REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
FIRST DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION
Petitioner,

- versus -

C.T.A. CASE NOS. 6506 & 6559

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MEMBERS:

ACOSTA, E., Chairman
BAUTISTA, L.,
CASANOVA, C., JJ

Promulgated:

FEB 09 2005

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DECISION

BAUTISTA, J.:

Before the Court are consolidated cases involving claims for refund or issuance of tax credit certificates in the aggregate amount of P175,901,950.20 allegedly representing specific taxes paid on purchases by Petitioner of heavy fuel oil/feedstock subsequently, sold to the National Power Corporation covering the following period:

CTA Case No.	Period Covered	Amount
6506	July 2000 to June 2001	Php 95,943,863.70
6559	July 2001 to December 2001	79,958,086.50
	TOTAL	Php 175,901,950.20

The facts as culled from the records are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with address at the Shell House, 156 Valero Street, Salcedo Village, Makati City. *(par. 1, Admitted Facts, Joint Stipulation of Facts and Issues, CTA Case Nos. 6506 & 6559)*

It is engaged in the business of processing and refining crude oil into various petroleum products. Part of its operations consist of the extraction of lubricating oil base stock, wax and bitumen from heavy fuel oil/feedstock. This process is undertaken at Petitioner's Pililla Baseoil Refinery (Baseoil Refinery, for brevity).

After the extraction process, the residual fuel oil which allegedly comprises approximately sixty (60%) percent of the heavy fuel oil/feedstock received from its Tabangao Refinery, is sold to NPC, which is then used at the NPC Power Plant to generate electricity.

Upon withdrawal of the feedstock from petitioner's Tabangao Refinery, excise taxes due thereon are being paid pursuant to Section 148 of the 1997 National Internal Revenue Code (NIRC), to wit:

> "Sec. 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:
>
> xxx xxx xxx

> (l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity. Thirty centavos (P0.30)"

The P0.30 excise tax per liter which was previously paid by petitioner pursuant to Section 148 (l) of the NIRC was passed on to NPC as part of the selling price of the volumes of fuel oil purchased from the former. However, NPC refused to pay the same, invoking its exemption under its Charter, R.A. No. 6935.

Petitioner invoked this Court's Decision in CTA Case No. 5882 entitled "Shell Philippine Petroleum Corporation (Now Pilipinas Shell Petroleum Corporation) vs. Commissioner of Internal Revenue, promulgated on July 26, 2000, where the Court granted petitioner's claim for refund of the excise taxes paid pertaining to the residual fuel oil sold to NPC.

On the basis of the foregoing decision, respondent issued the corresponding tax credit certificates to herein petitioner, as the successor of Shell Philippine Petroleum Corporation. However, respondent ceased to issue the tax credit certificates corresponding to petitioner's claims starting the year 2000. As such, petitioner's claims for refund covering the period July 2000 to December 2001 remain pending.

During the period July 2000 to June 2001, petitioner transferred the following volumes of fuel oil/feedstock from the Tabangao Refinery to the

Baseoil Refinery, and paid the corresponding specific taxes thereon, summary is shown below:

CTA CASE NO. 6506

Period Covered	Volume in liters	Specific Tax at P0.30/liter
July to September, 2000	169,338,339	Php 50,801,501.70
October to December, 2000	218,076,409	65,422,922.70
January to March, 2001	154,652,696	46,395,808.80
April to June, 2001	107,983,829	32,395,148.70
TOTAL	650,051,273	Php 195,015,381.90

CTA Case No. 6559

Period Covered	Volume in liters	Specific Tax at P0.30/liter
July to September 2001	229,578,009	Php 68,873,402.70
October to December 2001	142,164,310	42,649,293.00
TOTAL	371,742,319	Php 111,522,695.70

On the other hand, the total volume of residual fuel oil sold and delivered by petitioner to NPC are summarized as follows:

CTA Case No. 6506

Period Covered	Volume in liters	Specific Tax at P0.30/liter
July to September, 2000	71,695,298	Php 21,508,589.40
October to December, 2000	102,981,800	30,894,540.00
January to March, 2001	67,560,104	20,268,031.20
April to June, 2001	77,575,677	23,272,703.10
TOTAL	319,812,879	Php 95,943,863.70

CTA CASE NO. 6559

Period Covered	Volume in liters	Specific Tax at P0.30/liter
July to September 2001	140,958,334	Php 42,287,500.20
October to December 2001	125,568,621	37,670,586.30
TOTAL	266,526,955	Php 79,958,086.50

The following claims for refund, were thus, filed by petitioner with the Bureau of Internal Revenue (BIR):

CTA Case No. 6506

Exhibit	Date Filed w/ BIR	Amount of Claim	
JJJ	December 12, 2001	Php	21,508,589.40
JJJ-1	December 12, 2001		30,894,540.00
JJJ-2	February 26, 2002		20,268,031.20
JJJ-3	February 26, 2002		23,272,703.10
	Total	Php	95,943,863.70

CTA Case No. 6559

Exhibit	Date Filed w/ BIR	Amount of Claim	
EE	February 26, 2002	Php	42,287,500.20
EE-1	February 26, 2002		37,670,586.30
	Total	Php	79,058,086.50

For failure on the part of respondent to act on the administrative claims for refund, petitioner filed the judicial claims for refund with this Court on July 9, 2002 for claims covering the period July 2000 to June 2001 and docketed as CTA Case No. 6506 and on October 30, 2002 for claims covering the period July 2001 to December 2001 and docketed as CTA Case No. 6559.

Respondent advanced the same Special and Affirmative Defenses in his separate Answers to the two Petitions for Review:

> 1. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 2. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes ***(Commissioner***

of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35)

3. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute ***(Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);***

4. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

5. It is incumbent upon petitioner to show compliance with the provisions of Section 112 and Section 229, both of the National Internal Revenue Code, as amended;

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

The following issues have been stipulated by the parties in both cases:

1. Whether or not the Decision of this Honorable Court in CTA Case No. 5882 entitled "Shell Philippine Petroleum Corporation (now Pilipinas Shell Petroleum Corporation) vs. Commissioner of Internal Revenue" is applicable to the claims for refund subject matter of petitions for review in both cases.

<u>CTA Case No. 6506</u>

factual!

2. Whether or not during the period of July 2000 to June 2001, Petitioner transferred from its Tabangao Refinery to its Baseoil Refinery in Pililla, Rizal, a total of 650,051,273 liters of fuel

oil, and paid specific tax thereon at P0.30 per liter, or a total of P195,051,381.90.

3. Whether or not out of said fuel oil transferred to, and subsequently processed at, Petitioner's Baseoil Refinery, 319,812,879 liters of residual fuel oil were sold and delivered by the Petitioner to NPC, on which specific tax of P95,943,863.70 had been paid.

CTA Case No. 6559

2. Whether or not during the period July 2001 to December 2001, Petitioner transferred from its Tabangao Refinery to its Baseoil Refinery in Pililla, Rizal, certain volumes of fuel oil, and paid specific tax thereon at P0.30 per liter.

3. Whether or not out of said fuel oil transferred to, and subsequently processed at, Petitioner's Baseoil Refinery, 266,526,955 liters of residual fuel oil were sold and delivered by the Petitioner to NPC, on which specific taxes of P79,958,086.50 had been paid.

Before the parties rested their case, petitioner filed a "Motion for Consolidation of Cases" of CTA Case Nos. 6506 and 6559. Considering that the two cases involve the same parties, and the same cause of action, and that there was no objection on the part of the respondent, petitioner's motion for consolidation of cases was granted by the Court on May 9, 2003 *(Resolution, CTA Case Nos. 6506 and 6559, May 14, 2003).*

After a careful evaluation of the evidence adduced by petitioner as well as the applicable laws, rules and jurisprudence, this Court finds in favor of the petitioner.

On the first stipulated issue, we rule in the affirmative. In CTA Case No. 5882, this Court 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.
>
> 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 the exemption 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." ***(Opinion No. 106, S'54, cited in Maceda vs Macaraig, Jr. , 223 SCRA 217)***
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> Likewise, it is worth mentioning that the case of Maceda vs. Macaraig, 223 SCRA 217 is just a reiteration of an earlier ruling of the Supreme court in the case of CIR vs. Gotamco 148 SCRA 36 where it was held that the contractor of the World Health Organization (WHO) is not liable to contractor's tax which the BIR assessed considering that it cannot pass on the said tax to the WHO because the latter is exempted from all taxes, direct or indirect, by virtue of the Host Agreement with the Philippine Government.
>
> In view of the settled jurisprudence on the matter, we find legal basis and merit to the arguments raised by the Petitioner.

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering the Respondent to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner the amount of P109,497,108.19 representing specific taxes paid by Petitioner on its purchases of heavy fuel oil from May to December of 1997.
>
> **SO ORDERED.**"

Well-settled is the rule that NPC is exempt from direct and indirect taxes pursuant to its Charter, Republic Act No. 6395, as amended by P.D. 380. And that there is no indication that its tax exemption privileges have been withdrawn. Hence, the Decision in CTA Case No. 5882 is definitely applicable to the consolidated cases at bar.

The subject matter of the claim for refund in CTA Case No. 5882 and in the consolidated cases at bar are similar. Both claims for refund in the prior case and in these consolidated cases were brought about by petitioner's sale of residual fuel oil to NPC, for which specific taxes have been paid. However, by virtue of NPC's exemption from direct and indirect taxes, petitioner cannot pass on to NPC the specific taxes paid on the fuel oil sold to the latter.

Thus, as held by this Court in CTA Case No. 5882, "it 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."

Moreover, Respondent has, in fact, complied with the aforesaid Decision, and issued tax credit certificates in relation to petitioner's claims for refund for the period prior to July 2000. Such that, his act of discontinuing the issuance of tax credit certificates to petitioner in relation to the excise taxes paid on fuel oil sold and delivered to NPC for the period July 2000 to December 2001 has no basis.

We shall now proceed to discuss the factual issues of these consolidated cases.

To prove the transfer of fuel oil from Tabangao Refinery to Baseoil Refinery, petitioner presented in evidence the Daily Product Delivery Report (DPDR) which shows the daily deliveries made for each petroleum product in terms of total volume, specific tax due and the covering Withdrawal Certificate Number, the computation of the excise tax due is reflected in the Daily Removals and Excise Tax Due to Petroleum Products (DRETDPP). The Specific tax due on petroleum products removed from its place of production has been remitted to the BIR as shown in the Excise Tax Returns.

On the other hand, the sale of residual fuel oil to NPC is evidenced by Invoices and Official Receipts issued by petitioner.

The volumes of fuel oil transferred from the Tabangao Refinery to the Baseoil Refinery and the corresponding excise tax payments are shown below *(Exhs. B, C, D, E,F, G, H, I, J, K, L, M, N, O, P, Q, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, and GGG inclusive of submarkings, CTA Case No.*

6506 and Exhs. C, D,E F,G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA and BB, inclusive of submarkings, CTA Case No. 6559):

CTA Case No. 6506

Delivery Date	Withdrawal Certificate No.	Quantity (in liters)	Excise Tax Paid P0.30/liter
9-Jul-00	49553	2,502,696	750,808.80
13-Jul-00	49572	4,251,009	1,275,302.70
16-Jul-00	49584	4,163,664	1,249,099.20
21-Jul-00	49706	2,322,870	696,861.00
24-Jul-00	49710	4,990,738	1,497,221.40
29-Jul-00	49730	6,946,933	2,084,079.90
3-Aug-00	49743	8,338,185	2,501,455.50
4-Aug-00	49749	9,229,918	2,768,975.40
8-Aug-00	49817	15,318,838	4,595,651.40
15-Aug-00	49845	503,841	151,152.30
16-Aug-00	49848	19,580,134	5,874,040.20
26-Aug-00	49689	20,155,440	6,046,632.00
5-Sep-00	49977	24,292,113	7,287,633.90
21-Sep-00	50031	26,867,061	8,060,118.30
29-Sep-00	50115	19,874,899	5,962,469.70
29-Sep-00	50115	19,874,899	5,962,469.70
3-Oct-00	50135	17,039,846	5,111,953.80
11-Oct-00	50167	20,148,906	6,044,671.80
18-Oct-00	50252	20,107,405	6,032,221.50
26-Oct-00	50288	21,762,747	6,528,822.60
5-Nov-00	50367	17,086,797	5,126,039.10
15-Nov-00	50456	4,715,018	1,414,505.40
26-Nov-00	50495	19,449,347	5,834,804.10
2-Dec-00	50569	19,416,849	5,825,054.70
11-Dec-00	50658	16,149,899	4,844,969.70
20-Dec-00	50690	20,187,798	6,056,339.40
22-Dec-00	50753	2,223,321	666,996.30
26-Dec-00	50767	19,913,582	5,974,074.60
26-Dec-00	50767	19,913,582	5,974,074.60
3-Feb-01	52279	20,479,101	6,143,730.30
5-Feb-01	52290	7,869,043	2,360,712.90
9-Feb-01	60312	12,921,975	3,876,592.50
16-Feb-01	60338	10,290,519	3,087,155.70
21-Feb-01	60408	10,555,697	3,166,709.10
26-Feb-01	60433	11,301,267	3,390,380.10
1-Mar-01	60447	10,402,677	3,120,803.10
12-Mar-01	60604	26,668,041	8,000,412.30

19-Mar-01	60636	24,250,794	7,275,238.20
26-Mar-01	60668	6,519,194	1,955,758.20
2-Apr-01	60753	8,190,614	2,457,184.20
2-Apr-01	60754	2,239,251	671,775.30
6-Apr-01	60776	4,332,597	1,299,779.10
9-Apr-01	60788	5,831,425	1,749,427.50
22-Apr-01	60903	24,145,852	7,243,755.60
29-Apr-01	60935	18,916,996	5,675,098.80
10-May-01	61304	16,113,192	4,833,957.60
24-May-01	61100	11,319,149	3,395,744.70
31-May-01	61178	10,375,559	3,112,667.70
Total		650,051,278	195,015,381.90

CTA Case No. 6559

Delivery Date	Withdrawal Certificate No.	Quantity (in liters)	Excise Tax Paid P0.30/liter
20-Jun-01	61332	19,785,896	5,935,768.80
1-Jul-01	61441	3,783,954	1,135,186.20
9-Jul-01	61486	27,439,718	8,231,915.40
17-Jul-01	61526	20,786,162	6,235,848.60
22-Jul-01	61602	24,113,846	7,234,153.80
28-Jul-01	61638	22,363,120	6,708,936.00
11-Aug-01	61777	29,060,564	8,718,169.20
19-Aug-01	61820	24,222,287	7,266,686.10
31-Aug-01	61947	20,154,879	6,046,463.70
11-Sep-01	62062	28,984,476	8,695,342.80
16-Sep-01	62094	8,883,107	2,664,932.10
24-Sep-01	62146	23,407,043	7,022,112.90
2-Oct-01	62250	13,377,766	4,013,329.80
2-Oct-01	62252	4,699,336	1,409,800.80
2-Oct-01	62251	2,233,053	669,915.90
17-Oct-01	30252	10,480,159	3,144,047.70
20-Oct-01	30273	10,500,170	3,150,051.00
26-Oct-01	62610	16,098,362	4,829,508.60
1-Nov-01	62642	8,969,360	2,690,808.00
2-Nov-01	62403	4,956,559	1,486,967.70
4-Nov-01	62643	2,230,883	669,264.90
13-Nov-01	62520	27,461,215	8,238,364.50
21-Nov-01	62574	17,750,404	5,325,121.20
Total		371,742,319	111,522,695.70

The volumes of residual fuel oil sold and delivered by petitioner to NPC are likewise duly substantiated as evidenced by the Invoices and Official

Receipts issued by petitioner in favor of NPC *(Exhs. R, HH, UU and HHH inclusive of submarkings, CTA Case No. 6506 and Exhs. N and CC, inclusive of submarkings, CTA Case No. 6559),* details are shown below:

CTA 6506

Date	Volume (in liters)	Specific Tax Amount
31-Jul-00	2,376,218	712,865.40
29-Aug-00	3,770,054	1,131,016.20
29-Aug-00	5,005,416	1,501,624.80
29-Aug-00	4,805,718	1,441,715.40
29-Aug-00	4,465,368	1,339,610.40
30-Aug-00	4,781,998	1,434,599.40
30-Aug-00	5,449,864	1,634,959.20
30-Aug-00	4,823,578	1,447,073.40
31-Aug-00	5,412,469	1,623,740.70
20-Sep-00	4,709,385	1,412,815.50
20-Sep-00	4,897,347	1,469,204.10
20-Sep-00	1,749,365	524,809.50
25-Sep-00	5,022,597	1,366,423.50
25-Sep-00	4,554,745	1,506,779.10
30-Sep-00	5,054,967	1,516,490.10
30-Sep-00	4,816,209	1,444,862.70
16-Oct-00	5,167,721	1,550,316.30
16-Oct-00	3,950,031	1,185,009.30
20-Oct-00	4,898,834	1,469,650.20
20-Oct-00	5,666,545	1,699,963.50
20-Oct-00	4,768,302	1,430,490.60
30-Oct-00	5,440,819	1,632,245.70
31-Oct-00	5,289,734	1,586,920.20
31-Oct-00	1,946,390	583,917.00
31-Oct-00	2,527,788	758,336.40
24-Nov-00	4,313,408	1,294,022.40
24-Nov-00	4,937,582	1,481,274.60
28-Nov-00	5,055,654	1,516,696.20
29-Nov-00	5,396,802	1,619,040.60
29-Nov-00	5,069,325	1,520,797.50
20-Dec-00	5,579,336	1,673,800.80
20-Dec-00	5,014,128	1,504,238.40
27-Dec-00	4,895,727	1,468,718.10
29-Dec-00	5,526,820	1,658,046.00
27-Dec-00	4,525,906	1,357,771.80

28-Dec-00	2,101,043	630,312.90
28-Dec-00	3,616,116	1,084,834.80
29-Jan-01	2,120,331	636,099.30
29-Jan-01	5,173,458	1,552,037.40
31-Jan-01	4,668,965	1,468,159.50
31-Jan-01	4,771,763	1,479,635.10
23-Feb-01	5,110,281	1,571,443.80
23-Feb-01	5,292,352	1,653,393.90
26-Feb-01	3,612,804	1,130,370.00
26-Feb-01	1,538,366	476,130.30
27-Feb-01	4,650,271	1,453,066.50
28-Mar-01	5,203,469	1,641,647.10
28-Mar-01	4,742,532	1,487,355.90
28-Mar-01	4,756,479	1,504,811.10
28-Mar-01	4,915,193	1,518,441.00
28-Mar-01	5,412,311	1,710,574.50
28-Mar-01	4,907,846	1,533,581.70
30-Mar-01	5,233,155	1,639,420.80
30-Apr-01	4,001,354	1,262,364.90
30-Apr-01	5,283,857	1,657,392.90
30-Apr-01	4,936,169	1,543,365.30
30-Apr-01	4,747,222	1,484,723.40
30-May-01	4,735,904	1,466,195.40
30-May-01	5,429,765	1,703,301.90
30-May-01	4,813,691	1,499,164.20
30-May-01	5,519,910	1,724,867.70
25-Jun-01	5,262,592	1,649,290.80
25-Jun-01	4,867,196	1,520,172.00
25-Jun-01	5,276,373	1,658,968.20
25-Jun-01	5,048,380	1,572,389.10
25-Jun-01	5,044,188	1,569,455.70
27-Jun-01	4,831,790	1,518,902.70
27-Jun-01	4,549,457	1,442,148.90
	313,840,733	95,943,863.70

CTA 6559

Date	Volume (in liters)	Specific Tax Amount
16-Jul-01	5,732,201	1,719,660.30
27-Jul-01	5,394,695	1,618,408.50
27-Jul-01	5,852,281	1,755,684.30
27-Jul-01	5,247,932	1,574,379.60
27-Jul-01	5,017,566	1,505,269.80
27-Jul-01	4,911,542	1,473,462.60

27-Jul-01	5,101,938	1,530,581.40
27-Jul-01	5,414,740	1,624,422.00
27-Aug-01	5,633,944	1,690,183.20
27-Aug-01	5,470,726	1,641,217.80
27-Aug-01	5,816,523	1,744,956.90
27-Aug-01	4,969,388	1,490,816.40
28-Aug-01	4,197,519	1,259,255.70
28-Aug-01	4,849,365	1,454,809.50
28-Aug-01	5,234,882	1,570,464.60
28-Aug-01	5,173,470	1,552,041.00
28-Aug-01	5,338,719	1,601,615.70
28-Aug-01	5,031,470	1,509,441.00
28-Aug-01	5,609,636	1,682,890.80
28-Sep-01	4,780,562	1,434,168.60
28-Sep-01	5,460,497	1,638,149.10
28-Sep-01	5,275,603	1,582,680.90
28-Sep-01	5,332,129	1,599,638.70
28-Sep-01	4,639,755	1,391,926.50
28-Sep-01	5,047,761	1,514,328.30
28-Sep-01	4,858,791	1,457,637.30
28-Sep-01	5,564,699	1,669,409.70
27-Oct-01	5,693,564	1,708,069.20
27-Oct-01	4,974,374	1,492,312.20
27-Oct-01	5,331,184	1,599,355.20
27-Oct-01	3,486,295	1,045,888.50
27-Oct-01	5,317,167	1,595,150.10
30-Oct-01	5,745,099	1,723,529.70
30-Oct-01	5,568,255	1,670,476.50
26-Nov-01	5,690,932	1,707,279.60
26-Nov-01	5,292,126	1,587,637.80
26-Nov-01	5,097,210	1,529,163.00
26-Nov-01	4,123,068	1,236,920.40
26-Nov-01	5,513,676	1,654,102.80
26-Nov-01	5,358,796	1,607,638.80
26-Nov-01	4,907,730	1,472,319.00
26-Nov-01	5,342,116	1,602,634.80
26-Nov-01	5,579,970	1,673,991.00
27-Nov-01	5,105,041	1,531,512.30
28-Dec-01	5,241,856	1,572,556.80
28-Dec-01	5,555,186	1,666,555.80
28-Dec-01	4,847,778	1,454,333.40
28-Dec-01	5,426,102	1,627,830.60
28-Dec-01	5,695,125	1,708,537.50
28-Dec-01	4,998,848	1,499,654.40
28-Dec-01	5,677,123	1,703,136.90
TOTAL	266,526,955	79,958,086.50

WHEREFORE, petitioner's claims for refund in CTA Case Nos. 6506 and 6559 are hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor petitioner the amount of P175,901,950.20 representing excise taxes paid for the period July 2000 to December 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Chairman, First Division