REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

C.T.A. EB No. 279
(C.T.A. Case No. 6554)

Present:

Acosta , *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

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DECISION

ACOSTA, *P.J.*:

This is a Petition for Review *En Banc* seeking the reconsideration and setting aside of the Decision of this Court's Second Division dated November 28, 2006, which ordered herein petitioner Commissioner of Internal Revenue (CIR) to refund or issue a Tax Credit Certificate to herein respondent Pilipinas Shell Petroleum Corporation in the amount of P39,305,419.49, representing excise taxes paid by respondent on petroleum products sold to international carriers which were sourced from its own tax-paid inventories and the subsequent Resolution dated February 23, 2007, affirming the assailed Decision.

The antecedent facts as culled from the records are as follows:

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Petitioner is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under and by virtue of Philippine Laws, with principal office at Shell House, 156 Valero St., Salcedo Village, Makati City.

For the period November 2000 to March 2001, respondent sold and delivered petroleum products, net of excise taxes, to various international carriers of Philippine or foreign registry for their use or consumption outside the Philippines. These petroleum products were sourced by respondent from its tax-paid inventories stored at its various depots and installations, except for those delivered at the port of Zamboanga.

The petroleum products delivered by respondent at the port of Zamboanga were borrowed from Petron Corporation pursuant to a "loan or borrow" agreement between them. The excise taxes on the "borrowed" petroleum products were paid by Petron Corporation which was, in turn billed/passed to respondent.

On June 5, 2001 and September 5, 2001, respondent filed two separate formal claims for refund or tax credit with petitioner, in the amounts P14,126,644.90 and P34,932,088.19, respectively or a total of P49,058,733.09, representing the excise taxes it paid on the petroleum products it sold and delivered to the international carriers.

Respondent filed a Petition for Review before the Court of Tax Appeals (CTA) on October 25, 2002 due to petitioner's inaction on its claims and in order to toll the running of the statutory period of two (2) years within which to file a judicial claim for refund.

In the assailed Decision, the CTA Second Division (hereafter "the Court") granted respondent's claim in the reduced amount of P39,305,419.49 representing the excise taxes paid by respondent on the sold petroleum products sourced from its own tax-paid inventories. The dispositive portion of the said Decision is as follows:

"**IN VIEW OF ALL THE FOREGOING**, petitioner's claim is hereby **GRANTED** in the reduced amount of P39,305,419.49, computed as follows

	Volume (in Liters)		Gas Oil	Fuel Oil	
Month	Gas Oil	Fuel Oil	@ P1.63/Liter	@ P0.30/Liter	Total
November 2000	3,701,260	0	P 6,033,053.80	P 0.00	P 6,033,054.00
December 2000	3,577,410	639,580	5,831,178.30	191,874.00	6,023,052.00
January 2001	5,704,597	1,341,055	9,298,493.11	402,316.50	9,700,810.00
February 2001	3,992,120	192,090	6,507,155.60	57,627.00	6,564,783.00
March 2001	6,377,986	1,958,680	10,396,117.18	587,604.00	10,983,721.00
Total	23,353,373	4,131,405	P38,065,997.99	P1,239,421.50	P39,305,419.49

Accordingly, respondent is hereby **ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **THIRTY NINE MILLION THREE HUNDRED FIVE THOUSAND FOUR HUNDRED NINETEEN & 49/100 PESOS** (P39,305,419.49) representing excise taxes paid by petitioner on petroleum products sold to international carriers which were sourced from its own tax-paid inventories.

SO ORDERED."

The Court denied the remaining claim of respondent in the amount of P2,679,720.00 representing the excise taxes paid by respondent on the "borrowed" petroleum products from Petron Corporation, on the ground that respondent was not the proper party to claim the refund in accordance with Section 130(A)(2) and Section 204 of the 1997 National Internal Revenue Code (NIRC), as amended.

On January 4, 2007, respondent filed a Motion for Reconsideration. The Court denied respondent's Motion for Reconsideration in a Resolution dated February 23, 2007.

Petitioner filed the instant Petition through registered mail on April 10, 2007 (April 6 being Good Friday and April 9, 2007 being Araw ng Kagitingan), after being granted by this Court an extension to file the Petition for a final and non-extendible period of fifteen (15) days from March 22, 2007 or until April 6, 2007.

Petitioner presented the following issues for resolution:

"1.The Second Division of the Honorable Tax Court erred in holding that the payment of excise taxes made by respondent constitute as erroneously paid taxes that could be recovered under Section 229 of the Tax Code.

2. The Second Division of the Honorable Tax Court erred in not applying the case of Maceda vs. Macaraig in resolving the present case."

The issues boil down to the principal issue of whether or not respondent is entitled to a refund of the excise taxes it paid in the amount of P39,305,419.49.

Petitioner in questioning the Court's Decision asserts that tax exemptions are construed strictly against the taxpayer claiming it and he who claims an exemption must point to the specific provision of the statute authorizing it and that the taxpayer must prove that he is entitled to the exemption.

The applicable law to the issue before Us is Section 135 of the 1997 National Internal Revenue Code (NIRC), as amended which provides 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;

(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."

The aforecited law is clear. The sale of petroleum products to international carriers complying with the requisites laid down above shall be exempt from excise taxes.

It is well-settled that Courts may not construe a statue that is clear and free from doubt. Time and time again, it has been repeatedly declared by the Honorable Supreme

Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[1]

Here, the Court correctly found that respondent's sale of petroleum products complied with the requisites laid down in Section 135 of the 1997 NIRC, as amended. Respondent sufficiently proved by the pieces of evidence presented before the Court of its entitlement to the refund. The Court held in its Decision that:

> "Indeed, during November 2000 to March 2001, petitioner sold and delivered a total of 23,353,373 liters of gas oil and 4,131,405 liters of fuel oil to various tax-exempt international carriers of Philippine or foreign registry, net of the related excise taxes. The said sales and deliveries to tax-exempt international carriers are duly supported by Bunkering Permit, showing among others the nationality of the vessel; Receipts for Marine Banker Fuel; Sales Invoices; Billing details; Pricing details; Official Receipts; in relation to the Certification issued by the Department of Foreign Affairs listing therein the name of the countries that grant tax exemption to Philippine-registered carriers. Further, the petroleum products which were sold to various tax-exempt international carriers of Philippine or foreign registry were used or consumed outside the Philippines."

Considering that the petroleum products sold to international carriers are exempt from taxes, then it follows that the excise taxes paid by respondent are erroneous since they are not supposed to be paid at all by the clear mandate of Section 135 of the 1997 NIRC, as amended. An erroneous 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 in some other similar respect is illegal[2].

The excise taxes paid by respondent clearly fall within the definition. Section 135 of the 1997 NIRC, as amended exempts the sale of respondent from excise taxes. Thus, when respondent paid it, the tax became erroneous being upon a subject matter not supposed to be taxed.

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[1] Statutory Construction by Ruben Agpalo, Fifth Edition 2003 citing the case of Cebu Portland Cement Co. vs Municipality of Naga, GR No. 24116, Aug. 22, 1968; 24 SCRA 708, 712

[2] Black's Law Dictionary

Equally noteworthy is the opinion of the Court as stated in the assailed Decision that inasmuch as respondent ended up shouldering the specific tax component of the fuel oil, although it's sale is exempt from excise taxes, it would be reasonable and just to recover what it would have otherwise passed on to its buyers had it not been for Section 135 of the 1997 NIRC, as amended. The Court explained thus:

> "In the case of Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, CTA EB No. 91, November 25, 2005 (CTA Case Nos. 6506 & 6559), it was held:
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>> Finally, considering that Petitioner's sale of fuel oil to NPC is exempt from the payment of excise taxes, then Petitioner may rightfully recover the excise taxes it paid to PSPC (Pilipinas Shell Petroleum Corporation). And as correctly pointed out by Petitioner, since it ended up shouldering the specific tax component of the fuel oil, it is but just and reasonable to allow it to recover what it would have otherwise have passed on to NPC had it not been for NPC's exemption from indirect taxes. xxx
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> While the above case deals with sale of petroleum products to tax exempt entities whose exemption from excise tax falls under Section 135(c) of the 1997 NIRC, and this case deals with fuel oil sold to international carriers whose exemption fall under Section 135(a) of the same Code, the above pronouncement of the Court of Tax Appeals En Banc, applies by analogy since in this case, petroleum products were sold to an entity exempt from the payment of excise tax, and petitioner ended up shouldering the tax since it cannot pass on the excise taxes to the tax-exempt buyer."

Therefore, the Court correctly found respondent entitled to a refund in accordance with Section 135, in relation to Section 229 of the 1997 NIRC, as amended.

In support of the Petition, petitioner mentioned the case of Philippine Acetylene Co. vs. Commissioner of Internal Revenue[3] as being applicable to the case at bar. In the said Decision, the Supreme Court ruled that sales tax being passed on to the purchaser as part of the purchase price of the commodity is a tax on the seller, and not on the buyer. Hence, if the buyer happens to be tax exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax not on the buyer but is actually a tax on the seller.

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[3] GR No. 19707, August 17, 1967 20 SCRA 1056

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However, the case of Philippine Acetylene Co. vs. Commissioner of Internal Revenue is not applicable to the instant case. The facts of the said case are not on all fours with that of the case at bar. In the Philippine Acetylene case, the party asking for the refund is the seller-producer based on the exemption granted under the law to the buyer, National Power Corporation (NPC) and Voice of America (VOA). In this case, the law itself exempts the sale of the petroleum products made by respondent to the international carriers. Respondent is not anchoring its claim on the tax status of its buyer but rather by clear specific provisions of the law, that is, Section 135 of the 1997 NIRC, as amended.

Petitioner likewise claims that the Court should have applied the case of Maceda vs. Macaraig, Jr[4].

We do not agree.

It bears stressing that the case of Maceda vs. Macaraig cited by petitioner refers to the Supreme Court's Resolution on the Motion for Reconsideration of petitioner Ernesto Maceda. In the Decision of the Supreme Court disposing the case in main (Maceda vs, Macaraig, 197 SCRA 771, May 31, 1991), the High Tribunal clarified that the said Decision particularly deals with the exemption of NPC, to quote:

> "The fear of the serious implication of this decision in that NPC's suppliers, importers and contractors may claim the same privilege should be dispelled by the fact that (a) this decision particularly treats of only the exemption of the NPC from all taxes, duties, fees, imposts and all other charges imposed by the government on the petroleum products it used or uses for its operation. xxx"

In that case, the Supreme Court only put to rest the issue on whether NPC is subject to tax or not. On the other hand, the case at bar involves the tax exemption of the sale of respondent's petroleum products under Section 135 of 1997 NIRC, as amended and whether it is entitled to refund of excise taxes erroneously paid.

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[4] 223 SCRA 217, June 8, 1993

Under the legal maxim *stare decisis et non quieta movere*, past decisions of the court should be followed in the adjudication of cases. It means one should follow precedents and should not disturb what has been settled. The rule rests on the desirability of having stability in the law[5]. However, the principle presupposes that the facts of the precedent and the case to which it is applied are substantially the same.[6] Where the facts are dissimilar, then the principle of *stare decisis* does not apply. Obviously, the facts and issues in the case of Maceda vs. Macaraig are not substantially the same as the instant case.

For all the foregoing, We see no reason to reverse the assailed Decision and Resolution of the Second Division of this Court.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on November 28, 2006 and Resolution dated February 23, 2007, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[5] Statutory Construction by Ruben Agpalo, Fifth Edition 2003
[6] Tung Chiu Hui vs. Rodriguez, 340 SCRA 765 (2000)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division