REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10440

Present:

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

Promulgated: JAN 10 2024

3:05 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(2)[3], Rule 4, of the

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[1] Filed on 04 January 2021, Division Docket, Volume I, pp. 6-40.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Revised Rules of the Court of Tax Appeals[4] **(RRCTA).** In the petition filed against respondent Commissioner of Internal Revenue (**respondent/CIR**), petitioner SL Harbor Bulk Terminal Corporation (**petitioner/SL**) points to the former's inaction on its application for tax credit/refund amounting to ₱52,835,000.00, allegedly representing erroneously or illegally collected excise taxes on its bunker fuel oil (**BFO**) and special fuel oil (**SFO**). According to petitioner, these were sold to various tax-exempt entities registered with either the Subic Bay Metropolitan Authority (**SBMA**) or Philippine Economic Zone Authority (**PEZA**) for the calendar year (**CY**) 2019.

PARTIES TO THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal head office at Block 4, Lots 10 and 11, Manila Harbor Center, North Harbor, Brgy. 128 Zone 10, Tondo, Manila.

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (**BIR**), a government agency tasked to, among others, assess and collect all national internal revenue taxes and charges, and enforce all forfeitures, penalties, and fines connected therewith.

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

...

[4] A.M. No. 05-11-07-CTA dated 22 November 2005.

FACTS OF THE CASE

In 2019, petitioner claims to have made importations of BFO and SFO which were sold to tax exempt entities on the same year. It also claims that the excise tax for their importation was paid. On 15 December 2020, it filed an administrative claim for refund[5] with BIR Revenue District Office (**RDO**) No. 29 for the excise tax it paid. A copy of such claim was sent to respondent. On 04 January 2021, due to respondent's inaction on its claim, petitioner filed the present judicial claim for refund before this Court. Initially, it was raffled to the Third Division of this Court.

On 14 January 2021, the Court issued and served Summons[6] on respondent. On 03 March 2021, respondent filed his or her Answer.[7]

Later, on 09 March 2021, the Court issued a Notice of Pre-Trial Conference.[8] On 14 May 2021, respondent filed his or her Pre-Trial Brief[9] (**PTB**) while, on 18 May 2021, petitioner also filed its PTB.[10] Thereafter, the Pre-Trial Conference was held, and the Pre-Trial Order was issued subsequently.[11]

On 30 June 2022, following a reorganization of the Court's different Divisions, the case was transferred to the Second Division.[12]

Still later, trial ensued and petitioner proceeded to present the testimony of its witnesses: (1) Christian Ivan R. Requinta (**Requinta**), petitioner's Trading Head[13]; (2) Sheila Mary A. Ahing (**Ahing**), petitioner's Finance Manager[14]; (3) Jenny V. Catriz (**Catriz**), petitioner's Billing Head[15]; and, (4) Romeo A. De Jesus,

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5 Exhibit "P-9", Division Docket, Volume V, p. 2037.
6 Id., Volume III, p. 1225.
7 Id., pp. 1227-1233.
8 Id., pp. 1234-1234-A.
9 Id., pp. 1284-1313.
10 Id., pp. 1238-1267.
11 See Order dated 20 May 2021, id., pp. 1272-1274.
12 Pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022, reorganizing the Second and Third Divisions of the Court.
13 Exhibit "P-27", Division Docket, Volume IV, pp. 1709-1721.
14 Exhibit "P-26", id., pp. 1591-1611.
15 Exhibit "P-29", id., pp. 1488-1506.

Jr.[16] (**De Jesus**), the court-commissioned Independent Certified Public Accountant (**ICPA**), who all testified through their respective judicial affidavits (**JAs**).

As for Requinta, he testified that petitioner made an importation of bunker fuel in CY 2019. He also testified that the excise tax therefor was paid accordingly. In connection thereto, Requinta identified a series of commercial invoices, bills of lading, and import entries all showing petitioner's importation of said bunker fuel. He also identified several Statements of Settlement of Duties and Taxes (**SSDTs**) and Authorities to Release Imported Goods (**ATRIGs**) evincing petitioner's payment of excise tax on the importation.[17]

Thereafter, Ahing testifed on petitioner's sale of the imported bunker fuel to various tax-exempt entities registered either with the PEZA or SBMA. According to Ahing, all sales to said entities were made net of excise tax as shown in several sales invoices issued to the said tax-exempt entities.[18]

Catriz corroborated Ahing's testimony regarding petitioner's sales of bunker fuel to tax-exempt entities. In the course of Catriz's testimony, he identified PEZA's and SBMA's Certificates of Registration (**CORs**) wherein their supposed tax exemption privileges are shown.[19]

Lastly, the ICPA assumed the witness stand and testified about his findings which he reduced in his ICPA Report.[20] There, he stated that after reviewing petitioner's documents, he found that the latter paid excise tax in the amount of ₱52,835,000.00 as a result of its bunker fuel importation. In the ICPA Report, the ICPA also stated that following the sale of bunker fuel to the said tax-exempt entities, petitioner is entitled to a refund.[21]

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16 Exhibit "P-51", id., pp. 1963-1980.
17 Supra at note 13.
18 Supra at note 14.
19 Supra at note 15.
20 Exhibit "P-28", Division Docket, Volume IV, pp. 1941-1954.
21 Supra at note 16.

On 06 May 2022, after the termination of its last witness' testimony, petitioner filed its Formal Offer of Evidence (**FOE**).[22] On 03 June 2022, respondent filed its Comment/Opposition filed thereto.[23]

In a Resolution dated 19 July 2022[24], the Court resolved petitioner's FOE, admitting as evidence its offered documentary exhibits *except* Exhibits **"P-1"**[25], **"P-1-1"**[26], **"P-11"**[27], **"P-11-1"**[28], **"P-15"**[29], **"P-15-1"**[30], **"P-15-2"**[31], **"P-16"**[32], **"P-16-1"**[33], **"P-25-7"**[34], **"P-40-90"**[35], and **"P-40-252"** to **"P40-255"**[36] either due to petitioner's failure to submit originals of the said documents or due to their absence in the case's records.

Subsequently, petitioner filed an Omnibus Motion[37] on 12 August 2022, wherein it prayed: (1) for reconsideration of the above Resolution; and, (2) the re-marking of some of its exhibits. On 12 September 2022, respondent filed a Comment/Opposition[38] against petitioner's Omnibus Motion.

On 27 October 2022, the Court did not reconsider and petitioner's previously denied exhibits were still not admitted as evidence.[39] Petitioner was then deemed to have rested its case accordingly.

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22 Division Docket, Volume V, pp. 2020-2033.
23 Id., Volume VII, pp. 3053-3055.
24 Id., pp. 3060-3062.
25 Employment Contract of Ms. Sheila Ahing dated 01 September 2004.
26 Signature of Ms. Sheila Ahing.
27 Employment Contract of Mr. Christian Ivan Requinta dated 02 September 2013.
28 Signature of Mr. Requinta.
29 Contact dated 18 January 2017 between petitioner SL Harbor Bulk Terminal Corporation and Powerlane Logistics & Brokerage Corp.
30 Signature of Mr. Thomas Tan.
31 Signature of Mr. Edgar Torralba.
32 Employment Contract of Ms. Jenny Catriz dated b05 November 2015.
33 Signature of Ms. Jenny Catriz.
34 SEC Certificate of Accreditation with No. 0300-SEC.
35 Withdrawal Certificates issued by BIR and the corresponding Delivery Receipts.
36 Withdrawal Certificates issued by BIR and the corresponding Delivery Receipts.
37 See Omnibus Motion (Re: Resolution dated 19 July 2022), Division Docket, Volume VII, pp. 3089-3094.
38 See Comment/Opposition [Re: Petitioner's Omnibus Motion dated 12 August 2022], id., pp. 3132-3137.
39 See Resolution dated 27 October 2022, id., pp. 3142-3150.

Later, respondent presented the testimony of its sole witness, Revenue Officer (**RO**) Melandrew Mañalac (**Mañalac**) who testified through his JA.[40] There, Mañalac testified that he submitted a Memorandum[41] recommending the denial of petitioner's administrative claim for refund. According to him, petitioner claimed an ending inventory for CY 2019 amounting to ₱1,442,645,330.39. On the other hand, its Merchandise/Raw Materials/Goods in Process/Finished Goods Inventory[42] reflected a value of ₱1,472,423,330.39 comprising the cost of purchase and taxes paid thereon. He, however, pointed out that none of these values were reflected in petitioner's audited financial statements (**AFS**).

Thereafter, on 22 August 2022, respondent filed an FOE[43] to which petitioner filed its Comment/Objection[44] on 30 August 2022. In a Resolution dated 27 October 2022[45], the Court resolved to admit all of respondent's exhibits having found the same to be faithful reproductions of the documents they purported to be.

On 23 December 2022, respondent filed a Memorandum[46] while petitioner filed its own Memorandum[47] on 27 December 2022. On 10 January 2023, the Court submitted the case for decision.[48]

ISSUE

WHETHER PETITIONER SL HARBOR BULK TERMINAL CORPORATION IS ENTITLED TO TAX CREDIT/REFUND OF ₱52,835,000.00.

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40 Exhibit "R-6", id., pp. 3066-3070.
41 Exhibit "R-2", id., pp. 3072-3074.
42 Exhibit "R-3", id., pp. 3075-3076.
43 Id., pp. 3115-3118.
44 See Comment/Objection (Re: Formal Offer of Evidence dated 17 August 2022), id., pp. 3125-3128.
45 Supra at note 39.
46 Division Docket, Volume VII, pp. 3156-3170.
47 Id., pp. 3171-3204.
48 See Resolution dated 10 January 2023, id. p. 3207.

ARGUMENTS

In its bid for a favorable decision, petitioner argues that the excise tax it paid as a result of its importation of bunker fuel was erroneously paid because of its subsequent sale of the same to tax-exempt entities (to whom such excise tax was never passed). It equally maintains that its administrative claim and the present judicial claim for refund before the Court of Tax Appeals (**CTA**) was filed timely.

Respondent, on the other hand, claims essentially that petitioner failed to exhaust all administrative remedies as it did not allow the BIR a chance to resolve the matter considering that petitioner's claim was filed on 15 December 2020 while its judicial claim was filed only days after. Moreover, respondent contends that the excise tax paid on the sold BFO and SFO were already part of petitioner's 2018 inventory thus, petitioner's claim for refund in 2021 had already prescribed. According to respondent, they were filed beyond the two (2)-year prescriptive period.

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, the Court finds it propitious to first discuss whether the instant petition complied with the conditions precedent necessary for this Court's exercise of jurisdiction over it. Sections 204(C) and 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, read:

> ...
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> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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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.
>
> ...
>
> **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.[49]
>
> ...

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[50]

(2) If the claim is denied or not acted upon within said period, the petition for refund should be filed with the

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[49] Emphasis supplied.

[50] See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

CTA within thirty (30) days from receipt of the denial <u>and</u> within the said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause; otherwise, the claim for refund shall have prescribed;[51] and,

(3) The claim for refund must be a categorical demand for reimbursement.[52]

As to the ***first and second requirements***, it is clear that petitioner's administrative and judicial claims for the refund of the excise taxes it paid (on the BFO and SFO it sold to various tax-exempt entities registered with either the SBMA or PEZA) were both timely filed.

In the case of *Chevron Philippines Inc. v. Commissioner of Internal Revenue*[53], the Supreme Court elucidated that the exemption under Section 135[54] of the NIRC of 1997, as amended, operates as a condition as to the taxability of the petroleum products, to wit:

> ...
>
> Pursuant to Section 135(c), *supra*, petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase *which are by law exempt from direct and indirect taxes* describes the entities to whom the petroleum products **must be sold in order to render the exemption <u>operative</u>**. Section 135 (c) should thus

[51] See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

[52] *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

[53] G.R. No. 210836 (Resolution), 01 September 2015; Italics in the original text, emphasis and underscoring supplied.

[54] **SEC. 135.** Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. — Petroleum products 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 agreement for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) Entities which are by law exempt from direct and indirect taxes.

> be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers — that is, the entities that are by law exempt from direct and indirect taxes — because they are not under any legal duty to pay the excise tax.
>
> ...
>
> Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customshouse, Chevron was bound to pay, and actually paid such taxes. But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007 (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). Before then, Chevron did not have **any legal basis to claim the tax refund or the tax credit as to the petroleum products**.
>
> Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed **illegal and erroneous upon the sale of the petroleum products to CDC**. ...
>
> ...

This principle was echoed in the recent case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[55] (**Pilipinas Shell**), where the Supreme Court held:

> ...
>
> 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.
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> 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

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55 G.R. No. 211303, 15 June 2021; Emphasis and italics in the original text and supplied.

> 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."
>
> ...

From the above, **the refund can only be ascertained,** or **the excise taxes will only be deemed erroneously or illegally collected** *once* the petroleum products are sold to the entities mentioned under Section 135 of the NIRC of 1997, as amended.

Notably, the phrase "two (2) years from the date of **payment**" of the 2nd paragraph of Section 229 of the NIRC of 1997, as amended, must be read in relation to the title of the same Section, *i.e.*, "Recovery of Tax **<u>Erroneously or Illegally Collected</u>**". Thus, the reckoning point of the two (2)-year period must start *not* from the payment of tax *per se* but from the **erroneous or illegal payment of tax**. This is the *raison d'etre* of why the two (2)-year prescriptive period for excessively collected income taxes is reckoned from the actual filing of the final adjustment annual income tax return, and *not* from the payment of quarterly income tax instead. In *Commissioner of Internal Revenue v. Court of Appeals, et al.*[56], it was held:

> ...
>
> Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, we held:
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>> **<u>Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished</u>**. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the *TMX Sales* case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and

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56 G.R. No. 117254, 21 January 1999; Citation omitted, emphasis supplied, italics and underscoring in the original text.

> Section 321 should be construed in conjunction with it.
>
> ...
>
> Thus, it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. **This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer.** Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed.
>
> ...

Clearly, in the case at bar, the two (2)-year prescriptive period must be reckoned from the time petitioner sold the petroleum products to the tax-exempt entities pursuant to Section 135 of the NIRC of 1997, as amended. It is only at such point that it can be ascertained whether there has been an overpayment made by the taxpayer. Differently put, it is the sale of the manufactured or imported petroleum products to the entities enumerated under Section 135 of the NIRC of 1997, as amended, that the excise taxes previously paid thereon become wrongfully or erroneously collected by operation of law, and it is the basis on which a claim for refund under Section 229 may be made.

Here, petitioner avers that the subject excise taxes became illegally or erroneously collected when it sold the petroleum products to tax-exempt entities on various dates from 04 January 2019 to 18 December 2019.[57] Counting from the earliest transaction on 04 January 2019, petitioner had until 04 January 2021 to file its administrative and judicial claims for refund. Petitioner's administrative claim for refund was filed on 15 December 2020 before the BIR[58], and the judicial claim for refund was filed before this Court on 04 January 2021.[59] Thus, both administrative and judicial claims fell within the two (2)-year prescriptive period.

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57 Exhibits "P-38-1" to "P-38-84", and Annex F, ICPA Report, USB.
58 Exhibit "P-32-1", USB.
59 Division Docket, Volume I, p. 8.

We cannot subscribe to respondent's insistence that the instant petition is partly time-barred due to the fact that a portion of the petroleum products sold to tax-exempt entities were sourced from petitioner's 2018 inventory.

As discussed earlier, the two (2)-year prescriptive period must be reckoned from the point when it can be ascertained whether the taxpayer has made an overpayment (which is from the point petitioner sold the petroleum products to tax-exempt entities). In addition, it is worth noting that the law on prescription, being a remedial measure[60], should be interpreted in a way conducive to bringing about the beneficent purpose of balancing the taxpayer's and the government's interest. Here, the government's interest of fiscal adequacy, *i.e.*, availability of funds from the collection of taxes being not left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties[61], must be balanced with the legislative objectives of Section 135 of the NIRC of 1997, as amended, to wit: (*i*) in fulfillment of the country's obligation, under the Chicago Convention and various bilateral agreements, not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers to promote and expand international travel through avoidance of multiple taxation and ensure the viability and safety of international air travel; (*ii*) prevent the practice of "tankering" and instead, encourage international carriers to purchase domestic petroleum or establish refueling depots here in our country; and, (*iii*) to spare the Government from the risk of retaliatory actions from other countries.[62]

Incidentally, statutory construction enjoins that laws be construed in a manner that avoids absurdity or unreasonableness.[63] Indeed, it would be absurd to deny a claim

60 *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, 05 December 2016.

61 *Atlanta Land Corporation v. Commission of Internal Revenue*, C.T.A. EB No. 79, 23 May 2006.

62 See Associate Justice Alfredo Benjamin S. Caguioa's Concurring Opinion in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, supra at note 55, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 19 February 2014.

63 *The Bureau of Customs and the Commissioner of Customs v. Jade Bros. Farm and Livestock, Inc.*, G.R. No. 246343, 18 November 2021.

for refund under Section 135 of the NIRC of 1997, as amended, on excise taxes on manufactured and imported petroleum products only *recently* sold to exempt entities on the ground that the payment of the related excise taxes (which was *legally* or *properly* made by the taxpayer) happened beyond the two (2)-year prescriptive period.

Anent the ***third requirement***, a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the CIR. As the records show, petitioner complied with this requirement when it filed its administrative claim for refund on 15 December 2020.

Respondent's argument that petitioner failed to exhaust administrative remedies when it filed a judicial claim without awaiting a decision from respondent is also of no moment. In *Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue*[64], the Supreme Court ruled, thusly:

> ...
>
> ...Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. ...
>
> ...

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[65], it likewise declared:

> ...
>
> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim,

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64 G.R. No. 182582, 17 April 2017.
65 G.R. No. 226592, 27 July 2021.

> so long as both claims were filed within the two-year prescriptive period.
>
> ...

From the foregoing, a taxpayer need not await the CIR's decision on its administrative claim lest it risks the prescription of its claim. Therefore, for the purpose of this Court's exercise of jurisdiction over the case at bar, the present petition is deemed timely and properly filed on 04 January 2021 or the last day of the two (2)-year prescriptive period.

Moving forward to the ***fourth and last requirements***, the claimant must show indubitably the specific provision of law from which the right to claim arises. It cannot be allowed to exist upon a mere vague implication or inference, nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.[66]

Upon an arduous review of the parties' arguments and the documents presented, the Court finds that petitioner has failed to prove its right to the refund being claimed.

Petitioner insists that it sold petroleum products to tax-exempt entities registered with SBMA and PEZA pursuant to Section 135 of the NIRC of 1997, as amended, which states that:

> ...
>
> **SEC. 135.** *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — Petroleum products 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;

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[66] *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado,* supra at note 52.

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreement for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) **Entities which are by law exempt from direct and indirect taxes.**[67]

...

In relation to the aforecited provision, it has been settled in *Pilipinas Shell* that in order to have a successful claim for refund under Section 135 of the NIRC of 1997, as amended, the taxpayer-claimant must prove that: (1) the petroleum products were sold to any of the entities enumerated above; and, (2) the claimant is the statutory taxpayer *i.e.*, the manufacturer, producer or the importer of the petroleum products sold.

PETROLEUM PRODUCTS WERE SOLD TO TAX-EXEMPT ENTITIES.

ENTITIES REGISTERED WITH SBMA ARE EXEMPT FROM EXCISE TAX UNDER SECTION 135 OF THE NIRC OF 1997, AS AMENDED.

Section 12 of Republic Act (**RA**) No. 7227[68], as amended by RA 9400[69], otherwise known as the Bases Conversion and Development Act of 1992, reads as follows:

...

SEC. 12. *Subic Special Economic Zone.* — ...

...

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[67] Emphasis supplied.

[68] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

[69] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

(b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines;

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, **no national and local taxes shall be imposed within the Subic Special Economic Zone**. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land area (25%), and equal sharing (25%).[70]

...

The Implementing Rules and Regulation (**IRR**)[71] of RA 7227 provides:

...

SECTION 3. *Definitions.* — For purposes of these Rules, these terms shall be understood to have the following meanings:

...

g. *SBF Enterprise* — refers to **any business entity or concern within the SBF duly registered with and/or licensed by the SBMA** to operate any lawful economic activity within the SBF.

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[70] Emphasis and underscoring supplied.

[71] Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone (SSEFZ) and the Subic Bay Metropolitan Authority (SBMA) IRR of RA 7227, 03 November 1992.

> h. *Certificate of Registration* — **refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> ...
>
> SECTION 21. *Effect of Issuance of Certificates.* — **Issuance of the Certificate of Registration or Residency to an SBF Enterprise or Resident, respectively, shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules,** and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.[72]
>
> ...

From the foregoing, enterprises duly registered with SBMA, being operated as a separate customs territory, are considered tax-exempt entities under Section 135(c) of the NIRC of 1997, as amended.

ENTITIES REGISTERED WITH PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) ARE EXEMPT FROM EXCISE TAX UNDER SECTION 135 OF THE NIRC OF 1997, AS AMENDED.

Likewise, Sections 8 and 24 of RA 7916[73], as amended by RA 8748[74], otherwise known as the Special Economic Zone Act of 1995, provides:

> ...
>
> SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* — The ECOZONES **shall be managed and operated by the PEZA as separate customs territory.**
>
> ...
>
> SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, **no**

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72 Emphasis and underscoring supplied.

73 AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

74 AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

> **taxes, local and national**, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> > (a) Three percent (3%) to the National Government;
> >
> > (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.[75]
>
> ...

The IRR[76] of RA 7916 states:

> ...
>
> PART I
> *General Provisions*
>
> RULE I
> *Definitions and Basic Guidelines*
>
> ...
>
> SECTION 2. *Definition of Terms*. — For purposes of these Rules and Regulations, the following definitions shall apply:
>
> ...
>
> > s. "**Certificate of Registration**" shall mean the certificate issued by the PEZA to an ECOZONE Enterprise **upon its registration**.
> >
> > t. "Date of Registration" shall refer to the date **appearing in the certificate of registration**.
>
> ...
>
> PART VII
> *Incentives to ECOZONE Enterprises*
>
> RULE XIII
> *Application and Entitlement*
>
> ...

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[75] Emphasis supplied.

[76] Rules and Regulations to Implement Republic Act No. 7916, IRR of RA 7916, 17 May 1995.

> SECTION 2. *Scope of Entitlement.* — New or expanding ECOZONE Developers/Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, **registered** on or after the effectivity of these Rules, shall be entitled to **the fiscal incentives provided in Sections 24 and 42 of the Act.**[77]
>
> ...

As can be gleaned from the afore-quoted, enterprises registered with PEZA are also considered tax-exempt entities under Section 135(c) of the NIRC of 1997, as amended.

In the instant case, petitioner presented the Certifications issued by SBMA and PEZA to show that it transacted with tax-exempt entities, to wit:

Customer	Exhibit	Registration	Certification No.	Period
Del Monte Philippines, Inc.	"P-49-1"	PEZA Certificate of Registration No. 07-68	2019-1904	January 1-June 30, 2019
			2019-1904-1150	July 1 to December 31, 2019
Johnson Controls - Hitachi Air Conditioning Philippines, Inc.	"P-49-3"	SBMA	SBMA Certificate of Registration No. 1997-0022	June 18, 2018 to June 17, 2021
JX Nippon Mining and Metals Philippines, Inc.	"P-49-2"	PEZA Certificate of Registration No. 96-080	2019-0808	January 1-June 30, 2019
			2019-0808-0202	July 1 to December 31, 2019
Philippine Sinter Corporation	"P-49-4"	PEZA Certificate of Registration No. 11-04	2019-0710	January 1-June 30, 2019
			2019-0710-0169	July 1 to December 31, 2019

Based on the foregoing, petitioner was able to prove that it sold petroleum products to tax-exempt entities during the period 01 January 2019 to 31 December 2019.

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77 Emphasis supplied.

PETITIONER FAILED TO PROVE THAT IT IS THE STATUTORY TAXPAYER.

As discussed above, it is incumbent upon **petitioner to prove, with preponderant evidence, that the petroleum products sold to tax-exempt entities came from petitioner's importation of petroleum products.** As stated earlier, it is only at this instance that the tax incidence or the actual liability to pay the tax falls upon petitioner which, in turn, vests unto it a standing to file a claim for refund (as opposed to its local purchases of petroleum products wherein only the tax burden is passed, hence no excise tax refund should arise therefrom).[78]

In the present case, petitioner proffered as evidence the Withdrawal Certificates issued by the BIR and the corresponding Delivery Receipts[79], Bill of Lading[80], Import Entry Declarations (**IEDs**)[81], and SSDTs.[82] It is noted that the Withdrawal Certificates will only prove that petitioner sold and delivered petroleum products to tax-exempt entities. On the other hand, the other documents will only show that petitioner imported petroleum products in 2019.

As it is, however, the aforesaid pieces of evidence still fail to confirm that the petroleum products sold to the tax-exempt entities (SBMA and PEZA) are the same petroleum products that petitioner imported in 2018 or 2019. Such proof or trail is necessary and should have been established since, based on petitioner's Official Registry Book (**ORB**) as of 31 December 2018[83], it also purchased locally-manufactured petroleum products that co-mingled with its imported petroleum products.

Additionally, petitioner failed to proffer as evidence its ORB for every month of CY 2019 which ORB would have shown the ***monthly*** movement of the petroleum products (transfers,

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[78] See *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, supra at note 55.
[79] Exhibit "P-40-1" to "P-40-321", USB.
[80] Exhibit "P-42-1" to "P-42-15", id.
[81] Exhibit "P-43-1" to "P-43-7", id.
[82] Exhibit "P-44-1" to "P-44-9"; "P-44-11" to "P-44-17", id.
[83] Exhibit "P-36", id.

domestic purchases, importations and sales to both tax-exempt and taxable entities) pursuant to Section 41 of Revenue Regulations (**RR**) No. 13-77.[84] Other than the monthly ORB that respondent reviewed and certified, petitioner could also have presented its inventory general ledger which would have tied up with its 2019 AFS. This will show the movement of its inventory for the year 2019. With the foregoing, petitioner failed to establish the desired nexus between the imported petroleum products and the petroleum products sold to tax-exempt entities.

On a final note, it could not be emphasized enough that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption. Being so, the law is not only construed in *strictissimi juris* against the taxpayer but also the pieces of evidence presented to entitle it to an exemption. These pieces of evidence are *strictissimi* scrutinized and must be duly proven.[85] The burden of proof is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[86] Here, petitioner failed to discharge that burden.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner SL Harbor Bulk Terminal Corporation on 04 January 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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84 See *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266, 11 November 2013.

85 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

86 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.

I CONCUR:

(With Concurring and Dissenting Opinion)
LANEE S. CUI-DAVID
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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION, *Petitioner,*	**CTA Case No. 10440**
	Members:
-versus-	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 10 2024 3:05 p.m.

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CONCURRING AND DISSENTING OPINION

CUI-DAVID, J.:

I concur with the *Decision* of my esteemed colleague, Associate Justice Jean Marie A. Bacorro-Villena, in denying petitioner's claim for refund of alleged erroneously or illegally collected excise taxes on its bunker fuel oil (**BFO**) and special fuel oil (**SFO**).

With due respect, although I concur with the denial, I write this opinion to express my dissent on the discussion made in the *ponencia* in relation to the *first* and *second* requisites of the filing of the claim for refund, *i.e.*, the two-year period mandated by Sections 204 and 209 of the NIRC of 1997, as amended.

The *ponencia* reckoned the two years from petitioner's sale of BFO and SFO to various tax-exempt entities. The *ponencia* ratiocinated that the act of sale "renders the exemption operative."

It is my opinion that the two-year period should be counted from petitioner's payment of excise tax, either by filing returns or upon importation, and not from the date petitioner sold its BFO and SFO to various tax-exempt entities.

Sections 204(C) and 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *[Emphasis supplied.]*
>
> "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 explicit: within two (2) years **from the date of <u>payment</u> of tax**, the claimant must file an administrative claim with respondent before filing a judicial claim with the courts of law. **Both claims must be filed within a two-year (2)-year reglementary period.** The law explicitly provides that it be filed within two (2) years from

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payment of the tax "regardless of any supervening cause that may arise after payment."[1]

It is noteworthy that in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,[2] the Supreme Court counted the two years for filing a claim for refund from the time that Caltex electronically filed the excise tax returns.

Admittedly, in the later case of *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*,[3] the Supreme Court pronounced 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." However, the ruling in *Pilipinas Shell Petroleum* is not an interpretation of Sections 204 and 229 of the NIRC of 1997, as amended. The statement was part of the discussion of the Supreme Court to "[reconcile] ... the exemption under Section 135 ... with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation." Thus, the Supreme Court concluded therein that "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)."

The same can be said in *Chevron Phils., Inc. v. Commissioner of Internal Revenue*,[4] where the Supreme Court mentioned that the exemption becomes operative when petroleum products are sold to tax-exempt entities. The statement was part of the discussion of the Supreme Court in determining the proper party to file a claim for refund of excise taxes and not an interpretation of Sections 204 and 229 of the NIRC of 1997, as amended.

Sections 204 and 229 of the NIRC of 1997, as amended, explicitly state that the period of two (2) years must be counted

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[1] *Commissioner of Internal Revenue v. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[2] G.R. No. 198759, July 1, 2013, 713 PHIL 134-160.
[3] G.R. No. 211303, June 15, 2021.
[4] G.R. No. 210836 (Resolution), September 1, 2015, 768 PHIL 37-98.

"from the date of **payment** of the tax or penalty regardless of any supervening cause that may arise after payment."

Nevertheless, I concur with the *ponencia* that the *Petition* shall not be entirely dismissed because of lack of jurisdiction. Respondent argues for the dismissal of the petition on the ground that petitioner admits that, in 2019, petitioner had sold fuel from its 2018 inventory and that such inventory forms part of petitioner's instant claim for refund.

Granting that the excise tax from its 2018 inventory was paid in 2018, consistent with the provisions of Section 131(A) of the NIRC of 1997, as amended, indeed, respondent is correct in arguing that the filing of the instant Petition for Review on January 4, 2021, was already out of time.

However, such does not render the *Petition for Review* entirely dismissible as petitioner also sought the refund of excise taxes it paid with its importation of 366,341,346 liters of BFO and SFO beginning February 28, 2019. Clearly, the Court can validly obtain jurisdiction on petitioner's Petition for Review filed on January 4, 2021 for its refund of excise taxes pertaining to petitioner's importation in the year 2019, as the filing is within the two-year reglementary period provided by Sections 204 and 229 of the NIRC of 1997, as amended.

Nonetheless, as stated in the *ponencia*, despite petitioner being able to show that it sold BFO and SFO to tax-exempt entities, it failed to prove that it is the statutory taxpayer. Thus, I concur with the *ponencia* in stating that it cannot be determined that the BFO and SFO sold to these tax-exempt entities were the same BFO and SFO imported by petitioner.

With the foregoing, I join the *ponencia* in denying the *Petition for Review*.

LANEE S. CUI-DAVID
Associate Justice