REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**CTA CASE NO. 8492**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 28 2014

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3:55 p.m.

DECISION

CASANOVA, *J.*:

This is a claim for refund or issuance of tax credit certificate in the amount of Forty Eight Million Five Hundred Seventy Thousand Seven Hundred Seventy-Two and 81/100 Pesos (₱48,570,772.81) allegedly representing excise taxes paid by Pilipinas Shell Petroleum Corporation (PSPC) on aviation turbo jet fuel ("Jet A-1 fuel") sold to various exempt international carriers for the period May 26 to July 2, 2010.

Petitioner PSPC is a corporation organized and existing under the laws of the Philippines with office address at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City.[1]

Petitioner is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.[2]

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I) p. 96
[2] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I) p. 96

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is sued in her official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She may be served with summons, notices and other court processes at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Sometime in May to June 2010, petitioner imported Jet A-1 fuel through its refinery in Tabangao, Batangas and paid the corresponding excise taxes to the Bureau of Customs (BOC)-Batangas. Details of the importation and payment of excise taxes are as follows:

Arrival Date	IEIRD No.	Volumes in Liters	Amount of Excise Taxes Paid	Date of Payment
May 13, 2010[3]	C-1001; SN107713767	7,854,564	₱ 28,826,250.00	June 4, 2010
May 19, 2010[4]	C-1026	6,227,410	₱ 22,854,595.00	June 10, 2010
TOTAL		**14,081,974**	**₱ 51,680,845.00**	

Within the same period of June 2010, petitioner likewise purchased Jet A-1 fuel from PTT Philippine Trading Corporation (PTT) at the Subic Bay Freeport Zone and paid the corresponding excise taxes to the BOC-Subic. Details of the importation and payment of excise taxes are as follows:

Arrival Date	IEIRD No.	Volumes in Liters	Amount of Excise Taxes Paid	Date of Payment
June 14, 2010[5]	C-998; SN107713733	3,179,680	₱ 11,669,425.00	June 11, 2010

Petitioner then allegedly sold the Jet A-1 fuel to various international airlines as follows:

Customers	Total Volume in Liters
Philippine Airlines	3,406,863
Air Hong Kong	190,075

[3] Exhibit "B" to "B-5"
[4] Exhibit "A" to "A-5"
[5] Exhibit "C" to "C-5"

Air China	123,120
Air Asia	330,203
Air Asia X	106,088
China Airlines	627,625
Federal Express	1,260
Japan Airlines	976,916
Jet Star Asia	394,842
Korean Air	1,345,273
Qantas Airlines	530,553
Qatar Airways	3,877,400
Royal Brunei Airlines	183,041
Singapore Airlines	915,454
Tiger Airways	225,830
TOTAL AVIATION SALES	**13,234,543**
Excise Tax Rate	**3.67**
TOTAL EXCISE TAX	**48,570,772.81**

The amounts billed by petitioner to the international airlines were denominated in foreign currency and were net of excise taxes. Arguing that the international carriers to which it sold Jet A-1 fuel are exempt from excise taxes, petitioner filed, on May 3, 2012, a formal claim for refund or tax credit certificate with the Large Taxpayers Audit & Investigation Division II of the BIR,[6] seeking recovery of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period May 26 to July 2, 2010 in the total amount of ₱48,570,772.81, computed as follows:

Description	**Volume in Liters**	**Excise Tax Rate**	**Amount**
Sale to international carriers of Philippine or foreign registry pursuant to Section 135 of the 1997 Tax Code	13,234,543	3.67	₱48,570,772.81

Claiming inaction on the part of respondent, petitioner, filed on May 14, 2012, a Petition for Review[7] with this Court.

In her Answer,[8] respondent raised the following special and affirmative defenses:

[6] Exhibit "D"
[7] Docket (Vol. I) pp. 6-24
[8] Docket (Vol. I) pp. 47-55

"4. Respondent hereby reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

5. Petitioner's claim for refund or issuance of tax credit certificate is anchored on Section 135 of the National Internal Revenue Code of 1997 (NIRC) which provides:

> **SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*** - Petroleum products sold to the following are exempt from excise tax:
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> (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.

From the foregoing provision, it is apparent that the tax exemption is granted to international carriers and other exempt entities or agencies covered by tax treaties, conventions and other international agreements as buyers of petroleum products. Nowhere in the said provision confers tax exemption to the manufacturers or importers of petroleum products as it was explicitly bestowed to the entities specified therein. Petitioner cannot rely on the exemption granted to international carriers since the former stand in the position of manufacturers or producers which sold petroleum products to tax-exempt international carriers.

In the case of Philippine Acetylene Co. Inc. vs. CIR, the Honorable Supreme Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Honorable Court held that a tax exemption being enjoyed by the buyer cannot be the basis of the claim for tax exemption by the manufacturer.

Accordingly, petitioner's claim for tax exemption has no leg to stand on.

6. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

While Section 229 of the National Internal Revenue Code allows the recovery of tax erroneously or illegally collected, the Supreme Court had an occasion to rule that there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as when he is not aware of an existing exemption in his favor at the time the payment was made. 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 respect is illegal. In this case, petitioner admittedly paid the excise taxes on Jet A-1 fuel by virtue of Section 131 (A) of the NIRC which basically imposed on the owner or importer the payment of excise tax. It goes without saying that petitioner was well aware that the liability for the payment of excise tax is directly enforced on them. The excise tax was levied and imposed with statutory authority. Ergo, there is no erroneous or illegally collected tax.

Petitioner's claim for tax exemption having been sufficiently rebuffed, its claim for refund must necessarily be denied for lack of cause of action.

7. Taxes collected are presumed to be in accordance with laws and regulations. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent Commissioner of Internal Revenue (CIR) still has to investigate and ascertain the validity of the claim.

8. Taxes are essential to the government's very existence; hence, the dictum that 'taxes are the lifeblood of the government'. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions and these are to be construed in ***strictissimi juris*** against the person or entity claiming the exemption.

9. Moreso, the amount of Forty Eight Million, Five Hundred Seventy Thousand, Seven Hundred Seven Two and 81/100 (P48,570,770.81) *[sic]* representing petitioner's alleged excise tax allegedly paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period May 26 to July 2, 2010 is not properly documented.

9. *[sic]* Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim." *(Citations Omitted)*

On July 6, 2012, this Court issued a Notice of Pre-Trial Conference[9] informing both parties that a pre-trial conference is set on August 9, 2012 at 9:00 a.m.

Respondent's Pre-Trial Brief[10] was filed on July 12, 2012, while petitioner filed its Pre-Trial Brief for Petitioner[11] on August 6, 2012. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[12] on September 26, 2012. Finding the Joint Stipulation in order, this Court issued a Pre-trial Order[13] on October 2, 2012 adopting the parties' stipulations and further declaring the pre-trial terminated.

Meanwhile, pursuant to CTA Administrative Circular No. 01-2013[14] dated March 26, 2013, the instant case was transferred to the Second Division of the Court of Tax Appeals (CTA) on April 5, 2013.

On May 17, 2013, petitioner filed a Motion to Avail of the Provisions of Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals[15], manifesting its intention to avail the services of Mr. Benjamin P. Valdez, a partner of "Punongbayan & Araullo", as an Independent Certified Public Accountant (ICPA) pursuant to Section 5 of Rule 12, in relation to Sections 1 to 3 of Rule 13 of the Revised Rules of Court of Tax Appeals (RRCTA). [16]

Finding merit therein, this Court granted petitioner's motion during the May 22, 2013 hearing, thereby commissioning Mr. Benjamin P. Valdez as the case's ICPA, and ordering him to submit his ICPA report within thirty (30) days thereof. Accordingly, on June 21, 2013, the ICPA complied with the said Court order and submitted his ICPA Report[17].

On August 16, 2013 petitioner filed its Formal Offer of Exhibits[18], offering exhibits "A" to "NNNN", inclusive of sub-markings. In response, respondent filed her Comment (Re: Petitioner's Formal Offer of

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[9] Docket (Vol. I) p. 56
[10] Docket (Vol. I) pp. 57-62
[11] Docket (Vol. I) pp. 72-83
[12] Docket (Vol. I) pp. 96-105
[13] Docket (Vol. I) pp. 107-113
[14] Re-organizing the three (3) divisions of the Court of Tax Appeals
[15] Docket (Vol. II) pp. 520-523
[16] A.M. No. 05-11-07-CTA, enacted on November 22, 2005
[17] Docket (Vol. II) p. 534
[18] Docket (Vol. II) pp. 565-605

Evidence)[19] on August 27, 2013 stating that she has no objection to the admission of said exhibits, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents under Section 4[20] Rule 12 of the RRCTA. Acting thereon, the Court issued a Resolution[21] on September 19, 2013 denying most of the exhibits offered by petitioner for its failure to submit the original documents for comparison as well as to have them identified.

On October 7, 2013, petitioner filed a Motion for Reconsideration (of the Resolution dated September 19, 2013)[22] asking for the court's leniency and in the interest of substantial justice. On the other hand, respondent filed her Comment (Re: Petitioner's Motion for Reconsideration) on October 24, 2013 asserting that the court correctly denied the admission of said exhibits.

Meanwhile, petitioner filed a Motion to Suspend Proceedings[23], praying for the suspension of the proceedings before this Court as a matter of judicial courtesy and in order not to pre-empt and possibly render moot and academic the Supreme Court's final action on its motion for reconsideration regarding its other refund cases[24] that are still pending with the Supreme Court. On November 8, 2013 respondent filed her Comment (Petitioner's Motion to Suspend Proceedings)[25] citing the rationale given by the CTA Court En Banc in its resolution to the same motion filed by petitioner in another case.[26] The Court therein ruled that it cannot just sit idly and wait for petitioner's appeal to be resolved, to do so would create a vacuum where courts would wait for an issue to be resolved by the Supreme Court before rendering judgment.

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[19] Docket (Vol. II) pp. 1038-1041
[20] "**SEC. 4.** ***Taking of evidence by Court official.*** - In default or ex parte hearings, or in any case where the parties agree in writing, the Court may delegate the reception of evidence to the Clerk of Court, the Division Clerks of Court, their assistants who are members of the Philippine bar, or any Court attorney. The reception of documentary evidence by a Court official shall be for the sole purpose of marking, comparison with the original, and identification by witnesses of such documentary evidence. The Court official shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the Court upon submission of his report and the transcripts within ten days from termination of the hearing."
[21] Docket (Vol. II) pp. 1043-1044
[22] Docket (Vol. II) pp. 1048-1071
[23] Docket (Vol. II) pp. 1081-1085
[24] CIR vs. Pilipinas Shell Petroleum Corporation (CTA EB No. 415; CTA Case Nos. 6775 & 6839)
[25] Docket (Vol. II) pp. 1095-1100
[26] CTA EB No. 960 (CTA Case No. 7731)

In the December 11, 2013 Resolution,[27] this Court partially granted petitioner's motion for reconsideration thereby admitting majority of the exhibits offered by petitioner but, however, denied its motion to suspend the proceedings. Furthermore, considering the manifestation made by respondent during the September 23, 2013 hearing that she will no longer be presenting evidence, the Court ordered both parties to submit, within thirty (30) days, their respective memorandum.

Complying thereon, petitioner submitted its Memorandum[28] on January 30, 2014, while respondent submitted her Memorandum[29] on February 11, 2014.

Accordingly, with the filing of the parties' memoranda, this Court in the February 17, 2014 Resolution[30], deemed the case submitted for decision.

Meanwhile, petitioner filed a Manifestation on March 21, 2014 stating that on March 17, 2014 it received a Notice of Judgment with attached Resolution dated February 19, 2014 from the Supreme Court in the case entitled *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[31] whereby the Supreme Court allowed Pilipinas Shell Petroleum Corporation's claims for refund or issuance of tax credit certificate in the amount of ₱95,014,283.00 representing excise taxes it paid on the petroleum products it sold to international carriers from October 2001 to June 2002.

The issues stipulated[32] by the parties for this Court's pronouncement are:

1. Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[27] Docket (Vol. II) pp. 1102-1105
[28] Docket (Vol. II) pp. 1116-1167
[29] Docket (Vol. II) pp. 1168-1188
[30] Docket (Vol. II) p. 1189
[31] G.R. No. 188497 (CTA EB No. 415; CTA Case Nos. 6675 & 6839); *Supra* No. 23
[32] Stipulation of Issues, JSFI, Docket pp. 97-98

2. Whether petitioner has the right to claim for refund or tax credit for excise taxes it allegedly paid for petroleum products sold to international carriers.

3. Whether petitioner is exempt from the payment of excise tax on petroleum products sold to international carriers.

4. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.

5. Whether petitioner's claim for tax refund of excise taxes was filed within the period prescribed by law.

6. Whether the petitioner is entitled to a refund or tax credit in the total amount of Forty Eight Million, Five Hundred Seventy Thousand, Seven Hundred Seventy Two and 81/100 (₱48,570,772.81).

7. Whether or not petitioner is entitled to the recovery of excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period May 26 to July 2, 2010.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide the taxpayer a period of two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may exist after payment, within which to file a suit or proceeding to recover any erroneously paid or illegally collected tax, to wit:

> "**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. <u>No credit or refund of taxes or penalties shall be allowed unless</u>

> 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.
>
> *xxx xxx xxx" (Underscoring Ours)*
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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." *(Underscoring Ours)*

It is worth mentioning that the above-cited provisions were intended to govern all kinds of refund of internal revenue taxes.[33] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial claims for the recovery of erroneously paid tax. However, both claims for refund, administrative and judicial, must be filed within the two-year period from the *date of payment of the tax or penalty*.

Thus, based from the foregoing, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:

[33] CIR vs. Central Azucarera Don Pedro, L-28467, February 28, 1973 *citing* CIR vs. Insular Lumber Co., L-24221, December 11, 1967

1) That there must be an erroneous or illegal collection of tax or a penalty collected without authority, or sum excessively or wrongfully collected;

2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3) That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

We shall first discuss the timeliness of both the administrative and judicial petition under the second (2nd) and third (3rd) requisites.

In the instant case, petitioner seeks refund or issuance of tax credit certificate for the excise taxes it paid on June 4, 2010,[34] June 10, 2010[35] and June 11, 2010,[36] respectively. Counting from the earliest date that the excise taxes were paid, petitioner had until June 4, 2012 within which to file both its administrative and judicial claims. As gleaned from the records of the case, petitioner filed its administrative claim *via* Application for Tax Credits/Refunds (BIR Form No. 1914) on May 3, 2012[37] and its judicial claim *via* Petition for Review on May 14, 2012[38] thereby complying with the mandatory two (2) year prescriptive period.

However, respondent contends that the petitioner should have waited for the Commissioner of Internal Revenue's action before proceeding with the filing of the Petition for Review with the Court. She bore emphasis on the fact that petitioner filed a petition for review with this Court on May 14, 2012 or just merely eleven (11) days after filing the administrative claim for tax refund or issuance of tax credit certificate with the BIR.

Respondent's contention is misplaced. a

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[34] Exhibits "B" to "B-5"; *Supra* No. 3
[35] Exhibits "A" to "A-5"; *Supra* No. 4
[36] Exhibits "C" to "C-5"; *Supra* No. 5
[37] Exhibit "D"; Supra 6
[38] *Supra* No. 7

The case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[39] should help shed light in the issue at hand. In said case, the taxpayer filed an administrative claim for refund on April 9, 2003; the next day, on April 10, 2003, without waiting for any action from the CIR, it filed a Petition for Review with the CTA to avoid the expiration of the prescriptive period under Section 229 of the Tax Code. Just like in the instant case, only a single day has passed when the taxpayer filed its Petition for Review. The CTA-First Division in said case found that, contrary to the contentions of the CIR, respondent was able to establish the factual basis[40] for its claim for refund or issuance of a tax credit certificate, and that the same was filed within the period prescribed under Section 229 of the Tax Code.

Stated differently, jurisprudence has it that when the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, compliance with the 120-day mandatory period is inconsequential as long as the administrative and judicial claims are filed within the two-year prescriptive period.[41] Otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to this Court.[42]

After satisfactorily complying with the second (2nd) and third (3rd) requisites, We now proceed to discuss the merits of petitioner's claim.

Petitioner seeks the recovery of excise taxes paid on Jet A-1 fuel sold to tax exempt international air carriers for the period May 26 to July 2, 2010 in the aggregate amount of ₱48,570,772.81, computed as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
Sale to international carriers of Philippine or foreign registry pursuant to Sec. 135 of the 1997 Tax Code	13,234,543	₱ 3.67	₱ 48,570,772.81
	13,234,543		**₱48,570,772.81**

[39] G.R. 179617, January 19, 2011.
[40] *Citing* the case of Citibank N.A. vs. Court of Appeals
[41] CIR vs. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010; CIR vs. Toshiba Information Equipment (Phils), Inc., G.R. No. 150154. August 9, 2005
[42] Commissioner of Internal Revenue vs. Hitachi Computed Products (Asia) Corporation, CA G.R. SP No. 63340, February 7, 2002 *citing* Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151

Pursuant to Section 135 of the NIRC of 1997, petroleum products sold to international air carriers, whether of Philippine or foreign registry, are exempt from excise taxes provided that: **(a)** the petroleum products are consumed outside the Philippines; **(b)** such petroleum products be stored in a bonded storage tank and maybe disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner; and **(c)** in the case of foreign international carriers, their country of registry exempt from excise or similar taxes petroleum products sold to Philippine carriers. To quote:

> "**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."

Petitioner posits that it sells and delivers Jet A-1 fuel to its various domestic and international customers including international carriers of Philippine or foreign registry which are exempt from excise taxes under Section 135 of the NIRC of 1997. Thus, petitioner claims that the excise taxes in the amount of ₱48,570,772.81 were erroneously or illegally paid.

Perusal of the records show that petitioner is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof;[43] that it manufactures Jet A-1 fuel in its refinery in Tabangao, Batangas utilizing imported crude as raw material; that in certain instances, petitioner also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas[44] primarily for sale and delivery to foreign and domestic air carriers and other customers; that on May to June 2010, petitioner imported Jet A-1 fuel through its refinery in Tabangao, Batangas ("Tabangao Refinery"), and accordingly, paid to the Bureau of Customs in Batangas the corresponding duties, taxes and fees including excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel. The details of petitioner's importations and payments of excise taxes are as follows:

Exhibit No.	Arrival Date	IED No.	IEIRD No.	Payment Date	Volume in Liters	Amount of Excise Tax paid
B	13-May-10	2010164	10PROIMP24	4-Jun-10	7,854,564	₱ 28,826,250.00
A	19-May-10	2010169	10PROIMP29	10-Jun-10	6,227,410	22,854,595.00
	TOTAL				**14,081,974**	**₱51,680,845.00**

Likewise, within the same period of June 2010, petitioner purchased imported Jet A-1 fuel from PTT at the Subic Bay Freeport Zone, and correspondingly paid the Bureau of Customs in Subic excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel. The details of its importations and payments of excise taxes are as follows:

Exhibit No.	Arrival Date	IED No.	IEIRD No.	Payment Date	Volume in Liters	Amount of Excise Tax paid
C	16-Jun-10	2010217	10PROIMP40	11-Jun-10	3,179,680	₱ 11,669,425.00

The foregoing importations of Jet A-1 fuel are supported by the following documents:

a. Import Entry and Internal Revenue Declaration ("IEIRD");[45]
b. Electronic IEIRD;[46]
c. Bill of Lading[47]

[43] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I) p. 96
[44] Par. 4 and 5, Statement of Facts, Petitioner's Memorandum, Docket (Vol. II) p. 1117
[45] Exhibits "A", "B" and "C"
[46] Exhibits "A-1", "B-1" and "C-1"

d. Proforma/Sales/Tax Invoice[48]
e. Certificate of Quantity Received[49]
f. Authority to Release Imported Goods[50]
g. Quantity Report (Petroleum Loading)[51]

From the foregoing importations and withdrawals of Jet A-1 fuel in the total of 17,261,654 liters (14,081,974 plus 3,179,680), petitioner avers that it sold a total of 13,234,543 liters, with excise tax payments of ₱48,570,772.81, to various international airlines from May 26 to July 2, 2010 for their use or consumption outside the Philippines as follows:

CUSTOMERS	**Volume in Liters**
Philippine Airlines Inc.	3,406,863
AHK Air Hongkong	190,075
Air China	123,120
Air Asia	330,203
Air Asia X	106,088
China Airlines	627,625
Federal Express	1,260
Japan Airlines	976,916
Jetstar Asia Airways	394,842
Korean Airlines	1,345,273
Qantas Airways	530,553
Qatar Airways	3,877,400
Royal Brunei Airlines	183,041
Singapore Airlines	915,454
Tiger Airways	225,830
TOTAL AVIATION SALES	**13,234,543**
Excise Tax Rate	₱ 3.67
TOTAL EXCISE TAX	**₱ 48,570,772.81**

To prove that the foregoing airlines were registered in the countries that grant reciprocal tax exemption to Philippine-registered airline carriers, petitioner secured from the Department of Foreign Affairs (DFA)[52] a list of countries that grant such exemptions with their corresponding dates of effectivity, as well as, Certification[53] issued by

[47] Exhibits "A-2", "B-2", "C-3"
[48] Exhibits "A-3", "B-3", "C-4", "C-5"
[49] Exhibits "A-4", "B-4", "C-7"
[50] Exhibits "A-5", "C-2"
[51] Exhibit "C-6"
[52] Exhibits "P", "P-1", "V" and "V-1"
[53] Exhibits "Q" and "Q-1"

the Civil Aviation Authority of the Philippines (CAAP) indicating the nationality and country of registration of the aircrafts listed therein. Likewise, various Air Services Agreements[54] were presented to prove the existence of an agreement between the Philippines and other countries on the grant of reciprocal tax exemption to Philippine-registered airline carriers; and the Certifications[55] issued by the Civil Aeronautics Board (CAB) to prove that the airline companies to whom petitioner sold Jet A-1 fuel during the period subject of the present claim have been issued a Foreign Air Carrier Permits (FACP) by the CAB which allow them to operate on international route.

Petitioner also presented, among others, the following documentary evidence to prove the sale and delivery of Jet A-1 fuel to the international carriers, which were duly examined by the Court-commissioned ICPA, Mr. Benjamin P. Valdez of Punongbayan and Araullo:

1. **Withdrawal Certificates (WCs)**[56] – which show the removal of imported Jet A-1 fuel from petitioner's refinery at Tabangao, Batangas to Pandacan Depot which shall be delivered to Joint Oil Company Aviation Storage Plant ("JOCASP") and to Lubwell Facility in Clark for eventual sale and delivery to the various international and domestic carriers;

2. **Official Register Books (ORBs)**[57] - which show the documentation relevant to the receipts and withdrawals of Jet A-1 fuel at the Tabangao refinery, Pandacan installation and JOCASP, as prepared by the BIR personnel, the Revenue Officer on Premises (ROOP) and petitioner's representative;

3. **Daily Product Movement Report**[58] - which shows the recording, summary and monitoring of removals as well as the running balances of imported Jet A-1 fuel at JOCASP;

4. **Various Sales Invoices**[59] - which prove petitioner's sale and delivery of Jet A-1 fuel to the international carriers;

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[54] Exhibits "S-1", "W" to ""EE"
[55] Exhibit "N-1", "N-2", and "N-3"
[56] Exhibits "F" , "JJ", "DDDD-1" to "DDDD-9"
[57] Exhibits "H" to "H-2"
[58] Exhibit "L"
[59] Exhibits "EEEE-1" to "EEEE-111"

5. Certificate of Inward Remittance[60] - which prove receipt of payment by petitioner through fund transfer or inward remittances for the sale and delivery of Jet A-1 fuel to international carriers;

6. Central Payment System (CPS)[61] – evidencing payments from international carriers;

7. Printouts of Petitioner's Computerized Accounting System Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts)[62] – to show printouts of the reports generated under petitioner's computerized accounting system to support sales and deliveries to various customers;

8. Aviation Service Returns[63] - which show the volume of Jet A-1 fuel delivered to the international carrier;

9. Delivery Notes (DNs)[64] – evidencing withdrawals and transfers from Pandacan to JOCASP or Lubwell Facility in Clark.

As ascertained by the ICPA and further verified by this Court, out of the total claim of ₱48,570,772.81, only the amount of ₱46,794,180.86, as summarized below,[65] was properly supported by relevant documents:

CUSTOMERS	Volume in Liters
Philippine Airlines Inc.	3,307,597
AHK Air Hongkong	190,075
Air China	123,120
Air Asia	285,353
China Airlines	627,625
Japan Airlines	916,985
Jetstar Asia Airways	394,842
Korean Airlines	1,345,273
Qantas Airways	530,553

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[60] Exhibit "G-2"
[61] Exhibits "BBBB-1" to "BBBB-150"
[62] Exhibits "AAAA-1" to "AAAA-111"
[63] Exhibits "CCCC-1" to "CCCC-616"
[64] Exhibits "FFFF-1" to "FFFF-443"
[65] Exhibit JJJJ of the ICPA Report (Exhibit MMMM)

Qatar Airways	3,781,674
Royal Brunei Airlines	183,041
Singapore Airlines	869,314
Tiger Airways	195,006
TOTAL AVIATION SALES	**12,750,458**
Excise Tax Rate	₱ 3.67
TOTAL EXCISE TAX	**₱ 46,794,180.86**

On the other hand, the remaining amount of ₱1,776,591.95[66] consisting of 484,085 liters of Jet A-1 fuel should be denied due to the following grounds:

	Volume in Liters	**Specific Tax @ ₱3.67/Liter**
F4 displays with excise tax component *(excise tax was passed on to an international carrier)*	106,088	₱ 389,342.96
Sales/Deliveries not fully supported with complete documents *(with no supporting DNs)*	377,997	1,387,248.99
TOTAL	**484,085**	**₱ 1,776,591.95**

Thus, based on the foregoing, it is clear that within the period May 26 to July 2, 2010, petitioner imported, sold and delivered petroleum products to international carriers, for which the corresponding excise taxes thereof were paid by petitioner upon importation.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱46,794,180.86** representing petitioner's erroneously paid excise taxes on petroleum products sold to international carriers from May 26 to July 2, 2010, computed as follows:

Claimed Excise Taxes	₱ 48,570,772.81
Less: Disallowed Excise Taxes	1,776,591.95
Substantiated Excise Taxes	**₱ 46,794,180.86**

[66] *See* Exhibit "JJJ-2" of the ICPA Report for details

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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