REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1301 (CTA CASE No. 8232)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
PILIPINAS SHELL PETROLEUM CORPORATION, Respondent.	Promulgated: SEP 01 2016 3:25 p.m.

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review dated May 14, 2015 filed by the Commissioner of Internal Revenue assailing the Decision dated December 16, 2014, and the Resolution dated April 6, 2015, both rendered by the Court in Division, which partially granted the claim for refund of excise taxes paid by respondent on petroleum products sold to tax-exempt international carriers for the period March 1, 2009 to April 7, 2009.

The facts were established during the trial on the merits of the case:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to grant claims for refund/tax credit as provided by law with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Pilipinas Shell Petroleum Corporation is a domestic corporation with address at Shell House, 156 Valero Street, Salcedo Village, Makati City. It is engaged in the business of manufacturing, processing, treating, and refining petroleum for the purpose of producing marketable products and by-products for sale. It manufactures Jet A-1 fuel primarily for sale and delivery to foreign and domestic carriers, and other customers. In certain instances, it also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas.

On February 4, 2011, respondent filed an administrative claim for refund with the BIR Large Taxpayers Audit and Investigation Division II for the recovery of excise taxes it paid on imported Jet A-1 fuel sold to tax-exempt international air carriers for the period March 1, 2009 to April 7, 2009 in the amount of P60,004,433.94 detailed as follows:

Description	Volume (Liters)	Excise Tax Rate	Amount
Sale to international carriers of Philippine or foreign registry pursuant to Section 135 of the NIRC of 1997	16,349,982	P3.67	P60,004,433.94

On the same date, respondent also filed a formal claim for refund with the BIR Large Taxpayers Audit and Investigation Division II for the recovery of excise taxes paid under the Replenishment Scheme on locally-produced Jet A-1 fuel sold to tax-exempt international air carriers for the period of March 21-31, 2009 in the total amount of P13,106,726.05, as follows:

Description	Volume (Liters)	Excise Tax Rate	Amount
Sale to international carriers of Philippine or foreign registry pursuant to Section	3,571,315	P3.67	P13,106,726.05

6(C) of Revenue Regulations No. 3-2008			

For failure to take any action on the two applications for refund in the aggregate amount of P73,111,159.99 (P60,004,433.94 + P13,106,726.05), respondent elevated the matter to the Court in Division through a Petition for Review filed on February 18, 2011.

In the Decision dated December 16, 2014, the Court in Division ruled in favor of respondent, albeit partially, in the following fashion:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, (petitioner) Commissioner of Internal Revenue is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the reduced amount of P63,161,734.94 to (respondent) Pilipinas Shell Petroleum Corporation, representing excise taxes paid by (respondent) on petroleum products sold to international carriers from March 1, 2009 to April 7, 2009.
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> SO ORDERED."

The Court in Division affirmed its ruling when it denied petitioner's plea for reconsideration in the similarly assailed Resolution of April 6, 2015, the dispositive portion of which reads as follows:

> "WHERFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, (petitioner's) Motion for Partial Reconsideration (Re: Decision dated 16 December 2014) filed on January 22, 2015, is hereby DENIED for lack of merit.
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> SO ORDERED."

Hence, this appeal before the Court *En Banc* filed by petitioner on May 15, 2015. Petitioner rejects the partial grant of the claim for refund contending that respondent failed to exhaust administrative remedies depriving the Court of jurisdiction over the case.

Respondent claims that its first payment of excise tax for the subject importation was on February 18, 2009. Hence, it had two years or until February 18, 2011 to file both its administrative and judicial claims pursuant to Section 229 of the National Internal Revenue Code (NIRC), as amended.

Near the end of the two-year prescriptive period or on February 4, 2011, respondent filed its administrative claim for refund. Exactly fourteen (14) days thereafter, or on February 18, 2011, it filed a Petition for Review with the Court in Division.

Petitioner complains that the very short period between the filing of the administrative and the judicial claims for refund practically removed from her the opportunity to determine the merits of respondent's claim for refund in violation of the doctrine of exhaustion of administrative remedies justifying the dismissal of the case.

Petitioner also disputes respondent's reliance on Section 135 of the NIRC for its alleged exemption from excise tax payment arguing that the provision is only applicable to international carriers which purchased petroleum products for their use or consumption outside the Philippines, on condition that the petroleum products are stored in a bonded storage tank, and disposed of in accordance with the rules prescribed by the Secretary of Finance. In this case, respondent is not an international carrier or an airline company, but one that sells petroleum products to international carriers, hence, not entitled to excise tax exemption. Petitioner maintains that exemption from tax cannot be permitted to exist upon vague implications, without clearly establishing the right thereto.

In contrast, Section 148 of the NIRC provides that there shall be collected on refined and manufactured mineral oils and motor fuels, excise taxes which shall attach to the mentioned goods as soon as they are in existence.

Respondent, on the other hand, counters that the arguments in the instant Petition for Review are mere rehash of petitioner's arguments before the Court in Division, which have been sufficiently addressed in the assailed Decision of December 16, 2014 and settled in the similarly assailed Resolution of April 6, 2015.

Further, in her Motion for Reconsideration filed with the Court in Division, petitioner raised as its sole issue respondent's failure to exhaust administrative remedies before seeking judicial intervention. Thus, the other issues in this Petition for Review not included in her motion for reconsideration before the Court in Division, should be deemed waived and not entertained by the Court in consonance with Section 8, Rule 15 of the Rules of Court.

Anent the alleged haste in seeking judicial intervention barely fourteen (14) days after the filing of the administrative claim for refund thereby depriving her of the opportunity to resolve the case at her level, respondent invokes Sections 204 and 229 of the NIRC, as amended, prescribing a mandatory period of two years for filing claims for refund, reckoned from the date of the payment of the tax sought to be refunded. According to respondent, it was just trying to preserve its right to appeal by filing its judicial claim for refund within the required two-year period.

The Highest Tribunal in a case[1] has ruled that in consonance with the principle of *pacta sunt servanda*, the Philippines has the duty to fulfil the country's treaty obligations in good faith and that the statutory taxpayer who is directly liable to pay excise tax on its petroleum products sold to tax-exempt international carriers is exempt from the payment of excise tax under Section 135(a) of the NIRC.

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[1] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, Resolution dated February 19, 2014

Also under the doctrine of *stare decisis,* courts, such as the Court of Tax Appeals must adhere to and apply the ruling laid down by the Supreme Court.

Finally, the Court in Division based its ruling on the evidence presented which were ascertained and verified by the Court-commissioned Independent Certified Public Accountant proving that it is entitled to refund in the amount of P63,161,734.94. Moreover, once the taxpayer had convincingly discharged this burden to the satisfaction of the Court as in the present case, there is no other course of action but for it to grant the refund prayed for.

THE RULING OF THE COURT

On the alleged indecent haste in the filing of the Petition for Review with the Court in Division only fourteen (14) days after the institution of the administrative claim for refund, Sections 204 and 229 of the NIRC, as amended, pertinently provide, thus:

> SEC. 204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may -
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> x x x x x x x x x
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> (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.
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> x x x x x x x x x

> 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, 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**: x x x.

Both Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. However, Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the claim must be filed within two (2) years from the date of payment of the tax or penalty. Note that Section 229 further requires that an administrative claim for refund must first be lodged with the CIR before the taxpayer may seek judicial intervention for the claim for refund or credit.[2] The same provision states that the two (2)-year prescriptive period is mandatory regardless of any supervening cause that may arise after payment.[3]

In other words, the filing of the claim for refund with petitioner is a pre-requisite to the filing of the Petition for Review with the Court of Tax Appeals. Both actions must be filed within two (2) years from the payment of the tax being

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[2] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue, vs. CBK Power Company Limited, G.R. Nos. 193407-08

[3] Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014

refunded. Indeed, respondent cannot be faulted for filing its Petition for Review for it only tried to preserve its right to appeal to this Court. The only requirement is that petitioner is given the opportunity to evaluate the merits of the taxpayer's claim which is obtaining in the present case.

Evident from the record that respondent made the first payment of the subject excise tax on February 18, 2009 for the earliest importation which arrived on February 19, 2009. Counting two years from said date, pursuant to Sections 204 and 229 of the NIRC, respondent had until February 18, 2011, within which to file its claim for refund both with the CIR and the CTA. In fine, both respondent's administrative claim and Petition for Review were seasonably filed on February 4, 2011 and February 18, 2011, respectively.

With regard to Section 135 of the NIRC[4], as legal basis for respondent's claim for refund, the provision has been interpreted by the Supreme Court in this wise:

> "Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). Any excise

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[4] Section 135 of the NIRC states:

> SEC. 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 agreement 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.

> tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the National Internal Revenue Code (NIRC) exempt from excise tax is deemed illegal or erroneous, and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products."[5]

Very clearly, respondent as the statutory taxpayer, who paid the excise taxes on petroleum products sold to international carriers for their use or consumption outside the Philippines, is entitled to claim refund of the subject excise taxes paid based on Section 135 of the NIRC.

In fact, in a case of recent vintage involving the same parties, the Supreme Court has specifically declared that respondent, as an entity which paid excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid pursuant to Section 135 of the NIRC, to wit:

> "We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC. [6]

In explaining its ruling, the Supreme Court held that Section 135 of the NIRC should be interpreted taking into consideration the fulfilment of the country's treaty obligations. Effectively, the provision is a prohibition against shifting of the tax burden by the manufacturer-seller, the

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[5] Chevron Philippines Inc. vs. Commissioner of Internal Revenue, G.R. No. 210836, September 01, 2015

[6] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, February 19, 2014

respondent in this case, to the tax-exempt buyer, the international carrier.

Although he concurred in the result, Honorable Supreme Court Justice Lucas P. Bersamin, in his Separate Opinion, advanced a different view on the proper interpretation of Section 135(a) of the NIRC, saying that "the excise tax exemption under Section 135(a) of the NIRC is conferred on the petroleum products on which the excise tax is levied in the first place in view of its nature as a tax on property, the liability for the payment of which is statutorily imposed on the domestic petroleum manufacturer". In his disquisition he added:

> x x x x x x x x x
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> Applying the foregoing, the Court concludes that: (1) the exemption under Section 135(a) of the NIRC is conferred on the petroleum products on which the excise tax was levied in the first place; (2) Pilipinas Shell, being the manufacturer or producer of petroleum products, was the statutory taxpayer of the excise tax imposed on the petroleum products; (3) as the statutory taxpayer, Pilipinas Shell's liability to pay the excise tax accrued as soon as the petroleum products came into existence, and Pilipinas Shell accordingly paid its excise tax liability prior to its sale or disposition of the taxable goods to third parties, a fact not disputed by the CIR; and (3) Pilipinas Shell's sale of the petroleum products to international carriers for their use or consumption outside the Philippines confirmed the proper tax treatment of the subject goods as exempt from the excise tax.
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> Under the circumstances, therefore, Pilipinas Shell erroneously paid the excise taxes on its petroleum products sold to international carriers, and was entitled to claim the refund of the excise taxes paid in accordance with prevailing jurisprudence and Section 204(C) of the NIRC.[7]"

[7] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, February 19, 2014, Separate Opinion of J. Bersamin.

The latter stand was affirmed in a subsequent case where the Supreme Court emphasized that "Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous, and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products."[8]

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[9] Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[10]

The Court shall now determine whether respondent has proved compliance with the requisites or conditions to be entitled to the refund sought.

Pursuant to Section 135 of the NIRC, petroleum products sold to international air carriers, whether of Philippine or foreign registry, are exempt from excise taxes provided that (a) the petroleum products were consumed outside the Philippines; (b) such petroleum products were stored in a bonded storage tank and disposed of only in accordance with the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner; and (c) in case of foreign international carriers, reciprocity in tax exemption is observed meaning

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[8] Chevron Philippines Inc. vs. Commissioner of Internal Revenue, G.R. No. 210836, September 1, 2015
[9] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003
[10] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. Nos. 184360 & 184361; Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.), G.R. No. 184384, February 19, 2014

that their country of registry also exempts from excise or similar taxes the petroleum products sold to Philippine carriers.

The record shows that respondent 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. It manufactures Jet A-1 fuel in its refinery in Tabangao, Batangas utilizing imported crude as raw material. In certain instances, respondent imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas primarily for sale and delivery to foreign and domestic air carriers and other customers.

In February 2009, respondent's Tabangao Refinery was shut down to give way to its annual preventive maintenance. Consequently, on February 19, 2009 and March 17, 2009, respondent imported 12,489,864 liters, and 3,245,963 liters, respectively, of Jet A-1 fuel, for a total of 15,735,827 liters.

The first batch of importation arrived at the port of Batangas on February 19, 2009, covered by Import Entry and Internal Revenue Declaration (IEIRD) No. 95806295. Excise taxes for the said importation in the amount of P45,837,800.88 were paid on February 18 and 26, 2009. The second batch of importation arrived at the port of Batangas on March 17, 2009, covered by IEIRD No. 95806943. Excise taxes for the second batch, in the amount of P11,912,684.21 were paid on March 16 and 24, 2009.

Likewise, on March 31, 2009, respondent purchased a total of 3,996,724 of Jet A-1 fuel from Chevron (Philippines) Corporation.

From the foregoing importation and from the purchase from Chevron, respondent accumulated 19,732,551 liters of Jet A-1 fuel (15,735,827 plus 3,996,724). Out of the 19,732,551 liters of Jet A-1 fuel, respondent sold a total of 16,349,982 liters, with excise tax payments of P60,004,433.94, to various international air carriers for the period of March 1 to April 7, 2009 for use or consumption outside the Philippines.

In the meantime, on March 17, 2009, respondent started withdrawing locally-produced Jet A-1 fuel for sale to international carriers for their use or consumption outside the Philippines. Pursuant to the Replenishment Scheme under Revenue Regulations No. 3-2008 dated January 22, 2008, respondent paid excise taxes on the said removals through Product Replenishment Debit Memo in the total amount of P13,106,726.05 for 3,571,315 liters of locally-produced Jet A-1 fuel. The details of the removal and payment of excise taxes by respondent are as follows:

Date of Removal	Withdrawal Certificate	Paid Through PRDM No.	Volume (liters)	Excise Taxes Paid
Mar. 17, 2009	2008-00001854	2008-0000544	358,006	P 1,313,882.02
Mar. 21, 2009	2008-00001886	2008-0000544 & 2008-0000642	3,213,309	11,792,844.03
			3,571,315	P13,106,726.05

The entire batch of locally-produced Jet A-1 fuel was sold to various international air carriers for the latter's use or consumption outside the Philippines from March 21-31, 2009.

To prove that the airlines who purchased the Jet A-1 fuel were registered in the countries that grant reciprocal tax exemption to Philippine-registered airline carriers, respondent secured from the Department of Foreign Affairs (DFA) a list of countries that grant such exemptions with their corresponding dates of effectivity, as well as a Certification issued by the Civil Aviation Authority of the Philippines (CAAP) indicating the nationality and country of registration of the aircrafts of these airlines. Likewise, submitted Certifications issued by the Civil Aeronautics Board (CAB) proved that the said airline companies to which respondent sold the Jet A-1 fuel during the subject period had been issued Foreign Air Carrier Permits (FACP) by the CAB allowing them to operate an international route.

After conducting its own audit, and taking into consideration the report of the ICPA, the Court found that out of the total claim of P73,111,159.99, only the amount of P63,161,734.94 was properly substantiated,[11] as follows:

	Volume (liters)		
Customers	From Importation	From Local Production	Total
Air Asia	239,948	83,021	322,969
Air Hongkong	208,383	50,174	258,557
Asiana Airlines	202,981	72,330	275,311
China Airlines	648,827	153,869	802,696
China Southern	233,230	60,333	293,563
Hongkong Express	116,056	30,822	146,878
Japan Airlines	1,991,250	492,483	2,483,733
Jet Star Asia Airways	255,309	70,291	325,600
Korean Airlines	1,690,720	495,499	2,186,219
Philippine Airlines	1,653,861	454,360	2,108,221
Qantas Airways	694,762	189,093	883,855
Qatar Airways	3,379,442	773,181	4,152,623
Royal Brunei Airlines	186,481	50,073	236,554
Singapore Airlines	1,773,829	482,668	2,256,497
Tiger Airways	363,888	113,118	477,006
Total Aviation Sales	**13,638,967**	**3,571,315**	**17,210,282**
Excise Tax Rate	P3.67	P3.67	P3.67
TOTAL EXCISE TAX	**P50,055,008.89**	**P13,106,726.05**	**P63,161,734.94**

The remaining amount of P9,949,425.05[12] of excise taxes paid subject of the claim for 2,711,015 liters of Jet A-1 fuel should be denied, the details of which are as follows:

Findings	Volume (liters)	Excise Tax At P3.67
Sourced from local purchases	2,041,738	P7,493,178.46
Not duly supported by relevant documents	299,019	1,097,399.73
No Aviation Service Returns	370,258	1,358,846.86
Total	**2,711,015**	**P9,949,425.05**

From the foregoing, it is clear that within the period of March 1, 2009 to April 7, 2009, respondent imported and locally manufactured, then sold and delivered Jet A-1 fuel to international carriers, for which the corresponding excise taxes were paid by respondent upon importation or removal.

[11] Exhibits JJJJ-1 of the ICPA Report
[12] Exhibit JJJJ-2 of the ICPA Report

Thus, respondent proved its entitlement to a refund or issuance of tax credit certificate but in the reduced amount of P63,161,734.94, representing excise taxes paid on petroleum products sold to international carriers from March 1, 2009 to April 7, 2009, computed as follows:

Amount of Excise Taxes of the claim	P 73,111,159.99
Less: Disallowed Excise Taxes	9,949,425.05
Substantiated Excise Taxes	**P63,161,734.94**

WHEREFORE, the Petition for Review dated May 14, 2015 filed by the Commissioner of Internal Revenue, is hereby **DENIED**, for lack of merit.

Consequently, the Decision dated December 16, 2014, and the Resolution dated April 6, 2015, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice