Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
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PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7122

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:
OCT 22 2008 ; 10:55 am

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DECISION

CASANOVA, J.

For decision is the Petition for Review filed by Pilipinas Shell Corporation on January 3, 2005 praying that respondent be ordered to refund or issue a tax credit certificate amounting to P80,425,554.99 for excise taxes erroneously paid by petitioner on its sales of petroleum products to international carriers for their use or consumption outside the Philippines.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with office address at Shell House, 156 Valero Street, Salcedo

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Village, 1227 Makati City.[1] 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.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, holding office at the BIR National Office Building located at Agham Road., Diliman, Quezon City.[3]

During the period of January 2003 up to June 2003, petitioner sold and delivered petroleum products to various international carriers of Philippine or foreign registry for their use or consumption outside the Philippines. The foreign international carriers were registered in the countries of Panama, Singapore, Netherlands, Denmark, Norway, Malaysia and Korea which were allegedly exempt from excise or similar taxes on petroleum products by virtue of various tax treaties.[4]

In the conduct of its operations, petitioner paid to the Bureau of Internal Revenue (BIR) excise taxes on its locally manufactured petroleum products in compliance with Section 148 of the 1997 National Internal Revenue Code (1997 NIRC). Petitioner allegedly made these payments upon the removal of such products from the refineries or place of production, prior to delivery, consistent with Section 130 of the 1997 NIRC.[5] Petitioner also stipulated that it paid to the BIR excise taxes on imported petroleum products before the release of such

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[1] Joint Stipulation of Facts and Issues (JSFI), Par. 1, *Rollo*, p. 135.
[2] Petition for Review, Par. 4, *Rollo,* p. 2.
[3] Ibid. Par 2; *Rollo*, pp. 135-136.
[4] Petition for Review, Par. 7, *Rollo*, p. 3.
[5] Petition for Review, Par. 5, *Rollo,* pp. 2-3.

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products from customs custody in compliance with Section 131 (A) of the same code.[6]

Petitioner argued that as a result of the exemption, and pursuant to Section 135 of the 1997 NIRC, it billed the international carriers net of excise taxes. This notwithstanding, the petroleum products petitioner delivered to the international carriers were products with excise taxes already paid for.[7] Due to petitioner's erroneous payment of excise taxes, it found it necessary to claim for a refund or issuance of a tax credit certificate.

On February 13, 2004, petitioner filed a formal claim for tax refund or credit with the Large Taxpayers Audit Inspection Department (LTAID) Division II seeking the recovery of excess excise taxes paid in the amount of P49,306,787.09 incurred from January 2003 to March 2003. Afterwards, on July 2, 2004, petitioner filed another claim for refund with the same LTAID division in the amount of P31,118,767.90 for the period of April 2003 to June 2003. Both claims amount to P80,425,554.99, the subject amount of the instant petition.

Receiving no favorable response from respondent, and to protect its rights, petitioner filed this case before Us on January 3, 2005.

For her part, respondent stated the following Special and Affirmative Defenses:

> "5. He reiterates and re-pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

[6] Ibid. Par. 6, *Rollo*, p. 3.
[7] Petition for Review, Par. 9, *Rollo*, p. 4.

6. Petitioner's claim for refund or issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

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

8. Petitioner's claim for refund in the amount of P80,425,554.99, representing the alleged excise taxes paid on its sales and deliveries of petroleum products to various international carriers, covering the period from January 2003 to December 2003 were not duly substantiated.

9. The amount being claimed by petitioner as alleged excise taxes paid for the period covering from January 2003 to December 2003 does not in full pertains to its sales and deliveries of petroleum products to various international carriers for use or consumption outside the Philippines.

10. Petitioner's sales and deliveries of petroleum products to various international carriers are not exempt from excise taxes.

11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (C) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

During the hearing, petitioner presented documentary and testamentary evidence to prove and substantiate the amounts of gasoline and fuel oil petitioner sold to international carriers. Respondent failed to present any evidence in support of her arguments.[8]

[8] TSN, April 10, 2008, p. 3.

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Upon the filing of the parties' respective Memorandum, June 13, 2008 for petitioner and June 10, 2008 for respondent, this case was submitted for decision on June 24, 2008.

The following are the issues agreed upon by the parties:[9]

"1. [w]hether or not [p]etitioner sold and delivered petroleum products to international carriers of Philippine or foreign registry from January 2003to June 2003[;]

2. [w]hether or not [p]etitioner is exempt from the payment of excise taxes on petroleum products sold and delivered to international carriers in paragraph 1 above[;]

3. [w]hether or not [p]etitioner is exempt from the payment of excise taxes on petroleum products sold and delivered to international carriers[;]

   3.1 [w]hether or not petroleum products were used or consumed by international carriers outside of the Philippines;

   3.2 [w]hether or not the international foreign carriers are exempted from the payment of excise taxes under tax treaties, conventions, or other international agreements;

   3.3 [w]hether or not the countries of registry of the international foreign carriers purchasing [p]etitioner's petroleum products grant Philippine-registered vessels reciprocal exemption from the payment of excise or such similar taxes[;]

4. [w]hether or not [p]etitioner is entitled to the recovery of the amount of P80,425,554.99 representing excise taxes paid on the petroleum products sold and delivered to international carriers[;]

5. [w]hether or not [p]etitioner's claim for refund/tax credit in the amount of P80,425,554.99, representing the alleged excise taxes paid on its sales and deliveries of petroleum products to various international carriers, covering the period from January 2003 to June 2003 were duly substantiated by proper documentary evidence[;]

[9] JSFI, *Rollo*, pp. 137-139.

6. [w]hether or not the amount of P80,425,554.99, being claimed by [p]etitioner as excise taxes paid for the period from January 2003 to June 2003, pertains in full to its alleged exempt sales and deliveries of petroleum products to various international carriers."

The parties' issues can be summarized to whether or not petitioner is entitled to its refund claim of P80,425,554.99.

We find petitioner's arguments partially meritorious.

In order to be entitled to a claim for refund or issuance of a tax credit certificate of excise taxes paid on petroleum products, petitioner must first comply with the two-year prescriptive period in Sections 204 (C) and 229 of the NIRC of 1997 which states that:

> "**SECTION 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** — The Commissioner may —
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> 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.
>
> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: Provided, That the

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original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: Provided, further, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

xxx xxx xxx"

"**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, 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."

These provisions must be correlated with Sections 130 (A)(2) and 131 (A) of the 1997 NIRC which reads as follows:

"**SECTION 130. Filing of Return and Payment of Excise Tax on Domestic Products.** —

xxx xxx 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: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody."

> "**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 customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. xxx "

Pursuant to Sections 204(C) and 229 of the NIRC of 1997, petitioner is entitled to refund if it files its administrative and judicial claims within the two-year prescriptive period reckoned from the **date of payment** of the tax. Based on Section 130(A)(2) of the NIRC of 1997, excise taxes on locally manufactured petroleum products shall be paid by the manufacturer or producer before removal thereof from the place of production. On the other hand, excise taxes on imported articles shall be paid by the owner or importer to the Customs

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Officers before the release of such articles from customs custody in accordance with Section 131(A) of the NIRC of 1997.

In the instant case, the earliest date of removal of the subject petroleum products from the place of production is January 5, 2003[10]. Counting from this date, the administrative claims filed on February 13, 2004 and July 2, 2004 for the periods January to March 2003 and April to June 2003, respectively, and this instant Petition for Review filed on January 3, 2005 fall within the two-year period.

Going now to the merits of its claim, petitioner hinges its arguments on Section 135 of the 1997 NIRC which states that:

> "**Section 135.** *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – Petroleum products sold to the following are exempt from excise tax:
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> (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;
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> (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
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> (c) Entities which are by law exempt from direct and indirect taxes."

[10] Exhibit "BBBB-4".

Petitioner ratiocinates that the petroleum products it sold and delivered to various international carriers for their use or consumption outside the Philippines are exempt from excise taxes pursuant to above section. Hence, petitioner billed his clients net of excise taxes. However, as petitioner earlier paid the excise taxes it sold upon removal from the place of production or from customs custody, it is entitled to a refund of the excise taxes it paid.

For the period January 2003 to June 2003, petitioner sold 57,274,185 liters of petroleum products to international carriers and paid the excise taxes due thereon amounting to P80,425,554.99, detailed as follows:

	Sales volume in liters		
Month	Gas Oil	Fuel Oil	Total
Jan-03	2,110,057	557,430	2,667,487
Feb-03	16,338,310	1,444,675	17,782,985
Mar-03	11,174,826	1,401,170	12,575,996
Apr-03	8,976,940	3,074,976	12,051,916
May-03	4,370,102	1,166,841	5,536,943
Jun-03	4,581,118	2,077,740	6,658,858
TOTAL	**47,551,353**	**9,722,832**	**57,274,185**

	Excise Tax		
Month	Gas Oil @ P1.63/liter	Fuel Oil @ P0.30/liter	Total
Jan-03	P 3,439,392.91	P 167,229.00	P 3,606,621.91
Feb-03	26,631,445.30	433,402.50	27,064,847.80
Mar-03	18,214,966.38	420,351.00	18,635,317.38
Apr-03	14,632,412.20	922,492.80	15,554,905.00
May-03	7,123,266.26	350,052.30	7,473,318.56
Jun-03	7,467,222.34	623,322.00	8,090,544.34
TOTAL	**P 77,508,705.39**	**P 2,916,849.60**	**P 80,425,554.99**

Records reveal that for the period January 2003 to June 2003, petitioner sold and delivered petroleum products to international carriers with the following countries of origin:

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1. Panama
2. Denmark
3. Norway
4. Korea
5. Cyprus

These ships or international carriers are engaged in international trade, and their countries of registry grant reciprocal tax exemption to Philippine-registered marine vessels as certified by the Maritime Industry Authority (MARINA) and the Department of Foreign Affairs (DFA), respectively. Likewise, the bunkering permits issued by the Bureau of Customs attest that the petroleum products purchased by the international carriers are "for the ship's use only". These put the sales of petitioner within the purview of Section 135 of the 1997 NIRC.

Despite the above, BIR Revenue Memorandum Order (RMO) No. 19-06, Annex "A" further requires the submission of the following documents to fully entitle petitioner to its refund claim:

1.) Withdrawal certificates (WCs)/ Summary of Daily Liftings/Summary of Removals;

2.) Excise Tax Return, Bank Official Receipt (in the case of a local manufacturer/producer) or IEIRD (in the case of an importer);

3.) Delivery receipts duly acknowledged by the authorized representative of the international carrier;

4.) Sales invoice issued in the name of the international carrier and/or in the name of the international carrier "c/o Name of Intermediary Party/Broker";

5.) Official receipt issued in the name of the international carrier and/or in the name of the international carrier "c/o Name of Intermediary Party/Broker";

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6.) Bunkering Permit (BP) issued by the BOC (in the case of sales to international vessels);

7.) Copy of any one of the following:

a.) Certification from the DFA of the list of countries granting excise or similar tax exemption to Philippine-registered international carriers; or

b.) Certification from the Embassy/Consular Office of the country concerned duly validated by the DFA.

In compliance with the above RMO, petitioner submitted the following documents: (1) withdrawal certificates[11]; (2) receipts for marine bunker fuel[12]; (3) bunkering permits[13]; (4) sales invoices[14]; (5) printouts of petitioner's computerized accounting system[15]; (6) official receipts[16]; (7) schedule of the running balance of excise tax advance payments and Excise Tax Returns (ETRs) with bank official receipts[17]; (8) letters from the Maritime Industry Authority (MARINA) dated February 12, 2007, the Department of Foreign Affairs (DFA) dated October 5, 2004, and the Directorate General of Income of the Republic of Panama[18]; and (9) Excise Tax Returns (ETRs) for the period January 2003 to June 2003 [19].

From the above documents, the Court-commissioned independent Certified Public Acountant (CPA), Punongbayan & Araullo, through its partner,

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[11] Exhibits "BBBB-1 to 18".
[12] Exhibits "CCCC-1 to 239".
[13] Exhibits "DDDD-1 to 203".
[14] Exhibits "EEEE-1 to 231".
[15] Exhibits "FFFF-1.1 to 243.2".
[16] Exhibits "GGGG-1 to 104".
[17] Exhibits "HHHH to HHHH-37.6".
[18] Exhibits "JJJJ, KKKK and LLLL".
[19] Exhibits "AA to CCC".

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Mr. Benjamin P. Valdez, stated the following findings as regards petitioner's claimed excise taxes in a final amended report dated February 22, 2007[20]:

> "After performing the procedures outlined in this report, we have established that out of the total claim of P80,425,555 representing excise taxes paid on petroleum products sold to international carriers for their use or consumption outside the Philippines for the period January 2003 to June 2003, the amount of P76,167,628 was properly supported by relevant documents. The balance of P4,257,926 was not completely supported due to lack of proof of reciprocal tax exemption and certain documents supporting the claims were not yet provided to us as of the date of this report."

The independent CPA disallowed the balance of P4,257,926 for the following reasons[21]:

	Volume in liters		Specific Tax		
	Gas Oil	Fuel Oil	Gas Oil @ P1.63/liter	Fuel Oil @ P0.30/liter	Total
Without reciprocity agreement	744,552	1,452,530	P 1,213,620	P 435,759	P 1,649,379
With missing documents	827,997	3,285,428	1,349,635	985,628	2,335,263
Unregistered vessel	84,173	358,440	137,202	107,532	244,734
Unmatched bunkering permit quantity	14,099	18,562	22,981	5,569	28,550
Total	**1,670,821**	**5,114,960**	**P 2,723,438**	**P 1,534,488**	**P 4,257,926**

Upon review of petitioner's evidence, this Court affirms the findings of the independent CPA.

As can be gleaned from the independent CPA report, the claimed excise tax of P80,425,554.99 pertained to petitioner's exempt sales and deliveries of petroleum products to international carriers. Also, petitioner's documents have

[20] Exhibit "MMMM", p. 12.
[21] Ibid., p. 10

proven that petitioner sold and delivered petroleum products to international carriers of foreign registry and paid the excise taxes due thereon for the period January 2003 to June 2003. Furthermore, except for the amount P4,257,926.00, petitioner's claim for refund or tax credit for the excise taxes paid on exempt sales of petroleum products were duly substantiated by proper documentary evidence.

Thus, petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate of the excise taxes paid on petroleum products sold and delivered to international carriers for the period January 2003 to June 2003.

WHEREFORE, in view of the foregoing, the instant claim for refund or issuance of a tax credit certificate is hereby **PARTIALLY GRANTED** but in the reduced amount of **SEVENTY SIX MILLION ONE HUNDRED SIXTY SEVEN THOUSAND SIX HUNDRED TWENTY EIGHT AND 99/100 (P76,167,628.99)** as computed below:

Excise tax claimed	P 80,425,554.99
Less: Disallowed amount	4,257,926.00
Valid excise tax for refund	**P 76,167,628.99**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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