REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, *Petitioner*,	**CTA Case No. 10241** Members:
-*versus*-	**MANAHAN**, *Chairperson*, **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: OCT 29 2024 11:15 a.m.

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D E C I S I O N

MANAHAN, *J.*:

This is an *Amended* Petition for Review filed by Pilipinas Shell Petroleum Corporation praying that judgment be rendered ordering respondent to refund or issue a tax credit certificate in the amount of ₱43,844,524.00 representing excise taxes allegedly paid by petitioner on Jet A-1 fuel and sold to tax-exempt international air carriers during the period January to September 2018.[1]

THE PARTIES

Petitioner Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines[2] with principal office at the 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Taguig City 1634.[3]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building, located at Agham Road,

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[1] Prayer, *Amended Petition for Review*, Docket – Vol. I, p. 133.
[2] Exhibit "P-18", Docket – Vol. II, pp. 1029 to 1059.
[3] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 487.

Diliman, Quezon City where he may be served with summons and other legal processes.[4]

THE FACTS

On December 10, 2019, petitioner filed a formal claim for refund or tax credit with the Excise Large Taxpayers Audit Division II of the BIR, seeking the recovery of excise taxes paid on importations of Jet A-1 fuel and sold to tax-exempt international air carriers, in the aggregate amount of ₱43,844,524.00 for the period January to September 2018.[5]

On January 9, 2020, petitioner filed the present Petition for Review.[6] The case was initially raffled to this Court's First Division.

After being granted by the Court several extensions,[7] respondent posted his Answer on July 1, 2020. [8]

On September 4, 2020, respondent transmitted to the Court the BIR Records of this case, consisting of three (3) folders.[9]

The Pre-Trial Conference was initially set on October 8, 2020.[10]

Petitioner filed an Omnibus Motion for Leave of Court to: A. Amend Petition for Review; B. Admit the Attached Amended Petition for Review; and C. Defer Pre-Trial Conference on September 28, 2020.[11] Hence, in the Resolution dated October 5, 2020, the Pre-Trial Conference set on October 8, 2020 was

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[4] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 487.
[5] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 487.
[6] Docket – Vol. I, pp. 6 to 23.
[7] Respondent's *Motion for Extension of Time to File Answer* dated February 7, 2020, and March 9, 2020, Docket – Vol. I, pp. 72 to 75, and 79 to 82, respectively; Order dated February 11, 2020 and Resolution dated June 4, 2020, Docket – Vol. I, pp. 77 and 84, respectively.
[8] Docket – Vol. I, pp. 87 to 94.
[9] Respondent's *Compliance* dated September 4, 2020, Docket – Vol. I, pp. 110 to 112.
[10] Notice of Pre-trial Conference dated July 27, 2020, Docket – Vol. I, pp. 104 to 106.
[11] Docket – Vol. I, pp. 116 to 133.

cancelled, until further orders from the Court.[12] Respondent failed to file his comment to the said Omnibus Motion.[13]

In the meantime, Respondent's Pre-Trial Brief was filed on October 2, 2020.[14]

In the Resolution dated December 10, 2020,[15] petitioner's Omnibus Motion was granted by the Court, and the Amended Petition for Review was admitted. The Court further directed respondent to file his Answer to the Amended Petition for Review.[16]

On January 22, 2021, respondent filed his Manifestation to Adopt Original Answer,[17] stating that he adopts and reiterates the original Answer as his Answer to the Amended Petition for Review. In the Resolution dated February 11, 2021,[18] the Court noted respondent's Manifestation, and set the Pre-Trial Conference on April 8, 2021.[19]

The Pre-Trial Brief for Petitioner was filed via electronic mail on March 31, 2021.[20]

However, pursuant to the Resolution dated June 10, 2021,[21] the Pre-Trial Conference set on April 8, 2021 was reset to, and held on, July 22, 2021.

On August 11, 2021, the parties submitted, via electronic mail, their Joint Stipulation of Facts and Issues (JSFI),[22] which was approved by the Court in its Resolution dated October 13, 2021,[23] thereby terminating the Pre-Trial proceedings. The Pre-Trial Order was then issued on December 13, 2021.[24]

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[12] Docket – Vol. I, p. 420.
[13] Records Verification dated November 20, 2020, issued by this Court's Judicial Records Division, Docket – Vol. I, p. 423.
[14] Docket – Vol. I, pp. 135 to 137.
[15] Docket – Vol. I, pp, 426 to 428.
[16] *Id.*
[17] Docket – Vol. I, pp. 429 to 431.
[18] Docket – Vol. I, p. 435.
[19] Notice of Pre-Trial Conference dated February 19, 2021, Docket – Vol. I, pp. 436 to 438.
[20] Docket – Vol. I, pp. 442 to 453.
[21] Resolution dated June 10, 2021, Docket – Vol. I, p. 474; Minutes of the hearing held on, and Order dated July 22, 2021, Docket – Vol. I, pp. 475 to 479.
[22] Docket – Vol. I, pp. 486 to 496.
[23] Docket – Vol. I, p. 693.
[24] Docket – Vol. II, pp. 767 to 781.

In the meantime, on November 15, 2021, respondent transmitted to the Court the second set of BIR Records of this case, consisting of pages 753 to 830.[25]

Trial ensued, with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Berenice Angelique L. Flores,[26] Tax Advisor for petitioner; (2) Ms. Carla Angelica T. Peralta,[27] former Import and Export Scheduler for Trading and Supply of petitioner; (3) Mr. Matias D. Aquiatan, Jr.,[28] Country Operations Manager for Shell Aviation Philippines of petitioner; (4) Atty. Farida Nimfa Guyala-Dimailig,[29] Country Tax Manager of petitioner; and (5) Ms. Madonna Mia S. Dayego,[30] the Court-commissioned Independent Certified Public Accountant (ICPA).[31]

The Report of the ICPA was posted on June 6, 2022.[32]

On July 13, 2022, petitioner filed its Formal Offer of Evidence with Motion for Permanent Marking,[33] to which respondent submitted a Comment (Re: Formal Offer of Evidence) on July 15, 2022.[34] In the Resolution dated July 22, 2022,[35] the Court granted petitioner's Motion for Permanent Marking and set a Commissioner's Hearing on August 2, 2022 for the marking and comparison of documentary exhibits.

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[25] Respondent's *Compliance* dated November 12, 2021, Docket – Vol. II, pp. 750 to 752.
[26] Exhibit "P-38", Docket – Vol. I, pp. 329 to 340; Minutes of the hearing held on, and Order dated, October 26, 2021, Docket – Vol. II, pp. 698 to 700.
[27] Exhibit "P-39", Docket – Vol. I, pp. 375 to 390; Minutes of the hearing held on, and Order dated, October 26, 2021, Docket – Vol. II, pp. 698 to 700.
[28] Exhibit "P-41", Docket – Vol. I, pp. 142 to 154; Minutes of the hearing held on, and Order dated, April 21, 2022, Docket – Vol. II, pp. 802 to 806, and 808 to 810, respectively.
[29] Exhibit "P-40", Docket – Vol. I. pp. 263 to 270; Minutes of the hearing held on, and Order dated, April 21, 2022, Docket – Vol. II, pp. 802 to 806, and 808 to 810, respectively.
[30] Exhibit "P-43", Docket – Vol. II, pp. 845 to 850; Minutes of the hearing held on, and Order dated, June 28, 2022, Docket – Vol. II, pp. 852 to 857.
[31] *Oath of Commission* dated April 21, 2022, Docket – Vol. II, p. 807; Minutes of the hearing held on, and Order dated, April 21, 2022, Docket – Vol. II, pp. 802 to 806, and 808 to 810, respectively.
[32] Exhibit "P-42", Docket – Vol. II, pp. 815 to 836.
[33] Docket – Vol. II, pp. 864 to 908.
[34] Docket – Vol. II, pp. 1120 to 1122.
[35] Docket – Vol. II, p. 1125.

In the Resolution dated October 14, 2022,[36] the Court admitted petitioner's offered exhibits, *except* the following:

(1) Exhibits "P-2", "P-7", "P-7-1", "P-8", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-36", "P-101-1" to "P-101-13", "P-101-14" to "P-101-16", "P-102-1" to "P-102-13", "P-102-14" to "P-102-17", "P-102-18" to "P-102-26", "P-102-27" to "P-102-36", "P-102-37" to "P-102-47", "P-102-50" to "P-102-62", "P-103-1" to "P-103-13", "P-104-1" to "P-104-9", and "P-109-917" to "P-109-1042", for failure to present the originals for comparison;

(2) Exhibits "P-34" and "P-35", for failure to present the originals for comparison and for failure of the exhibits formally offered to correspond with the duly marked documents; and

(3) Exhibits "P-109-915" to "P-109-916", "P-112-289" to "P-112-400", and "P-113-74", for not being found in the records.

On November 3, 2022, petitioner filed a Manifestation and Motion for Reconsideration (of the Resolution dated October 14, 2022),[37] praying, *inter alia*, for the admission of the denied exhibits. Respondent failed to submit his comment on petitioner's Motion.[38]

In the Resolution dated February 3, 2023,[39] the Court, among others, partially granted petitioner's Manifestation and Motion for Reconsideration, thereby admitting Exhibits "P-112-289" to "P-112-400", and "P-113-74", but still denied the other exhibits for failure to present the originals for comparison.

On April 19, 2023, petitioner filed a Tender of Excluded Evidence,[40] praying that the Court grant its tender of excluded evidence marked as Exhibits "P-2", "P-7", "P-7-1", "P-8", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35" "P-36", "P-101-1" to "P-101-13", "P-101-14" to "P-101-16", "P-102-1" to "P-102-13", "P-102-14" to "P-102-

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[36] Docket – Vol. II, pp. 1145 to 1148.
[37] Docket – Vol. II, pp. 1149 to 1162.
[38] Records Verification dated December 20, 2022, issued by this Court's Judicial Records Division, Docket – Vol. II, p. 1177.
[39] Docket – Vol. II, pp. 1183 to 1195.
[40] Docket – Vol. II, pp. 1196 to 1200.

17", "P-102-18" to "P-102-26", "P-102-27" to "P-102-36", "P-102-37" to "P-102-47", "P-102-50" to "P-102-62", "P-103-1" to "P-103-12", "P-104-1" to "P-104-9", "P-109-915" to "P-109-916", and "P-109-917" to "P-109-1042", and that the same be attached to and made part of the records of the case. In the Order dated April 27, 2023,[41] the Court noted and granted said Tender of Excluded Evidence.

For his part, respondent offered the testimony of Revenue Officer Aurora T. Alberto.[42]

On May 3, 2023, respondent filed his Formal Offer of Evidence,[43] to which petitioner filed its Comment [on Respondent's Formal Offer of Evidence dated April 28, 2023] on May 16, 2023.[44] In the Resolution dated June 23, 2023,[45] the Court admitted all of respondent's offered evidence.

In the meantime, pursuant to the Notice of Resolution dated May 29, 2023,[46] this case was transferred to the Court's Third Division.

Respondent filed his Memorandum on August 8, 2023;[47] while petitioner's Memorandum was submitted on August 11, 2023.[48] Subsequently, petitioner filed a Motion to Admit Attached Amended Memorandum on August 31, 2023.[49]

In the Resolution dated October 16, 2023,[50] the Court granted petitioner's Motion, thereby admitting the Amended Memorandum, and submitting the present case for decision.

THE ISSUE

The issue for this Court's resolution is as follows, *viz.*:

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[41] Docket – Vol. II, pp. 1202 to 1203.
[42] Exhibit "R-5", Docket – Vol. II, pp. 758 to 762; Order dated April 27, 2023, Docket – Vol. II, pp. 1202 to 1203.
[43] Docket – Vol. II, pp. 1205 to 1208.
[44] Docket – Vol. II, pp. 1210 to 1212.
[45] Docket – Vol. II, pp. 1219 to 1220.
[46] Docket – Vol. II, p. 1216.
[47] Docket – Vol. II, pp. 1221 to 1229.
[48] Docket – Vol. II, pp. 1232 to 1278.
[49] Docket – Vol. II, pp. 1281 to 1330.
[50] Docket – Vol. II, pp. 1333 to 1334.

> "Whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of Forty-Three Million Eight Hundred Forty Four Thousand Five Hundred Twenty Four Pesos (P43,844,524.00) representing alleged excise taxes paid by petitioner on its sales and deliveries of imported Jet A-1 fuel to various international carriers and to tax exempt entities covering the period of January to September 2018."[51]

Petitioner's arguments:

Petitioner anchors its claim on Section 135 of the 1997 NIRC, as amended, which provides that sales of petroleum products to international carriers and exempt entities or agencies are exempt from excise tax, provided, that the country of said foreign international carriers or exempt entities similarly exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies. It claims that it sold Jet A-1 fuel to various international carriers for the period January to September 2018 and allegedly paid excise taxes in the total amount of ₱43,844,524.00. According to petitioner, the principle of *pacta sunt servanda* obligates the Philippines not to impose excise taxes on petroleum products sold to international carriers for their use or consumption outside the Philippines and that a denial of the instant claim for refund defeats the purpose of promoting goodwill and international comity.

On the factual aspect of the present claim for tax refund, petitioner maintains that it was able to prove all the requirements for exemption of petroleum products from excise tax not only under Section 135 of the 1997 NIRC, as amended, but also under Section 229 of the same Code for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected.

Respondent's counter-arguments:

Respondent counters that the excise tax exemption found in Section 135 of the 1997 NIRC, as amended, refers to international air carriers and other tax exempt entities and not to petitioner. Moreover, respondent argues that the tax exemption found in Section 135 of the 1997 NIRC, as amended,

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[51] Stipulation of Issues, JSFI, Docket – Vol. I, p. 488.

is subject to several conditions and that it is incumbent upon petitioner to establish its entitlement to the said tax exemption. Respondent alleges that petitioner failed to present clear and convincing evidence to merit a tax refund or credit.

Respondent proffers the theory that Section 135 of the 1997 NIRC, as amended, is not categorical in granting excise tax exemption for imported goods such as petroleum products as compared to Section 130(D) of the same Code which clearly grants credit or refund of excise taxes on locally manufactured goods actually exported.

THE RULING OF THE COURT

We deny petitioner's Amended Petition for Review.

Sections 204(C) and 229 of the 1997 NIRC, as amended,[52] read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx 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 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." *(Emphasis added)*
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> "SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully**

[52] 1997 NIRC prior to the enactment of Republic Act No. 11976 or the Ease of Paying Taxes Act (EOPT).

> **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." (*Emphases supplied*)

The afore-quoted provisions are clear: within two (2) years from the date of *payment of the tax,* the claimant must first file an administrative claim with respondent before filing a judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, hence, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, the law even explicitly provides that it be filed within two (2) years from the payment of the tax "regardless of any supervening cause that may arise after payment."[53]

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 subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal.[54] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[55]

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

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[53] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[54] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[55] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Petitioner failed to present proof of payment of excise taxes on the importation of Jet A-1 fuel.

For excise tax on imported articles, in general, the same is paid by the owner or importer upon importation and prior to removal thereof from the customs house as provided in Sections 129 and 131 of the 1997 NIRC, as amended, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale 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.
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> xxx xxx xxx." (*Emphasis supplied*)
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
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> xxx xxx xxx." (*Emphasis supplied*)

Thus, based on the foregoing provisions, the two (2)-year period prescribed in Sections 204(C) and 229 of the 1997 NIRC, as amended, should be reckoned from the date of actual payment of excise taxes.

Petitioner, in its Petition for Review, provides the details of the alleged importation of finished grade Jet A-1 fuel and payment of excise taxes as follows:[56]

[56] Par. 8, Statement of the Facts, *Amended Petition for Review*, Docket – Vol. I, pp. 123 to 124; Q&A No. 44, Exhibit "P-39", Docket – Vol. I, pp. 385 to 387.

Arrival Date	SAD No.	Volume in Liters	Amount of Excise Taxes Paid at ₱4.00	SSDT Date
January 12, 2018	C 265	750,000	₱3,000,000.00	January 10, 2018
January 20, 2018	C 658	516,409	2,065,636.00	January 19, 2018
February 7, 2018	C 1174	948,285	3,793,140.00	January 31, 2018
February 20, 2018	C 1818	650,000	2,600,000.00	February 19, 2018
February 28, 2018	C 2161	957,150	3,828,600.00	February 23, 2018
March 24, 2018	C 3228	947,920	3,791,680.00	March 23, 2018
April 15, 2018	C 4073	954,458	3,817,832.00	April 13, 2018
May 5, 2018	C 4924	941,666	3,766,664.00	May 4, 2018
June 8, 2018	C 6159	859,106	3,436,424.00	June 1, 2018
June 19, 2018	C 6727	865,365	3,461,460.00	June 18, 2018
July 15, 2018	C 7336	858,520	3,434,080.00	June 29, 2018
August 7, 2018	C 8470	913,369	3,653,476.00	July 27, 2018
August 30, 2018	C 9683	909,199	3,636,796.00	August 24, 2018
	Total	**11,071,447**	**₱44,285,788.00**	

To determine the reckoning of the two (2)-year prescriptive period, petitioner must first show the date of the actual payments of the excise taxes on the imported Jet A-1 fuel for the period January to September 2018.

An astute evaluation of the evidence presented by petitioner, however, reveals that there are no supporting documents to show the actual payments of excise taxes on the importation of the subject Jet A-1 Fuel. Notably, the available supporting documents supposedly on the payment of said excise taxes (*i.e.*, Exhibits "P-34", "P-35" "P-36", "P-102-18" to "P-102-26", and "P-102-27" to "P-102-36") were denied admission by the Court for failure to present the originals for comparison.[57]

In response to the denial of the said exhibits, petitioner filed a Motion for Reconsideration on November 3, 2022 which was partially granted by the Court in the Resolution dated February 3, 2023 but maintained the denial of the other exhibits for failure to present the originals for comparison.

In its Motion for Reconsideration, petitioner insists that photocopies, without objection as to the genuineness or authenticity of the contents of the originals, need not be compared with the originals citing the Revised Rules on Evidence.

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[57] Court Resolution dated October 14, 2022, Docket – Vol. II, pp. 1145 to 1148.

The above argument was however struck down by the Court in the Resolution dated February 3, 2023, in this manner and we quote:

> "xxx xxx petitioner's argument that the Court may admit the photocopies of the exhibits given the absence of any objection from respondent on the genuineness or authenticity of the contents of the original documents is bereft of merit considering that respondent stated in his Comment (Re: Formal Offer of Evidence), filed on July 15, 2022, that he has no objection to the admission of petitioner's enumerated exhibits, but only as to the manner they were identified in open court and **subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents as required under Section 4, Rule 12 of the Revised Rules of the Court of Tax Appeals**.
>
> Accordingly, the Court still denies the admission of the subject exhibits." (*Emphasis supplied*)

To add to the afore-quoted Resolution of the Court, it is appropriate to cite the Supreme Court decision in the case of *Kuwait Airways Corporation vs. Tokio Marine and Fire Insurance Co., Ltd.,*[58] when it ruled that "a photocopy of an original, therefore, may consist of a "duplicate" if there is no question that it is an accurate reproduction of the original."

In sum, the Court cannot consider these denied exhibits to establish the fact of payment of the subject excise taxes or any portion thereof.

The subsequent Tender of Excluded Evidence filed by petitioner on April 19, 2024,[59] and noted by the Court during the hearing held on April 27, 2023[60] will not alter this conclusion. Tender of Excluded Evidence is governed by Section 40 of Rule 132 of the Revised Rules of Court,[61] and are made for purposes of appeal as succinctly described by the Supreme

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[58] G.R. No. 213931, November 17, 2021.

[59] Docket – Vol. II, pp. 1196-1203.

[60] Order dated April 27, 2023, Docket- Volume II, pp. 1202 to 1203.

[61] "**Rule 132**
Presentation of Evidence

Section 40. *Tender of excluded evidence.* – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony."

Court in the case of *Cruz-Arevalo vs. Querubin-Layosa*,[62] as follows:

> "xxx If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the record of the case xxxxx. **These procedures are known as proof or tender of excluded evidence and are made for purposes of appeal**." (*Emphasis supplied*)

To stress, in claims for refund, it is crucial to show the payment or collection of the amount of tax being refunded, not only for the purpose of determining whether there was a timely filing of the administrative and judicial claims pursuant to the above-quoted Sections 204(C) and 229 of the 1997 NIRC, as amended, but more importantly, it is because a claim for refund must always be premised on the fact that the said amount went to the government coffers.

Hence, the *Amended Petition for Review* must be denied for failure to show proof of the payment or collection of the amount of excise taxes being refunded.

In *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*,[63] the Supreme Court ruled and we quote:

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven**. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. xxx" (*Emphasis supplied*)

Accordingly, it is incumbent upon petitioner to clearly show the factual basis for claiming that it is entitled to a tax refund or credit which, as discussed above, it failed to do in the present case.

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[62] A.M. No. RTJ-06-2005, July 14, 2006.
[63] G.R. No. 222428, February 19, 2018.

WHEREFORE, in light of the foregoing considerations, the present *Amended Petition for Review* is **DENIED** for insufficiency of evidence.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice