn	Total Volume (ADO B2[384])	WC Exhibit No.[385]	BDN Exhibit No.[386]	CBDN Exhibit No.[387]	SI Exhibit No.[388]	Invoice Amount
27 July 2020	420,000	"P-51", p. 1	"P-52", p. 1	"P-53", p. 1	"P-56", pp. 1 to 2	₱9,369,486.00
27 August 2020	608,400	"P-51", p. 2	"P-52", p. 2	"P-53", p. 2	"P-56", pp. 3 to 4	13,190,902.92
06 September 2020	460,000	"P-51", p. 3	"P-52", p. 3	"P-53", p. 3	"P-56", pp. 5 to 6	9,940,830.00
11 September 2020	100,060	"P-51", p. 4	"P-52", p. 4	"P-53", p. 4	"P-56", pp. 7 to 8	2,115,598.60
24 September 2020	99,964	"P-51", p. 5	"P-52", p. 5	"P-53", p. 5	"P-56", pp. 9 to 10	1,961,823.49
12 October 2020	320,302	"P-51", p. 6	"P-52", p. 6	"P-53", p. 6	"P-56", pp. 11 to 12	6,270,296.01
16 October 2020	99,853	"P-51", p. 7	"P-52", p. 7	"P-53", p. 7	"P-56", pp. 13 to 14	1,991,598.04
13 November 2020	100,333	"P-51", p. 8	"P-52", p. 8	"P-53", p. 8	"P-56", pp. 15 to 16	1,923,634.44
25 November 2020	550,000	"P-51", p. 9	"P-52", p. 9	"P-53", p. 9	"P-56", pp. 17 to 18	11,600,435.00
26 November 2020	99,871	"P-51", p. 10	"P-52", p. 10	"P-53", p. 10	"P-56", pp. 19 to 20	2,106,449.17
28 November 2020	356,926	"P-51", p. 11	"P-52", p. 11	"P-53", p. 11	"P-56", pp. 21 to 22	7,528,176.11
Total	3,215,709					₱67,999,229.78

384 Base diesel and CME.
385 USB (Exhibit "P-67-2").
386 Id.
387 Id.
388 Id.

An examination of petitioner's SIs reveals that all pertain to sales to SPEX and contain no "Excise Duty Element" line. A review of the ZF2 Display[389] likewise confirms the absence of any excise tax component. Accordingly, petitioner neither billed nor collected excise tax on its sale of ADO to SPEX.[390]

Moreover, the ICPA found that all the SIs[391] totaling ₱67,999,229.78 were supported by proof of payment, including online screenshots of bank transactions.[392] The ICPA further noted that the difference of ₱5,439,938.38 represented the 8% FWT imposed pursuant to PD 1354[393], considering petitioner's status as a petroleum service contractor. Results of the examination appear summarized below:

SI Exhibit No.[394]	ZF2 Exhibit No.[395]	Online Screenshot of Bank Statement Exhibit No.[396]	Invoice Amount	Amount *per* Online Screenshot of Bank Statement	8% FWT
"P-56", pp. 1 to 2	"P-57", p. 1	"P-58", p. 1	₱9,369,486.00	₱20,755,557.81	₱1,804,831.11
"P-56", pp. 3 to 4	"P-57", p. 2		13,190,902.92		
"P-56", pp. 5 to 6	"P-57", p. 3	"P-58", p. 2	9,940,830.00	9,145,563.60	795,266.40
"P-56", pp. 7 to 8	"P-57", p. 4	"P-58", p. 3	2,115,598.60	1,946,350.71	169,247.89
"P-56", pp. 9 to 10	"P-57", p. 5	"P-58", p. 4	1,961,823.49	1,804,877.61	156,945.88
"P-56", pp. 11 to 12	"P-57", p. 6	"P-58", p. 5	6,270,296.01	5,768,672.33	501,623.68
"P-56", pp. 13 to 14	"P-57", p. 7	"P-58", p. 6	1,991,598.04	1,832,270.20	159,327.84
"P-56", pp. 15 to 16	"P-57", p. 8	"P-58", p. 7	1,923,634.44	1,769,743.68	153,890.76
"P-56", pp. 17 to 18	"P-57", p. 7	"P-58", p. 8	11,600,435.00	12,610,333.44	1,096,550.73
"P-56", pp. 19 to 20	"P-57", p. 8		2,106,449.17		
"P-56", pp. 21 to 22	"P-57", p. 9	"P-58", p. 9	7,528,176.11	6,925,922.02	602,254.09
		Total	**₱67,999,229.78**	**₱62,559,291.40**	**₱5,439,938.38**

In fine, petitioner sufficiently proved that excise tax amounting to ₱18,908,370.00[397] paid on a total volume of 3,151,395[398] liters of imported ADO subsequently sold to SPEX, a tax-exempt entity,

389 Annex T, id.
390 See ICPA Report dated 20 October 2023, Exhibit "P-67", supra at note 57, pp. 772-774.
391 Annex R, USB (Exhibit "P-67-2").
392 Annex U, id.
393 Supra at note 185.
394 USB (Exhibit "P-67-2").
395 Id.
396 Id.
397 3,151,395 liters (98% of 3,215,709 liters of ADO) multiplied by ₱6.00 excise tax rate.
398 98% of 3,215,709 liters of ADO.

constituted an erroneous payment and is refundable pursuant to Sections 204(C)[399] and 229[400] of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review, filed by petitioner Pilipinas Shell Petroleum Corporation on 12 July 2022, is **GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱18,908,370.00**, representing petitioner's excise taxes erroneously paid on petroleum products sold to Shell Philippines Exploration, B.V. (SPEX), an entity exempt from excise tax, covering the period from July to November 2020.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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[399] Supra at p. 15.
[400] Supra at pp. 15-16.

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice