REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SL HARBOR BULK TERMINAL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

EB CASE NO. 2928
(CTA Case No. 10289)

Present:
Ringpis-Liban, *Acting P.J.,*
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, *and*
Angeles, *JJ.*

Promulgated:
DEC 02 2025 3:15

x---x

DECISION

RINGPIS-LIBAN, J.:

Before this Court is the Petition for Review filed by petitioner on June 7, 2024[1] assailing the Decision[2] dated November 15, 2023, and Resolution[3] dated May 15, 2024, promulgated by the Court of Tax Appeals Special Second Division (Court in Division) in the case entitled "*SL Harbor Bulk Terminal Corporation vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 10289.

The dispositive portion of the Decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

---

[1] Rollo, CTA EB No. 2928, pp. 1-34.
[2] Ibid., pp. 39-69.
[3] Ibid., pp. 71-77A.

The dispositive portion of the Resolution reads:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* (Re: Decision dated 15 November 2023) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner SL Harbor Bulk Terminal Corporation is a domestic corporation organized and existing under and by virtue of Philippine laws, duly registered with the Bureau of Internal ("BIR") Revenue District Office ("RDO") No. 29, and with principal office at Block 4, Lots 10 and 11, Manila Harbor Center, North Harbor, Barangay 128, Zone 10, Tondo, Manila.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws the authority to carry out its functions, duties, and responsibilities of his office, including the authority to refund and/or credit taxes under Section 204 of the National Internal Revenue Code of 1997, as amended. as amended.[5]

THE FACTS

Records show that petitioner allegedly paid excise taxes in the amount of Php25,164,902.50 to the Bureau of Customs (BOC) on May 15 and 18, 2018, and June 7 and 8, 2018, relative to its importation of bunker fuel and diesel on various dates in May and June 2018.[6]

On June 26, 2020, petitioner filed its administrative claim for tax credit with Revenue District Officer (RCO) Teresita R. Yumang of RDO No. 29 of the BIR.[7]

The administrative claim was filed due to the erroneous payment of excise taxes on imported bunker fuel and diesel sold to tax-exempt entities registered with the Board of Investments (BOI), Subic Bay Metropolitan Authority (SMBA), and the Philippine Economic Zone Authority (PEZA), for the period covering April 1 to June 30, 2018.

---

[4] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 10289, p. 1318.
[5] Ibid., pp. 1318-1319.
[6] Exhibits "P-36-1.1.B", "P-36-1.2", "P-36-1.3", "P-36-1.4", P-36-1.5", "P-36-2.1 A", "P-36-2.2", "P-36-2.3", "P-36-2.4", and "P-36.2.5", "P-36-3.1", "P-36-3.2", "P-36-3.4", and "P-36-3.5", "P-36-4.1 A", "P-36-4.2", "P-36-4.3", "P-36-4.4" and "P-36-4.5".
[7] Joint Stipulation of Facts and Issue, Docket, p. 1319.

On June 30, 2020, petitioner filed a Petition for Review[8] before the Court in Division, praying that the Court give due course to the Petition for Review on account of the Commissioner's inaction to petitioner's administrative claim for tax credit; and after trial on the merits, the Court grants petitioner's claim for tax credit of erroneously paid excise tax in the amount of Twenty-Five Million One Hundred Sixty-Four Thousand Nine Hundred Two and 50/100Pesos (Php25,164,902.50).

On August 14, 2020, respondent filed by registered mail his Answer[9] on the Petition for Review.

On September 15, 2020, petitioner filed a Motion for Leave to Admit Amended Petition for Review, with attached Amended Petition for Review.[10]

In the Amended Petition for Review, the petitioner's claim for tax credit was reduced to Ten Million Three Hundred Thirty-One Thousand Six Hundred Sixty-Two and 50/100 Pesos (Php10,331,662.50).

On January 6, 2021, the Court granted the Motion for Leave to Admit Amended Petition for Review, and noted the Amended Petition for Review.[11]

The Pre-Trial Conference was held on February 21, 2021.[12]

On February 22, 2021, the parties filed their Joint Stipulation of Facts and Issues.[13]

In the Pre-Trial Order[14] dated March 8, 2021, the Court approved and adopted the parties' Joint Stipulation of Facts and Issues.

Trial thereafter ensued, wherein both parties presented their respective documentary and testimonial evidence.

The case was submitted for Decision on February 1, 2024.

On November 15, 2023, the Court in Division promulgated the assailed Decision[15] denying the case for lack of merit.

---

[8] Docket, pp. 7-31, with Annexes.
[9] Ibid., pp. 886-896.
[10] Ibid. pp. 990-929.
[11] Ibid., p. 1291.
[12] Ibid., 1294.
[13] Ibid., pp. 1818 – 1320.
[14] Ibid., pp. 1510-1516.
[15] Ibid., pp. 3363-3393.

On December 15, 2023, petitioner filed through a private courier its Motion for Reconsideration (Re: Decision dated 15 November 2023), which was received by the Court on December 18, 2023.[16]

On January 22, 2024, respondent filed his Comment (To Petitioner's Motion for Reconsideration dated December 15, 2023).[17]

On May 15, 2024, the Court in Division issued the assailed Resolution denying for lack of merit the petitioner's Motion for Reconsideration.[18]

Aggrieved, petitioner filed the instant "Petition for Review" before this Court on June 7, 2024.

On July 26, 2024, the Court *En Banc* ordered petitioners to submit the original or certified true copy of the Secretary's Certificate of Board Resolution relative to the filing of the Petition for Review, within five (5) days from notice.

On August 6, 2024, the Court *En Banc* received petitioner's "Compliance (Re Notice dated 26 July 2024)"[19]

On August 8, 2024, the Court *En Banc* ordered petitioner to submit additional four (4) copies of its "Compliance" which was received by the Court on August 6, 2024.[20]

On August 20, 2024, the Court *En Banc* received petitioner's "Compliance (Re Notice dated 08 August 2024)."[21]

On August 27, 2024, the Court *En Banc* noted petitioner's "Compliance (Re Notice dated 08 August 2024)."[22]

On October 21, 2024, the Court *En Banc* directed respondent to file Comment on the Petition for Review, within ten (10) days from notice.

On November 4, 2024, the Court received respondent's "Comment (To Petitioner's Petition for Review dated June 4, 2024)."[23]

---

[16] Ibid., 3394-3413.
[17] Ibid., pp. 3418-3434.
[18] Ibid., pp. 3439-3445.
[19] Rollo, pp. 80-82.
[20] Ibid., p. 88.
[21] Ibid., pp. 93-96.
[22] Ibid., p. 99.
[23] Ibid., pp. 101-102.

On December 12, 2024, the Court noted respondent's "Comment (To Petitioner's Petition for Review dated June 4, 2024)," and ordered the instant case submitted for decision.

THE ISSUE

"***Whether or not the Court in Division erred in denying, for lack of merit, the petitioner's claim for tax credit.***"

THE ARGUMENTS

Petitioner alleged that the Court in Division erred in denying, for lack of merit, the Petition for Review.

Petitioner insists that its claim for tax credit of erroneously or illegally paid excise tax is not barred by prescription. The Court in Division erred when it concluded that the prescriptive period for the claiming of tax credit in this case, starts on the date when the corresponding excise taxes were paid. Petitioner claims that at the time it paid the excise taxes, the same could not have been considered erroneous since the payments became erroneous only upon their sale to tax-exempt entities.

Petitioner's sales of petroleum products to Johnson Controls-Hitachi Air Conditioning Philippines, Inc. (Johnson) during the 2nd quarter of 2018 are exempt from excise tax considering that Johnson is an SBMA registered enterprise and a tax-exempt business enterprise since 1997 by virtue of its Certificate of Registration and Tax Exemption (CRTE).

Moreover, petitioner is entitled to a tax credit for the erroneously paid excise tax in the aggregate amount of Php10,331,662.50 covering the period of 01 April 2018 to 30 June 2018. Since the bunker fuel and diesel which it has imported was subsequently used to sell 4,132,665 L of BFO and SFO to SBMA and PEZA registered entities.

Conversely, respondent states that the Court has no jurisdiction over the original petition filed by petitioner for its claim for tax credit.

Respondent maintains that it is not stated in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended that the two (2)-year prescriptive period must reckon from the date of sale of petroleum products to tax-exempt entities. Thus, when petitioner filed its administrative claim for tax credit or refund of alleged erroneous payment on June 26, 2020, the same is already time-barred for being filed beyond the two-year prescriptive period.

Respondent agrees with the Court in Division that petitioner failed to prove that it is entitled to tax credit. The excise taxes on imported petroleum products shall be paid by the petitioner to the Customs Officers before the release of such products from the customs house. Hence, petitioner's payment cannot be considered as illegally or erroneously collected tax.

Respondent asserts that there is no sufficient proof that Johnson is an SBMA registered entity since 1997. Thus, petitioner agrees with the Court in Division that the sale of petroleum products to Johnson prior to June 18, 2018 is subject to excise tax.

Furthermore, the documentary evidence which petitioner presented cannot determine whether the petroleum products sold to tax exempt entities came from importations.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition for Review

On November 30, 2023, the petitioner received the Decision of the Court in Division. On December 13, 2023, petitioner filed a Motion for Reconsideration of the said Decision. On May 15, 2023, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner through its counsel on May 23, 2024.

From receipt of the said Resolution on May 23, 2024, petitioner had until June 7, 2024 within which to file the Petition for Review before the Court *En Banc*.

The "Petition for Review" was filed on June 7, 2024. Hence, this Petition for Review was timely filed.

The 2-year prescriptive period must be counted from the illegal payment of tax

After a careful evaluation of the facts, assigned errors and arguments raised by petitioner, the Court *En Banc* finds that the Petition for Review should be denied for lack of merit.

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

"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." *(Emphasis supplied)*

The Court in Division based the prescriptive period for the claiming of tax credit on the date when the corresponding taxes were paid as stated in the aforequoted provision.

Petitioner questions this interpretation and argues that the reckoning date of the prescriptive period should be from the sale of the products to the tax exempt entities pursuant to Section 135[24] of the NIRC of 1997, as amended. It claims that its administrative and judicial claims for tax credit filed on June 26, 2020 and June 30, 2020 have not prescribed counting 30 days from the lifting of the Modified Enhanced Community Quarantine (MECQ) on June 1, 2020.

Section 204 of the NIRC of 1997, as amended talks about credit or refund of taxes erroneously or illegally received. 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 by some other similar respect illegal.[25] Excise taxes will only be deemed erroneously or illegally collected once the petroleum products are sold to tax exempt entities mentioned under Section 135 of the NIRC, of 1997, as amended. It is only at this point when it could be ascertained that there has been erroneous or illegally collected excise taxes.

In *Chevron Philippines Inc. v. Commissioner of Internal Revenue*,[26] and *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[27] it was held that the payment of excise taxes by the taxpayer upon its importation of petroleum products was deemed illegal and erroneous only upon the sale of the petroleum products to entities that are by law exempt from direct and indirect taxes. Thus, the reckoning point of the 2-year period must start not from the payment of tax per se but from the erroneous or illegal payment of tax.

The phrase "two (2) years from the date of payment" of the second paragraph of Section 299 of the NIRC of 1997, as amended, must be read in relation to the title of the same Section, i.e. "Recovery of Tax Erroneously or Illegally Collected." Hence, the reckoning point of the 2-year period must start not from the payment of tax per se but from the erroneous or illegal payment of tax.

---

[24] "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 of 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 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."

[25] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April25, 2012.

[26] G.R. No. 210836 (Resolution) 01 September 2015.

[27] G.R. No. 211303, 15 June 2021.

Basic is the rule in statutory construction that laws should be given a sensible construction, so as to give effect to their rationale and intent and thus avoid an unjust or absurd interpretation.[28] *Interpretatio talis in ambiguis semper frienda est, ut evitatur inconveniens et absurdum.* When there is ambiguity, an interpretation that will avoid inconvenience and absurdity is to be adopted.[29] In other words, a rational interpretation must be effectuated.

Too literal and strict application of the law would result in absurdity and injustice which is frowned upon by the Court.

The following are the significant dates relevant to petitioner's claim for tax credit:

Invoice No.	Date of Sale	Last day of the two (2) years to file a claim for tax credit	Last day of the extended period to file an administrative claim for a tax credit pursuant to Item 39 of RR No. 11-2020	Date of filing of an administrative claim for a tax credit	Last day of the extended period to file a judicial claim for a tax credit pursuant to SC Administrative Circular No. 39-2020	Date of filing of a judicial claim for a tax credit
28024	April 7, 2018	April 7, 2020	June 14, 2020	June 26, 2020	July 1, 2020	June 30, 2020
28204	April 8, 2018	April 8, 2020				
28310	April 27, 2018	April 27, 2020				
28344	April 30, 2018	April 30, 2020				
28878	April 30, 2018	April 30, 2020				
28879	April 30, 2018	April 30, 2020				
28899	May 8, 2018	May 8, 2020	June 30, 2020			
29096	May 24, 2018	May 24, 2020				
29294	May 31, 2018	May 31, 2020				
29474	May 31, 2018	May 31, 2020				
29671	May 31, 2018	May 31, 2020				
29825	June 7, 2018	June 7, 2020	none		none	
29915	June 22, 2018	June 22, 2020				
30190	June 30, 2018	June 30, 2020				

Whether the reckoning point of the 2-year prescriptive period is the date when the excise taxes were paid *or* from the date of sale of the petroleum products to tax exempt entities, still the Court has jurisdiction only over a part of petitioner's claim for tax credit.

[28] Cosico Jr. v. NLRC, 338 Phil. 1080, May 23, 1997.

[29] Commissioner of Internal Revenue v. TMX Sales, Inc., 205 SCRA 184, 187, January 15, 1992.

After consideration of the evidence on record, the Court *En Banc* rules that the Court in Division has jurisdiction to the erroneous payments on May 8, 2018, May 24, 2018, May 31, 2018, and June 30, 2018 only. The rest of the claims are already barred by prescription.

In the assailed Decision,[30] the Court in Division ruled as follows:

> Nonetheless, under RA No. 11469, Section 2 of Revenue Regulations ("**RR**") No. 11-2020 extended to **June 30, 2020**, from the original period of two (2) years after the payment of the tax or penalty, the period to file application for tax credits/refunds for erroneous payments made from May 1 to 31, 2018. Thus, petitioner had until June 30, 2020 to file its administrative claim for the erroneous payments of excise taxes on May 15 and 18, 2018.
>
> In relation thereto, Administrative Circular No. 39-2020, issued on May 14, 2020, extended the filing of petitions and appeals that fall due up to May 31, 2020, for 30 calendar days counted from June 1, 2020, *viz.*:
>
>> "Considering that the Inter-Agency Task Force for the Management of Emerging Infectious Diseases has placed certain areas in the country, i.e. National Capital Region xxx xxx xxx under the Modified Enhanced Community Quarantine (MECQ) until 31 May 2020, all the courts in the said areas under MECQ shall operate as follows during the said period:
>>
>> xxx xxx xxx
>>
>> 7. The filing of petitions, appeals, complaints, motions, pleadings, and other submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are likewise extended for 30 calendar days counted from 1 June 2020." *[Emphasis and underscoring supplied.]*

Based on the foregoing discussions on the reckoning period of prescription and in view of the above-cited Administrative Circular, petitioner had thirty (30) days from June 1, 2020, or until July 1, 2020 to file its judicial claim for the erroneous payment of excise taxes on the sale of petroleum products on May 8, 2018, May 24, 2018, May 31, 2018 and June 30, 2018.

---

[30] Decision, pp. 8-10. Citations omitted.

Petitioner failed to prove that it is entitled to tax credit on the transactions that were not barred by prescription

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.[31]

Tax refunds derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State.[32]

After due consideration of the arguments of the parties and based on the evidence on record, the Court *En Banc* finds that petitioner failed to present documentary proof of the alleged erroneous payment of excise taxes on the petroleum products sold to tax exempt entities. Thus, the petitioner's claim for tax credit was correctly denied by the Court in Division.

As aptly discussed in the assailed Decision:[33]

> "As can be gleaned from the above provision and consistent with the earlier quoted Section 229 of the NIRC of 1997, as amended, it must be shown that (1) the entity to which petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes, and (2) petitioner paid the claimed excise taxes on the same petroleum products sold to the exempt entity.
>
> As held by the Supreme Court in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under the afore-quoted Section 135, any excise taxes that were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund.
>
> xxx xxx xxx
>
> In this case, petitioner presented the Certifications issued by the SBMA and PEZA to prove that its customers, as enumerated below, are SBMA and PEZA-registered entities:

---

[31] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[32] *Gulf Air Company, Philippine Branch (GF) vs. Commissioner of Internal Revenue*, G.R. No. 182045, September 19, 2012.
[33] Decision, pp. 30-32. Citations omitted.

Customer Name	SBMA/PEZA Certification	Exhibit No.
Johnson Controls-Hitachi Air Conditioning Philippines, Inc.	SBMA CRTE No. 1997-0022	"P-41-1"
JX Nippon Mining & Metals Philippines, Inc.	PEZA Amended Certificate of Registration No. 96-080 and PEZA Certification No. 2018-0596	"P-41-2"
Philippine Sinter Corporation	PEZA Certificate of Registration No. 11-04 and PEZA Certification No. 2018-0841	"P-41-3"

A scrutiny of the above certifications shows that Exhibit "P-41-1" was valid from June 18, 2018 to June 17, 2021, while Exhibits "P-41-2 and "P-41-3 were valid for 2018.

Given that the SMBA issued the CRTE to Johnson Controls-Hitachi Air Conditioning Philippines, on June 18, 2018, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes in the SSEZ, as of the said date. Thus, the sale of imported petroleum products between petitioner and Johnson Controls- Hitachi Air Conditioning Philippines, Inc. prior to the issuance of said CRTE on June 18, 2018, is subject to excise taxes.

Furthermore, petitioner presented the following invoices to prove that it sold bunker fuel oil ("BFO") and special fuel oil ("SFO") to allegedly tax-exempt entities in April and June 2018:

Date	Invoice No.	Customer	Quantity (L)
April 7, 2018	280241	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 18, 2018	28204	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 27, 2018	28310	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
April 30, 2018	28344	JX Nippon Mining & Metals Phils.	360,000.00
April 30, 2018	28878	Philippine Sinter Corp.	265,948.00
April 30, 2018	28879	Philippine Sinter Corp.	1,826,717.00
May 8, 2018	28899	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
May 24, 2018	29096	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
May 31, 2018	29294	JX Nippon Mining & Metals Phils.	80,000.00
May 31, 2019	29474	JX Nippon Mining & Metals Phils.	280,000.00
May 31, 2018	29671	Philippine Sinter Corp.	800,000.00

N

June 7, 2018	29825	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
June 22, 2018	29915	Johnson Controls-Hitachi Air Conditioning Phils. Inc.	20,000.00
June 30, 2018	30190	JX Nippon Mining & Metals Phils.	380,000.00
		TOTAL	**4,132,665.00**

Hence, petitioner's claim of P10,331.662.50 is computed as 4,132,665 liters of fuel oil sold to tax-exempt entities multiplied by the excise tax rate paid of P2.50.

As stated earlier, petitioner's sales to Johnson Controls-Hitachi Air Conditioning Philippines, Inc. prior to the issuance of the CRTE on June 18, 2018, are subject to excise tax. Consequently, the following sales to the said entity prior to June 19, 2018 should be disallowed:

Invoice Date	Invoice No.	Quantity (L)
April 7, 2018	28024	20,000.00
April 18, 2018	28204	20,000.00
April 27,2018	28310	20,000.00
May 8, 2018	28899	20,000.00
May 24, 2018	29096	20,000.00
June 7, 2018	29825	20,000.00
	TOTAL	**120,000.00**

The ICPA on the other hand, reported the following findings:

Sales to tax exempt customers per petitioner declaration	4,132,665 L
Sales to tax exempt customers based on supported documents	2,030,000 L
Difference/lacking documents	**2,102,665 L**

Notably, the above discrepancy was accounted for as follows:

Lacking documents	1,092,665 L
Unsigned withdrawal certificates by BIR representatives	1,000,000 L
Discrepancy in the withdrawal certificate/sales invoice 29474	10,000 L
Total as accounted for	**2, 102,665 L**

Such being the case, petitioner's total disallowed sales to tax-exempt entities are summarized as follows:

Disallowed sales per ICPA report	2,102,665 L
Disallowed sales to Johnson Controls-Hitachi Air Conditioning Phils. Inc. prior to June 18, 2018	120,000 L
Total disallowed sales to tax-exempt entities	**2,222,665 L**

For the excise tax on the remaining sales of fuel oil of 1,910,000 liters (4,132,665 less 2,222,665) to be refundable, however, it must be determined that the subject sales came from the importation with the excise tax paid on May 18, 2018.

Thus, petitioner submitted, among others, the following documents, *viz.*:

Exhibit	Documentary Evidence
"P-31"	List of Ending Inventory as of December 31, 2017
"P-31-1"	Validation of Inventory as of December 31, 2017
"P-31-2"	List of Ending Inventory as of December 31, 2017, duly submitted to BIR
"P-32"	Importation Schedule 2018 (First Quarter)
"P-32-1.2" to "P-32-4.5"	Commercial Invoices, Bills of Lading, Assessments Notices, Import Entry Declarations, and Statements of Settlement of Duties and Taxes for January to March 2018
"P-32-5"	Summary of Local Purchases for 1st Quarter of 2018
"P-33"	Summary of Monthly Sales per Product for the 1st Quarter of 2018
"P-34"	Validation of Inventory Accounted vs. Reported to BIR as of 31 March 2018
"P-34-1"	Ending Inventory as of 31 March 2018 – Certificates of Stock Inventory
"P-35"	Comparative Inventory as of 01 April 2018 based on filed Petition
"P-36"	Petitioner's Importation Schedule for 2nd Quarter 2018
"P-36-1.1.B" to "P-36-4.5"	Commercial Invoices, bills of Lading, Assessment Notices, Import Entry Declarations, and Statements of Settlement of Duties and Taxes for April to June 2018
"P-37"	Summary of Monthly Sales per Product for 2nd Quarter 2018
"P-38"	Schedule of Sales to Excise Tax Exempt Entity for the period of 01 April 2018 to 30 June 2018
"P-38-1.1" to "P-38-20.4"	Sales Invoices, Withdrawal Certificates, Delivery Notes, and Proof of Collection

N

	for the period 01 April 2018 to 30 June 2018
"P-39"	Review of Subsequent Collection of Sales Subject for Tax Refund from 01 April 2018 to 30 June 2018
"P-46"	Summary of Local Purchases (2nd Quarter of 2018)
"P-47"	Ending Inventory as of June 30, 2018 – with Certificates of Stock Inventory

From the foregoing, it cannot be determined with certainty that petitioner paid the excise taxes on the petroleum products sold to Johnson Controls-Hitachi Air Conditioning Philippines, Inc.; JX Nippon Mining & Metals Philippines, Inc.; and Philippine Sinter Corporation, considering that it failed to offer in evidence the supply or sales agreements with these entities. Details such as the dates of the sale, a complete description of all petroleum products associated with the transaction, the dates of performance of each contractual event, evidence of an agreement between the tax-exempt entities and petitioner, and the purchase price, among others, would have been included in these supply or sales agreements, which petitioner did not submit. To be sure, the Summary of Monthly Sales per product for the 2nd Quarter of 2018, the Schedule of Sales to Tax-Exempt Entities for April to June 2018, sales invoices, withdrawal certificates, delivery notes, and collection receipts, presented by petitioner are insufficient to establish that petitioner sold the imported petroleum products, as explicitly imported on May 15, 2018 or May 18, 2018, to these entities, and that petitioner paid the claimed excise taxes on these same petroleum products sold to them.

Furthermore, even if petitioner provided the pertinent supply or sales agreements, the documentary evidence submitted is not enough to allow the Court to trace the movement of petitioner's fuel oil inventory using the first-in, first-out ("FIFO") method, which is the method of inventory valuation provided by its properly supported fuel oil inventory record and submitted the sales invoices and pertinent sales documents of <u>all</u> its sales for at least the 2nd quarter of 2018 for the Court to properly determine that the fuel oil sold to tax-exempt entities came from the imported lot that petitioner paid for excise tax on May 15, 2018 or May 18, 2018. Without information on all its purchases and sales for the claim period, the Court finds it impossible to apply the FIFO method." *(Emphasis supplied)*

In view of the foregoing, the Court *En Banc* finds that petitioner has not sufficiently established its case.

ACCORDINGLY, the Petition for Review is **DENIED for lack of merit.**

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(On Leave)

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice