REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10352

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 14 2024
4:45 p.m.

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AMENDED DECISION

CUI-DAVID, J.:

This resolves the following:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 4 January 2024)*[1] filed on January 23, 2024, with petitioner's *Opposition [To Respondent's Motion for Partial Reconsideration dated January 22, 2024]* filed on March 4, 2024;

2. *Supplemental Certification*[2] filed by the Independent Certified Public Accountant (ICPA) on January 24, 2024; and

3. Petitioner's *Omnibus Motion I. For Partial Reconsideration of Decision dated January 4, 2024; II. To Admit ICPA Certification and Clear Copies of Admitted Exhibits; and III. Recall the ICPA*[3] filed on January 25, 2024, *sans* respondent's comment/opposition thereto despite notice.

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[1] Docket, Vol. IV, pp. 1393 to 1399.
[2] Docket, Vol. IV, pp. 1401 to 1402.
[3] Docket, Vol. IV, pp. 1404 to 1413.

Both parties seek reconsideration of the Court's Decision[4] promulgated on January 4, 2024, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant *Petition for Review* filed by Pilipinas Shell Petroleum Corporation on September 17, 2020, is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱77,234,784.00**, representing the erroneously paid excise taxes on its Jet A-1 fuel importation during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018.
>
> **SO ORDERED.**

Respondent's Motion for Partial Reconsideration:

Respondent asks for partial reconsideration of the above Decision on the sole ground, to wit:

> WHETHER OR NOT THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO REFUND IN THE REDUCED AMOUNT OF P77,234,784.00 ALLEGEDLY REPRESENTING EXCISE TAXES ON JET A-1 FUEL IMPORTATION DURING THE PERIOD FROM MAY TO SEPTEMBER 2018 AND SOLD TO INTERNATIONAL AIR CARRIERS DURING THE PERIOD FROM SEPTEMBER TO NOVEMBER 2018.

Respondent claims that the Court erred when it ruled that petitioner is entitled to a refund or tax credit of the excise taxes it paid on its importations of Jet A-1 fuel that were subsequently sold to international air carriers.

According to respondent, Section 135 of the NIRC of 1997, as amended, cannot be the source for petitioner's right to claim a refund on the excise taxes paid as it merely provides an enumeration of the exempt entities not liable to pay excise taxes. Respondent explains that if petitioner will be granted a refund of excise tax on fuel sold to an exempt entity under Section 135(c) of the NIRC of 1997, as amended, petitioner, in effect, is granted a refund for excise tax based solely on the exemption enjoyed by the exempt entities.

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[4] Docket, Vol. IV, pp. 1357 to 1392.

In its *Opposition*, petitioner submits that respondent's *Motion for Partial Reconsideration* should be denied for lack of merit as the arguments raised therein are a mere rehash of previous arguments raised in his *Answer* and *Memorandum*, which the Court has already considered and resolved in the Decision sought to be reconsidered.

Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 4 January 2024)* must fail.

All the arguments raised by respondent in his *Motion for Partial Reconsideration* were the very same flawed arguments presented in his *Answer* filed on December 11, 2020, and *Memorandum* filed on November 25, 2022, which were thoroughly discussed and passed upon in the challenged *Decision* of January 4, 2024.

Nevertheless, to the point of being repetitive, the Court quotes the relevant portion of the assailed Decision, to wit:

> Relevantly, the disquisition of the Supreme Court on Section 135 of the NIRC of 1997, as amended, which is petitioner's legal basis for its claim for refund, is enlightening, to wit:
>
> > "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.**"[5]
>
> **As the statutory taxpayer that paid the excise taxes on petroleum products sold to international carriers, petitioner is entitled to claim a refund of the subject excise taxes paid based on Section 135 of the NIRC, as amended,** as the payment thereof is deemed illegal or erroneous. *(Boldfacing supplied)*

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

Petitioner's Omnibus Motion:

I. For Partial Reconsideration of Decision dated January 4, 2024

Petitioner avers that the Court disallowed the amount of ₱5,405,564.00 allegedly related to the 1,351,391 liters of Jet A-1 fuel covered by Withdrawal Certificates (WCs) dated earlier than September 24, 2018, as follows:

> Moreover, the Court noted that the instant claim included deliveries to petitioner's international air carrier customers, sourced from withdrawals dated earlier than September 24, 2018, the date shown in the ATRIG for the *First Importation*.
>
> As testified by petitioner's former *Import and Export Scheduler for Trading and Supply*, Ms. Carla Angelica T. Peralta, an ATRIG constitutes permission from the BIR to withdraw the Jet A-1 fuel from the Tabangao Refinery or Subic Terminal after the settlement of the taxes and duties due thereon. For taxable importation or importation made outside the CBW period, the Jet A-1 fuel cannot be withdrawn by petitioner without the ATRIG. If the article to be imported is subject to excise tax, the ATRIG shows the amount of excise taxes to be paid. Since Jet A-1 fuel indicates the amount of excise taxes to be paid thereon.
>
> Considering that the date of the ATRIG for the *First Importation* was on September 24, 2018, any withdrawal from the Tabangao Refinery that is earlier than the said date is not covered by the *First Importation* upon which the claimed deliveries to international air carriers, subject of the instant claim, were sourced. Consequently, petitioner's claimed excise taxes in the amount of ₱5,405,564.00 related to the 1,351,391 liters of Jet A-1 fuel covered by WCs dated earlier than September 24, 2018 shall be disallowed...

Petitioner asks for the Court to reconsider the foregoing ruling, contending that though the WCs, marked as Exhibits P-99.1 to P-99.8, are before the Authority to Release Imported Goods (ATRIG), it was allegedly established that the excise taxes on the quantity withdrawn as indicated in the said WCs were fully paid.

Petitioner avers that its witness, Ms. Carla Angelica T. Peralta, testified that at the time of the conversion of the Tabangao product storage tanks from Customs Bonded Warehouse (CBW) to non-Customs Bonded Warehouse (non-

CBW) on September 13, 2018, there were still 3,963,880 liters of Jet A-1 fuel remaining from the *First Importation*, which remained stored in the Tabangao product storage tanks. According to petitioner, the conversion of the storage tank from CBW to non-CBW prompted it to lodge the corresponding importation details for the remaining quantity of 3,963,880 liters through the E2M System and paying the corresponding taxes, thus converting the same from tax-free into tax-paid inventory.

The foregoing testimony is also consistent with the Closure Order of the Bureau of Customs (BOC), stating that on September 13, 2018, the physical sounding/dipping of bonded tanks to counter-check the actual remaining balance of Je A-1 fuel was conducted by the SGS Inspector. Further, it can be gleaned from the ATRIG dated September 24, 2018, that the volume of Jet A-1 fuel to be released is 3,963,880 liters, which tallies with the importation details lodged through the E2M System, where the corresponding excise taxes were paid.

Petitioner further avers that after the closure of the CBW on September 13, 2018, it continued its business and proceeded with its commitment to supply Jet A-1 fuel to its clients. According to petitioner, during the transition period of CBW to non-CBW of the Tabangao product storage tank, it was allowed by the Bureau of Internal Revenue (BIR) through the Revenue Officers On-Premise (ROOP) to withdraw the Jet A-1 fuel stored in the CBW pending the release of the ATRIG to prevent stoppage of operations that will have a detrimental effect on its business and clients.

Petitioner asserts that from the closure of the CBW on September 13, 2018, it was established that the remaining Jet A-1 fuel from the *First Importation* was 3,963,880 liters. The ATRIG dated September 24, 2018, refers to the same quantity of Jet A-1 fuel, where the excise taxes due thereon were reflected in the Single Administrative Document (SAD), and payment thereof is duly supported by the Statement of Settlement of Duties and Taxes (SSDT). According to petitioner, these documents show that excise taxes on the *First Importation* were paid. The ICPA Report marked as Exhibit P-104.1 shows that the Jet A-1 fuel covered by the WCs included in the *First Importation* was reconciled with the deliveries to airport facilities as supported by the Bulk Delivery Notes (BDNs). The ICPA further reconciled the BDNs with the Aviation Service Returns

(ASRs) in Exhibit P-105.1, which shows that the Jet A-1 fuel was eventually delivered to international air carrier customers.

For petitioner, the WCs dated earlier than September 24, 2018, but later than September 13, 2018, are covered under the ATRIG dated September 24, 2018. Hence, it prays for the Court to reconsider its ruling and allow the additional refund or issuance of a tax credit certificate for ₱5,405,564.00 related to the 1,351,391 liters of Jet A-1 fuel from deliveries dated earlier than September 24, 2018.

After taking a second look at the records of the instant case, the Court finds merit in petitioner's arguments.

In the Decision sought to be reconsidered, the Court found that when petitioner operated its Tabangao product storage tanks as a CBW from the date of approval by the BOC in July 2015 until its closure in September 2018, petitioner was not allowed to produce Jet A-1 fuel locally; thus, all Jet A-1 fuel stored in its Tabangao product storage tanks was sourced or imported from abroad.[6]

The Court also found that at the time of the conversion of the Tabangao product storage tanks from CBW to Non-CBW on September 13, 2018, there were still 3,963,880 liters of Jet A-1 fuel from the *First Importation*, which remained in the Tabangao product storage tanks. Thus, to convert the same from tax-free into tax-paid inventory prompted by the conversion of the storage tank from CBW to Non-CBW, petitioner lodged the corresponding importation details for the remaining quantity of 3,963,880 liters through the BOC E2M System and paid the corresponding excise taxes therefor in the amount of ₱15,855,520.00.[7]

As the records reveal, the ATRIG[8] for the *First Importation* dated September 24, 2018, pertains to the 3,963,880 liters of Jet A-1 fuel remaining in petitioner's Tabangao product storage tanks as of September 13, 2018. Thus, petitioner's withdrawals of 1,351,391 liters of Jet A-1 fuel from its Tabangao product storage tanks, covered by WCs dated later than September 13, 2018 but before September 24, 2018, could only come from the 3,963,880 liters of Jet A-1 fuel inventory as of September 13, 2018.

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[6] Decision, last par., p. 21, Docket – Vol. IV, pp. 1377 to 1378.
[7] Decision, 2nd par., p. 23, Docket – Vol. IV, p. 1379.
[8] Exhibit "P-13", Docket – Vol. III, p. 959.

Indeed, while the 1,351,391 liters of Jet A-1 fuel related to the disallowed excise tax claim of ₱5,405,564.00 were withdrawn from petitioner's Tabangao product storage tanks before the release of the ATRIG on September 24, 2018, it was, however, established that such withdrawals came from the 3,963,880 liters of Jet A-1 fuel upon which excise taxes of ₱15,855,520.00 were paid by petitioner.

Thus, considering that the 1,351,391 liters of Jet A-1 fuel formed part of petitioner's sales to various international airlines for their use and consumption outside the Philippines, as evidenced by the various BDNs,[9] ASRs,[10] Sales Invoices,[11] submitted by petitioner and reconciled by the Court-commissioned ICPA in his reports dated December 21, 2021[12] and January 31, 2022,[13] the same is exempt from excise tax pursuant to Section 135(a) of the National Internal Revenue Code (NIRC) of 1997, as amended. Accordingly, petitioner's excise tax payment of ₱5,405,564.00 on the said 1,351,391 liters of Jet A-1 fuel represents erroneously paid tax, which is refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended.

II. To Admit ICPA Certification and Clear Copies of Admitted Exhibits

Petitioner avers that the Court disallowed the amount of ₱2,400,000.00, as follows:

> ... [U]pon careful examination of petitioner's supporting documents, the Court finds that the BDNs supporting the following 600,000 liters Jet A-1 fuel deliveries are unreadable. Thus, the Court could not ascertain the correctness of relevant details such as volume, destination, delivery number, shipment number, product description, and date. Accordingly, petitioner's claimed excise tax payment related thereto in the amount of ₱2,400,000.00 shall be disallowed...

Petitioner asks for reconsideration of the denial of the blurred BDNs in the amount of ₱2,400,000.00 and claims that Exhibits P-101.58, P-101.177, P-101.242, P-101.243, P-101.319, P-101.342, P-101.369, P-101.388, P-101.442, P-101.454, P-101.473, P-101.474, P-101.475, and P-101.498 have readable copies.

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[9] Exhibits "P-101.1" to "P-101.532".
[10] Exhibits "P-98.1" to "P-98.1086".
[11] Exhibits "P-100.1" to "P-100.147".
[12] Exhibit "P-66".
[13] Exhibit "P-107".

In support thereof, petitioner submits that procedural rules may be relaxed in the interest of substantial justice. It also adds that the "strict and rigid application [of procedural rules], which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed."

Allegedly, upon being informed that excise taxes of ₱2,400,000.00 attributable to certain unreadable/blurred BDNs were disallowed, the ICPA, on January 24, 2024, submitted his *Supplemental Certification* together with copies of readable BDNs marked as Exhibits P-101.58, P-101.177, P-101.242, P-101.243, P-101.319, P-101.342, P-101.369, P-101.388, P-101.442, P-101.454, P-101.473, P-101.474, P-101.475, and P-101.498 which are saved/stored in the USB flash drive attached to the *Supplemental Certification.*

Considering the foregoing, and in the paramount interest of justice, petitioner implores this Court to set aside technicalities and allow petitioner to submit the said documents in this case and prove that it is also entitled to the refund of excise taxes of ₱2,400,000.00 which is attributable to the unreadable BDNs.

The Court finds no compelling reason to reconsider and admit the BDNs attached to the *Supplemental Certification* filed by the ICPA.

While Section 8[14] of Republic Act (RA) No. 1125,[15] as amended by RA No. 9282, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence, the same should still be balanced considering that the application of technical rules may be relaxed only in the interest of substantial justice and to benefit the deserving.

In *Republic v. Sandiganbayan et. al.*, the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify a good reason for reopening the case and serve the interest of justice, the Court may allow the reception of additional evidence.

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[14] SECTION 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."

[15] Otherwise known as "An Act Creating the Court of Tax Appeals".

Here, petitioner failed to discharge this burden. Petitioner's *Motion* did not justify the correction to warrant the subsequent submission of such exhibits after judgment was already rendered. Petitioner failed to carefully examine and scrutinize all of its supporting evidence before submitting it to the Court during the trial stage. By exercising reasonable diligence, petitioner could have promptly corrected said unreadable exhibits. Absent such an explanation, a liberal application of the rules of procedure to suit the petitioner's purpose would pave the way for injustice as it would reward an act of negligence with undeserved tolerance.

Correspondingly, the Court denies petitioner's plea to admit the attached BDNs and maintains that the amount of ₱2,400,000.00 is disallowed for failure to substantiate.

III. To Recall the ICPA

Concerning its *Motion to Admit ICPA Certification and Clear Copies of Previously Admitted Exhibits*, petitioner requests for the Court to set a hearing for the ICPA to identify the *Supplemental Certification* and the clear copies of the excluded BDNs.

Allegedly, in the case of *Cabarles v. Judge Maceda*,[16] the Supreme Court acknowledged that a motion to reopen a case to receive further proof was not in the old rules, but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. Likewise, in *Air Philippines Corporation v. Commissioner of Internal Revenue*,[17] this Court explained that a motion to reopen the trial may be filed after either or both parties have formally offered and closed their evidence before judgment is rendered, and even after promulgation but before the finality of judgment. According to the Court, the only controlling guideline governing a motion to reopen is the paramount interest of justice.

Hence, in the interest of substantial justice, petitioner prays for the Court to set a hearing and recall the ICPA for the identification and authentication of the *Supplemental Certification* and the attachments thereto, if necessary.

Petitioner's *Motion to Recall ICPA* must fail.

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[16] G.R. No. 161330, February 20, 2007.
[17] CTA Case Nos. 7966, 7990 and 8020, August 5, 2016.

As discussed above, there is no compelling reason to reconsider and admit the BDNs attached to the *Supplemental Certification* filed by the ICPA. Hence, recalling the ICPA would only be futile as there would be nothing to identify and authenticate.

Thus, with all the foregoing considered, petitioner is entitled to a refund of erroneously paid excise tax in the **increased** amount of ₱82,640,348.00, computed as follows:

Excise Tax Claim per Petition for Review	₱ 85,040,348.00
Less: Excise tax claim with unreadable supporting documents	2,400,000.00
Refundable Excise Taxes	**₱82,640,348.00**

WHEREFORE, in light of the foregoing:

1. Respondent Commissioner of Internal Revenue's *Motion for Partial Reconsideration (Re: Decision promulgated 4 January 2024)* is **DENIED** for lack of merit.

2. Petitioner Pilipinas Shell Petroleum Corporation's *Omnibus Motion I. For Partial Reconsideration of Decision dated January 4, 2024; II. To Admit ICPA Certification and Clear Copies of Admitted Exhibits; and III. Recall the ICPA* is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on January 4, 2024, is **AMENDED** to read as follows:

> **WHEREFORE**, premises considered, the instant *Petition for Review* filed by Pilipinas Shell Petroleum Corporation on September 17, 2020, is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱82,640,348.00**, representing the erroneously paid excise taxes on its Jet A-1 fuel importation during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018.
>
> **SO ORDERED.**

3. The Court-commissioned Independent Certified Public Accountant's *Supplemental Certification* filed on January 24, 2024, is **NOTED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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