Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA CASE NO. 8049
For: Refund or issuance of a Tax Credit Certificate

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated: JUL 1 1 2013

4:30 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed on March 29, 2010 by Pilipinas Shell Petroleum Corporation as petitioner, against the Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended. c

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[2] RULE 4
JURISDICTION OF THE COURT

Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund or issuance of a tax credit certificate (TCC) in the amount of ₱59,277,091.32, allegedly representing excise taxes paid by petitioner on Jet A-1 fuel sold to tax-exempt international air carriers for the period covering March 18 to April 20, 2008.

Petitioner is a corporation organized and existing under the laws of the Philippines, with office address at Shell

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

RULE 8
PROCEDURE IN CIVIL CASES

Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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House, 156 Valero Street, Salcedo Village, Makati City. It is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof. Petitioner also imports finished Jet A-1 fuel.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR). She holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.

On February 18, 2010, petitioner filed a claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the BIR, seeking the recovery of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period covering March 18 to April 20, 2008 in the aggregate amount of ₱59,277,091.32, computed as follows:[4]

DESCRIPTION	**VOLUME IN LITERS**	**EXCISE TAX RATE**	**AMOUNT**
Sale to international carriers of Philippine or foreign registry pursuant to Section 135 of the Tax Code of 1997	16,151,796	₱3.67	₱59,277,091.32
	16,151,796		₱59,277,091.32

Due to respondent's inaction on petitioner's administrative claim for refund of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period beginning March 18 to April 20, 2008, petitioner filed the instant Petition for Review before this Court on March 29, 2010.

[3] Pars. 1 and 3, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 74-75.
[4] Exhibit "C".

Respondent, in her Answer filed on May 24, 2010, interposed the following Special and Affirmative Defenses[5]:

"9. Respondent hereby repleads the above admissions and denials as part of his special and affirmative defenses.

10. Petitioner must prove it is entitled to a claim for refund under the strictest terms.

10.1. Pertinent to the claim for refund for alleged erroneously paid excise taxes on aviation turbo jet fuel are the following provisions of the NIRC of 1997:

Section 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 customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into to Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof and shall be liable for the duty and internal revenue tax due on such importation.

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Section 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – ↳

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[5] Docket, pp. 47-52.

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.

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Section 148. *Manufactured Oils and Other Fuels. –*
There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

(a) Lubricating oils and greases, including but not limited to, basestock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four Pesos and Fifty Centavos (₱4.50): *Provided, however*, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: *Provided, further*, That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: *Provided, finally,* That locally produced or imported oils previously taxed as such but are subsequently reprocessed, re-refined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five Centavos (₱0.05);

(c) Waxes and petrolatum, per kilogram, Three Pesos and Fifty Centavos (₱3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five Centavos (₱0.05): *Provided*, That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent [90%] absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four Pesos and Thirty-Five Centavos (₱4.35): *Provided, however*, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): *Provided, further*, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excises tax under this Section;

(f) Leaded premium gasoline, per liter of volume capacity, Five Pesos and Thirty-Five Centavos (₱5.35); unleaded premium gasoline, per liter of volume capacity, Four Pesos and Thirty-Five Centavos (₱4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three Pesos and Sixty-Seven Centavos (₱3.67);

(h) Kerosene per liter of volume capacity Zero (0.00): *Provided*, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Zero (0.00);

(j) Liquefied petroleum gas, per liter, Zero (0.00): *Provided*, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six Centavos (₱0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Zero (0.00).

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Section 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 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 the payment was made, such payment appears clearly to have been erroneously paid.

10.2. In relation to the aforementioned provisions of law, petitioner must also comply with the requirements set forth under Revenue Memorandum Order (RMO) No. 19-2006, RMO No. 28-2006, and Revenue Memorandum Circular (RMC) No. 59-2005.

11. It is well-established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant.

11.1. Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for the tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

11.2. Petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual basis of its claim for refund.

11.3. In the case of *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, the Supreme Court held:

> A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

11.4. Indeed, a claim for refund is in the nature of an exemption and is construed in *strictissimi juris* against the taxpayer. In the 2008 case of *M.E. Holding Corp. vs. The Court of Tax Appeals*, the Supreme Court held that '(w)e reiterate at this juncture that claims for tax refund/credit, as in the instant case, are in the nature of claims for exemption.'

12. All told, petitioner's claim for refund filed before the Honorable Court should be denied for lack of merit." *(Citations omitted)*

On July 9, 2010, the parties filed their Joint Stipulation of Facts and Issues, which the Court approved in a

Resolution[6] dated July 13, 2010. In the same Resolution, the Court declared the pre-trial terminated.

During trial, petitioner presented eight (8) witnesses, namely: Mr. Nicasio Manuel, Mr. Garry Galvez, Ms. Pamela Harder, Ms. Rossebelle Litao, Atty. Nigel Avila, Mr. Benjamin Valdez, Mr. Damaso Pastrana, and Ms. Maria Luz Salting-Verdejo.

On April 16, 2012, petitioner filed its Formal Offer of Exhibits, offering Exhibits "A" to "EEE-1", "AAAA-1" to "MMMM-1". The Court in its Resolution[7] dated May 21, 2012, admitted Exhibits "A" to "A-6", "A-8", "A-10" to "C-2", "F", "G", "L" to "M-1", "P", "S" to "S-1", "Y" to "Y-1", "AA" to "BB-1", "DD" to "RR-1", "UU" to "WW-3", "YY", "CCC" to "IIII-14", and "KKKK-1" to "MMMM-1", inclusive of submarkings.

Further, this Court in another Resolution[8] dated August 13, 2012, upon petitioner's Motion for Reconsideration, admitted Exhibits "A-7", "C-3", "D" to "E", "I" to "K", "Q", "V" to "V-1", "Z" to "Z-1", "XX", "ZZ", and "JJJJ" to "JJJJ-2". On September 3, 2012, upon motion of petitioner's counsel and without objection from respondent's counsels, this Court admitted in open court Exhibit "R".[9] Thereafter, petitioner was deemed to have formally rested its case.

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
A	Import Entry and Internal Revenue Declaration No. 677-08 dated April 18, 2008
A-1	Import Entry Declaration No. 25984621
A-2	Import Entry Declaration No. 26813832

[6] Docket, p. 77.
[7] Docket, pp. 320-322.
[8] Docket, pp. 372-382.
[9] Docket, p. 385.

A-3	Certificate of Quantity Received dated March 26, 2008
A-4	Tax Invoice No. 90202587/P dated April 1, 2008
A-5	Bill of Lading No. 6931-01
A-6	Security Bank Official Receipt No. 000153 dated April 18, 2008
A-7	Equitable PCI Bank Official Receipt No. 000154 dated April 18, 2008
A-8	Authority to Release Imported Goods with number 008949 dated March 19, 2008
A-10	Security Bank Official Receipt No. 000129 dated April 11, 2009 with amount ₱2,981,764.95.
A-11	Equitable PCI Bank Official Receipt No. 139322 dated March 17, 2008
A-12	Discharging Report: M/T/ "High Harmony", V.2008-03
B	Import Entry and Internal Revenue Declaration No. 736-08 dated April 29, 2008
B-1	Import Entry Declaration ("IED") with number 25984673
B-2	Tanker Bill of Lading No. 7052-01 dated March 20, 2008
B-3	Tax Invoice No. 90293763/P dated April 9, 2008
B-4	Authority to Release Imported Goods No. 009134 dated March 31, 2008
B-5	Certificate of Quantity Received dated March 31, 2008
B-6	Security Bank Official Receipt No. 00194 dated April 29, 2008

B-7	Security Bank Official Receipt No. 000195 dated April 29, 2008
B-8	Security Bank Official Receipt No. 00091 dated March 27, 2008
B-9	Discharging Report: M/T "Ocean Sunrise", V.006-DT/08
C	Claim for Refund or Tax Credit dated 16 February 2010 stamped received by the Large Taxpayers Audit and Investigation Division II on 18 February 2009 (sic)
C-1	Stamp of Receipt by BIR LT Excise Audit Div. on 18 February 2009 (sic)
C-2	Application for Tax Credits/Refunds (BIR Form 1914) of Pilipinas Shell Petroleum Corporation
C-3	Pilipinas Shell Petroleum Corporation Summary of Sales to International Carriers–Ex-Imported Jet A-1 For the Period March 18 to April 20, 2008
D	Official Register Book - Oil Manufacturing Operations for the month of March 2008
D-1	Official Register Book – Oil Manufacturing Operations for the month of April 2008
E	Withdrawal Certificate with number 29531
F	Aviation Service Return with Receipt No. 0830535
G	Aviation Service Return with Receipt No. 211831
I	Pilipinas Shell Petroleum Corporation Sales Invoice No. 110094084 dated March 23, 2008
J	Certification from Philippine Airlines on use for international operations on 2,060,639 liters of AVTUR for the period March 23 to April 14, 2008
K	Certification from Asiana Airlines on use for international operations of 268,640 liters of

	AVTUR for the period March 21 to April 19, 2008
L	Judicial Affidavit of Nicasio Manuel dated October 11, 2010
L-1	Signature of Nicasio Manuel
M	Letter of the Department of Foreign Affairs dated May 3, 2007 with:
M-1	List of Countries Granting Reciprocal Tax Exemption to Philippine Registered/ Designated Air Carriers
P	Permit to Use Computerized Accounting System, Computerized Books of Accounts and Use/Print System-Generated Accounting Records issued by the BIR on June 4, 2003 under Permit No. 0503-LTADII-00002 including attachments
Q	Commingling Permit per BIR Letter LTADII-(P)-028-11-03-003537 dated November 18, 2003
S	Official Register Book – Manufactured Jet A-1 Fuel – Bonded Storage Tanks PSPC Pandacan For the Period of 1st – 31st March, 2008
S-1	Official Register Book – Manufactures Jet A-1 Fuel – Bonded Storage Tanks PSPC Pandacan For the Period of 1st – 30th April, 2008.
V	PSPC Product Transfer Advice with Delivery No. 96443412 dated April 1, 2008.
V-1	PSPC Product Transfer Advice with Delivery No. 96443415 dated April 1, 2008.
Y	Judicial Affidavit of Garry B. Galvez dated November 4, 2010.
Y-1	Signature of Garry B. Galvez.
Z	PSPC Schedule of Receipts and Deliveries, Manufactured Jet A-1 Fuel – Bonded Storage Tanks, For the Period 18-Mar 2008.

Z-1	PSPC Schedule of Receipts and Deliveries, Manufactured Jet A-1 Fuel- Bonded Storage Tanks, For the Period 2-Apr 2008.
AA	Civil Aeronautics Board (CAB) Certification dated January 14, 2011 issued by Carmelo L. Arcilla, Executive Director.
AA-1	Civil Aeronautics Board (CAB) Certification dated March 16, 2010 issued by Carmelo L. Arcilla, Executive Director.
AA-2	Civil Aeronautics Board (CAB) Certification dated June 29, 2009 issued by Carmelo L. Arcilla, Executive Director.
BB	Judicial Affidavit of Pamela B. Harder dated February 17, 2011.
BB-1	Signature of Pamela B. Harder.
DD	Air Services Agreement Between the Government of Malaysia and the Government of the Republic of the Philippines.
EE	Air Transport Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Korea.
FF	Agreement Between the Government of the Republic of the Philippines and the Government of the People's Republic of China Relating to Civil Air Transport.
FF-1	Memorandum of Understanding Between the Government of the Republic of the Philippines and the Government of the People's Republic of China.
GG	Air Services Agreement Between the Government of Japan and the Government of the Republic of the Philippines.
HH	Air Transport Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Singapore.
II	Agreement Between the Government of the Republic of the Philippines and the Government

	of the His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for Air Services Between And Beyond the Republic of the Philippines and Brunei Darussalam.
JJ	Air Transport Agreement Between the Government of the Commonwealth of Australia and the Government of the Republic of the Philippines.
KK	Agreement Between the Government of the Republic of the Philippines and the Government of the State of Qatar.
LL	Air Transport Agreement Between the Government of the Republic of the Philippines and the Government of the French Republic.
MM	Air Transport Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Indonesia.
NN	Air Transport Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines.
NN-1	Certification from the Department of Foreign Affairs-Foreign Service Institute dated April 26, 2011 re: Air Transport Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines.
OO	Certification from the Department of Foreign Affairs-Foreign Service Institute dated January 31, 2011 re: Air Services Agreement Between the Government of Japan and the Government of the Republic of the Philippines.
PP	Judicial Affidavit of Rossebelle Litao dated March 2, 2011.
PP-1	Signature of Rossebelle Litao.
QQ	Certification from CAAP dated October 13, 2010, with attached:

QQ-1	List of international airlines/aircrafts and countries of registration.
RR	Judicial Affidavit of Atty. Nigel T. Avila dated March 30, 2011.
RR-1	Signature of Atty. Nigel T. Avila.
UU to UU-3	SAP printouts denominated as *Aviation/ AstraNova (F4) Display: Overview of Billing Items* and *Aviation/AstraNova (F4) Display: Item Conditions* under Billing Document No. 110079842
VV to VV-3	SAP printouts denominated as *Aviation/ AstraNova (F4) Display: Overview of Billing Items* and *Aviation/AstraNova (F4) Display: Item Conditions* under Billing Document No. 110079832.
WW to WW-3	SAP printouts denominated as *Aviation/ AstraNova (F4) Display: Overview of Billing Items* and *Aviation/AstraNova (F4) Display: Item Conditions* under Billing Document No. 110079918.
XX	Pilipinas Shell Petroleu Corporation Sales Invoice No. 110079832 dated March 19, 2007 for Air Asia BHD – Clark
YY	Printout of Atlas invoice for Asiana Airlines with number A702283357.
ZZ	Pilipinas Shell Petroleum Corporation Sales Invoice No. 110079183 dated March 1, 2007 for Phil. Airlines – Domestic.
AAA	JPMorgan Chase Bank N.A. Advice of Credit dated March 23, 2007 per Reference No. T37SWIC015974 by order of Philippine Airlines Inc. in the amount of USD512,360.51.
CCC	Judicial Affidavit of Damaso Pastrana dated May 10, 2011.
CCC-1	Signature of Damaso Pastrana.
DDD	Supplemental Judicial Affidavit of Benjamin P. Valdez dated September 14, 2011.

DDD-1	Signature of Benjamin Valdez.
EEE	Judicial Affidavit of Maria Luz Salting-Verdejo dated December 6, 2011.
EEE-1	Signature of Maria Luz Salting-Verdejo.
AAAA-1 to AAAA-346	Printouts of PSPC's Computerized Accounting System Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts)
BBBB-1 to BBBB-181	Central Payment System ("CPS") Documents Evidencing Payment from International Carriers
CCCC-1 to CCCC-735	Aviation Service Returns ("ASRs") of Various Airlines
DDDD-1 to DDDD-4	Withdrawal Certificates ("WCs") from Tabangao to Pandacan
DDDD-5 to DDDD-55	Withdrawal Certificates ("WCs") from Tabangao to Joint Oil Companies Storage Project ("JOCASP")
EEEE-1 to EEEE-350	Sales Invoices for International Sales
FFFF-1 to FFFF-318	Withdrawal Certificates ("WCs") and Product Transfer Advices ("PTAs") from Pandacan to JOCASP
GGGG-1 to GGGG-2	Summary of Fund Transfer Evidencing Payments from International Carriers (specifically for Philippine Airlines or PAL transactions)
HHHH-1 to HHHH-2	Certificate of Inward Remittances
IIII-1 to IIII-14	Certifications from Various Air Carriers
JJJJ	Summary of Aviation Turbo Fuel Deliveries
JJJJ-1	Details of Jet Aviation Turbo Fuel Deliveries to Various International Carriers Subject to Specific Tax Claims Without Exceptions

JJJJ-2	Details of Jet Aviation Turbo Fuel Deliveries to Various International Carriers Subject to Specific Tax Claims Not Duly Supported by Documents
KKKK-1 to KKKK-29	Reconciliation of ORBs and Product Transfer Advices (Pandacan)
LLLL-1	Summary Table of Aviation Turbo Fuel Importations and Deliveries
MMMM	Report of the Independent Certified Public Accountant dated August 16, 2011 and stamped received by the Court of Tax Appeals on August 18, 2011.
MMMM-1	Signature of Benjamin P. Valdez

On September 26, 2012, respondent, through counsel, manifested that she will no longer present evidence. Hence, the Court directed the parties to file their respective memoranda, within thirty (30) days therefrom or until October 26, 2012.[10]

On December 6, 2012, the case was deemed submitted for decision, taking into consideration petitioner's Memorandum[11] filed on October 25, 2012 and respondent's Memorandum[12] filed on December 4, 2012.[13]

The parties submitted the following issues[14] for this Court's resolution:

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

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[10] Docket, p. 386.
[11] Docket, pp. 387-426.
[12] Docket, pp. 441-454.
[13] Docket, p. 456.
[14] Docket, p. 75.

2. Whether or not petitioner is entitled to the recovery of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period March 18 to April 20, 2008."

Pertinent to the resolution of the issue of the timeliness of petitioner's claim for refund are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which are quoted hereunder for ready reference:

> "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."
>
> "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 order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied:

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;
2. That the claim for refund must be duly filed with the Commissioner within two (2) years after the payment of the tax or penalty; and
3. That the suit or proceeding must be instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Petitioner claims that it is entitled to the refund of the excise taxes it paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period of March 18 to April 20, 2008 as provided under Section 135 of the NIRC of 1997, to wit:

> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – Petroleum products sold to the following are exempt from excise tax:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (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."

Based on the foregoing, petitioner concludes that inasmuch as the entities to which it sold its Jet A-1 fuel are international carriers exempt from excise taxes, it is therefore entitled to a refund of excise taxes paid thereon.

This Court does not agree.

Excise taxes imposed under Title VI of the Tax Code are taxes on property which are imposed on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported." Though excise taxes are paid by the manufacturer or producer before removal of domestic products from the place of production or by the owner or importer before the release of imported articles from the customs house, the same partake of the nature of indirect taxes when it is passed on to the subsequent purchaser.[15]

Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[16]

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[15] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183553, November 12, 2012.

[16] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005.

Corollarily, Section 131 of the NIRC of 1997 identifies the persons liable to pay excise taxes, to wit:

> "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 customhouse, **or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.**
>
> In the case of tax-free articles brought or imported into to Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof and shall be liable for the duty and internal revenue tax due on such importation." *(Emphasis supplied)*

Clearly, from the foregoing, petitioner, being the importer of the petroleum products sold to various international air carriers, is liable to pay the excise taxes due on the said importation. However, petitioner wishes to claim the refund of the excise taxes it paid on the sale of Jet A-1 fuel it sold to international carriers on the basis of Section 135 of the NIRC of 1997.

Contrary to petitioner's claim, there is nothing in the above-quoted Section 135 of the NIRC of 1997 that expressly grants petitioner, a seller of petroleum products, exemption from the payment of excise taxes for the same. The exemption provided in Section 135 is explicit and petitioner clearly does not fall in any of the categories enumerated.

In the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, et al.*[17], the Supreme Court had the occasion to explain that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer/importer of the goods for any tax due to it as the manufacturer/importer. The excise tax imposed on petroleum products under Section 148 of the NIRC of 1997, as amended, is the direct liability of the manufacturer/importer who cannot invoke the excise tax exemption granted to its buyers who are international carriers.

Further, in the recent case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[18], the Supreme Court thoroughly explained that Section 135 of the NIRC of 1997 did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers, to wit:

> "Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods."

Thus, the excise taxes paid by petitioner on the imported Jet A-1 fuel sold to tax-exempt international air carriers for the period covering March 18 to April 20, 2008, in the amount of ₱59,277,091.32, cannot be considered as

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[17] G.R. No. L-19707, August 17, 1967.
[18] G.R. No. 188497, April 25, 2012.

erroneously or illegally collected tax since petitioner is the taxpayer statutorily liable to pay the said taxes. Consequently, petitioner is not entitled to its claim for refund, there being no erroneous or illegal collection of excise tax.

Long established is the rule that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[19]

In the same vein, statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken.[20]

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

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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[19] *Silk Air (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.
[20] *Quezon City, et al. vs. ABS CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008.

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

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