REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PACIFIC EAST ASIA CARGO AIRLINES, INC. and PETRON CORPORATION,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7668

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

NOV 05 2009; 10:08am

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

This Petition for Review seeks the refund of excise taxes on petroleum products erroneously paid by petitioners in the amount of **SEVEN HUNDRED FIVE THOUSAND FOUR HUNDRED SEVENTY THREE PESOS AND 09/100 (P705,473.09)** for the period August 12, 2005 to September 21, 2005.

STATEMENT OF FACTS

The facts are undisputed.

Petitioner PACIFIC EAST ASIA CARGO AIRLINES, INC. (PEAC for brevity) is a corporation organized and existing under Philippine law with principal office at 2nd Floor International Cargo Terminal Building, NAIA Complex, Pasay City[1]. It is engaged in the business of international aircraft carriage.

Petitioner PETRON CORPORATION (Petron for brevity) is a corporation organized and existing under Philippine law with principal office at Petron Megaplaza Building, 358 Sen. Gil Puyat Ave., Makati City[2]. It is engaged in the sale and manufacture of petroleum products.

Respondent COMMISSIONER OF INTERNAL REVENUE is the head of the government office with the authority to decide on administrative applications for tax refund and/or tax credit of internal revenue taxes erroneously paid and collected[3].

Petitioner PEAC has international cargo flights in Laoag City bound to Taipei and Pudong, Shanghai. From August 12, 2005 to September 21, 2005, it purchased Jet A-1 fuel[4] solely from Petron in Laoag which was sourced from Pandacan, Metro Manila[5]. The following quantities of Jet A-1 fuel have been sold and delivered to petitioner PEAC, for which it paid the corresponding excise taxes to petitioner Petron, who paid the same to respondent at the time of the withdrawal of the said fuel from Pandacan, pursuant to Section 130 (A) (2) of the NIRC of 1997. The details of the said transactions between petitioners PEAC and Petron are[6]:

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[1] Joint Stipulation of Facts and Issues (JSFI), par. 1, Rollo Vol. II, p. 295.
[2] Ibid., par. 2.
[3] Ibid., par. 4.
[4] A kind of aviation jet fuel and a petroleum product
[5] Amended Petition for Review, par. 78, Rollo Vol. II, pp.3-4
[6] Ibid., par. 11, pp. 5-10.

DATE OF PAYMENT	QUANTITY of FUEL (L)	EXCISE TAXES PAID (P)	AMOUNT (P)
August			
12	14,634	3.67	53,706.78
12	5,736	3.67	21,051.12
13	6,541	3.67	24,005.47
14	10,955	3.67	40,204.85
15	13,620	3.67	49,985.40
15	16,769	3.67	61,542.23
15	6,348	3.67	23,297.16
September			
4	5,033	3.67	18,471.11
6	10,783	3.67	39,573.61
7	14,733	3.67	54,070.11
8	11,300	3.67	41,471.00
15	16,150	3.67	59,270.50
16	9,943	3.67	36,490.81
17	18,016	3.67	66,118.72
17	15,645	3.67	57,417.15
19	7,778	3.67	28,545.26
21	8,243	3.67	30,251.81
TOTAL	**192,227**		**705,473.09**

After petitioner Petron's payment of the aforesaid excise taxes, the Jet-A-1 fuels were delivered to Petron's Office in Laoag, to be loaded to petitioner PEAC's aircrafts.

Petitioner PEAC claims that it paid petitioner Petron a total of P705,473.09 excise taxes at the time of withdrawal of the Jet A-1 petroleum product from Pandacan for the period August 12, 2005 to September 21, 2005.

On August 9, 2007, petitioner PEAC filed its written claim for tax refund[7] amounting to P10,842,075.48, which includes the amount of this claim of P705,473.09 with the Bureau of Internal Revenue District Office (BIR RDO) No. 51. As basis, petitioner PEAC claims that on the ground that it erroneously paid taxes to petitioner Petron on its petroleum products since the latter's sale to the former is exempt from excise taxes pursuant to Sec. 135 of the National Internal Revenue Code (NIRC) of 1997.

[7] Exhibits C and C-3

Petitioner Petron likewise filed, on the same date, its written claim for tax refund[8] for its petroleum products sold to petitioner PEAC. The claim was filed with RDO No. 121 or the Excise Large Taxpayers Office.

Since the earliest transaction involved in this claim is on August 12, 2005, both petitioners PEAC and Petron were constrained to file this instant Petition for Review on August 10, 2007[9] to toll the expiration of the two year period granted by law for filing for refunds or tax credits.

Respondent, by way of his Answer[10] and Amended Answer[11], raised the following SPECIAL AND AFFIRMATIVE DEFENSES:

> "4. Granting *arguendo* that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been erroneously or illegally collected in violation of the tax laws relied upon the petitioner.
>
> 6. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No[.] 112024, 302 SCRA 241, January 28, 1999).
>
> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

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[8] Exhibits D and D-3

[9] with a claim amounting to P10,842,075.48 for the period August 12, 2005 to July 7, 2006. However, on September 14, 2007, petitioners PEAC and Petron filed an Amended Petition for Review changing the covered dates of the claim to August 12, 2005 to September 21, 2005; and consequently the amount of the claim to P705,473.09.

[10] Rollo, Vol. II, pp. 161-162.

[11] Rollo, Vol. II, pp. 168-169.

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

In their Reply[12] to Amended Answer, petitioners state that:

"1. Petitioners specifically deny paragraph 6 of the Amended Answer on the ground that the cited rule as embodied in the case of ***Philippine Bank of Communications v. Commissioner of Internal Revenue***[13] finds no application in the instant Petition. Nowhere in the original and amended Petitions did Petitioners make any reliance, expressly or impliedly, on the statement that 'interpretation placed upon a statute by executive officers, whose duty is to enforce it is entitled with great respect by the courts.'[14] Petitioners did not cite any administrative issuance or ruling to bolster the claim for refund of erroneously paid excise taxes on petroleum products in the Petition for Review. Thus, to argue on the part of the respondent that 'such interpretation is not conclusive and will be ignored if judicially found to be erroneous[15]' is a defense that is highly misplaced and irrelevant from the allegations in the Petition for Review.

2. Petitioners specifically deny paragraph 8 of the Amended Answer on the ground that the claim by the respondent under the said paragraph that '[i]t is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended,' is again seriously misplaced, misleading, irrelevant

[12] Rollo, pp. 171-172
[13] GR No. 112024, 302 SCRA 241, 28 January 1999.
[14] See par. 6, p.2 of the Amended Answer.
[15] Id.

> and completely inapplicable to the instant Petition. To reiterate, the instant Petition is for refund of **excise taxes** on petroleum products erroneously paid by the petitioners from 12 August 2005 to 21 September 2005 in the total amount of SEVEN HUNDRED FIVE THOUSAND FOUR HUNDRED SEVENTY THREE PESOS AND 9/100 (P705,473.09). On the other hand, Sections 108 and 112 refer to provisions of the National Internal Revenue Code (NIRC) as amended, on **value-added tax** which have no relevance to the instant petition for the refund of erroneously paid excise tax on petroleum products. Moreover, written claims for refund[16] were duly filed in accordance with Section 229 of the NIRC. Furthermore, it is precisely because of the two year prescriptive period under Section 229 of the NIRC that the Petitioners are constrained to file the instant Petition before this Honorable Court on 10 August 2007. The earliest transaction involved in the instant case is on 12 August 2005 hence the elevation of the case to this Honorable Court of Tax appeals so as to prevent the prescription of the claim for recovery of erroneously collected excise tax on petroleum products on 13 August 2007."

After trial on the merits, this case was submitted for decision on November 27, 2008, taking into consideration petitioner's Memorandum filed on November 21, 2008 and respondent's Memorandum posted on the same date as petitioner's.

STATEMENT OF THE ISSUE

The parties submitted this sole issue[17] for this Court's resolution:

"[W]hether or not the petitioners are entitled to their claim for tax refund of erroneously paid excise taxes on Jet A-1 aviation turbo jet fuel to the Bureau of Internal Revenue from 12 August 2005 to 21 September 2005 in the total amount of SEVEN HUNDRED FIVE THOUSAND FOUR HUNDRED SEVENTY THREE PESOS AND

[16] See copy of PEAC's letter application for tax refund dated 9 August 2007 and BIR Form No. 1914 filed with RDO 51 attached to the Amended Petition for Review as Annexes "C" and "C-1", respectively. See also a copy of Petron's letter application for tax refund dated 9 August 2007 and BIR Form No. 1914 filed with RDO 51 attached to the Amended Petition for Review as Annexes "D" and "D-1", respectively.

[17] Supra, note 1, par. 9.

09/100 (P705,473.09) for the sale of Jet A-1 fuel by Petron to PEAC for the latter's international air cargo flights form Laoag City to Taipie and Pudong, Shanghai."

THE COURT'S RULING

Section 229 (A) of the National Internal Revenue Code (NIRC) of 1997 lays down the requisites for refund of tax erroneously collected, it reads:

> "**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, of any sum alleged to have been excessively or in any manner wrongfully 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."

This provision is congruent with the authority of respondent to refund erroneously collected taxes as stated in Sec. 24 of the same code, the pertinent portion of which reads:

> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may -
>
> (A) xxx
>
> (B) 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."

The aforequoted provisions presuppose that there are erroneously paid taxes made by the taxpayer. Before going into the merits of this petition, let us first determine who the taxpayer is in this petition.

Section 22 (N) of the NIRC of 1997 defines a taxpayer as "any person subject to tax." This definition was upheld by Supreme Court in *Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp.*[18], to wit:

> "A 'person liable to tax' has been held to be the 'person subject to tax' and properly considered a 'taxpayer'. The terms 'liable to tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax."

In the instant case, the two petitioners seek for the refund of the excise taxes that Petron paid to respondent.

Pursuant to Section 129 of the NIRC of 1997, excise taxes refer to taxes imposed on specified goods manufactured or produced in the Philippines for domestic consumption for any other disposition and to things imported. The said excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production.

[18] GR No. 66838, December 2, 1991

The subject of this Petition is the excise tax imposed pursuant to Section 148(g) of the NIRC 1997 on the aviation Jet A-1 fuel petitioner Petron sold to petitioner PEAC. Clearly, petitioner Petron is the manufacturer or producer of the Jet A-1 fuel liable to the payment of the excise taxes before the removal of the said fuel from the place of its production, which is Pandacan in the instant case.

Hence, petitioner Petron is the taxpayer as contemplated in Section 22 (N) of the NIRC of 1997; the one with the legal obligation or duty to pay a tax and the proper person to file a case for refund, in case of an erroneous payment.

Petitioner PEAC's payment of excise taxes of Jet A-1 fuels it purchased from petitioner Petron, and its reliance on its exemption as provided in Section 135 of the NIRC of 1997 does not hold water in this case. This is for the simple reason that petitioner PEAC does not have the statutory obligation to pay the said excise taxes and entitled to a refund in case of erroneous payment. Petitioner PEAC should have invoked its tax exemption under Section 135 of the NIRC against petitioner Petron, before buying the Jet A-1 fuels. Since petitioner PEAC failed to do so, petitioner Petron passed on the burden of paying its excise taxes to petitioner PEAC. This exercise of petitioner Petron of passing on the burden of paying the excise tax to its purchasers is valid. Excise taxes, as ruled by the Supreme Court in *Maceda vs. Macaraig Jr.*[19], are in the nature of indirect taxes wherein it is paid by persons who can shift the burden upon someone else. For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, who in this case is petitioner PEAC, by adding them to the cash and/or selling price. Hence, what

[19] GR No. 88291, May 31,1991.

petitioner PEAC paid to petitioner Petron was treated by the latter as part of the cost of the Jet A-1 fuels and tacked it on to the selling price.

From the foregoing, it is clear that petitioner PEAC is not entitled to claim for refund. Since the impact of the excise taxes fell on petitioner PEAC, it may claim from petitioner Petron, and not from respondent, the reimbursement of what it paid to the former.

Having determined petitioner Petron as the proper party to a claim under Section 229 of the NIRC of 1997, let us now determine if petitioner Petron sold and delivered Jet A-1 fuels to petitioner PEAC and paid the corresponding excise taxes thereof.

Perusal of the Aviation Delivery Receipts[20] show that from August 12, 2005 to September 21, 2005, petitioner Petron delivered a total of 192,227 liters of Jet A-1 Fuel to petitioner PEAC for its international flights from Laoag bound to Pudong, Shangahai and Taipei. Those deliveries were corroborated by the judicial affidavit[21] of petitioners' witness Reizer V. Vizconde, who personally supervised and monitored the actual refueling by petitioner Petron refueler of petitioner PEAC's aircraft in Laoag bound to Taipei or Pudong, Shanghai. In addition thereto, petitioners presented Withdrawal Certificates[22] stating therein the exact quantities of Jet A-1 fuel actually withdrawn from Petron Pandacan and delivered to Petron in Laoag for the period August 12, 2005 to September 21, 2005.

Anent petitioner Petron's payment of the corresponding excise taxes, it made advance payments to respondent on its petroleum products estimated to be

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[20] Exhibits N-4, N-5, N-6, N-7, O-4, O-5, O-6, P-3, P-4, P-5, P-6, Q-3, Q-4, R-3, R-4, S-3 and T-3.
[21] Exhibit BB
[22] Exhibits F, G, H, I, J, K, L, M, II and II-1.

removed from Petron Pandacan Terminal to ensure that the balance of already paid excise taxes will not be less than the excise tax due for petroleum products actually removed. Upon the withdrawal petitioner Petron's petroleum products from Pandacan, it filed another set of excise tax returns, to liquidate the advance payments it made. The details of the said payments are as follows:

EXCISE TAX RETURN	PAYMENT DETAIL INQUIRY			
Exhibit No.	Exhibit No.	Period	Date Filed and Paid	Advanced Payment
CC	HH	8/10/2005	8/11/2005	1,146,000.00
H-1	HH-1	8/14/2005	8/15/2005	540,000.00
CC-1	HH-2	8/15/2005	8/16/2005	25,000.00
CC-2	HH-3	8/16/2005	8/17/2005	360,000.00
CC-3	HH-4	8/17/2005	8/18/2005	100,000.00
CC-4	HH-5	8/18/2005	8/19/2005	350,000.00
CC-5	HH-6	8/21/2005	8/22/2005	100,000.00
CC-6	HH-7	8/22/2005	8/23/2005	130,000.00
CC-7	HH-8	8/23/2005	8/24/2005	165,000.00
CC-8	HH-9	8/24/2005	8/25/2005	180,000.00
CC-9	HH-10	8/25/2005	8/26/2005	550,000.00
CC-10	HH-11	8/28/2005	8/29/2005	82,000.00
CC-11	HH-12	8/29/2005	8/30/2005	233,000.00
CC-12	HH-13	8/30/2005	8/31/2005	5,500,000.00
TOTAL				**9,461,000.00**

The corresponding liquidation of the excise taxes due on the said petroleum products is as follows:

Exhibit No.	Period	Date Filed and Paid	Advanced Payment
F-1 to F-2	8/12/2005	8/15/2005	354,024.00
G-1 to G-2	8/13/2005	8/15/2005	15,414.00
H-1 to H-2	8/14/2005	8/15/2005	724,949.51
DD-1 to DD-2	8/16/2005	8/17/2005	498,494.59
EE-1 to EE-2	8/20/2005	8/22/2005	169,017.11
I-1 to I-2	9/5/2005	9/7/2005	253,410.64
J-1 to J-2	9/7/2005	9/8/2005	204,830.58
K-1 to K-2	9/16/2005	9/19/2005	150,583.35
L-1 to I-2	9/17/2005	9/19/2005	134,399.07
M-1 to M-2	9/21/2005	9/22/2005	247,327.39
TOTAL			**2,752,450.24**

From the foregoing, the Excise Tax Returns (Exhibits "CC" to "CC-12") contain the Filing Reference Number, which constitutes the proof of filing the returns. On the other hand, Exhibits "HH" to "HH-12" contain Confirmation and Acknowledgement Numbers which constitutes proof of petitioner Petron's payment of excise taxes to respondent. Payment was also established in the aforementioned Withdrawal Certificates submitted by petitioners which all bear the remark "TAX PAID". Moreover, as stated by petitioners' witness Susan G. Rivera in her Judicial Affidavit[23], the liquidated excise tax due found in Exhibits "F" to "M-2", "DD-1" to "DD-2" and "EE-1" to "EE-2" include all the excise taxes corresponding to the Jet A-1 fuel removed from Pandacan and delivered to Laoag for petitioner PEAC from August 12, 2005 to September 21, 2005.

Having determined that petitioner Petron sold and delivered jet A-1 fuel to petitioner PEAC, and paid the corresponding excise taxes thereof, let us now determine whether or not there was an erroneous payment made by petitioner Petron on the said transactions.

In *UST Cooperative Store v. City of Manila*[24], the Supreme Court explained that "there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made." Such payment is held to be not voluntary and, therefore can be recovered or refunded.

The tax subject of this case is excise tax of petroleum products. Section 135 of the NIRC of 1997 exempts the following entities from paying the excise taxes of petroleum products sold to them, to wit:

[23] Exhibit FF
[24] GR No. L-17133, December 31, 1965; cited in Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corp., GR No. 147295, February 16, 2007.

1. 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 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 the recommendation of the Commissioner;

2. 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

3. Entities which are by law exempt from direct and indirect taxes.

Petitioner Petron is not any among the abovementioned exempt entities. However, since it is settled that it sold and delivered petroleum products to petitioner PEAC, which alleges that it is one of the exempt entities from paying excise taxes pursuant to Section 135 of the NIRC of 1997, let us now discuss whether petitioner PEAC qualifies as such.

The fact that petitioner PEAC is an international carrier with authorized international flights from Laoag to Taipei and Pudong, Shanghai are duly established by the following documents:

1. Civil Aeronautics Board letters approving the request of petitioner PEAC for Authority to operate its air cargo flights from Laoag to Taipei and Pudong, Shanghai[25];

2. License of Operation issued by the Civil Aviation Administration of China (CAAC) allowing petitioner PEAC to operate regular round trip cargo flights between Laoag and Pudong, Shanghai;[26] and

3. Civil Aeronautics Administration Ministry of Transportation and Communications Air Route Certificate issued by the Chinese Government authorizing petitioner PEAC to operate air service with route of Laoag to Taipei and vice versa.[27]

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[25] Exhibit "Y"
[26] Exhibits "Z" to "Z-10"
[27] Exhibits "AA" to "AA-1"

From the foregoing, it is established that the Jet A-1 fuel petitioner Petron sold to petitioner PEAC was used and consumed solely for international flights of the latter from Laoag to Taipei and Pudong, Shanghai. Hence, petitioner PEAC is exempt from excise taxes on petroleum products, pursuant to Section 135 of the NIRC of 1997.

Petitioner Petron's excise taxes paid on jet A-1 fuel sold and delivered to petitioner PEAC, an exempt entity partakes the nature of erroneously or illegally collected taxes. It is refundable pursuant to Section 229 of the NIRC of 1997, subject to the two-year prescriptive period reckoned from the date of the payment of the excise tax.

Records show that the earliest withdrawal of Jet A-1 fuel covered by the instant case was made on August 12, 2005[28]. Petitioners PEAC[29] and Petron[30] filed their respective administrative claim for refund on August 9, 2007 and the instant petition for review on August 10, 2007. Thus, petitioners' claims for refund were seasonably filed pursuant to Section 229 of the NIRC of 1997.

Upon examination of the documentary evidence presented, Petitioner Petron duly substantiated its claim and therefore is entitled to its claim for tax refund in the total amount of **SEVEN HUNDRED FIVE THOUSAND FOUR HUNDRED SEVENTY THREE PESOS AND 09/100 (P705,473.09)** for the sale of Jet A-1 fuel by petitioner Petron to petitioner PEAC for the latter's international air cargo flights from Laoag City to Taipei and Pudong, Shanghai from August 12, 2005 to September 21, 2005; computed as follows:

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[28] Exhibit F
[29] Exhibits C to C-3
[30] Exhibits D to D-3

DATE OF PAYMENT	QUANTITY of FUEL		EXCISE TAXES PAID (P)	AMOUNT (P)
	L	Exhibit		
August				
12	14,634	N-4	3.67	53,706.78
12	5,736	N-5	3.67	21,051.12
13	6,541	N-6	3.67	24,005.47
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6	10,783	P-4	3.67	39,573.61
7	14,733	P-5	3.67	54,070.11
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17	18,016	R-3	3.67	66,118.72
17	15,645	R-4	3.67	57,417.15
19	7,778	S-3	3.67	28,545.26
21	8,243	T-3	3.67	30,251.81
TOTAL	**192,227**			**705,473.09**

Premises considered, the instant *Amended Petition for Review* is **PARTIALLY GRANTED.**

Petitioner **PEAC** is **NOT ENTITLED** to claim for refund for being not the "taxpayer" contemplated in Section 22 (N) of the NIRC of 1997.

Respondent **COMMISSIONER OF INTERNAL REVENUE is** hereby **ORDERED** to **REFUND** to petitioner **PETRON CORPORATION** the amount of **SEVEN HUNDRED FIVE THOUSAND FOUR HUNDRED SEVENTY THREE PESOS AND 09/100 (P705,473.09),** representing the excise taxes it paid corresponding to its transactions to excise tax exempt, petitioner PEAC, for the period August 12, 2005 to September 21, 2005.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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