REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**C.T.A. E.B. NO. 415 (C.T.A. CASE NOS. 6775 & 6839)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
PILIPINAS SHELL PETROLEUM CORPORATION, Respondent.	**Promulgated:** MAR 2 5 2009

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DECISION

UY, J.:

Before Us is a Petition for Review filed on August 13, 2008 seeking a review of the Decision[1] dated April 25, 2008 and Resolution[2] dated July 10, 2008, rendered by the First Division of this Court (Court in Division) in CTA Case Nos. 6775 and 6839, entitled "Pilipinas Shell Petroleum Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent", the dispositive portions of which read as follows:

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[1] Ponencia of Associate Justice Caesar A. Casanova concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, Docket, pp. 18-34 (photocopy), and 75-91 (certified true copy).
[2] Docket, pp. 35-38.

Decision promulgated on April 25, 2008:

"**WHEREFORE**, premises considered, this instant Petition for Review is hereby **PARTIALLY GRANTED** in the reduced amount of P95,014,283.00, computed as follows:

	VOLUME IN LITERS			EXCISE TAXES PAID			
	Gas Oil	Fuel Oil	Total	Gas Oil	Fuel Oil	Total	Exhibit
CTA Case No. 6776							
October 2001	6,317,350.00	4,049,610.00	10,366,960.00	P 10,297,280.50	P 1,214,883.00	P 11,512,163.50	S-2.1.1
November 2001	3,812,194.00	1,857,966.00	5,670,160.00	6,213,876.22	557,389.80	6,771,266.02	S-2.1.2
December 2001	5,234,296.00	2,846,693.00	8,080,989.00	8,531,902.48	854,007.90	9,385,910.38	S-2.1.3
Sub-total	15,363,840.00	8,754,269.00	24,118,109.00	25,043,059.20	2,626,280.70	27,669,339.90	
CTA Case No. 6839							
January 2002	7,984,494.00	2,469,854.00	10,454,347.50	13,014,725.22	740,956.05	13,755,681.27	S-2.1.4
February 2002	8,555,473.00	1,665,870.00	10,221,343.00	13,945,420.99	499,761.00	14,445,181.99	S-2.1.5
March 2002	6,468,171.00	2,174,352.00	8,642,523.00	10,543,118.73	652,305.60	11,195,424.33	S-2.1.6
April 2002	6,395,909.00	2,532,364.00	8,928,273.00	10,425,331.67	759,709.20	11,185,040.87	S-2.1.7
May 2002	4,383,689.00	1,694,059.00	6,077,748.00	7,145,413.07	508,217.70	7,653,630.77	S-2.1.8
June 2002	5,326,252.00	1,427,310.00	6,753,562.00	8,681,790.76	428,193.00	9,109,983.76	S-2.1.9
Sub-total	39,113,988.00	11,963,809.00	51,077,796.50	63,755,800.44	3,589,142.55	67,344,942.99	
Grand Total	54,477,828.00	20,718,078.00	75,195,905.50	P 88,798,859.64	P 6,215,423.25	P 95,014,282.89	

Accordingly, respondent is hereby **ORDERED to REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **NINETY FIVE MILLION FOURTEEN THOUSAND TWO HUNDRED EIGHTY THREE PESOS (P95,014,283.00)** representing excise taxes paid by petitioner on petroleum products sold to international carriers from October 2001 to June 2002.

SO ORDERED."[3]

Resolution promulgated on July 10, 2008:

"**WHEREFORE**, finding no cogent reason to reverse, amend or modify the Decision dated April 25, 2008, respondent's "**Motion for Reconsideration**" is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The factual antecedents of the case are not in dispute.

[3] Docket, pp. 89-90.
[4] Docket, p. 38.

Petitioner is the duly appointed Commissioner of Internal Revenue, holding office at the BIR National Office Building located at Agham Road, Diliman, Quezon City. On the other hand, respondent, Pilipinas Shell Petroleum Corporation (PSPC), is a corporation organized and existing under the laws of the Philippines with principal place of business at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City, and is engaged, among others, in the business of processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.

During the periods covering from October to December 2001 and January to June 2002, PSPC sold and delivered petroleum products to various international carriers, of Philippine or foreign registry, for their use or consumption outside the Philippines and correspondingly paid the amount of P28,064,925.15 and P72,267,718.54 (or a total of P100,332,644.00), respectively, as excise taxes.

For the period from October to December 2001, PSPC filed a formal claim for refund or issuance of a tax credit certificate with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue (BIR) on July 18, 2002, seeking the recovery of excise taxes paid by PSPC on its sales and deliveries of petroleum products to international carriers in the total amount of P28,064,925.15.

Subsequently, on October 21, 2002, it filed another formal claim for refund or issuance of a tax credit also with the BIR seeking the recovery of excise taxes covering the period from January to March 2002 in the total amount of P41,614,827.99. Again, on July 3, 2003, PSPC filed another formal claim for refund or issuance of a tax credit certificate with the BIR this time covering the period from April to June 2002 in the total amount of P30,652,890.55.

There being no action on the part of the herein petitioner, PSPC then filed before this Court a Petition for Review on September 19, 2003, docketed as CTA Case No. 6775, covering the claim for refund for the period October to December 2001 in the amount of P28,064,925.15. On December 23, 2003, PSPC again filed a Petition for Review, docketed as CTA Case No. 6839, this time covering the period of January to June 2002 amounting to P72,267,718.54 (P41,614,827.99 + P30,652,890.55). Both cases were consolidated on June 14, 2004.

On April 25, 2008, the Court in Division rendered the assailed Decision partially granting PSPC's claim for refund or issuance of a tax credit certificate in its favor, and accordingly ordered herein petitioner to refund PSPC the amount of P95,014,283.00 representing excise taxes paid by herein respondent on petroleum products sold to international carriers from October 2001 to June 2002. In partially granting PSPC's claim, the Court in Division held that among those exempted from excise tax on petroleum products are those sold to international carriers of Philippine or foreign registry, for their use or consumption outside the Philippines; and considering that PSPC ended up shouldering the specific tax component of the petroleum products it sold to these entities, it is but just and reasonable to allow it to recover what it would have otherwise have passed on to these entities had it not been exempted from indirect taxes.[5]

On the other hand, a portion of PSPC's claim in the amount of P5,318,361.00 was denied on the ground that the same was not fully substantiated, specifically, the amount of P4,113,397.40 was found not supported by any of the following documents: Receipts for Marine Banker Fuel (RMBF), Bunkering Permits (BP), sales invoices, printouts of PSPC's computerized accounting system showing "overview of billing items (F2 display of sale sales invoice)" and "pricing details", Withdrawal Certificates or official receipts issued by PSPC evidencing payments from international carriers; while the amount of P1,204,963.25 was found not supported by the appropriate reciprocity agreement.

Petitioner filed a Motion for Reconsideration of the said Decision on May 15, 2008. Respondent PSPC filed its Opposition thereto on June 16, 2008. Finding no compelling reason to either modify or alter the assailed Decision, the Court in Division denied petitioner's motion thereof in a Resolution dated July 10, 2008. Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated April 25, 2008 and the assailed Resolution dated July 10, 2008 be reversed and set aside.

In a Resolution dated September 9, 2008,[6] this Court found the instant petition for review to be insufficient in form and substance for failure of petitioner to attach a certified true copy of the assailed Decision dated April 25, 2008, and correspondingly denied due course and dismissed the same.

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[5] Citing the case of Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, CTA E.B. No. 91, November 25, 2005 (CTA Case Nos. 6506 and 6559).
[6] Docket, pp. 59-61.

On October 3, 2008, petitioner filed through registered mail a "Motion for Reconsideration and to Admit Attached Duplicate Original of the Decision Dated April 25, 2008"[7] praying for a reconsideration of aforesaid Resolution on the grounds that: he has meritorious legal defense and to deny his appeal purely on technicality would be a denial of his fundamental right to due process; the duplicate original copy of the assailed Decision was inadvertently attached to the copy for the petitioner instead of the copy intended for this Court; and there was no intention on his part to delay the proceedings of this Court.

PSPC filed its "Opposition (to Petitioner's Motion for Reconsideration and to Admit Attached Duplicate Original of the Decision dated April 25, 2008)" on October 20, 2008[8] alleging, among others, that the dismissal of petitioner's Petition for Review on procedural grounds is wholly sanctioned by Section 7, in relation to Section 6 of the Rules of Civil Procedure and does not amount to a denial of due process to petitioner, and that the dismissal was proper and not a mere technicality that can be overlooked.

In the interest of substantial justice and for reasons stated in the said motion, this Court granted petitioner's Motion for Reconsideration and to Admit Attached Duplicate Original of the Decision dated April 25, 2008 and PSPC was required to file its Comment within ten days from receipt thereof, in the Resolution dated October 29, 2008.[9] In compliance thereto, PSPC filed its "Comment (On Petition for Review dated 5 August 2008)" on November 17,

[7] Docket, pp. 69-91.
[8] Docket, pp. 93-105.
[9] Docket, pp. 107-108.

2008.[10] And finally, in the Resolution dated November 28, 2008,[11] the instant case was deemed submitted for decision.

Hence, this Decision.

ASSIGNMENTS OF ERRORS

Petitioner raises three (3) grounds/assignments of errors in this petition, to wit:

1) The First Division of this Honorable Tax Court erred in ordering the refund in favor of respondent on the excise taxes it paid on its sales and deliveries of petroleum products to various international carriers for their use or consumption outside the Philippines merely on the ground that respondent ended up shouldering the excise taxes since it can no longer pass on the excise tax to the tax-exempt buyer;

2) The First Division erred in holding that the payment of excise taxes made by respondent constitute as erroneously paid taxes that could be recovered under Section 229 of the Tax Code;

3) The First Division of the Honorable Tax Court erred in not applying the cases of Maceda vs. Macaraig and Philippine Acetylene vs. CIR in resolving the present case.

THE ISSUE

Only one legal issue is presented for the resolution of this Court, that is: whether or not the payment of excise taxes made by respondent constitutes an erroneously paid tax which gives right to the respondent to recover under Section 229 of the NIRC of 1997.

Petitioner's Arguments

Petitioner alleges that the obvious intent of the law is to grant excise tax exemption to international carriers and exempt entities or agencies, as

[10] Docket, pp. 109-129.
[11] Docket, p. 131.

buyers of petroleum products, and not to grant exemption to manufacturers or producers of petroleum products from the payment of excise tax. This is undeniably clear allegedly under the NIRC of 1997 that it is the manufacturer or producer of such products who is the one directly liable to pay the excise tax, although by practice it shifts the tax to the selling price of the products. Thus, there is allegedly no tax erroneously or illegally collected by PSPC from which a claim for tax refund or issuance of a tax credit certificate under Section 229 of the NIRC of 1997 can arise.

Petitioner maintains that Section 135 of the NIRC of 1997, which exempts from excise taxes on petroleum products sold to international carriers and exempt entities or agencies does not allow respondent to pass on to said international carriers and exempt entities or agencies, the excise taxes it paid on petroleum products sold to them allegedly because these international carriers or exempt entities or agencies will purchase the said products net of excise tax. According to petitioner, respondent failed to point out provisions of law which expressly grants it to claim as refund or tax credit the excise tax it previously paid from removal at the place of production of the petroleum products which were sold to international carriers.

Section 130(D) of the NIRC of 1997, the only provision of law that allegedly grants tax credit or refund on the excise taxes paid, provides that when goods locally produced or manufactured are removed and actually exported without returning to the Philippines, 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. Thus, this provision speaks of export sales while the subject claim of PSPC does not constitute "export sales" because sale of petroleum products to foreign international marine vessels does not fall within the definition of "export sales" as contemplated by law, considering the petroleum products purchased are for the personal consumption of international carriers while plying the international waters, and not for transporting to a foreign destination for unloading.

Moreover, petitioner invokes by analogy, application of the ruling in the case of *Ernesto Maceda vs. Hon. Catalino Macaraig, Jr.*[12] to the present case, wherein the Supreme Court ruled that oil companies (such as herein respondent) have to shoulder the excise taxes on the petroleum products, if the buyer happens to be a tax-exempt entity, which therefore means that PSPC has to shoulder the excise tax it previously paid on the petroleum products it sold to the international carriers because it cannot pass on to these carriers the said excise taxes it paid by reason of their exemption granted under Section 135(a) of the NIRC of 1997.

Similarly, petitioner contends that in the case of *Philippine Acetylene Co. vs. Commissioner of Internal Revenue,*[13] the Supreme Court ruled that the sales tax that is passed on to the purchaser as part of the purchase price of the commodity is a tax on the seller, and not on the buyer; hence, if the buyer happens to be tax-exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax on not on the buyer but is actually a tax on the seller.

[12] G.R. No. 88291, June 8, 1993.
[13] G.R. No. L-19707, August 17, 1967, 20 SCRA 1056.

Respondent's Counter-Arguments

Respondent PSPC asserts that Section 135(a) of the NIRC of 1997 unequivocally exempts from excise taxes petroleum products sold to international carriers; that the history behind Section 135 (a) clearly shows that the exemption contained in the provision is founded on international comity and reciprocity to foster goodwill and better relations with foreign countries. When the excise tax exemption of petroleum products sold to international carriers was carried in subsequent tax codes, the only requirement imposed was the reciprocity requirement, that is, that the country of registry of the international carrier accorded the same tax exemption to Philippine carriers.

PSPC points out that it sold petroleum products to international carriers of Philippine or foreign registry, which were used and consumed outside the Philippines; that it paid excise taxes on said petroleum products upon removal thereof from its place of production; and that by virtue of Section 135 of the NIRC of 1997, the said sales of petroleum products, are exempt from excise taxes. Thus, PSPC should not have allegedly paid the same. Inasmuch as the said excise taxes were paid for by PSPC, then it is rightfully entitled to a refund or tax credit thereof.

With respect to the Supreme Court decision in the case of *Maceda vs. Macaraig, Jr.*,[14] it is respondent's contention that the same is not applicable to the case at bench because said case involves the tax exemption of an entity, i.e., NPC, whereas the instant case involves the exemption of an article, i.e., petroleum products sold to qualified international carriers under certain

[14] Supra.

conditions; and that, in said case, the Supreme Court recognized that if NPC purchases oil from oil companies, NPC is entitled to claim reimbursement from the BIR for that part of the purchase price that represents excise taxes paid by the oil company to the BIR.

As regards the applicability of the ruling in the case of *Philippine Acetylene vs. Commissioner of Internal Revenue*,[15] PSPC contends that the same is likewise not applicable herein because in the said case, the seller sought to refund the sales tax that it could not pass on to its buyers, NPC and Voice of America, by reason of exemption granted by law to the buyers. The Supreme Court denied the claim for refund since the sales tax which the seller wanted to pass on as part of the purchase price of the commodity is really a tax on the seller, not the buyer. Thus, it was ruled that if the buyer is exempt from tax, the seller is, nonetheless, liable for the sales tax.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

The general provisions on excise tax is found in Title VI, Chapter I of the National Internal Revenue Code (NIRC) of 1997, and Section 129 thereof mentions the goods that are subject to excise taxes, to wit:

> "**SEC.129. Goods 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. 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

[15] Supra.

specified value of the good shall be referred to as 'ad valorem tax."

Relative thereto, persons or entities liable to pay excise taxes are required to file a return within the period specified under Section 130 of the NIRC of 1997, the pertinent portions of which read as follows:

> "**SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —**
>
> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of the Tax. —*
>
> (1) *Persons Liable to File a Return. —* Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.
>
> Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.
>
> (2) *Time for filing of Return and Payment of the Tax. —* Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: *Provided*, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151 (A) (4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July

> 1, 1998 up to December 31, 1998; and before removal from the place of production of such products from January 1, 1999 and thereafter; x x x"

Chapter II of the same Title, provides certain "Exemption or Conditional Tax-Free Removal of Certain Articles" from the payment of excise taxes, and one of these exemptions pertains to petroleum products sold to *international carriers and exempt entities* under Section 135 of the NIRC of 1997. Said Section reads as follows:

> "**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 (*Underscoring supplied).*"

Clearly from the provisions of Section 135, there are three (3) instances when the sales of petroleum products are exempt from the payment of excise taxes, namely:

> (a) sale to international carriers of Philippine or foreign registry on their use or consumption outside the Philippines, upon compliance with the specified conditions in this subsection;
>
> (b) sale to exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use

or consumption, also upon compliance with the specified condition under this subsection; and

(c) sale to entities which are by law exempt from direct and indirect taxes.

For a valid claim of exemption under the foregoing instances, the following requirements must be complied with:

First, that the petroleum products are used and consumed outside the Philippines by international carriers of Philippine or foreign registry;

Second, that such petroleum products be stored in a bonded storage tank and disposed of in accordance with the rules and regulations prescribed by the Secretary of Finance, upon recommendation of Commissioner; and

Third, that the country of said international carrier exempts similar taxes of petroleum products sold to Philippine carriers.

In the petition at bench, it was found by the Court in Division that the excise taxes due on the petroleum products sold and delivered to various international carriers during the periods from October to December 2001, and from January to June, 2002, were paid by respondent PSPC upon removal thereof from its place of production, or upon removal of the same from customs custody, as the case may be. In short, the petroleum products sold and delivered by respondent to these international carriers were already tax paid as mandated under Section 130 (A)(2) of the NIRC of 1997.

As these petroleum products were sold to international carriers during the aforementioned periods from October to December 2001 and from January to June 2002, respondent filed formal claims for refund or issuance of tax credit with the Large Taxpayers Audit and Investigation Division II of the Bureau of Internal Revenue regarding the aforementioned payment of excise taxes.

The question now is whether or not the Court in Division erred in partially granting respondent's subject claim for refund or issuance of tax credit in its assailed Decision dated April 25, 2008 and Resolution dated July 10, 2008.

We are in consonance with the ruling of the Court in Division in the light of the specific exemption mentioned under Section 135 of the NIRC of 1997, subject to its findings that respondent only partially complied with the pre-requisites laid down under said Section. This would explain why the assailed Decision only partially granted respondent's refund claim therein.

Thus, We adopt *in toto* the undisputed factual findings of the Court in Division relative thereto, and quote the pertinent portions thereon, as follows:

> "As correctly pointed out by petitioner (herein respondent), Section 135 of the NIRC of 1997 is applicable. Pursuant to the said section, among those exempted from excise taxes on petroleum products are those sold to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines.
>
> A close scrutiny of the records would reveal petitioner's (herein respondent's) partial compliance with Section 135 which was confirmed and find support in the Report dated October 3, 2005, submitted by the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Benjamin P. Valdez of Punongbayan & Araullo.
>
> The ICPA made the following conclusions:
>
> '2. Per our recomputation of the excise tax paid based on the Summary of Bunker Oil Deliveries to Various International Carriers provided to us, we determined that the amount of excise taxes being claimed for refund or tax credit amounting to P28,064,925.00 and P72,267,719 for CTA Case Nos. 6775 and 6839, respectively, or a total amount of P100,332,644 agree with the amount reported in the Petition[s] (See Exhibit S-1);

3. We ascertained that upon withdrawal of the petroleum products from its refinery as supported by WCs, the Company duly paid and remitted the excise tax of P1.63 and P0.30 per liter of gas oil and fuel oil, respectively, due thereon under Section 148(i) and (l) of the NIRC as evidenced by the ETR filed with the BIR and bank official receipts covering the excise tax payments;

4. We ascertained that the Company paid the total excise taxes in the total amount of P100,332,644 on its withdrawal of petroleum products of 56,554,873 liters of gas oil and 27,160,669 liters of fuel oil for the period October 2001 to June 2002 which were subsequently sold to international carriers, net of the related excise taxes. **This means that the Company did not pass onto these international carriers the cost of excise taxes it paid upon withdrawal of petroleum.**

xxx

B. **Examination of Sales and Deliveries of Petroleum Products to Various International Carriers**

xxx

5. We ascertained that each country of registry of international carriers covered by the total claim of P95,014,283.00, which was supported by complete documents, grants reciprocal tax exemption to Philippine registered marine carriers based on certifications issued by the DFA. Likewise, **we ascertained that the petroleum products sold to said international carriers of Philippine or foreign registry were used or consumed outside the Philippines based on the letters from MARINA dated June 11, 2004, July 6, 2004 and August 16, 2004 (see Exhibits O, P and Q)**.' (*Emphasis Supplied*)

However, the ICPA also ascertained the following, to wit:

xxx xxx xxx

'2. **We ascertained that the petroleum products were sold and delivered by the company to various international carriers in US dollars and**

> **were collected from them mostly in Philippine pesos based on our examination of official receipts issued by the Company.** Although sales were made in US dollars and most of them were collected in Philippine pesos, we verified that no excise tax component were passed on to various international carriers by comparing the invoiced amount (in US dollars) and the amount in US dollars indicated in the official receipts (before applying the exchange rate written on the official receipts) (**see Exhibits S-2.1 to S-2.9**).
>
> 3. Of the total amount being claimed for refund or tax credit of P100,332,644, **we determined that** [only] **P95,014,283 was fully supported with complete documents (**see **Exhibit S-2.1)** and **P5,318,361 was unsupported** (see **Exhibit S-2.2**)
>
> 4. We determined that the total claim with complete documents amounting to P95,014,283.00 was fully supported with the original or certified true copies of the documents presented together with this report and marked as exhibits (see **Exhibits T to Y**).' (*Emphasis Supplied*)

Verily, this Court agrees with the Report in as much as the findings of petitioner's (herein respondent's) valid claims are concerned. The petroleum products sold and delivered to various international carriers of Philippine or foreign registry were indeed used or consumed outside the Philippines, as certified to by the corresponding Certifications issued by the MARINA. Moreover, the sales and deliveries to these tax-exempt international carriers were properly supported by the Certificates issued by the Department of Foreign Affairs listing therein the names of the countries which grant tax exemptions to Philippine registered marine carriers.

In other words, this Court finds petitioner (herein respondent) entitled to the refund or tax credit of the amount of P95,014,283.00 representing excise taxes paid on petroleum products it sold to international carriers of foreign or Philippine registry for consumption outside the Philippines. The amount of P95,014,283.00 representing excise taxes on petroleum products sold to international carriers were, according to the ICPA, supported by Bunkering Permits ('BP'), showing among others the nationality of the vessels; Receipts for Marine Banker Fuel ('RMBF'); Sales Invoices; Billing details; Official Receipts; in relation to the said Certification issued by the Department of Foreign Affairs and considering that the petroleum products which were sold to various tax-exempt international carriers of Philippine or foreign registry were used or consumed outside the Philippines.

However, this Court, after verification, agrees with the ICPA in concluding that petitioner (herein respondent) has unsupported claims amounting to P5,318,361.00, composed of P4,113,397.40 which was the total amount not supported by any of the following documents: RMBFs, BPs, sales invoices, printouts of PSPC's computerized accounting system showing 'overview of billing items (F2 display of sale sales invoice)' and 'pricing details', Withdrawal Certificates or official receipts issued by PSPC evidencing payments from international carriers and P1,204,963.25 which was the total of the amount being claimed not supported by the appropriate reciprocity agreement.

We quote the ICPA's report, viz.:

> '8. We ascertained that each country of registry of international carriers covered by the total claim of P4,113,398, which was not supported by complete documents, grants reciprocal tax exemption to Philippine registered marine carriers based on the certifications issued by the DFA. **Thus, out of the unsupported claims of P5,318,361, only P1,204,963 was not supported by the appropriate reciprocity agreement.** This means that the countries of origin of the international carriers were not included among the countries that grant reciprocal tax exemption to Philippine registered marine carriers based on the letter from Department of Foreign Affairs. **Nonetheless, we ascertained that all the petroleum products sold to these international carriers of Philippine or foreign registry were used or consumed outside the Philippines based on the letter from MARINA which indicates the list of registered vessels operating in the overseas and domestic trade and with issued special permit.**' (*Emphasis Supplied*)

Hence, only the reduced amount of P95,014,283.00, being duly supported, can be refunded. As previously mentioned, the total amount of P5,318,361.00 was unsupported or with exceptions, and thus, cannot be allowed to be refunded x x x"[16]

Based on the afore-quoted findings of the Court in Division, it is apparent that respondent ended up paying the specific tax component of the petroleum products sold to international carriers. The fact that the subsequent sales to international carriers involve an exempt transaction, will not, standing alone, deprive PSPC of its right to a refund of the excise taxes paid thereon, albeit the erroneous, illegal or wrongful payment angle mentioned under Section 229 of the NIRC of 1997 does not enter the equation.[17]

In relation to petitioner's insistence that the ruling of the Supreme Court in case of *Maceda vs. Macaraig, Jr.* is applicable to the case at bench, it appears that said decision is not on all fours with the instant case because the former pertains to the exemption specified under Section 135(c) while the latter pertains to Section 135(a). In the Decision of the Supreme Court disposing the case in main (*Maceda vs. Macaraig, Jr.*, 197 SCRA 771, May 31, 1991), the High Tribunal clarified that the said Decision particularly deals with the exemption of NPC, to quote:

> "The fear of the serious implication of this decision in that NPC's suppliers, importers and contractors may claim the same privilege should be dispelled by the fact that (a) this decision particularly treats of only the exemption of the NPC from all taxes, duties, fees, imposts and all other charges imposed by the government on the petroleum products it used or uses for its operation. x x x"

[16] Assailed Decision, Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, CTA Case Nos. 6775 and 6839, pp.10-14, Docket, pp. 84-88.

[17] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008.

Clearly in the Maceda case, the Supreme Court put to rest only the issue on whether or not NPC is subject to tax taking into consideration that NPC is a tax exempt entity mentioned under Section 135 (c) of the NIRC of 1997. On the other hand, the case at bench involves the tax exemption of the sale of respondent's petroleum products under Section 135 (a) of the same Code, as amended, and whether it is entitled to refund of excise taxes erroneously paid.

Further, petitioner also invokes applicability of the case of *Philippine Acetylene Co. vs. Commissioner of Internal Revenue*[18] wherein the Supreme Court ruled that sales tax being passed on to the purchaser as part of the purchase price of the commodity is a tax on the seller, and not on the buyer. Hence, if the buyer happens to be tax exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax not on the buyer, but is actually a tax on the seller.

However, the case of Philippine Acetylene is also not applicable to the instant case because the party asking for the refund in said case was the seller-producer based on the exemption granted under the law to the buyer, National Power Corporation (NPC) and Voice of America (VOA). The pronouncement that sales tax, being an indirect tax, passed on to the purchaser as part of the purchase price of the commodity, is indeed a tax on the seller, and not on the buyer; and therefore, even if the buyer happens to be tax-exempt, the seller is nonetheless liable for the payment of the tax, and not the other way around.

[18] Supra.

In the instant case, the excise tax on petroleum products sold to international carriers for use or consumption outside the Philippines attaches to the article when sold to said international carriers, as it is the article which is exempt from tax, not the international carrier. In must be noted that there is a clear distinction as regards the transaction in the Philippine Acetylene case and the transaction in the present case between respondent PSPC and the international carriers. In the transaction between Philippine Acetylene and NPC, the manufacturer-taxpayer's claim is premised on the exemption of the buyer or the party it is dealing with, the NPC, and not on any specific provision of the NIRC of 1997 exempting the transaction, or the product, from excise tax. In the case at bench, it is the petroleum products that respondent sold to international carriers which are exempt from the payment of excise taxes by express provision of the NIRC of 1997, Section 135 in particular.

In the light of the foregoing considerations, We find that the Court in Division committed no reversible error when it partially granted the respondent's claim for refund or issuance of tax credit certificate in its assailed Decision and Resolution amounting to NINETY FIVE MILLION FOURTEEN THOUSAND TWO HUNDRED EIGHTY THREE PESOS (P95,014,283.00).

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice