REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**C.T.A. CASE NO. 6554**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 2 8 2006

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review seeking the refund/tax credit of the amount of **FORTY NINE MILLION FIFTY EIGHT THOUSAND SEVEN HUNDRED THIRTY THREE PESOS and 09/100** (P49,058,733.09) allegedly representing excise taxes paid by petitioner on its sales and deliveries of petroleum products to various international carriers for their use or consumption outside the Philippines, covering the period November 2000 to March 2001.

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

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, holding office at the BIR National Office Building located at Agham Rd., Diliman, Quezon City.

During the period November 2000 to March 2001, petitioner allegedly sold and delivered petroleum products to various international carriers of Philippine or foreign registry for their use or consumption outside the Philippines. Except for those delivered at the port of Zamboanga, the petroleum products sold and delivered by petitioner to the international carriers were sourced by petitioner from its tax-paid inventories stored at its various depots and installations.

As regards the petroleum products delivered by petitioner at the port of Zamboanga, it allegedly "borrowed' tax-paid petroleum products from Petron Corporation pursuant to a "loan or borrow" agreement between them. Excise taxes previously paid by Petron Corporation on the "borrowed" petroleum products were allegedly billed/passed on by Petron Corporation to petitioner. Petitioner, in turn, sold and delivered these "borrowed" petroleum products to various international carriers docked at the port of Zamboanga, net of excise taxes.

Petitioner avers that for the total volume of petroleum products sold and delivered by it to various international carriers, for their use and consumption outside the Philippines, covering the period November 2000 to

March 2001, it paid the corresponding excise taxes in the total amount of P49,058,733.09, computed as follows:

Month	Product	Volume in Liters	Specific Tax Rate	Amount
November 2000	Gas Oil	3,833,260	1.63	P 6,248,213.80
	Fuel Oil	332,305	0.30	99,691.50
December 2000	Gas Oil	4,561,620	1.63	7,435,440.60
	Fuel Oil	1,144,330	0.30	343,299.00
January 2001	Gas Oil	7,539,836	1.63	12,289,932.68
	Fuel Oil	1,981,805	0.30	594,541.50
February 2001	Gas Oil	5,277,586	1.63	8,602,465.18
	Fuel Oil	2,194,118	0.30	658,235.40
March 2001	Gas Oil	7,425,161	1.63	12,103,012.43
	Fuel Oil	2,279,670	0.30	683,901.00
TOTAL				P 49,058,733.09

On June 5, 2001 and September 5, 2001, petitioner filed two separate formal claims for refund or tax credit with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue, seeking the recovery of excise taxes paid on its sales and deliveries of petroleum products to international carriers during the periods November to December 2000 and January to March 2001, in the amounts P14,126,644.90 and P34,932,088.19, respectively or a total of P49,058,733.09.[1]

There being no action on the part of the respondent on its claims and to toll the running of the statutory period of two (2) years within which to file a judicial claim for refund, petitioner filed the instant Petition for Review on October 25, 2002.

On December 11, 2002, respondent, by counsel, filed an Answer raising the following Special and Affirmative Defenses:

6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

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[1] Pars. 4 & 5, Joint Stipulation of Facts and Issues

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended; and

10. Claims for refund are construed strictly against the claimant for the same partakes [of] the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

Petitioner presented evidence to buttress its case while respondent's counsel manifested that this case has no report of investigation.[2]

On May 11, 2006, with petitioner's submission of Memorandum on April 12, 2006, and respondent's failure to file his Memorandum within the period granted, the case was considered submitted for Decision.

The parties mutually agreed to limit the issues to be resolved by this Court, as follows:

1. Whether or not petitioner has complied with the requirements under section 229 of the National Internal Revenue Code of 1997 for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected;

2. Whether or not the country of registry of the various international vessels that purchased petroleum products from petitioner during the period from November 2000 to March 2001 exempts from excise or similar taxes petroleum products sold to Philippine vessels;

3. Whether or not the petroleum products sold and delivered by petitioner to various international carriers during the period from November 2000 to March 2001 for the latter's use or

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[2] Records, p. 232

consumption outside the Philippines are exempt from excise tax; and

4. Whether or not petitioner is entitled to the recovery of excise taxes it paid on petroleum products sold and delivered by petitioner to various international carriers for their use or consumption outside the Philippines.

Petitioner alleges that under Section 135 of the 1997 National Internal Revenue Code (NIRC), petroleum products sold to international carriers (whether of Philippine or foreign registry) are exempt from excise taxes provided that: (a) the petroleum products are consumed outside the Philippines; and (b) in the case of foreign international carriers, their country of registry exempt from excise or similar taxes petroleum products sold to Philippine carriers. To quote:

> **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.

Petitioner contends that with respect to the foreign international carriers, their respective country of registry exempts from excise or similar taxes petroleum products sold to Philippine carriers. Therefore, the petroleum products sold and delivered by petitioner to these various international carriers, for their use or consumption outside the Philippines, are exempt from excise taxes pursuant to Section 135 above. In relation thereto, Section 130(A)(2) provides:

> **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 Tax. —*
>
> (1) xxx
>
> (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 to December 31, 1998; and, ***before removal from the place of production of such products from January 1, 1999 and thereafter***: *xxx (Emphasis Supplied)*

Thus, petitioner posits that for the petroleum products it sold and delivered to various international carriers of Philippine or foreign registry for their use and consumption outside the Philippines for the period November 2000 to March 2001, it paid the excise taxes due thereon upon removal thereof from its place of production save for the petroleum products delivered by petitioner at the port of Zamboanga which were paid by Petron Corporation to the BIR upon removal thereof from the place of production. Petitioner, however, claims that Petron Corporation shifted or passed-on to it the excise tax component of the "borrowed" petroleum products. Petitioner asseverates that "borrowed" petroleum products emanated from a "Loan or Borrrow" Arrangement.[3]

The Court finds partial merit in petitioner's claim.

With respect to the first issue submitted to the Court for resolution, Section 229 of the National Internal Revenue Code provides:

> **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.

In the present case, the administrative claims for refund were made on June 5, 2001 and September 5, 2001, while the judicial claim was filed on October 25, 2002. On the other hand, Section 130(A)(2) of the 1997 NIRC requires that payments of excise taxes on petroleum products should be made before withdrawal of the products from their place of production and the subject claim involves excise taxes paid from November 2000 to March 2001.

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[3] Exhibit A

A scrutiny of the records reveals that the earliest withdrawal and payment of the excise tax for deliveries made in November 2000, were made on October 26, 2000 and October 27, 2000, respectively. Hence, counting two (2) years from these dates, petitioner was able to timely file both the administrative and judicial claims for refund in compliance with Section 229 of the 1997 NIRC. Thus, We shall proceed to the other issues raised.

Being interrelated, the same shall be discussed jointly. In the case of ***Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, CTA EB No. 91, November 25, 2005 (CTA Case Nos. 6506 & 6559),***[4] it was held:

> Finally, considering that Petitioner's sale of fuel oil to NPC is exempt from the payment of excise taxes, then Petitioner may rightfully recover the excise taxes it paid to PSPC (Pilipinas Shell Petroleum Corporation). And as correctly pointed out by Petitioner, since it ended up shouldering the specific tax component of the fuel oil, it is but just and reasonable to allow it to recover what it would have otherwise have passed on to NPC had it not been for NPC's exemption from indirect taxes. 'The view which refuses to accord exemption from indirect tax because the tax is first paid by the seller disregards realities and gives more importance to form than to substance. Equity and law always exalt substance over form' xxx."

While the above case deals with sale of petroleum products to tax exempt entities whose exemption from excise tax falls under Section 135(c) of the 1997 NIRC, and this case deals with fuel oil sold to international carriers whose exemption fall under Section 135(a) of the same Code, the above pronouncement of the Court of Tax Appeals *En Banc*, applies by analogy since in this case, petroleum products were sold to an entity exempt from the

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[4] Citing Shell Philippines Petroleum Corporation (now Pilipinas Shell Petroleum Corporation) vs. Commissioner of Internal Revenue, promulgated on July 26,2000, with entry of judgment dated November 24, 2000

payment of excise tax, and petitioner ended up shouldering the tax since it cannot pass on the excise taxes to the tax-exempt buyer.

It likewise would not be amiss to cite ***BIR Ruling No. 051-99*** which in part states:

> xxx ***"[S]ince your petroleum product withdrawals are for use by entities or agencies exempt from excise tax under Section 135 of the Tax Code of 1997,*** and that the petroleum products are to be delivered to the tax-exempt entities within ten (10) days (for the period January 1, 1998 to June 30, 1998); within five (5) days (for the period July 1, 1998 to December 31, 1998) from the date of removal of such products; and before removal from the place of production of such products (from January 1, 1999 and thereafter), ***you are allowed to claim a tax credit/refund of the excise taxes paid on petroleum products sold to tax exempt entities or agencies, subject to the two-year prescriptive period under Section 229 of the Tax Code of 1997.***
>
> Furthermore, the excise taxes paid on petroleum products sold and physically delivered to tax-exempt entities beyond ten (10) days (for the period January 1, 1998 to June 30, 1998), five (5) days (for the period July 1, 1998 to Dec. 31, 1998) after date of refinery withdrawal shall be recovered by you by filing claims for tax credit/refund with the Appellate Division, this Bureau. xxx"

As correctly pointed out by petitioner Section 135(a) of the 1997 NIRC is quite clear. 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. Under Section 135, there are three requirements for a valid claim of exemption:

> *First,* that the petroleum products are used and consumed outside the Philippines by international carriers of Philippine or foreign registry;
>
> *Second,* that the 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 from similar taxes petroleum products sold to Philippine carriers.

In this case, the commissioned Independent Certified Public Accountant of Joaquin Cunanan & Co., Mr. Jose Tayag, Jr., in his final report dated October 19, 2004, made the following findings:

"Based on the results of our examination of the Company's accounting and related records, including the relevant documents that support the Company's claims for tax refund or credit with respect to specific taxes imposed under Section 130 (A)(2) of the NIRC, we are of the opinion that the Company is entitled to a refund of P41,985,139.49 representing excise taxes paid on petroleum sold to international vessels for use or consumption outside the Philippines. We believe that the amount of P7,073,593.60 is not refundable. We verified that:

- The Company paid the excise taxes of P49,058,733.09 on its withdrawal of petroleum products of 28,637,463 liters of gas oil and 7,932,228 liters of fuel oil for the period November 2000 to March 2001 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.

  We have classified the excise tax payments of P49,058,733.09 based on the results of our examination as follows:

  a. With complete documents and, therefore, refundable (P41,985,139.49)

     - Of the amount refundable of P41,985,139.49, the amount of P39,305,419.49 (Annex C) represents excise taxes on petroleum products sold to international vessels which were sourced from the Company's own tax-paid inventories;

     - Of the amount refundable of P41,985,139.49, the amount of P2,679,720 (Annex F) represents excise taxes on petroleum products sold to international vessels which were borrowed from Petron's tax-paid inventories;

b. With incomplete documents or exceptions and, therefore, not refundable (P7,073,593.60)

- Excise taxes of P7,073,593.60 (Annex D) broken down as follows:

  As of October 19, 2004, the Company failed to furnish some documents for us to complete our verification on the excise tax claims amounting to P1,451,937.15 having a total volume of 607,905 liters of gas oil and 1,536,840 liters of fuel oil.

  The Company failed to provide DFA certification on several countries granting excise tax exemption to Philippine-registered vessels on their purchase of petroleum products while docked in foreign ports. Total claims for deliveries to countries without reciprocity agreement amount to P4,941,196.77 having a total volume of 2,629,449 liters of gas oil and 2,183,983 liters of fuel oil.

  Pursuant to Maritime Industry Authority Memorandum Circular No. 166, Philippine-Registered domestic ships may be allowed to temporarily engage in international voyages provided that the company obtains a special permit. Excise taxes on deliveries of petroleum products to domestic ships without special permit amount to P681,459.68 having a total volume of 402,736 liters of gas oil and 80,000 liters of fuel oil.

  Total amount of excise tax payment with incomplete documents or with exceptions amounted to P7,073,593.60.

- We have seen the related documents where deliveries of petroleum products to international carriers at the port of Zamboanga were sourced from Petron. Total excise taxes paid to Petron on its deliveries (November 2000 to March 2001) to the Company is P2,679,720 representing 1,644,000 liters of gas oil. xxx

- The certified true copy of the bunkering permit [Exhibit 'W-1' to 'W-75'] of each international carrier that we inspected to establish its nationality were obtained by the Company from Bureau of Customs.

- Based on the reconciliation of advance payments and excise taxes due xxx, we noted the following inconsistencies which do not affect the amount refundable: xxx

The inconsistencies noted xxx do not affect the amount of the claim because the beginning and ending balances of the advance payment are sufficient to cover the inconsistencies thus noted.

After effecting the exclusion on excise tax claims amounting to P7,073,593.60 due to unavailability of certain documents (original or duplicate original copies), deliveries to countries without reciprocity agreement, and deliveries to domestic vessels without special permit to ply international route, **it is our opinion that the Company is entitled to a refund of P41,985,139.49 representing excise taxes paid on petroleum products sold to international vessels for their use or consumption outside the Philippines.**

Our conclusion relates only to the Company's claims for tax refund or credit and does not extend to other components of the Company's financial statements.

This final report is solely in connection with the tax case involving claims for specific tax refund or credit filed by the Company now pending with the CTA (CTA Case No. 6554) and should not be used for any other purpose."[5] *(References Omitted)*

As verified by the Independent Certified Public Account, petitioner is entitled to a refund in the total amount P41,985,139.49, broken down as follows:

P39,305,419.49 (representing excise taxes on petroleum products sold to international carriers which were sourced from the Company's own tax-paid inventories); and

P2,679,720.00 (representing excise taxes on petroleum products sold to international carriers which were borrowed from Petron' tax-paid inventories).

In its Memorandum, petitioner prayed that judgment be rendered declaring its entitlement to a refund or tax credit in the amount of

[5] Exhibit U

P41,985,139.49 and ordering respondent to grant a refund or tax credit in the same amount. It is noteworthy that petitioner's prayer with respect to the amount of refund already considers the report of the commissioned independent CPA. Moreover, petitioner justified its claim in the amount of P2,679,720.00 in this manner:

> 1. Considering that petitioner does not have a depot or installation in Zamboanga for the storage of tax-paid petroleum products, petitioner 'borrowed' petroleum products from Petron Corporation, pursuant to an 'Agreement for Rationalized Operations of Bulk Fuel Storage Plant' entered into by petitioner and Petron Corporation. Petitioner, in turn, sold and delivered the 'borrowed' petroleum products to international vessels docked at the port of Zamboanga, net of excise taxes. The petroleum products 'borrowed by petitioner from Petron Corporation were later on replaced/repaid by petitioner with petroleum products of the same kind.
>
> 2. The petroleum products 'loaned' by Petron Corporation to petitioner for the period December 2000 to March 2001 for delivery to tax-exempt international carriers of Philippine or foreign registry were sourced by Petron Corporation from its tax-paid inventories, meaning the excise taxes due thereon had already been paid by Petron Corporation to the BIR upon removal thereof from the place of production.
>
> 3. Inasmuch as petitioner would later on replace/repay the 'borrowed' petroleum products, Petron Corporation only billed petitioner the excise tax component pertaining to the petroleum products 'borrowed'. In other words, Petron Corporation shifted or passed-on to petitioner the excise tax component of the 'borrowed' petroleum products as and when the same were 'loaned' by Petron Corporation to petitioner.
>
> 4. However, the amounts billed by petitioner for the sale and delivery of the 'borrowed' petroleum products to various international vessels docketed at the port of Zamboanga, during the period December 2000 to March 2001, were net of excise taxes. Thus, petitioner ultimately had to bear the excise tax component of the 'borrowed' petroleum products sold and delivered at the port of Zamboanga." [6]

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[6] Memorandum for Petitioner, Records, pages 237 - 238

Notwithstanding the above explanation, the claimed amount of P2,679,720.00 representing excise taxes on petroleum products sold to international carriers which were borrowed from Petron Corporation's tax-paid inventories is disallowed. Section 130(A)(2) and Section 204 of the National Internal Revenue Code of 1997 read:

> ***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 Tax. —
> (1) xxx
> (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***: xxx
>
> ***SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —*** The Commissioner may —
>
> (A) xxx
> (B) xxx
> (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 <u>taxpayer</u> 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.

Clearly, petitioner in this case is not the proper party to claim for the refund of the amount of P2,679,720.00 representing excise taxes on petroleum products sold to international carriers which were borrowed from Petron Corporation's tax-paid inventories. There was no erroneously or illegally collected excise tax because the taxes were indeed due and demandable at the time the petroleum products were withdrawn from their place of production. Petron Corporation, as the taxpayer statutorily liable to pay the excise taxes thereon, merely paid what was demandable from it.

In addition, petitioner did not pay and remit the tax to the Bureau of Internal Revenue. And since the excise taxes were paid by Petron Corporation, petitioner cannot seek for the refund thereof because it is not the taxpayer entitled the remedy provided by law in Section 204 of the National Internal Revenue Code of 1997. As held in the case ***Commissioner of Internal Revenue vs. Silkair (Singapore) PTE. LTD.,***[7] "the right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR at the point of removal of the petroleum products from the refinery and not respondent xxx, to whom the tax burden was merely passed on".

However, this Court finds petitioner entitled to the refund/tax credit of the amount of P39,305,419.49 representing excise taxes paid on the petroleum products it sold to international carriers of foreign or Philippine registry for consumption outside the Philippines. The amount of P39,305,419.49 representing excise taxes on petroleum products sold to international carriers were sourced from the Company's own tax-paid inventories [which according to the commissioned independent CPA was substantiated by documentary evidence, such as Bunkering Permit (Exhibits W-1 to 75); Receipts for Marine Bunker Fuel (Exhibits X-1 to X-96); Sales

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[7] CTA EB Case No. 25 (CTA Case No. 5996), Resolution, December 5, 2005

Invoices (Exhibits BB-1 to BB-82); Billing details (Exhibits Y-1 to Y-82); Pricing details (Exhibits Z-1 to Z-82); Official Receipts (Exhibits AA-1 to AA-62)].

After a careful review of the conclusion reached by the commissioned independent CPA[8] with reference to the documentary evidence offered by petitioner, We find that:

(1) Petitioner made advance payments of excise taxes from November 2000 to March 2001 in the total amount of P826,000,000.00,[9] summarized as follows:

Exhibit	Date	Amount
T-4-3	October 27, 2000	P 122,000,000.00
T-13-3	November 16, 2000	26,000,000.00
T-5-3	November 24, 2000	4,000,000.00
T-28-3	December 21, 2000	67,000,000.00
T-25-3	December 15, 2000	129,000,000.00
T-22-3	December 12, 2000	26,000,000.00
T-40-3	January 16, 2001	28,000,000.00
T-44-3	January 23, 2001	16,000,000.00
T-45-3	January 24, 2001	23,000,000.00
T-50-3	January 31, 2001	21,000,000.00
T-53-3	February 6, 2001	34,000,000.00
T-64-3	February 23, 2001	101,000,000.00
T-80-3	March 21, 2001	40,500,000.00
T-68-3	March 1, 2001	44,000,000.00
T-72-3	March 7, 2001	56,500,000.00
T-76-3	March 13, 2001	58,000,000.00
T-77-3	March 14, 2001	30,000,000.00
Total Advance Payments		**P 826,000,000.00**

(2) Petitioner made several withdrawals of gas and fuel oils from its refinery evidenced by Withdrawal Certificates[10] during the period from November 2000 to March 2001 for total volume in liters of 218,458,032 and 51,418,644, respectively. The related excise taxes of P356,081,702.16 and P12,425,593.20 of the said withdrawn petroleum products were already paid as evidenced by Daily Products

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[8] Exhibit U
[9] Annex B, commissioned independent CPA report (Exhibit U); Exhibits T-4-3, T-13-3, T-5-3, T-28-3, T-25-3, T-22-3, T-40-3, T-44-3, T-45-3, T-50-3, T-53-3, T-64-3, T-80-3, T-68-3, T-72-3, T-76-3, T-77-3
[10] Exhibits V-1 to V-51

Deliveries Report,[11] Daily Removals and Excise Tax Due to Petroleum Products[12] Excise Tax Returns[13] in relation to Payment Form (BIR Form No. 0605) for advance payment of excise tax.[14] Details of withdrawals of gas and fuels oils and their corresponding excise tax dues are shown below:

Withdrawal of Gas Oil

Exhibits	Withdrawal Certificate No.	Date	Volume	Exhibits	Excise Tax at P1.63 per liter of Gas Oil
V-1	50287	10/26/2000	12,097,104	T-1; T-1-1 & T-1-2	P 19,718,279.52
V-2	50366	11/5/2000	10,583,242	T-2; T-2-1 & T-2-2	17,250,684.46
V-3	50392	11/12/2000	5,779,858	T-3; T-3-1 & T-3-2	9,421,168.54
V-4	50454	11/15/2000	12,954,579	T-4; T-4-1 & T-4-2	21,111,073.77
V-5	50489	11/23/2000	8,092,005	T-5; T-5-1 & T-5-2	13,189,968.15
V-6	50689	12/20/2000	8,956,585	T-6; T-6-1 & T-6-2	14,599,233.55
V-7	50670	12/14/2000	7,378,925	T-7; T-7-1 & T-7-2	12,027,647.75
V-8	50659	12/11/2000	11,278,834	T-8; T-8-1 & T-8-2	18,384,499.42
V-9	50582	12/5/2000	9,665,348	T-9; T-9-1 & T-9-2	15,754,517.24
V-10	50560	11/29/2000	8,862,172	T-10; T-10-1 & T-10-2	14,445,340.36
V-12	50784	12/30/2000	9,638,712	T-11; T-11-1 & T-11-2	15,711,100.56
V-15	50802	1/4/2001	10,396,608	T-12; T-12-1 & T-12-2	16,946,471.04
V-18	50844	1/15/2001	7,210,329	T-13; T-13-1 & T-13-2	11,752,836.27
V-20	50891	1/22/2001	3,413,397	T-14; I-14-1 & T-14-2	5,563,837.11
V-21	50920	1/22/2001	7,329,969	T-14; T-14-1 & T-14-2	11,947,849.47
V-23	50929	1/23/2001	4,846,226	T-15; T-15-1 & T-15-2	7,899,348.38
V-25	52257	1/30/2001	7,340,480	T-16; T-16-1 & T-16-2	11,964,982.40
V-27	52288	2/5/2001	1,612,109	T-17; T-17-1 & T-17-2	2,627,737.67
V-32	60346	2/18/2001	8,912,686	T-18; T-18-1 & T-18-2	14,527,678.18
V-36	60380	2/22/2001	4,580,398	T-20; T-20-1 & T-20-2	7,466,048.74
V-37	60412	2/22/2001	14,466,020	T-20; T-20-1 & T-20-2	23,579,612.60
V-40	60427	2/25/2001	7,324,349	T-21; T-21-1 & T-21-2	11,938,688.87
V-42	60643	3/20/2001	4,948,132	T-22; T-22-1 & T-22-2	8,065,455.16
V-43	60443	2/28/2001	12,821,766	T-23; T-23-1 & T-23-2	20,899,478.58
V-47	60602	3/12/2001	8,977,354	T-25; T-25-1 & T-25-2	14,633,087.02
V-49	60611	3/13/2001	4,799,209	T-26; T-26-1 & T-26-2	7,822,710.67
V-50	60490	3/11/2001	4,191,636	T-27; T-27-1 & T-27-2	6,832,366.68
TOTAL			218,458,032		P 356,081,702.16

Withdrawal of Fuel Oil

Exhibits	Withdrawal Certificate No.	Date	Volume	Exhibits	Excise Tax At P0.30 per liter of Fuel Oil
V-11	50524	11/29/2000	2,107,380	T-10; T-10-1 & T-10-2	P 632,214.00
V-13	50732	1/4/2001	1,092,062	T-12; T-12-1 & T-12-2	327,618.60

[11] Exhibits T-1-2 to T-27-2
[12] Exhibits T-1-1 to T-27-1
[13] Exhibits T-1 to T-27
[14] Exhibits T-4-3 to T-80-3

V-14	50733	1/4/2001	2,050,081	T-12; T-12-1 & T-12-2	615,024.30
V-16	50873	1/15/2001	1,512,420	T-13; T-13-1 & T-13-2	453,726.00
V-17	50874	1/15/2001	1,900,512	T-13; T-13-1 & T-13-2	570,153.60
V-17	50874	1/15/2001	1,921,976	T-13; T-13-1 & T-13-2	576,592.80
V-19	50892	1/22/2001	2,085,070	T-14; T-14-1 & T-14-2	625,521.00
V-22	50896	1/23/2001	1,144,621	T-15; T-15-1 & T-15-2	343,386.30
V-24	50964	1/30/2001	1,527,360	T-16; T-16-1 & T-16-2	458,208.00
V-26	50978	2/5/2001	2,117,592	T-17; T-17-1 & T-17-2	635,277.60
V-28	60370	2/18/2001	1,869,278	T-18; T-18-1 & T-18-2	560,783.40
V-29	60369	2/18/2001	989,742	T-18; T-18-1 & T-18-2	296,922.60
V-29	60369	2/18/2001	535,658	T-18; T-18-1 & T-18-2	160,697.40
V-31	60347	2/18/2001	4,739,427	T-18; T-18-1 & T-18-2	1,421,828.10
V-34	60379	2/21/2001	736,147	T-19; T-19-1 & T-19-2	220,844.10
V-34	60379	2/21/2001	1,133,147	T-19; T-19-1 & T-19-2	339,944.10
V-35	60378	2/21/2001	1,515,977	T-19; T-19-1 & T-19-2	454,793.10
V-38	60391	2/25/2001	11,255,363	T-21; T-21-1 & T-21-2	376,608.90
V-39	60392	2/25/2001	2,812,299	T-21; T-21-1 & T-21-2	843,689.70
V-41	60564	3/20/2001	1,506,693	T-22; T-22-1 & T-22-2	452,007.90
V-44	60454	2/28/2001	1,858,642	T-23; T-23-1 & T-23-2	557,592.60
V-45	60474	3/6/2001	1,079,171	T-24; T-24-1 & T-24-2	323,751.30
V-46	60475	3/6/2001	1,518,664	T-24; T-24-1 & T-24-2	455,599.20
V-48	60495	3/12/2001	1,293,595	T-25; T-25-1 & T-25-2	388,078.50
V-51	60492	3/11/2001	1,115,767	T-27; T-27-1 & T-27-2	334,730.10
TOTAL			51,418,644		P12,425,593.20

TOTAL EXCISE TAX ON WITHDRAWALS OF GAS AND FUEL OIL P368,507,295.36

Thus, from November 2000 to March 2001, petitioner's total advance payments of excise tax amounting to P826,000,000.00 is greater than the excise tax due of P368,507,295.36 for the said withdrawn petroleum products.[15]

Indeed, during November 2000 to March 2001, petitioner sold and delivered a total of 23,353,373 liters of gas oil and 4,131,405 liters of fuel oil to various tax-exempt international carriers of Philippine or foreign registry, net of the related excise taxes. The said sales and deliveries to tax-exempt international carriers are duly supported by Bunkering Permit, showing among

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[15] *See Annex B, commissioned independent CPA report (Exhibit U) in relation to the pertinent documentary evidence referred therein.*

others the nationality of the vessel;[16] Receipts for Marine Banker Fuel;[17] Sales Invoices;[18] Billing details;[19] Pricing details;[20] Official Receipts;[21] in relation to the Certification issued by the Department of Foreign Affairs[22] listing therein the name of the countries that grant tax exemption to Philippine-registered carriers. Further, the petroleum products which were sold to various tax-exempt international carriers of Philippine or foreign registry were used or consumed outside the Philippines.[23] *(see Annex A of this Report)*

IN VIEW OF ALL THE FOREGOING, petitioner's claim is hereby **GRANTED** in the reduced amount of P39,305,419.49, computed as follows:

	Volume (in Liters)		Gas Oil	Fuel Oil	
Month	**Gas Oil**	**Fuel Oil**	**@ P1.63/Liter**	**@P0.30/Liter**	**Total**
November 2000	3,701,260	0	P 6,033,053.80	P 0.00	P 6,033,054
December 2000	3,577,410	639,580	5,831,178.30	191,874.00	6,023,052
January 2001	5,704,597	1,341,055	9,298,493.11	402,316.50	9,700,810
February 2001	3,992,120	192,090	6,507,155.60	57,627.00	6,564,783
March 2001	6,377,986	1,958,680	10,396,117.18	587,604.00	10,983,721
Total	**23,353,373**	**4,131,405**	**P38,065,997.99**	**P1,239,421.50**	**P39,305,419.49**

Accordingly, respondent is hereby **ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **THIRTY NINE MILLION THREE HUNDRED FIVE THOUSAND FOUR HUNDRED NINETEEN & 49/100 PESOS** (P39,305,419.49) representing excise taxes paid by petitioner on petroleum products sold to international

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[16] Exhibits W-1 to W-75
[17] Exhibits X-1 to X-96
[18] Exhibits BB-1 to BB-82
[19] Exhibits Y-1 to Y-82
[20] Exhibits Z-1 to Z-82
[21] Exhibits AA-1 to AA-62
[22] Exhibit S
[23] Exhibits L to L-9

carriers which were sourced from its own tax-paid inventories.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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.

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

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

ANNEX "A"

Month	Vessel	Country of Registry	Bunkering Permit No.	Exhibit	RMBF * No.	Exhibit	Invoice Number	Exhibit	Volume in Liters Gas Oil	Fuel Oil
November 2000	FoxHound	Philippines	1850	W-1	5906	X-1	910916792	BB-1	48,100	
	Million T	Panama	1694	W-2	5645	X-2	910908281	BB-2	54,110	
	MT Angela	Panama	1728	W-3	5904	X-4	910916199	BB-3	541,120	
	MT Angela	Panama	1833	W-4	5648	X-5	910916797	BB-4	541,120	
	MT Demetrius	Panama	1762	W-5	5650	X-6	910916201	BB-5	541,120	
	MT Golden Alpha	Panama	1790	W-6	5902	X-7	910916203	BB-6	541,120	
	MT Golden Alpha	Panama	1848	W-7	5905	X-8	910916794	BB-7	300,620	
	MT Kuotai	Panama	1752	W-8	5903	X-9	910916200	BB-8	541,120	
	MT Kuotai	Panama	1809	W-9	5649	X-10	910916204	BB-9	541,120	
	Royal Progress	Philippines	1702	W-10	5646	X-11	910890500	BB-10	51,710	
Sub-total									**3,701,260**	-
December 2000	Foxhound	Philippines	1850	W-1	5907	X-12	910952544	BB-11		253,010
	Golden Zebra	Panama	1928	W-12	5924	X-13	910953646	BB-12	541,120	
	Ho Feng No. 8	Panama	1954	W-13	5929	X-14	910953584	BB-13	60,130	
	Ho Feng No. 8	Panama	1954	W-13	5928	X-15	910953584	BB-13		32,160
	Isla Bohol	Philippines	1971	W-14	5933	X-16	910954246	BB-14	36,070	
	Isla Bohol	Philippines	1971	W-14	5934	X-17	910954245	BB-15		107,850
	MT Golden Ace	Panama	1892	W-15	5912	X-18	910950713	BB-16	541,120	
	MT Kuotai	Panama	1960	W-16	5932	X-19	910954243	BB-17	541,120	
	MT Liberty	Panama	1899	W-17	5918	X-20	910950690	BB-18	541,120	
	MV Royal Progress	Philippines	1946	W-18	5927	X-21	910953568	BB-19	42,090	
	Norella	Malaysia	1940	W-19	5925	X-22	910953594	BB-20		48,240
	Pacific Dragon	Panama	1867	W-20	5913	X-23	910947070	BB-21	192,400	
	Pacific Dragon	Panama	1867	W-20	5915	X-24	910947064	BB-22		96,480
	Pacific Dragon	Panama	1936	W-21	5930	X-25	910954244	BB-23		101,840
	Silver Star	Panama	1916	W-22	5919	X-26	910952565	BB-24	541,120	
	Sunny Hawk	Panama	1882	W-23	5911	X-27	910950720	BB-25	541,120	
Sub-total									**3,577,410**	**639,580**
January 2001	Angelo Amate	Italy	0122	W-24	5965	X-28	911024640	BB-26		210,840
	Angelo Amate	Italy	0122	W-24	5962	X-29	911024640	BB-26		316,265
	Asian Star	Panama	0064	W-25	5955	X-30	910991168	BB-27		139,360
	Asian Star	Panama	0064	W-25	5957	X-31	910984460	BB-28	42,087	
	Ginga Falcon	Panama	0114	W-26	5966	X-32	910992001	BB-29	541,120	
	Golden Ace	Panama	0113	W-27	5961	X-33	910990282	BB-30	541,120	
	Golden Alpha	Panama	0066	W-28	5953	X-34	910985002	BB-31	541,120	
	Golden Alpha	Panama	0098	W-29	5959	X-35	910991345	BB-32	541,120	
	Heunga Star	Greece	0029	W-32	5946	X-38	910984435	BB-35	36,070	
	Heunga Star	Greece	0072	W-33	5951	X-39	910984454	BB-36	84,170	
	Helios	Panama	0062	W-35	5948	X-43	910990160	BB-38	58,920	
	Helios	Panama	0062	W-35	5950	X-44	910990083	BB-39		248,700
	National Honor	Hongkon	0105	W-37	5960	X-48	910991950	BB-41		65,980
	Pacific Dragon	Panama	0035	W-38	5970	X-49	910984452	BB-42	72,150	
	Pacific Dragon	Panama	0035	W-38	5972	X-50	911023091	BB-43		101,840
	Pacific Ocean	Greece	0138	W-39	5971	X-51	911025729	BB-44		128,640
	Spring Orca	Panama	0059	W-40	5947	X-52	910984991	BB-45	541,120	
	Sun Treasure	Panama	0071	W-41	5969	X-53	910091870	BB-46	541,120	
	Sunny Hawk	Panama	0031	W-42	5942	X-54	910985010	BB-47	541,120	
	Sunny Hawk	Panama	0074	W-43	5954	X-55	910984973	BB-48	541,120	
	Sunrise Ivy	Panama	0013	W-44	5937	X-56	910984962	BB-49	541,120	
	TBN VI	Panama	0037	W-45	5943	X-57	910984981	BB-50	541,120	
	Ten Hiro	Panama	0016	W-46	5938	X-58	910984441	BB-51		129,430
Sub-total									**5,704,597**	**1,341,055**
February 2001	Fair Iris	Panama	0156	W-47	4175	X-59	911024290	BB-52	20,000	
	Fair Iris	Panama	0156	W-47	4176	X-60	911024290	BB-52	16,000	
	Fair Iris	Panama	0156	W-47	4177	X-61	911024290	BB-52	12,000	
	Global Falcon	Panama	0204	W-48	5984	X-62	911024725	BB-53	541,120	
	Golden Ace	Panama	0223	W-49	5989	X-63	911024733	BB-54	541,120	
	Golden Alpha	Panama	0217	W-50	5988	X-64	911024730	BB-55	541,120	

Month	Vessel	Country of Registry	Bunkering Permit No.	Exhibit	RMBF * No.	Exhibit	Invoice Number	Exhibit	Volume in Liters	
									Gas Oil	Fuel Oil
	Isla Bohol	Philippines	0202	W-51	5993	X-65	911062093	BB-56		60,090
	Janesia Asphalt	Panama	0182	W-52	5983	X-66	911026065	BB-57	36,080	
	Mt Angela	Panama	0179	W-54	5982	X-68	911024726	BB-59	541,120	
	Mt Ginga Falcon	Panama	0114	W-55	5981	X-69	911024721	BB-60	541,120	
	Mt Sunny Hawk	Panama	0170	W-56	5978	X-70	911024713	BB-61	541,120	
	Mt Sunrise Ivy	Panama	0159	W-57	5973	X-71	911024712	BB-62	541,120	
	MV Ace Eagle	Panama	0201	W-58	5986	X-72	911026286	BB-63	96,200	
	Yong An	Panama	0224	W-59	1554	X-73	911026083	BB-64	24,000	
	Yong An	Panama	0224	W-59	1556	X-74	911026083	BB-64		32,000
	Yong An	Panama	0224	W-59	1555	X-75	911026083	BB-64		100,000
Sub-total									**3,992,120**	**192,090**
March 2001	Asian Star	Panama	0847	W-60	5668	X-76	911065160	BB-65	102,210	
	Asian Star	Panama	0847	W-60	5672	X-77	911065160	BB-65	48,100	
	Asian Star	Panama	0847	W-60	5669	X-78	911065160	BB-65		168,680
	Cinta	Panama	0367	W-61	5664	X-79	911064699	BB-66	90,186	
	Cinta	Panama	0367	W-61	5661	X-80	911064699	BB-66		643,180
	Cinta	Panama	0367	W-61	5663	X-81	911065054	BB-67		214,400
	Golden Zebra	Panama	0869	W-62	5666	X-82	911063368	BB-68	541,120	
	Liberty Sun	Panama	0842	W-63	5657	X-83	911063216	BB-69	541,120	
	Maple Galaxy	Panama	0371	W-64	5667	X-84	911064928	BB-70	541,120	
	Mt Excelsior	Panama	0258	W-65	5997	X-85	911063156	BB-71	541,120	
	Mt Golden Alpha	Panama	0834	W-66	5656	X-86	911063197	BB-72	541,120	
	Mt Kuo Tai	Panama	0806	W-67	5651	X-87	911063175	BB-73	541,120	
	Mt Spring Bay	Panama	0826	W-68	5655	X-88	911063191	BB-74	541,120	
	Mt Sun Vry	Panama	0808	W-69	5654	X-89	911063180	BB-75	84,170	
	Pacific Dragon	Panama	0253	W-70	5652	X-90	911062099	BB-76	101,000	
	Pacific Dragon	Panama	0253	W-70	5653	X-91	911062110	BB-77		74,850
	Rotterdam VI	Netherlands	0281	W-71	6000	X-92	911063077	BB-78		857,570
	Sea Crane	Panama	0391	W-72	5673	X-93	911098602	BB-79	541,120	
	Spring Orca	Panama	0358	W-73	5658	X-94	911063366	BB-80	541,120	
	Sunny Hawk	Panama	0295	W-74	5999	X-95	911063172	BB-81	541,120	
	Sunrise Ivy	Panama	0270	W-75	5998	X-96	911063168	BB-82	541,120	
Sub-total									**6,377,986**	**1,958,680**
TOTAL									**23,353,373**	**4,131,405**

* Receipt for Marine Bunker Fuel