REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

CTA EB No. 1078
(CTA Case No. 8049)

Present:

- versus -

Del Rosario, *<u>PJ</u>,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *<u>JJ.</u>*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 19 2016 1:45 p.m.

x- x

R E S O L U T I O N

COTANGCO-MANALASTAS, <u>J.</u>:

For resolution is respondent's *Motion for Partial Reconsideration*[1] filed on August 18, 2015 by registered mail and received by this Court on August 28, 2015 with petitioner's *Comment (On CIR's Motion for Partial Reconsideration)* filed on November 26, 2015.

Respondent assails this Court's Decision[2], promulgated on July 27, 2015, which partially granted petitioner's claim for refund or issuance of tax credit certificate in the reduced amount of ₱50,797,156.29 representing petitioner's erroneously paid excise taxes on petroleum products sold to international carriers from March 18, 2008 to April 20, 2008.

[1] *Rollo*, pp. 530-534.
[2] *Rollo*, pp. 510-524.

Respondent maintains that petitioner is not entitled to the refund or tax credit for the following reasons:

1. Failure to file a bona fide claim for refund with the Commissioner of Internal Revenue (CIR);

2. Failure to exhaust administrative remedies and failure to comply with the requisites for exemption under Section 135 of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent stresses that petitioner filed its administrative claim with the Bureau of Internal Revenue (BIR) and its judicial claim with the Court in Division on February 18, 2010 and March 29, 2010, respectively, or a mere thirty-nine (39) day interval. Clearly, respondent was not given the opportunity to act on petitioner's claim for refund. Without a doubt, such filing of an administrative claim for refund is a mockery of respondent's vested power to decide tax cases, including claims for refund or tax credit.

Respondent further points out that petitioner did not submit documents to support its claim for refund. This is clear from the petition, as nowhere therein was petitioner's alleged formal claim for refund accompanied by supporting documents.

Also, respondent argues that petitioner failed to satisfy the requirement that the petroleum products were consumed outside the Philippines. This is particularly true with Philippine Airlines, which has both domestic and international flights. It was not sufficiently shown that the petroleum product sold to Philippine Airlines was used/consumed outside the Philippines.

In its comment, petitioner contends that the period of 39 days could have been sufficient for the CIR to act on the administrative claim for refund had it intended to do so. However, no action had been taken at all by the respondent on the said administrative claim. Moreover, Sections 204 and 229 of the NIRC are clear insofar as the period within which to validly file the administrative and judicial claims for refund of erroneously or illegally paid taxes, and petitioner duly complied with it.

Petitioner stresses that a mere perusal of the records of the case will show that the administrative claim for refund filed by petitioner by way of a letter dated February 16, 2010 (petitioner's Exhibit "C") indicated the submission of documents in support of such claim. Since the proceedings before the Court is a *trial de novo*, petitioner presented therein not only substantial but preponderant evidence to support its claim for refund of the excise tax paid on imported Jet A-1 fuel sold to international carriers. Moreover, in a number of cases, this Court has consistently held that the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level.

Petitioner likewise stresses that with respect to the fact of consumption of petroleum products outside the Philippines, petitioner presented the certifications from the Civil Aeronautics Board that Philippine Airlines has been granted a Franchise Permit via Presidential Decree No. 1590 and the issuance of Foreign Air Carrier's Permit to other airlines to operate scheduled international services to and from the Philippines (petitioner's Exhibits "AA" to "AA-2") and the Certifications from the international air carriers concerned as to their use or consumption of the Jet A-1 Fuel purchased from petitioner (petitioner's Exhibits "IIII-1" to "IIII-14").

We find no merit in the motion for partial reconsideration.

Respondent's argument that she was not given the opportunity to act on petitioner's claim for refund deserves scant consideration. It would be prejudicial for the petitioner to wait for the CIR's ruling before it files its judicial claim for refund since Sections 204 and 229 of the NIRC of 1997, as amended, clearly provides that petitioner must file both its administrative and judicial claims within two years from the date of payment of the tax.

In *CBK Power Company Ltd. vs. CIR*[3], respondent's same erroneous argument was addressed by the Supreme Court in this wise:

> "The Commissioner laments that he was deprived of the opportunity to act on the administrative claim for refund of excess final withholding taxes covering taxable year 2003

[3] G.R. Nos. 193383-84 and 193407-08, January 14, 2015.

which CBK Power filed on March 4, 2005, a Friday, then the following Wednesday, March 9, 2005, the latter hastily elevated the case on petition for review before the CTA. He argues that the failure on the part of CBK Power to give him a reasonable time to act on said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.

For its part, CBK Power maintains that it would be prejudicial to wait for the Commissioner's ruling before it files its judicial claim since it only has 2 years from the payment of the tax within which to file both its administrative and judicial claims.

The Court rules for CBK Power.

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. These provisions respectively read:

xxx xxx xxx

With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as

> worded, only requires that an administrative claim be priorly filed.
>
> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in no wise does the law, *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In *Kiener*, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow, viz.: xxx"

Anent respondent's argument that petitioner did not submit documents to support its claim for refund, the Court agrees with petitioner that a mere perusal of petitioner's administrative claim for refund by way of a letter dated February 16, 2010 (Exhibit "C") shows the submission of documents in support of such claim.

Also, contrary to respondent's argument that petitioner failed to prove the fact of consumption of petroleum products outside the Philippines, petitioner did present in evidence certifications from the Civil Aeronautics Board that Philippine Airlines has been granted a Franchise Permit via Presidential Decree No. 1590 to operate and maintain air transport services in the Philippines and between the Philippines and other countries, and that the other airlines have been issued Foreign Air Carrier's Permit to operate scheduled international services to and from the Philippines (Exhibits "AA" to "AA-2"). Petitioner likewise presented the certifications from the various international air carriers concerned (Exhibits "IIII-1" to "IIII-14") to show that these international air carriers purchased from petitioner Jet A-1 fuel for its international operations.

WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen R L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice