REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**CTA CASE NO. 10279**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 08 2024 2:03 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on June 09, 2020 prays for the refund and/or issuance of tax credit certificate in the amount of Php29,252,140.00, allegedly representing petitioner's excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers during the period April to May 2018.[1]

The Facts

Petitioner Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines with principal office at the 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Taguig City 1634.[2]

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[1] Docket, Pre-Trial Order dated February 23, 2021, Summary of the Case, p. 583.
[2] *Id., Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, Par. 1, p. 572.

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue ("BIR") National Office Building, located at Agham Road, Diliman, Quezon City where he may be served with summons and other legal process.[3]

On March 10, 2020, petitioner filed a formal claim for refund or tax credit with the Excise Large Taxpayers Audit Division II of the BIR, seeking the recovery of excise taxes paid in April 2018 on importations of Jet A-1 fuel sold to tax-exempt international air carriers for the period April to May 2018, in the aggregate amount of Php29,252,140.00.[4]

Petitioner filed the present *Petition for Review* on June 09, 2020.[5] The case was initially raffled to this Court's Second Division.

Respondent posted his *Answer* on September 14, 2020,[6] interposing the following special and affirmative defenses: (1) Section 135 of the Tax Code does not automatically exempt from excise tax petroleum products sold to international carriers and exempt entities and agencies; (2) there is no provision in the Tax Code which provides that petitioner is entitled to a refund or the issuance of tax credit certificate for excise taxes paid on imported Jet A-1 fuel sold to international air carriers; and (3) petitioner is clearly asking for a refund or issuance of a tax credit certificate which the law itself does not clearly provide.

The Pre-Trial Conference, which was initially set on November 23, 2020,[7] was cancelled, and reset to,[8] and held on January 20, 2021.[9] Prior thereto, the *Pre-Trial Brief for Petitioner* was filed on January 05, 2021,[10] while *Respondent's Pre-Trial Brief* was submitted on January 13, 2021.[11]

On February 18, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[12] which was approved and adopted by the Court in the Pre-Trial Order dated February 23, 2021,[13] thereby deeming the termination of the Pre-Trial.

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3 *Id.,* JSFI, Stipulation of Facts, Par. 2, p. 572.
4 *Id.,* JSFI, Stipulation of Facts, Par. 3, pp. 572 to 573; Exhibits "P-8" and "P-9", pp. 758 to 761.
5 *Id.,* pp. 14 to 25.
6 *Id.,* pp. 67 to 73.
7 *Id.,* Notice of Pre-trial Conference dated September 28, 2020, pp. 76 to 77.
8 *Id.,* Notice of Resetting dated November 09, 2020, p. 78.
9 *Id.,* Minutes of the hearing held on, and Order dated, January 20, 2021, pp. 552 to 553.
10 *Id.,* pp. 536 to 546.
11 *Id.,* pp. 548 to 550.
12 *Id.,* pp. 572 to 581.
13 *Id.,* pp. 583 to 588.

Trial ensued, with the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Matias D. Aquiatan, Jr.,[14] Country Operations Manager for Shell Aviation Philippines of petitioner; (2) Ms. Farida Nimfa Guyala-Dimailig,[15] Country Tax Manager of petitioner; (3) Mr. Rommel F. Guevarra,[16] Terminal Operations Supervisor at the Tabango Depot of petitioner; (4) Ms. Berenice Angelique L. Flores,[17] Tax Advisor for petitioner; (5) Ms. Carla Angelica T. Peralta,[18] former Import and Export Scheduler for Trading and Supply of petitioner; (6) Atty. Walter L. Abela, Jr.,[19] the Court-commissioned Independent Certified Public Accountant ("ICPA").[20]

The *Report* of the ICPA was submitted on May 21, 2021.[21]

Petitioner filed its *Formal Offer of Evidence with Manifestation* on March 25, 2022.[22] Respondent submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on March 29, 2022.[23] In the Resolution dated May 02, 2022,[24] the Court admitted petitioner's exhibits.

For his part, respondent offered the testimony of Revenue Officer Ma. Cecilia Tan.[25]

On June 28, 2022, respondent transmitted the entire *BIR Records* for this case, consisting of 1085 pages, contained in one (1) folder.[26]

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14 *Id.,* Exhibit "P-51", pp. 82 to 95; Minutes of the hearing held on, and Order dated, March 17, 2021, pp. 607 to 608.
15 *Id.,* Exhibit "P-53", pp. 205 to 212; Minutes of the hearing held on, and Order dated, June 21, 2011, pp. 632 to 633.
16 *Id.,* Exhibit" P-54", pp. 429 to 434; Minutes of the hearing held on, and Order dated, June 21, 2021, pp. 632 to 633.
17 *Id.,* Exhibit "P-49", pp. 443 to 455; Minutes of the hearing held on, and Order dated, March 17, 2021, pp. 607 to 608.
18 *Id.,* Exhibit "P-50", pp. 492 to 506; Minutes of the hearing held on, and Order dated, March 17, 2021, pp. 607 to 608.
19 *Id.,* Exhibit "P-55", pp. 626 to 630; Minutes of the hearing held on, and Order dated, June 21, 2021, pp. 632 to 633.
20 *Id., Oath of Commission* dated March 17, 2021, p. 609; Minutes of the hearing held on, and Order dated, March 17, 2021, pp. 607 to 628.
21 *Id.,* pp. 619 to 622.
22 *Id.,* pp. 683 to 733.
23 *Id.,* pp. 1093 to 1095.
24 *Id.,* pp. 1098 to 1101.
25 *Id.,* Exhibit "R-9", pp. 1109 to 1116; Minutes of the hearing held on, and Order dated, September 08, 2022, pp. 1127 to 1129.
26 *Id.,* pp. 1118 to 1120.

On September 21, 2022, respondent filed his *Formal Offer of Evidence.*[27] Petitioner then filed its *Comment [on Respondent's Formal Offer of Evidence dated September 21, 2022]* on October 03, 2022.[28] In the Resolution dated October 25, 2022,[29] the Court admitted all of respondent's offered evidence.

Respondent filed his *Memorandum* on December 09, 2022,[30] while the *Memorandum for Petitioner* was submitted on December 22, 2022.[31]

The present case was submitted for decision on January 16, 2023.[32]

<u>The Issue</u>

The sole issue for this Court's resolution is as follows, *viz.*:

> "Whether or not petitioner is entitled to the recovery of excise taxes paid for the period April 2018 on Jet A-1 fuel sold to tax-exempt international air carriers in the amount of Php29,252,140.00."[33]

Petitioner's arguments:

Petitioner argues that it timely filed its administrative and judicial claims for refund pursuant to Section 229 of the National Internal Revenue Code ("NIRC") of 1997, as amended; that it is the statutory taxpayer under Section 135 of the Tax Code; that its sale of Jet A-1 fuel to international carriers is exempt from excise tax; that petitioner previously paid excise taxes on the Jet A-1 fuel sold to international carriers; that it sold the excise tax-paid Jet A-1 fuel to international air carriers free of excise tax; and that it is clearly entitled to a refund or the issuance of tax credit certificate for excise taxes paid on Jet A-1 fuel sold to international air carriers.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to the refund claimed; that Section 135 of the Tax Code does not automatically exempt from excise tax

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27 *Id.,* pp. 1132 to 1137.
28 *Id.,* 1140 to 1142.
29 *Id.,* pp. 1148 to 1149.
30 *Id.,* pp. 1150 to 1160.
31 *Id.,* pp. 1163 to 1187.
32 *Id.,* Resolution dated January 16, 2023, p. 1190.
33 *Id.,* JSFI, Stipulation of Issues, p. 573.

petroleum products sold to international carriers and exempt entities and agencies; that there is no provision in the Tax Code which provides that petitioner is entitled to a refund or the issuance of a tax credit certificate for excise taxes paid on imported Jet A-1 fuel sold to international air carriers; and that petitioner is asking for a refund or issuance of a tax credit certificate which the law itself does not clearly provide.

Discussion/Ruling

The present *Petition for Review* is partly meritorious.

Governing provisions for refund claims.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
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> xxx xxx xxx
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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." *(Emphasis added)*
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> "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, 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." (*Emphases supplied*)

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with this Court. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[34]

Furthermore, the above-quoted provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[35]

Thus, for the present claim for refund or tax credit certificate to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject thereof is an "erroneous or illegal tax".

Petitioner timely filed its administrative and judicial claims.

For excise tax on imported articles, in general, the same is paid by the owner or importer upon importation and prior to removal thereof from the

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34 *Commissioner of Internal Revenue v. San Miguel Corporation,* G.R. Nos. 180740 and 180910, November 11, 2019.

35 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

customshouse as provided in Sections 129 and 131 of the NIRC of 1997, as amended, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
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> xxx xxx xxx." *(Emphasis and underscoring added)*
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> "SEC. 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.
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> xxx xxx xxx." *(Emphasis and underscoring added)*

Thus, from the foregoing, the two-year period prescribed in Sections 204(C) and 229 of the NIRC of 1997, as amended, should be reckoned from the date of actual payment of excise taxes. In relation thereto, Section 131(A) of the NIRC of 1997, as amended, provides that 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 customs house. Thus, the reckoning point of the two (2) year prescriptive period should be the date when the imported Jet A-1 fuel was released from the Bureau of Customs ("BOC"), which in this case was on April 26, 2018, as evidenced by Authority to Release Imported Goods ("ATRIG")[36] and Statement of Settlement of Duties and Taxes ("SSDT").[37]

Counting two (2) years from April 26, 2018, petitioner had until April 26, 2020, to file its administrative and judicial claims for refund. Consequently, petitioner's administrative claim was timely filed on March 10, 2020.[38]

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[36] Docket, Exhibit "P-42", p. 1081.
[37] *Id.,* Exhibit "P-45", p. 1088.
[38] *Id.,* JSFI, Stipulation of Facts, Par. 3, pp. 572 to 573; Exhibits "P-8" and "P-9", pp. 758 to 761.

As for petitioner's judicial claim for refund, the Court notes that within the period allowed by law to file the instant *Petition for Review*, the Supreme Court issued the following administrative circulars ordering the physical closure of courts and extending the filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces due to surge of Covid-19 cases, *viz.*:

Administrative Circular (AC) No.	**Date Issued**	**Subject Matter/Content**
AC No. 31-2020	16 March 2020	Re: Rising Cases of Covid-19 Infection "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due during the period from 15 March 2020 until 15 April 2020 is EXTENDED for THIRTY (30) calendar days counted from 16 April 2020."
AC No. 34-2020	8 April 2020	Re: Extension of Enhanced Community Quarantine Over Luzon Until 30 April 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 3 April 2020 is extended for 30 calendar days, counted from 1 May 2020, xxx."
AC No. 35-2020	27 April 2020	Re: Extension of the Enhanced Community Quarantine in Certain Areas Until 15 May 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 15 May 2020 in the ECQ areas is extended for 30 calendar days, counted from 16 May 2020, xxx"

AC No. 39-2020	14 May 2020	Re: Modified Enhance Community Quarantine in Certain Areas Until 31 May 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, xxx."

It can, thus, be inferred from AC No. 39-2020 that petitioner has thirty (30) days from June 01, 2020, or until July 01, 2020, within which to file its judicial claim before this Court. Thus, the filing of the present *Petition for Review* on June 90, 2020[39] was likewise timely made within the two-year prescriptive period.

Correspondingly, in this case, petitioner timely filed its administrative and judicial claims.

The excise taxes paid on imported Jet A-1 fuel sold to international air carriers are erroneously or illegally collected.

Respondent stresses that Section 135 of the NIRC of 1997, as amended, exempts from the payment of excise tax international air carriers and other exempt entities or agencies, but definitely not petitioner.[40] He further argues that the Resolution of the Supreme Court dated February 19, 2014 in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, cited by the petitioner to support its claim for refund or issuance of tax credit certificate for the excise taxes paid on the imported Jet A-1 fuel does not fall squarely with the present claim for refund or issuance of a tax credit certificate, considering that the controversy in the above cited case involved locally-manufactured Jet A-1 fuel, and not imported Jet A-1 fuel.[41]

The Court disagrees.

Section 135 of the NIRC of 1997, as amended, reads:

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[39] *Id., Petition for Review,* pp. 14 to 25.
[40] *Id., Answer,* Par. 9, p. 69; Respondent's *Memorandum,* p. 1155.
[41] *Id., Answer,* Pars. 15 to 17, p. 70; Respondent's *Memorandum,* pp. 1156 to 1157.

"SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **<u>Petroleum products</u> sold to the following are exempt from excise tax**:

(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;

(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

(c) **Entities which are by law exempt from direct and indirect taxes**." *(Emphases and underscoring added)*

A plain reading of the foregoing provision reveals that the words *"petroleum products"* were never qualified. The law did not distinguish whether the petroleum products sold were locally-manufactured or were imported, in order for there to be an excise tax exemption. Where the law does not distinguish, courts should not distinguish.[42] Thus, the exemption given under Section 135 of the NIRC of 1997 may be resorted regardless of whether the subject Jet A-1 fuel was locally-manufactured or imported, so long as the conditions therein are complied with by the refund-claimant.

Moreover, in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation ("2014 Pilipinas Shell* case"*)*,[43] which involved the same parties, the Supreme Court categorically declared that petitioner, as the statutory taxpayer, who paid the 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:

"xxx We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its**

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[42] *Manila International Airport Authority v. Court of Appeals, et al.*, G.R. No. 155650, July 20, 2006.
[43] G.R. No. 188497 (Resolution), February 19, 2014.

> **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.**" *(Emphasis added)*

Moreover, in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue ("2015 Chevron* case"*)*,[44] the exemption granted in Section 135 of the NIRC of 1997, as amended, was discussed as follows:

> "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.**" *(Emphases added)*

Although the exemption in *2015 Chevron* case was premised on Section 135(C) of the NIRC of 1997, while the *2014 Pilipinas Shell* case was premised on Section 135(A) of the same law, the Supreme Court held in *2015 Chevron* case that "[n]otwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC, the basic tax principle applicable was the same in both cases – that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed."

Furthermore, in the *2014 Pilipinas Shell* case, the Supreme Court held therein that "exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent." In contrast, the Supreme Court held in the *Chevron* case that "Section 135 (c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place."

Notably, in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[45] the Supreme Court elucidated on certain conceptual distinctions in the

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[44] G.R. No. 210836, September 01, 2015.
[45] G.R. No. 211303, June 15, 2021.

2014 Pilipinas Shell case vis-à-vis the Court's subsequent pronouncements in the *2015 Chevron* case, holding that Section 135 confers an impersonal tax exemption, to wit:

"II

By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a specific rate or *ad valorem*. As case law characterizes, **an excise tax is not a tax on the exercise of a privilege, <u>but rather a levy on certain articles which are manufactured or imported for domestic consumption</u>. It is equally settled that that the accrual or liability to pay the same arises <u>immediately upon importation or as soon as the goods come into existence when manufactured</u>.**

Furthermore, excise taxes are **indirect taxes, as opposed to direct taxes**. Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of **tax incidence** (or the actual liability to pay the tax) and **tax burden** (the economic burden of the tax incident).

On the one hand, **direct taxes** are 'those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,' which means, the tax incidence and tax burden fall upon the same person.

On the other, **indirect taxes** are 'those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered**.' As jurisprudence explains, 'this **<u>shifting process</u>**, otherwise known as '**<u>passing on</u>**,' is largely a **<u>contractual affair</u>** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the **manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the **owner or importer** (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law.** To this end, <u>the purchaser does not really pay the tax</u>; **rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.**'

Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. **Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the <u>statutory taxpayer, who must correspondingly benefit from any tax exemption</u>.** In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not *per se* the excise tax liability imposed under Section 129 of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that '**[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers**. The fact that [statutory taxpayer/importer], on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer.' **This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the 'exemption' granted under Section 135 governing excise taxes.**

III.

At its core, the purpose of a grant of tax exemption is 'some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption.' However, the **object of the grant of tax exemption** is not necessarily a natural person similar to how 'the objects of taxation are either persons, property[,] and property rights within the jurisdiction of the taxing authority.' As such, generally speaking, the object of tax exemptions may either be **personal or impersonal**. Personal exemptions conceptually pertain to those 'granted directly in favor of such persons as are within the contemplation of the law granting the exemption.' On the other hand, an impersonal exemption may be said to exist when a tax exemption is 'granted directly in favor of a certain class of property.' If the tax exemption is impersonal in nature, then, regardless of who transacts with the property, the exemption should still apply. This framework of personal and impersonal tax exemptions underpins the exemption granted under Section 135 on excisable articles.

Notably, the Court, in the 2014 Pilipinas Shell Resolution, stated that the 'exemption from payment of excise tax' under Section 135 is 'conferred on international carriers who purchased the petroleum products of respondent'; thus, in said case, the tax exemption under Section 135 covering said products was characterized as a grant of a personal tax exemption.

However, in the subsequent case of 2015 Chevron, the Court effectively abandoned the foregoing characterization, and instead, correctly categorized that the tax exemption under Section 135 is '**in favor of the petroleum products on which the excise tax was levied in the first place**.' As such, the Court, in 2015 Chevron, validated the nature of Section 135 as a provision conferring an impersonal tax exemption, which, in fact, cogently squares with the nature of excise taxes being a tax on property, rather than a tax on persons.

Being an impersonal tax exemption, Section 135 cannot be therefore interpreted as an exemption primarily conferred to the buyers because 'they are not under any legal duty to pay the excise tax.' To reiterate, upon the buyers' purchase of the articles, the 'excise tax' they pay, if any, is, in reality, a mere passed-on cost that forms part of the purchase price. Hence, while purchasers bear the economic burden, they do not, by the mere fact of assuming the passed-on costs, become legally regarded as statutory taxpayers. In this regard, Associate Justice Henri Jean Paul B. Inting aptly observed that 'a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune from therefrom.'

The impersonal nature of the tax exemption is also expressed in the wording itself of Section 135:

xxx xxx xxx

As worded, the object of Section 135 itself is not the enumerated persons but rather, the '**petroleum products sold.**' Palpably, **based on Section 135's phraseology, the enumerated persons are merely descriptive of the petroleum products, *i.e.*, the persons to which the products are sold to. As such, the wording of Section 135 hews more closely with the character of impersonal tax exemptions, which is, in turn, consistent with the nature of excise taxes as taxes not on persons but on the goods/articles**. As equally observed by Associate Justice Alfredo Benjamin S. Caguioa, '[t]he succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. **Paragraphs (a), (b)[,] and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative.**'

IV.

At this juncture, it is likewise relevant to mention that since an excise tax is in the nature of a property tax, it is thus erroneous to consider the operation of a tax exemption thereto in the same way as a transactional tax, wherein every purchaser and seller may be considered as a statutory taxpayer for every succeeding transaction, only ending with the final consumer. **Rather, the exemption under Section 135 must be reconciled with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation.**

The Court, in the 2015 Chevron, had already settled that the true status of the goods, whether ultimately taxable or tax-exempt, is **actually conditional** or **subject to confirmation** upon the sale of the articles to any of the entities enumerated under Section 135. This conditional taxability can actually be seen in another related provision in the Tax Code, i.e., Section 131 thereof:

> 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 customs house, or by the person who is found in possession of articles which

> are exempt from excise taxes other than those legally entitled to exemption.
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> **In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.**
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> xxx xxx xxx (Emphasis and underscoring supplied)

As may be gleaned from Section 131 as above-cited, although certain articles may be free from excise taxes upon importation, they may subsequently become subject to the same depending on the subsequent buyer. This is essentially the same principle of **subsequent confirmation** espoused by the 2015 Chevron, and is also a necessary consequence of excise tax being a property tax, and not a tax on persons.

Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, any excise taxes which were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund. In turn, the petroleum products become exempt from excise taxes once it is determined that they are to be sold to, among others, international carriers. This reflects Section 135's wording, *i.e.*, that the petroleum products are considered as tax-exempt once they are 'sold to [*inter alia*] x x x [i]nternational carriers.'

Based on *(a)* the nature of excise taxes as a property tax and an indirect tax, and *(b)* the principle that a buyer, when shouldering the tax burden, does not become the statutory taxpayer, **it is thus clear that the purchaser of local products (such as international carriers) cannot be deemed to have been conferred a tax exemption when it has not been imposed a tax liability**. In the ordinary course of things, international carriers do not manufacture or import petroleum products and hence, are not statutory taxpayers to which the exemption under Section 135 could pertain. **If anything, international carriers merely bear**

> **<u>the tax burden when the costs therefor are passed on to them by the actual manufacturers or importers</u>**. However, as earlier discussed, the 'passing on' of the tax burden is largely a contractual affair between the parties and should not determine the tax incidence imposed by law unless the contrary is provided. **As such, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).**"

Thus, contrary to respondent's argument, the tax exemption under Section 135 of the NIRC of 1997, as amended, applies regardless of whether the Jet A-1 fuel was manufactured or produced or imported by the statutory taxpayer (*i.e.*, manufacturer or producer or owner or importer) but the status of the petroleum products as exempt from excise taxes would be confirmed only upon their sale to any of the entities enumerated under Section 135 of the NIRC of 1997, as amended.

Applying the foregoing, upon petitioner's sale of its imported Jet A-1 fuel to various international air carriers, the status of the said sold petroleum product as tax-exempt solidifies. Consequently, the excise taxes it previously paid on the importation of said petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund or credit under Sections 204 and 229 of the NIRC of 1997.

The excise taxes due on the imported Jet A-1 fuel, subject of the present claim, were duly paid by petitioner.

Petitioner's witness, Ms. Peralta, testified that prior to 2017, petitioner produced Jet A-1 fuel from its own refinery. However, in 2017, when petitioner operated its Tabangao product storage tanks as a Customs Bonded Warehouse ("CBW") from the date of approval by the BOC in July 2015[46] until its closure in September 2018,[47] petitioner was not allowed to locally produce Jet A-1 fuel. Thus, all Jet A-1 fuel stored in its Tabangao product storage tanks were imported from abroad.[48]

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[46] Docket, Exhibit "P-33", pp. 1069 to 1071.
[47] *Id.*, Exhibit "P-34", p. 1072.
[48] *Id.*, Exhibit "P-50", Q&A No. 10, p. 495.

She further testified that during the CBW period, these storage tanks contain only purely imported and tax-free Jet A-1 fuel. But when the CBW was terminated sometime in September 2018, all remaining imported and tax-free Jet A-1 fuel was accounted for and reported to the BOC. The converted Jet A-1 fuel were declared with the BOC, and the corresponding excise and value-added taxes were paid therefor. Thus, all Jet A-1 fuel withdrawn from the Tabangao product storage tanks after the conversion from bonded tanks to non-bonded tanks became tax-paid fuel.[49]

Ms. Peralta likewise provided a walk-through of petitioner's process and documentation flow of the importation of petitioner's Jet A-1 fuel, which she simplified in three (3) stages: (1) requisition of goods and importation; (2) arrival and discharge of imported goods; and (3) payment of taxes and import duties.[50]

She explained that the process of importation starts upon determination of the total volume of Jet A-1 fuel which petitioner intends to import. Once petitioner and its supplier agree on the price of Jet A-1 fuel, petitioner will place an order for the purchase of Jet A-1, which is then delivered from the country of origin to the CBW in Tabangao, Batangas.[51]

Following the receipt of Import Advice and prior to the arrival of the imported Jet A-1 fuel, petitioner will then apply for the Special Permit to Discharge[52] with the District Collector of BOC submitting, among others, the Bill of Lading, Load Port Survey Report, and Proforma Invoice.[53]

Thereafter, petitioner will present the Special Permit to Discharge to the port authorities to allow the discharge of the imported Jet A-1 fuel to the tanks in Tabangao. Upon full discharge of the products from the vessel, petitioner will execute a Certificate of Quantity Received, which indicates the quantity of the products received and their last discharge to petitioner's storage tanks in Tabangao.[54]

After which, petitioner will then generate the Single Administrative Document ("SAD"),[55] which contains all the information encoded through the

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[49] *Id.*, Exhibit "P-50", Q&A No. 12, p. 495.
[50] *Id.*, Exhibit "P-50", Q&A No. 14, p. 496.
[51] *Id.*, Exhibit "P-50", Q&A No.16, p. 496.
[52] The Special Permit to Discharge is a permission from the BOC to discharge the imported Jet A-1 fuel from the vessel to petitioner's storage tanks.
[53] Docket, Exhibit "P-50", Q&A Nos. 18 and 21, pp. 496 to 497.
[54] *Id.*, Exhibit "P-50", Q&A No. 27, p. 498.
[55] The SAD replaced the Import Entry and Internal Revenue Declaration (IEIRD) which was manually filed by the importer/broker prior to the implementation of the E2M System and contains the same information as the IEIRD pursuant to Customs Memorandum Order No. 29-2015.

Electronic-to-Mobile System ("E2M"), including the assessed amount of taxes and duties under tentative liquidation to be paid on the said importation.[56]

Upon payment of taxes and duties under its tentative liquidation through Security Bank, the BOC will generate the SSDT through the E2M. And, upon final liquidation by the BOC, additional duties and taxes are computed and, thereafter, paid by petitioner. This subsequent payment would then be reflected in the same SAD (annotated manually) and in another SSDT.[57]

Thereafter, petitioner will apply for ATRIG with the BIR, which will serve as its permission from the BIR to withdraw the Jet A-1 fuel from its CBW after the settlement of taxes and duties due thereon.[58] But, in the event that there is a price and volume differential on which additional taxes and duties are due, petitioner undertakes a final liquidation of the importation through the filing of a Post-Modification of SAD, with attached Tax Invoice and Certificate of Quantity Received.[59] Such final payment of taxes and duties is evidenced by another SSDT.[60]

The details of petitioner's importation of finished grade Jet A-1 fuel and payment of excise taxes thereon are as follows:[61]

Arrival Date	SAD No.	Volume in Liters	Amount of Excise Taxes Paid at Php4.00	SSDT Date
April 12, 2018	C 4618	7,313,036	Php29,252,144.00	April 25, 2018
Total		**7,313,036**	**Php29,252,144.00**	

Moreover, the foregoing importation of 7,313,036 liters of Jet A-1 fuel is supported by the following documentary evidence, *viz.*:

a. Ocean Bill of Lading No. 3526102-10;[62]
b. Special Permit to Discharge dated April 10, 2018;[63]
c. Load Port Survey Report No. 501-18-01306;[64]

56 Docket, Exhibit "P-50", Q&A Nos. 31 and 32, p. 499.
57 *Id.*, Exhibit "P-50", Q&A No. 34, pp. 499 to 500.
58 *Id.*, Exhibit "P-50", Q&A Nos. 38 to 39, pp. 500 to 501.
59 *Id.*, Exhibit "P-50", Q&A Nos. 44, p. 502.
60 *Id.*, Exhibit "P-50", Q&A No. 46, p. 502.
61 *Id.*, *Petition for Review*, Statement of the Facts, Par. 8, p. 15; Exhibit "P-50", Q&A No. 50, p. 503.
62 *Id.*, Exhibit "P-35", p. 1073; Exhibit "P-61.1".
63 *Id.*, Exhibit "P-36", p. 1074; Exhibit "P-61.6".
64 *Id.*, Exhibit "P-37", p. 1075; Exhibit "P-61.6".

d. Customs Invoice – Bulk Product dated April 6, 2018 issued by Shell International Eastern Trading Company (SIETCo);[65]
e. Certificate of Quantity Received dated April 23, 2018;[66]
f. SAD dated April 25, 2018;[67]
g. Special Permit to Discharge dated April 25, 2018;[68]
h. Authority to Release Imported Goods dated April 26, 2018;[69]
i. Tax Invoice dated May 1, 2018 issued by Shell International Eastern Trading Company;[70]
j. E2M Post Modification of SAD;[71]
k. Statement of Settlement of Duties and Taxes;[72]
l. BOC Official Receipt No. 01877067758;[73]
m. Customs Payment Receipt No. 2018 R 18034;[74] and
n. Memorandum for BOC re: Tentative Assessment received on April 26, 2018.[75]

In the present case, petitioner paid excise tax under tentative liquidation amounting to Php29,158,296.00 for the total volume of 7,289,574 liters as evidenced by SAD No. P18CBW015A dated April 25, 2018[76] and SSDT.[77] However, it is to be noted that since the payment of taxes and duties under tentative liquidation was made on the basis of SAD which is based on the Customs Invoice – Bulk Product or the *tentative invoice* issued by SIETCo,[78] such payment is finalized by way of payment of the taxes and duties on the price differential as indicated in the Tax Invoice or the *final invoice* issued by SIETCo (USD 85.814 per barrel)[79] and the volume differential as indicated in the Certificate of Quantity Received[80] (45,357.29 barrels or 7,313,036 liters) with an equivalent excise tax payment amounting to Php29,252,144.00.[81]

Petitioner paid the final payment of additional excise tax of Php93,848.00[82] and additional VAT of Php2,347,744.00, or in the aggregate

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65 *Id.*, Exhibit "P-38", p. 1076; Exhibit "P-61.6".
66 *Id.*, Exhibit "P-39", p. 1077; Exhibit "P-61.3".
67 *Id.*, Exhibit "P-40", pp. 1078 to 1079; Exhibit "P-61".
68 *Id.*, Exhibit "P-41", p. 1080; Exhibit "P-61.6".
69 *Id.*, Exhibit "P-42", p. 1081; Exhibit "P-61.4".
70 *Id.*, Exhibit "P-43", pp. 1082 to 1084; Exhibit "P-61.2".
71 *Id.*, Exhibit "P-44", pp. 1085 to 1087.
72 *Id.*, Exhibits "P-45" and "P-46", pp. 1088 to1089; Exhibit "P-61.5".
73 *Id.*, Exhibit "P-47", p. 1090.
74 *Id.*, Exhibit "P-48", p. 1091.
75 *Id.*, Exhibit "P-61.6".
76 *Id.*, Exhibit "P-40", pp. 1078 to 1079; Exhibit "P-61".
77 *Id.*, Exhibit "P-45", p. 1088; Exhibit "P-61.5".
78 *Id.*, Exhibit "P-38", p. 1076.
79 *Id.*, Exhibit "P-43", p. 1082.
80 *Id.*, Exhibit "P-39", p. 1077; Exhibit "P-61.3".
81 7,313,036 liters multiplied by the excise tax rate of Php4.00.
82 Excise tax payment of Php 29,252,144.00 based on final invoice less excise tax payment of Php29,158,296.00 based on tentative invoice.

amount of Php2,441,592.00, on October 30, 2018 as evidenced by Receipt No. 01877067758,[83] Customs Payment Receipt No. 2018 R 18034,[84] and another SSDT.[85]

Based on the foregoing, the corresponding excise tax payment of Php29,252,144.00[86] for petitioner's importations of Jet A-1 fuel of 7,313,036[87] liters were duly paid before the release from the BOC.

Petitioner sufficiently proved that it had erroneously paid excise taxes on imported Jet A-1 fuel sold to international air carriers but only in the amount of Php15,501,712.00.

For the period from April to May 2018, petitioner allegedly sold excise tax paid imported Jet A-1 to various international airlines for their use or consumption outside the Philippines, as follows:[88]

Customers	**Total Volume in Liters**
Air China Ltd.	116,526
Air Niugini Ltd.	93,466
Asiana Airlines, Inc.	143,422
Cebu Air, Inc.	1,269,948
China Airlines Ltd.	119,437
China Eastern Airlines Co., Ltd.	120,335
Federal Express Corp.	342,368
Japan Airlines International Co. Ltd.	456,344
Jetstar Asia Airways Pte. Ltd.	94,757
Jin Air Co. Ltd.	330,069
Korean Airlines Co. Ltd.	354,299
Philippine Airlines Inc.	3,370,569
Qantas Airways Ltd.	446,940
Shell Aircraft Limited	8,989
Thai Air Asia X Co. Ltd.	45,567
Total Aviation Sales (in Liters)	**7,313,036**
Excise Tax Rate	Php4.00/Liter

83 Docket, Exhibit "P-47", p. 1090.
84 *Id.*, Exhibit "P-48", p. 1091.
85 *Id.*, Exhibit "P-46", p. 1089; Exhibit "P-61".
86 *Id.*, Exhibit "P-45", p. 1088; Exhibit "P-61.5".
87 *Id.*, Exhibit "P-39", p. 1077; Exhibit "P-61.3".
88 *Id.*, *Petition for Review*, Statement of the Facts, Par. 9, p. 16.

Total Excise Tax Paid	Php29,252,144.00

Alleging that the international air carriers to which it sold imported Jet A-1 fuel are exempt from excise taxes under Section 135(a) of NIRC of 1997,[89] petitioner seeks the recovery of excise taxes paid thereon in the amount of Php29,252,140.00.[90]

For the sale of petroleum products to an international air carrier be exempted from excise tax under Section 135(a) of the NIRC of 1997, as amended, petitioner must present the following:

1. proof of foreign registry of the international air carriers, or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights;

2. proof that the imported Jet A-1 fuel were used or consumed outside the Philippines; and

3. proof that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations.

Petitioner complied with the *first* requirement. Petitioner adduced before this Court the Certification[91] issued by the Civil Aviation Authority of the Philippines ("CAAP") on October 26, 2020, which confirms the country of registry of each of the international air carriers enumerated therein, subject of the instant claim. With regard to petitioner's international air-carrier customers which are of Philippine registry, namely, Philippine Airlines, Inc. and Cebu Air, Inc., petitioner presented the Certification[92] from the Civil Aeronautics Board ("CAB") dated August 28, 2020 which certifies that:

a. Bulk Delivery Notes Bulk Delivery Notes "*a. Cebu Air, Inc. has been granted a franchise permit through Republic Act No. 7151 (R.A. 7151), which was approved on August 30, 1991, from the date of effectivity of R.A. 7151 to present; and*

b. *Philippine Airlines, Inc. has been granted a franchise permit through Presidential Decree No. 1590 from June 11, 1978 to present.*

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89 *Id., Petition for Review,* Discussion, Par. 22, p. 21.
90 With Php4.00 difference.
91 Docket, Exhibit "P-31", pp. 1062 to 1067; Exhibits "P-67" and "P-67.1".
92 *Id.,* Exhibit "P-32", p. 1068; Exhibit "P-65".

The said airlines are authorized to operate and maintain air transport services in the Philippines and between the Philippines and other countries, and that R.A. 7151 and P.D. 1590 authorized Cebu Air, Inc. and Philippine Airlines, Inc. to operate international flights from the date of effectivity of R.A. 7151 and P.D. 1590 to present, including the years 2018-2019."

In compliance with the *second* requirement, the CAB Certification dated August 28, 2020[93] shows that the international air carriers of foreign registry listed therein have been issued with Foreign Air Carrier's Permit ("FACP") which authorized them to operate international flights only for a period, covering, but not limited to, the years 2018 to 2019. Further, the Aviation Service Returns[94] submitted by petitioner, indicated the details of the Jet A-1 fuel deliveries made by petitioner to international air carriers, including the origin and destination of the international carriers. It can be seen from the Aviation Service Returns that the route of the international air carrier named therein (whether of foreign or Philippine registry) is only between the Philippines and other country, thereby proving that the sold imported Jet A-1 fuel was used or consumed outside the Philippines.

The list of international air carriers which are authorized to operate international flights as indicated in the CAB Certification[95] is shown below:

International Air Carrier	Aircraft Registration No.[96]	Country of Registration[97]
1. Air China Ltd.	B5175, B5328, B5167, B5177, B5178, B5170	China
2. Air Niugini Ltd.	P2PXE, P2PXC	Papua New Guinea
3. Asiana Airlines, Inc.	HL7626, HL8293, HL7626, HL7418, HL7746, HL7428, HL7747	Republic of Korea
4. China Airlines, Ltd.	B18309, B18315, B18355, B18657, B18352, B18308, B18307, B18657, B18709, B18301, B18305	China
5. China Eastern Airlines Co., Ltd.	B5936, B5973, B5949, B6538, B5908, B5938, B8231	China

93 *Id.,* Exhibit "P-32", p. 1068; Exhibit "P-65".
94 Exhibits "P-80.1" to "P-80.357".
95 Docket, Exhibit "P-32", p. 1068; Exhibit "P-65".
96 *Id.,* Exhibit "P-31", pp. 1062 to 1067; Exhibits "P-67" and "P-67.1".
97 *Id.,* Exhibit "P-31", pp. 1062 to 1067; Exhibits "P-67" and "P-67.1".

6. Federal Express Corp.	N101FE, N103FE, N106FE, N108FE, N104FE, N112FE, N130FE, N592FE, N598FE, N601FE, N616FE, N914FD	United States of America
7. Japan Airlines International Co., Ltd.	JA02JJ, JA03JJ, JA04JJ, JA05JJ, JA13JJ, JA16JJ, JA17JJ, JA18JJ, JA19JJ, JA20JJ, JA606J, JA607J, JA608J, JA616J, JA618J, JA619J, JA620J, JA621J	Japan
8. Jetstar Asia Airways Pte., Ltd.	9VJSP, 9VJSV, 9VJSL, 9VJSB, 9VJSR, 9VJSQ	Singapore
9. Jin Air Co., Ltd.	HL7556, HL7557, HL7558, HL7559, HL7561, HL7562, HL7564, HL7565, HL7789, HL7798, HL8012, HL8013, HL8014, HL8016, HL8224, HL8225	Republic of Korea
10. Korean Airlines Co., Ltd.	HL7460, HL7532, HL7534, HL7573, HL7721	Republic of Korea
11. Qantas Airways Ltd.	VHEBL, VHEBN, VHEBR, VHEBO, VHEBP, VHEBM	Australia
12. Cebu Air, Inc.	RP-C4111, RP-C4108, RP-C4107, RP-C4106, RP-C4105, RP-C4103, RP-C4102, RP-C4101, RP-C4100, RP-C3348, RP-C3347, RP-C3346, RP-C3345, RP-C3344, RP-C3343, RP-C3277, RP-C3276, RP-C3275, RP-C3274, RP-C3273, RP-C3272, RP-C3271, RP-C3269, RP-C3267, RP-C3266, RP-C3265, RP-C3264, RP-C3263, RP-C3262, RP-C3261, RP-C3260, RP-C3250, RP-C3244, RP-C3243, RP-C3242, RP-C3238	Philippines

13. Philippine Airlines, Inc.	RP-C3435, RP-C3438, RP-C3439, RP-C7772, RP-C7773, RP-C7775, RP-C7776, RP-C7777, RP-C7779, RP-C7781, RP-C7782, RP-C8612, RP-C8614, RP-C8616, RP-C8618, RP-C8760, RP-C8762, RP-C8763, RP-C8780, RP-C8781, RP-C8782, RP-C8783, RP-C8784, RP-C8785, RP-C8786, RP-C8789, RP-C9901, RP-C9902, RP-C9905, RP-C9906, RP-C9909, RP-C9918, RP-C9919	

Thus, only the sale of imported Jet A-1 to the above enumerated airlines with valid FACP may qualify for the refund or issuance of a TCC of the erroneously paid excise taxes.

However, the Court finds that the 54,556 liters of imported Jet A-1 fuel with corresponding excise tax payments of Php218,224.00 sold to the following international air carriers without a valid FACP should be disallowed, to wit:

International Air Carrier	Volume in Liters	Amount of Excise Taxes Paid at Php4.00
Shell Aircraft Limited	8,989	Php35,956.00
Thai Air Asia X Co Ltd.	45,567	182,268.00
Total	**54,556**	**Php218,224.00**

We then proceed to the *third* requirement, *i.e.,* that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank, and had been disposed of in accordance with the rules and regulations.

Petitioner's witnesses: Ms. Peralta,[98] Mr. Aquiatan, Jr.,[99] Mr. Guevarra,[100] and Ms. Flores[101] explained the process and documentation of the receipts and

98 *Id.,* Exhibit "P-50", pp. 492 to 506.
99 *Id.,* Exhibit "P-51", pp. 82 to 94.
100 *Id.,* Exhibit "P-54", pp. 429 to 433.
101 *Id.,* Exhibit "P-49", pp. 443 to 454.

withdrawals of imported Jet A-1 fuel at petitioner's storage tank in Tabangao Refinery through the Tabangao Depot, and its subsequent delivery to Joint Oil Company Aviation Storage Plant ("JOCASP") and Clark Aviation Service Inc. ("CASI") for eventual sale to international air carriers.

Based from their testimony, upon withdrawal of the imported Jet A-1 fuel from the Tabangao Refinery through the Tabangao Depot, the Jet A-1 fuel is delivered directly to JOCASP located at Ninoy International Airport or CASI located at Clark International Airport *via* lorries or tank trucks for eventual sale and delivery to international air carriers.[102]

The movement (*receipts and withdrawals*) of the Jet A-1 fuel from the Tabangao Refinery is monitored by petitioner through an Official Register Book signed by the Revenue Officer on Premises and by petitioner's authorized representative, which indicates the receipts and removals of the Jet A-1 fuel for a certain period and the running balance of stored Jet A-1 for that period.[103]

Aside from the Official Register Book, petitioner also maintains a Daily Product Deliveries Report, which shows the Jet A-1 fuel's date of removal, shipment reference number, withdrawal certificate[104] and/or Certificate of Quantity Delivered, and the amount of excise tax paid thereon. The removal of the imported Jet A-1 fuel from the Tabangao Refinery for delivery to JOCASP or CASI is supported by Bulk Delivery Notes[105] and Certificate of Quantity Delivered[106].[107]

Thereafter, the imported Jet A-1 fuel is stored in storage tanks located at JOCASP and CASI to await the sale and delivery to international air carriers. In JOCASP, petitioner engages its own Into Plane Operations team, while at CASI, petitioner engages the services of a third-party Into Plane Operator. These operators deliver the Jet A-1 fuel to both international and domestic air carriers *via* a specialized vehicle which pumps the Jet A-1 fuel directly into the tank of the air carriers. The specialized vehicle is equipped with a meter that determines the volume of Jet A-1 fuel pumped into the air carrier.[108]

The sales and deliveries of the Jet A-1 fuel to international air carrier through Into Plane Operators are supported by Aviation Service Returns and

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102 *Id.,* Exhibit "P-51", Q&A No. 11, p. 84.
103 *Id.,* Exhibit "P-50", Q&A No. 52, p. 504; Q&A No. 12, Exhibit "P-54", p. 431.
104 The Withdrawal Certificate shows the source of the Jet A-1 fuel, its destination, the date of its withdrawal, its volume at the time withdrawn, and the fact that the same is "tax-paid".
105 Exhibits "P-83.1" to "P-83.186".
106 Exhibits "P-81.1" to "P-81.19".
107 Docket, Q&A Nos. 12 to 13, Exhibit "P-54", pp. 431 to 432; Q&A No. 16, Exhibit "P-49", p. 447.
108 *Id.,* Exhibit "P-51", Q&A 16, pp. 85 to 86; Q&A No. 23, Exhibit "P-49", p. 448.

petitioner's Invoices. The Aviation Service Return is where the customer of international carrier acknowledges the receipt of the delivery of the corresponding volume of Jet A-1 fuel, while petitioner's Invoice indicates the quantity, unit price, any other charges, and the total amount due for the Jet A-1 fuel sold and delivered to the customer.[109]

In support of the aforementioned Judicial Affidavits, petitioner proffered before this Court the following documentary evidence which were all examined by the ICPA, *viz.*:

1. Official Register Book;[110]
2. Certificates of Quantity Delivered;[111]
3. Bulk Delivery Notes[112]
4. Aviation Service Returns;[113]
5. Sales Invoices for International Sales of Jet A-1 fuel;[114]
6. ZF2 Display print outs;[115]
7. Sales of Jet A-1 fuel to International Carriers April 17, 2018 to May 7, 2018 (Report generated thru SAP);[116]
8. Schedule on Stock Monitoring and Liquidation Report[117]
9. Daily Product Movement Report;[118]
10. Reconciliation of Official Register Book and Bulk Delivery Notes;[119] and
11. Summary Table of Aviation Turbo Fuel Importations and Deliveries.[120]

In his supplemental report, the ICPA determined that out of the total amount of excise tax being claimed for refund or tax credit of Php29,252,140.00, the amount of Php640,000.00[121] was considered as an exception since this portion of the claim was passed on for local consumption of Jet A-1 fuel and was sold to its local distributor in the Philippines [122] Thus, only Php28,612,140.00[123] representing excise taxes paid on Jet A-1 fuel sold and delivered to international air carriers of Philippine or foreign registry for their use or consumption outside the Philippines for the period April 17, 2018 to May 7, 2018 was properly supported by relevant documents.

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[109] *Id.*, Exhibit "P-49", Q&A No. 24, p. 449.
[110] Exhibits "P-63" and "P-64".
[111] Exhibits "P-81.1" to "P-81.19".
[112] Exhibits "P-83.1" to "P-83.186".
[113] Exhibits "P-80.1" to "P-80.357".
[114] Exhibits "P-82.1" to "P-82.85".
[115] Exhibits "P-78.1.1" to "P-78.85.1".
[116] Docket, Exhibit "P-17", p. 845.
[117] Exhibits "P-75" and "P-76".
[118] Exhibit "P-77".
[119] Exhibit "P-85".
[120] Exhibit "P-86".
[121] Sale to Varace Air Corporation, Exhibit "P-84.2".
[122] C. Exceptions, ICPA Report, Exhibit "P-60", p. 11.
[123] Php29,252,140.00 less Php640,000.00.

However, an examination of the Daily Product Movement Report Subject to Excise Tax Claim[124] in relation to the Summary of Aviation Turbo (Jet A-1) Fuel Deliveries,[125] shows that there are discrepancies with regard to the date when the importation of the Jet A-1 fuel subject of the present case were made and the date of withdrawals from Tabangao and eventual sale and delivery thereof to international carriers.

Notably, Ms. Peralta testified that Jet A-1 fuel cannot be withdrawn by petitioner without the ATRIG,[126] to wit:

> "Q-39: Why does petitioner apply for an ATRIG?
>
> A-39: The ATRIG constitutes permission from the BIR to withdraw the Jet A-1 fuel from the CBW in Tabangao after the settlement of the taxes and duties due thereon. **The Jet A-1 fuel cannot be withdrawn by the PSPC without the ATRIG.** If the article to be withdrawn from the CBW is subject to excise tax, the ATRIG shows the amount of excise taxes to be paid. Since Jet A-1 fuel is an excisable article, the ATRIG for imported Jet A-1 fuel indicates the amount of excise taxes to be paid thereon."

As per ATRIG[127] and SSDT,[128] the date of settlement of taxes and duties due was made on April 26, 2018. However, the Court notes that some of the Certificates of Quantity Delivered and Bulk Delivery Notes,[129] which supports the date of movement of Jet A-1 fuel from the Tabangao depot to JOCASP or CASI, were made prior to April 26, 2018, the date of the ATRIG.

Considering that the date of the ATRIG for the importation was on April 26, 2018,[130] any withdrawal from the Tabangao Refinery which is earlier than the said date is not covered by the 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 Php11,132,948.00 supported by Certificates of Quantity Delivered dated earlier than April 26, 2018 shall be disallowed for failure to show that 2,783,237 liters

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[124] Exhibit "P-77".
[125] Exhibit "P-85".
[126] Docket, Exhibit "P-50", Q&A No. 39, pp. 500 to 501.
[127] *Id.,* Exhibit "P-42", p. 1081; Exhibit "P-61.4".
[128] *Id.,* Exhibit "P-45", p. 1088.
[129] Exhibit "P-85".
[130] Docket, Exhibit "P-42", p. 1081; Exhibit "P-61.4".

of Jet A-1 fuel sold to international carriers were sourced from the imported Jet A-1 fuel which is the subject of the present claim, as enumerated below:[131]

CERTIFICATES OF QUANTITY DELIVERED (CQDs)				AVIATION SERVICE RETURNS (ASRs)				
DATE	EXHIBIT NO.	CQD REF. NO.	VOLUME	DATE	EXHIBIT NO.	ASR NO.	AIRLINES	VOLUME
04/16/2018	"P-81.1"	W75175	103,238	April 17, 2018	"P-80.224"	42388	JIN AIR CO LTD	10,620
04/17/2018	"P-81.2"	W75176	190,000	April 17, 2018	"P-80.25"	42389	CEBU AIR INC	11,740
04/18/2018	"P-81.3"	W75177	300,000	April 17, 2018	"P-80.204"	42390	JETSTAR ASIA AIRWAYS PTE LTD	2,530
04/19/2018	"P-81.4"	W75178	190,000	April 17, 2018	"P-80.205"	42391	JETSTAR ASIA AIRWAYS PTE LTD	6,165
04/20/2018	"P-81.5"	W75179	300,000	April 17, 2018	"P-80.147"	42392	FEDERAL EXPRESS CORP	14,690
04/21/2018	"P-81.6"	W75180	659,999	April 18, 2018	"P-80.225"	42393	JIN AIR CO LTD	10,840
04/22/2018	"P-81.7"	W75181	520,000	April 18, 2018	"P-80.26"	42394	CEBU AIR INC	12,050
04/23/2018	"P-81.8"	W75182	360,000	April 18, 2018	"P-80.206"	42395	JETSTAR ASIA AIRWAYS PTE LTD	1,899
04/24/2018	"P-81.9"	W75183	160,000	April 18, 2018	"P-80.27"	42396	CEBU AIR INC	6,299
				April 18, 2018	"P-80.148"	42398	FEDERAL EXPRESS CORP	15,820
				April 18, 2018	"P-80.13"	45663	ASIANA AIRLINES INC	6,650
				April 18, 2018	"P-80.174"	45666	JAPAN AIRLINES INTL CO LTD	8,964

[131] Refer to Exhibits "P-77", "P-85" and "P-86".

					April 18, 2018	"P-80.14"	45968	ASIANA AIRLINES INC	17,000
					April 18, 2018	"P-80.175"	1081862	JAPAN AIRLINES INTL CO LTD	20,035
					April 18, 2018	"P-80.176"	1082687	JAPAN AIRLINES INTL CO LTD	10,200
					April 18, 2018	"P-80.15"	1082689	ASIANA AIRLINES INC	6,316
					April 18, 2018	"P-80.16"	1082880	ASIANA AIRLINES INC	28,725
					April 18, 2018	"P-80.17"	1082882	ASIANA AIRLINES INC	5,348
					April 19, 2018	"P-80.177"	40811	JAPAN AIRLINES INTL CO LTD	18,211
					April 19, 2018	"P-80.226"	42397	JIN AIR CO LTD	11,210
					April 19, 2018	"P-80.227"	42399	JIN AIR CO LTD	11,130
					April 19, 2018	"P-80.149"	42400	FEDERAL EXPRESS CORP	10,120
					April 19, 2018	"P-80.28"	42401	CEBU AIR INC	7,994
					April 19, 2018	"P-80.207"	42402	JETSTAR ASIA AIRWAYS PTE LTD	6,350
					April 19, 2018	"P-80.208"	42404	JETSTAR ASIA AIRWAYS PTE LTD	4,123
					April 19, 2018	"P-80.150"	42405	FEDERAL EXPRESS CORP	16,420
					April 19, 2018	"P-80.178"	45610	JAPAN AIRLINES INTL CO LTD	10,316
					April 19, 2018	"P-80.18"	45620	ASIANA AIRLINES INC	18,000

					April 19, 2018	"P-80.19"	1092692	ASIANA AIRLINES INC	6,695
					April 19, 2018	"P-80.179"	1092795	JAPAN AIRLINES INTL CO LTD	12,338
					April 19, 2018	"P-80.180"	1092890	JAPAN AIRLINES INTL CO LTD	15,204
					April 19, 2018	"P-80.252"	1092892	KOREAN AIRLINES CO LTD	8,036
					April 19, 2018	"P-80.20"	1092963	ASIANA AIRLINES INC	21,200
					April 20, 2018	"P-80.228"	42403	JIN AIR CO LTD	13,380
					April 20, 2018	"P-80.229"	42406	JIN AIR CO LTD	10,272
					April 20, 2018	"P-80.151"	42407	FEDERAL EXPRESS CORP	4,070
					April 20, 2018	"P-80.29"	42408	CEBU AIR INC	11,720
					April 20, 2018	"P-80.30"	42409	CEBU AIR INC	5,957
					April 20, 2018	"P-80.152"	42410	FEDERAL EXPRESS CORP	16,640
					April 20, 2018	"P-80.253"	45621	KOREAN AIRLINES CO LTD	16,709
					April 20, 2018	"P-80.31"	45622	CEBU AIR INC	13,252
					April 20, 2018	"P-80.32"	45627	CEBU AIR INC	13,161
					April 20, 2018	"P-80.33"	45628	CEBU AIR INC	12,516
					April 20, 2018	"P-80.342"	45635	QANTAS AIRWAYS LTD	16,192
					April 20, 2018	"P-80.254"	45969	KOREAN AIRLINES CO LTD	1,500

					April 20, 2018	"P-80.255"	45971	KOREAN AIRLINES CO LTD	1,103
					April 20, 2018	"P-80.34"	1101878	CEBU AIR INC	12,806
					April 20, 2018	"P-80.35"	1101879	CEBU AIR INC	11,186
					April 20, 2018	"P-80.343"	1102696	QANTAS AIRWAYS LTD	13,000
					April 20, 2018	"P-80.36"	1102797	CEBU AIR INC	715
					April 20, 2018	"P-80.256"	1102801	KOREAN AIRLINES CO LTD	34,261
					April 20, 2018	"P-80.181"	1102896	JAPAN AIRLINES INTL CO LTD	11,560
					April 20, 2018	"P-80.37"	1102969	CEBU AIR INC	111
					April 21, 2018	"P-80.230"	42411	JIN AIR CO LTD	10,635
					April 21, 2018	"P-80.38"	42412	CEBU AIR INC	11,760
					April 21, 2018	"P-80.209"	42413	JETSTAR ASIA AIRWAYS PTE LTD	5,380
					April 21, 2018	"P-80.39"	42414	CEBU AIR INC	520
					April 21, 2018	"P-80.210"	42415	JETSTAR ASIA AIRWAYS PTE LTD	7,190
					April 21, 2018	"P-80.40"	42416	CEBU AIR INC	10,970
					April 21, 2018	"P-80.41"	45624	CEBU AIR INC	6,691
					April 21, 2018	"P-80.42"	45625	CEBU AIR INC	12,703
					April 21, 2018	"P-80.272"	45972	PHILIPPINE AIRLINES INC	63,391
					April 21, 2018	"P-80.273"	46136	PHILIPPINE AIRLINES INC	60,649

					April 21, 2018	"P-80.273"	46136	PHILIPPINE AIRLINES INC	68,317
					April 21, 2018	"P-80.274"	1112701	PHILIPPINE AIRLINES INC	14,173
					April 21, 2018	"P-80.275"	1112702	PHILIPPINE AIRLINES INC	15,852
					April 21, 2018	"P-80.43"	1112703	CEBU AIR INC	12,902
					April 21, 2018	"P-80.276"	1112704	PHILIPPINE AIRLINES INC	12,991
					April 21, 2018	"P-80.44"	1112705	CEBU AIR INC	9,833
					April 21, 2018	"P-80.277"	1112976	PHILIPPINE AIRLINES INC	16,555
					April 21, 2018	"P-80.45"	1112977	CEBU AIR INC	17,159
					April 21, 2018	"P-80.46"	1112978	CEBU AIR INC	12,210
					April 22, 2018	"P-80.278"	40812	PHILIPPINE AIRLINES INC	15,538
					April 22, 2018	"P-80.279"	40813	PHILIPPINE AIRLINES INC	17,554
					April 22, 2018	"P-80.231"	42417	JIN AIR CO LTD	10,660
					April 22, 2018	"P-80.232"	42418	JIN AIR CO LTD	11,010
					April 22, 2018	"P-80.153"	42419	FEDERAL EXPRESS CORP	7,990
					April 22, 2018	"P-80.47"	42420	CEBU AIR INC	10,880
					April 22, 2018	"P-80.48"	42421	CEBU AIR INC	6,460
					April 22, 2018	"P-80.280"	46138	PHILIPPINE AIRLINES INC	63,346
					April 22, 2018	"P-80.281"	1121887	PHILIPPINE AIRLINES INC	28,522

					April 22, 2018	"P-80.282"	1122815	PHILIPPINE AIRLINES INC	23,542
					April 23, 2018	"P-80.233"	42422	JIN AIR CO LTD	13,406
					April 23, 2018	"P-80.234"	42423	JIN AIR CO LTD	12,990
					April 23, 2018	"P-80.211"	42424	JETSTAR ASIA AIRWAYS PTE LTD	2,690
					April 23, 2018	"P-80.49"	42425	CEBU AIR INC	11,570
					April 23, 2018	"P-80.50"	42426	CEBU AIR INC	6,100
					April 23, 2018	"P-80.154"	42428	FEDERAL EXPRESS CORP	24,170
					April 23, 2018	"P-80.51"	45626	CEBU AIR INC	12,888
					April 23, 2018	"P-80.21"	45689	ASIANA AIRLINES INC	17,900
					April 23, 2018	"P-80.283"	1131891	PHILIPPINE AIRLINES INC	133,957
					April 23, 2018	"P-80.155"	1131892	FEDERAL EXPRESS CORP	17,460
					April 23, 2018	"P-80.182"	1132606	JAPAN AIRLINES INTL CO LTD	11,383
					April 23, 2018	"P-80.140"	1132713	CHINA EASTERN AIRLINES CO., LTD	14,703
					April 23, 2018	"P-80.284"	1132716	PHILIPPINE AIRLINES INC	16,287
					April 23, 2018	"P-80.52"	1132717	CEBU AIR INC	13,487
					April 23, 2018	"P-80.1"	1132821	AIR CHINA LTD	20,385
					April 23, 2018	"P-80.183"	1132823	JAPAN AIRLINES INTL CO LTD	16,700

					April 23, 2018	"P-80.126"	113282 4	CHINA AIRLIN ES LTD	6,975
					April 23, 2018	"P-80.257"	113282 5	KOREA N AIRLIN ES CO LTD	16,050
					April 23, 2018	"P-80.184"	113282 7	JAPAN AIRLIN ES INTL CO LTD	15,100
					April 23, 2018	"P-80.127"	113282 8	CHINA AIRLIN ES LTD	7,727
					April 23, 2018	"P-80.8"	113282 9	AIR NIUGIN I LTD	20,241
					April 23, 2018	"P-80.258"	113283 0	KOREA N AIRLIN ES CO LTD	27,400
					April 23, 2018	"P-80.185"	113283 1	JAPAN AIRLIN ES INTL CO LTD	12,080
					April 23, 2018	"P-80.53"	113299 0	CEBU AIR INC	26,896
					April 23, 2018	"P-80.22"	113299 1	ASIANA AIRLIN ES INC	8,053
					April 23, 2018	"P-80.285"	113299 2	PHILIPP INE AIRLIN ES INC	97,907
					April 23, 2018	"P-80.344"	113299 3	QANTA S AIRWAY S LTD	24,276
					April 23, 2018	"P-80.286"	113299 4	PHILIPP INE AIRLIN ES INC	16,611
					April 23, 2018	"P-80.54"	113299 5	CEBU AIR INC	5
					April 23, 2018	"P-80.55"	113320 8	CEBU AIR INC	12,696
					April 23, 2018	"P-80.56"	113320 9	CEBU AIR INC	12,832
					April 24, 2018	"P-80.235"	42427	JIN AIR CO LTD	12,170
					April 24, 2018	"P-80.57"	42429	CEBU AIR INC	11,370
					April 24, 2018	"P-80.212"	42430	JETSTA R ASIA AIRWAY	3,310

							S PTE LTD	
				April 24, 2018	"P-80.213"	42431	JETSTAR ASIA AIRWAYS PTE LTD	6,310
				April 24, 2018	"P-80.156"	42432	FEDERAL EXPRESS CORP	15,940
				April 24, 2018	"P-80.287"	45819	PHILIPPINE AIRLINES INC	15,428
				April 24, 2018	"P-80.58"	1141893	CEBU AIR INC	27,302
				April 24, 2018	"P-80.288"	1141894	PHILIPPINE AIRLINES INC	106,470
				April 24, 2018	"P-80.289"	1141895	PHILIPPINE AIRLINES INC	62,352
				April 24, 2018	"P-80.157"	1141896	FEDERAL EXPRESS CORP	659
				April 24, 2018	"P-80.2"	1142607	AIR CHINA LTD	7,294
				April 24, 2018	"P-80.290"	1142610	PHILIPPINE AIRLINES INC	18,550
				April 24, 2018	"P-80.59"	1142721	CEBU AIR INC	13,726
				April 24, 2018	"P-80.60"	1142722	CEBU AIR INC	14,234
				April 24, 2018	"P-80.291"	1142723	PHILIPPINE AIRLINES INC	145,385
				April 24, 2018	"P-80.292"	1142724	PHILIPPINE AIRLINES INC	65,811
				April 24, 2018	"P-80.186"	1142832	JAPAN AIRLINES INTL CO LTD	11,567
				April 24, 2018	"P-80.61"	1142900	CEBU AIR INC	7,524
				April 24, 2018	"P-80.141"	1142996	CHINA EASTERN	14,820

								AIRLIN ES CO., LTD	
					April 24, 2018	"P- 80.293"	114299 8	PHILIPP INE AIRLIN ES INC	14,437
					April 24, 2018	"P- 80.62"	114299 9	CEBU AIR INC	11,671
					April 24, 2018	"P- 80.63"	114321 0	CEBU AIR INC	12,513
					April 24, 2018	"P- 80.64"	114321 1	CEBU AIR INC	10,880
					April 24, 2018	"P- 80.65"	114321 2	CEBU AIR INC	15,680
					April 25, 2018	"P- 80.236"	42433	JIN AIR CO LTD	10,910
					April 25, 2018	"P- 80.158"	42434	FEDER AL EXPRES S CORP	9,430
					April 25, 2018	"P- 80.214"	42435	JETSTA R ASIA AIRWAY S PTE LTD	4,280
					April 25, 2018	"P- 80.66"	42436	CEBU AIR INC	11,760
					April 25, 2018	"P- 80.67"	42437	CEBU AIR INC	6,090
					April 25, 2018	"P- 80.159"	42438	FEDER AL EXPRES S CORP	14,850
					April 25, 2018	"P-80.9"	45867	AIR NIUGIN I LTD	15,089
					April 25, 2018	"P- 80.68"	45975	CEBU AIR INC	11,776
					April 25, 2018	"P- 80.294"	115180 0	PHILIPP INE AIRLIN ES INC	62,080
					April 25, 2018	"P- 80.69"	115180 1	CEBU AIR INC	13,264
					April 25, 2018	"P- 80.70"	115180 2	CEBU AIR INC	12,090
					April 25, 2018	"P- 80.295"	115261 3	PHILIPP INE AIRLIN ES INC	19,100
					April 25, 2018	"P- 80.296"	115272 6	PHILIPP INE AIRLIN ES INC	14,284

				April 25, 2018	"P-80.297"	1152727	PHILIPPINE AIRLINES INC	12,778
				April 25, 2018	"P-80.71"	1152728	CEBU AIR INC	11,818
				April 25, 2018	"P-80.160"	1152729	FEDERAL EXPRESS CORP	12,235
				April 25, 2018	"P-80.298"	1152838	PHILIPPINE AIRLINES INC	34,321
				April 25, 2018	"P-80.299"	1152839	PHILIPPINE AIRLINES INC	27,318
				April 25, 2018	"P-80.300"	1152841	PHILIPPINE AIRLINES INC	6,600
				April 25, 2018	"P-80.72"	1152901	CEBU AIR INC	28,801
				April 25, 2018	"P-80.301"	1152903	PHILIPPINE AIRLINES INC	7,216
				April 25, 2018	"P-80.73"	1152905	CEBU AIR INC	2,087
	TOTAL		2,783,237			TOTAL		2,783,237
						Multiplied by: Excise Tax Rate		Php4.00
						Total Disallowed Excise Tax		**Php11,132,948.00**

Moreover, upon careful examination of petitioner's supporting documents, the Court finds that the Aviation Service Returns supporting the following deliveries of 439,814 liters Jet A-1 fuel are unreadable. Thus, the Court cannot ascertain the correctness of relevant details such as destination, customer name and volume. Accordingly, petitioner's claimed excise tax payment related thereto in the amount of Php1,759,256.00 shall be disallowed, detailed as follows:

Airlines	**Exhibit No.**	**ASR No.**	**Destination**	**Volume in Liters**	**Amount of Excise Taxes Paid at Php4.00**
Air Nuigini Ltd.	"P-80.10"	1173220	Port Moresby	19,377	Php 77,508.00
			Sub-total	***19,377***	***Php 77,508.00***
Cebu Air Inc.	"P-80.79"	1181818	Kansai	10,128	Php 40,512.00
	"P-80.80"	1182923	Narita	26,147	104,588.00

	"P-80.89"	1202941	Narita	23,540	94,160.00
	"P-80.90"	1202945	Shanghai	11,964	47,856.00
			Sub-total	***71,779***	***Php 287,116.00***
Philippine Airlines Inc.	"P-80.302"	1162910	Vancouver	46,914	Php 187,656.00
	"P-80.303"	1201826	Busan	25,987	103,948.00
	"P-80.304"	1201827	California	139,931	559,724.00
	"P-80.309"	1202940	Jeddah	82,135	328,540.00
			Sub-total	***294,967***	***Php1,179,868.00***
Qantas Airways Ltd.	"P-80.347"	1182927	Sydney	53,691	Php 214,764.00
			Sub-total	***53,691***	***Php 214,764.00***
			Total	**439,814**	**Php1,759,256.00**

In fine, petitioner sufficiently proved that the excise taxes it paid on April 26, 2018[132] for Jet A-1 fuel imported for the period April 2018, and subsequently sold to tax-exempt international air carriers during April to May 2018 were erroneous and refundable pursuant to Sections 204 and 229 of the NIRC of 1997, as amended, but in the reduced amount of Php15,501,712.00, computed as follows:

	JET A-1 FUEL	
Particulars	**Volume in Liters**	**Amount of Excise Taxes Paid at Php4.00**
Volume/Amount of Excise Tax Claim per *Petition for Review*	**7,313,035**	**Php29,252,140.00**
Less: Disallowances		
I. Disallowances noted by the ICPA		
a. Was passed on for local consumption and was sold to its local distributor in the Philippines	160,000	Php 640,000.00
Sub-total	*160,000*	*Php 640,000.00*
II. Disallowances found by the Court		

[132] As discussed earlier, additional excise taxes were paid on October 30, 2018, refer to Docket, Exhibits "P-46" to "P-48", pp. 1089 to 1091; Exhibit "P-61".

a. Without valid FACP	54,556	Php 218,224.00
b. Sales made to international carriers prior to importation and payment of excise taxes	2,783,237	11,132,948.00
c. With unreadable ASRs	439,814	1,759,256.00
Sub-total	*3,277,607*	*Php 13,110,428.00*
Volume/Amount of Total Disallowances	**3,437,607**	**Php13,750,428.00**
Volume/Amount of Refundable Excise Taxes	**3,875,428**	**Php15,501,712.00**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Php15,501,712.00**, representing petitioner's erroneously paid excise taxes for its imported Jet A-1 fuel for the period covering April to May, 2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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