CTA Form No. 8 (For DCC)

19-000611-0105

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NOS. 10232, 10266 & 10267

PETRON CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **March 11, 2025,**a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PETRON CORPORATION,
Petitioner,

CTA Case Nos. **10232, 10266** and **10267**

Members:

- versus -

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 1 1 2025; 3:40PM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated 15 August 2024)"[1] (**MR**), filed on 10 September 2024, with petitioner Petron Corporation's (**petitioner**'s/**Petron**'s) "Comment (on Respondent's [MR] dated September 9, 2024)"[2] (**Comment**), filed on 30 October 2024; and,

2. Petitioner's "Motion for Partial Reconsideration (Re: Decision dated August 15, 2024)"[3] (**MPR**), filed on 20 September 2024, with respondent's "Opposition (Re: [MPR] of the Decision dated [1]5 August 2024)"[4] (**Opposition**), filed on 15 October 2024.

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1 Division Docket, Volume IV, pp. 1597-1604.
2 Id., pp. 1630-1656.
3 Id., pp. 1608-1619.
4 Id., pp. 1623-1626.

Both respondent's MR[5] and petitioner's MPR[6] seek the reconsideration, reversal, or setting aside of this Court's Decision[7] promulgated on 15 August 2024 (**assailed Decision**). The dispositive portion of which reads as follows:

> ...
>
> **WHEREFORE**, with the foregoing premises, the consolidated Petitions for Review filed by petitioner Petron Corporation on 26 December 2019 (CTA Case No. 10232), 11 March 2020 (CTA Case No. 10267), and 11 March 2020 (CTA Case No. 10266), respectively, are hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱727,332,597.00**, representing petitioner's erroneously paid excise taxes for its locally-produced unleaded gasoline fuel and diesel fuel oil sold to Micro Dragon Petroleum, Inc., a tax-exempt entity, for the period from 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018.
>
> **SO ORDERED.**
>
> ...

In his or her MR, respondent once again asserts that claims for refund of excise taxes paid are authorized only by Section 130(D)[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and not by Section 135(c)[9] of the NIRC of 1997, as amended. Moreover, respondent reiterated that petitioner is liable to pay excise tax on locally-produced unleaded gasoline fuel and diesel fuel oil subsequently sold and delivered to Micro Dragon Petroleum, Inc. (**MDPI**) because the latter failed to meet the conditions prescribed in its Subic Bay Metropolitan Authority (**SBMA**)-issued Certificate of Registration and

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5 Supra at note 1.

6 Supra at note 3.

7 Division Docket, Volume IV, pp. 1545-1596.

8 **SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* —

...

(D) *Credit for Excise Tax on Goods Actually Exported.* — **When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**: *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported. (Emphasis supplied)

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

...

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

Tax Exemption[10], particularly that MDPI's sales within the customs territory exceeded the 30% threshold. Thus, the excise taxes paid were not erroneously or illegally paid.

In its Comment[11], petitioner contends that the arguments in respondent's MR are mere rehash of those previously raised in respondent's Answer[12] dated 20 January 2020 and Memorandum[13] dated 10 May 2023. In the assailed Decision,[14] the Court has already thoroughly examined and passed these arguments.

On the other hand, petitioner, in its MPR[15], insists that it has fully complied with the legal requirements and has established, by a preponderance of evidence, its entitlement to a refund, including the amount of ₱46,567,625.00, which this Court disallowed. The excise tax payments (subject of the present refund claims) represent petitioner's erroneous excise tax payments on its locally-produced unleaded gasoline fuel and diesel fuel oil, which were sold to MDPI, a tax-exempt entity, for the period from 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of the taxable year (**TY**) 2018.

In respondent's Opposition[16], it is argued that this Court has already categorically ruled that the amount of ₱46,567,625.00 should be disallowed for failure to verify that it formed part of the excise tax payments subject of the present refund claims. Respondent asserts that claims for tax refunds are in the nature of tax exemptions and must therefore be strictly construed against the claimant. Consequently, such claims cannot be allowed unless granted in the most explicit and categorial language.

We resolve.

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10 See Certificate of Registration and Tax Exemption No. 2006-0048 dated 27 October 2017, Exhibit "P-884", USB (Exhibit "P-124-B"); Included under Exhibit "R-5", BIR Records (CTA Case No. 10232), pp. 3-4/Exhibit "R-8", BIR Records (CTA Case No. 10267), pp. 3-4/Exhibit "R-4", BIR Records (CTA Case No. 10266), pp. 304-305.

11 Supra at note 2.

12 Division Docket, Volume I, pp. 64-72.

13 Id., Volume IV, pp. 1468-1476.

14 Supra at note 7.

15 Supra at note 3.

16 Supra at note 4.

After a careful consideration of the parties' arguments, this Court finds no merit in both respondent's MR[17] and petitioner's MPR.[18]

RESPONDENT'S MOTION FOR RECONSIDERATION

As petitioner correctly argues, a cursory review of the instant MR immediately reveals that respondent merely rehashed his or her previous arguments (reiterating *word-for-word* the grounds and discussion in his or her Answer[19] and Memorandum[20]) that this Court has already considered and passed upon in the assailed Decision.[21] Given that respondent raises an issue that has already been resolved, this Court finds the instant MR unworthy of further consideration.

In the case of *The Department of Energy v. Commissioner of Internal Revenue*[22], the Supreme Court, citing *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[23], held that, while an MR, by its nature, may tend to dwell on issues already resolved in the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration, litigants must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.

Furthermore, as held in *Social Justice Society (SJS) Officers, et al. v. Alfredo S. Lim*[24], when the grounds relied on are mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the assailed Decision or re-write the *ponencia* in accordance with the outline of the MR.

Accordingly, since the instant MR fails to present any new or substantial legal ground that would warrant reconsideration of the assailed Decision, this Court finds the same to be without merit.

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17 Supra at note 1.
18 Supra at note 3.
19 Supra at note 12.
20 Supra at note 13.
21 Supra at note 7.
22 G.R. No. 260912 (Resolution), 30 August 2023.
23 G.R. No. 159938, 22 January 2007.
24 G.R. No. 187836 (Resolution), 10 March 2015.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

Petitioner assails the Court's disallowance amounting to ₱46,567,625.00 (out of the total excise tax payments of ₱773,902,402.00[25]) corresponding to petitioner's erroneous excise tax payments on its locally-produced unleaded gasoline fuel and diesel fuel oil subsequently sold and delivered to MDPI, a tax-exempt entity, for the period from 01 January 2018 to 30 September 2018, or the 1st to 3rd Quarters of TY 2018.

As explained in the assailed Decision[26], this Court could not verify whether the excise tax payments, amounting to ₱46,567,625.00 (corresponding to the removals of locally produced diesel fuel oil with a total volume of 18,627,050 L @ air), were included in the total excise tax payments of ₱773,902,402.00 (adjusted to ₱773,900,222.00) that are subject of the present refund claims. This determination could not be made by reconciling petitioner's Excise Tax Returns (**ETRs**) with the Official Register Books (**ORBs**) in petitioner's Computerized Accounting System (**CAS**) or the SAP-generated ORBs, *viz*:

> ...
>
> However, upon further verification, this Court finds that the following removals of locally-produced diesel fuel oil with the total volume of 18,627,050 L @ air and corresponding alleged excise tax payments in the aggregate amount of ₱46,567,625.00 should be disallowed, to wit:

Exhibit No.				Date Withdrawn	Total Locally-Produced Unleaded Gasoline Fuel and Diesel Fuel Oil Removed from the PBR for Sale & Delivery to MDPI	
ETR	SAP-generated ORB	COC	WC		Volume (in L @ air)	Excise Tax
"P-399"	"P-1016"	"P-983"	"P- 950"	25 April 2018	4,508,850	₱11,272,125.00
"P-460"	"P-1017"	"P-984"	"P- 951"	02 May 2018	3,011,360	7,528,400.00
"P-474"	"P-1019"	"P-985"	"P- 953"	17 May 2018	3,007,951	7,519,877.50
"P-489"	"P-1020"	"P-987"	"P- 954"	26 May 2018	8,098,889	20,247,222.50
				Total	18,627,050	₱46,567,625.00

> The said removals of 18,627,050 L @ air from the PBR that were subsequently sold to MDPI cannot be verified by reconciling petitioner's ETRs with its SAP-generated ORBs. Specifically, the aforementioned removals of locally-produced diesel fuel oil cannot be found in or traced within the detailed transaction listings in the

[25] Adjusted to ₱773,900,222.00.
[26] Supra at note 7.

corresponding SAP-generated ORBs, which reflect the breakdown of the amounts paid *per* ETR. This observation, coupled with the fact that the amounts paid *per* the corresponding ETRs tied up with the SAP-generated ORBs, suggests that these removals fall outside the scope of the subject refund claims. As a result, the Court cannot ascertain whether these removals are indeed part of the excise tax payments totalling ₱773,902,402.00 (with an adjusted amount of ₱773,900,222.00), which are the subject of the present refund claims.

Proof of payment of the subject taxes is essential in refund cases. While the collection of taxes may theoretically be found to be illegal or erroneous, the claimant cannot be refunded amounts that were not actually paid or remitted to the government.[27]

...

Petitioner now asserts that, based on the procedure carried out by the court-commissioned Independent Certified Public Accountant (**ICPA**), the ICPA successfully validated, confirmed, and traced the subject removals and the corresponding excise tax payments, amounting to ₱46,567,625.00, using the exhibits submitted to this Court. We quote below the pertinent portions of petitioner's arguments in its MPR:[28]

...

9. Petitioner respectfully submit that the removals of locally-produced diesel fuel oil with the total volume of 4,508,850 L @ air can be traced with Exhibits P-1016, P-983 and P-950, to wit:

	SAP-generated ORB	**COC**	**WC**
	P-1016	P-983	P-950
Volume (in L @ air)	15,872,750	4,508,850	4,508,850
Delivered from	PBR	SL-PanAsia	SL-PanAsia
Consignee	SL-PanAsia	[MDPI]	[MDPI]

10. Further, Petitioner respectfully submit that the removals of locally-produced diesel fuel oil with the total volume of 3,011,360 L @ air can be traced with Exhibits P-1017, P-984 and P-951, to wit:

	SAP-generated ORB	**COC**	**WC**
	P-1017	P-984	P-951
Volume (in L @ air)	10,008,511	3,011,360	3,011,360
Delivered from	PBR	SL-PanAsia	SL-PanAsia
Consignee	SL-PanAsia	[MDPI]	[MDPI]

[27] Supra at note 7, pp. 1591-1592; Citations omitted and italics in the original text.
[28] Supra at note 3, pp. 1612-1614.

11. Furthermore, Petitioner respectfully submit that the removals of locally-produced diesel fuel oil with the total volume of 3,007,951 L @ air can be traced with Exhibits P-1019, P-985, P-953, to wit:

	SAP-generated ORB	**COC**	**WC**
	P-1019	P-985	P-953
Volume (in L @ air)	6,007,288	3,007,951	3,007,951
Delivered from	PBR	SL-PanAsia	SL-PanAsia
Consignee	SL-PanAsia	[MDPI]	[MDPI]

12. Lastly, Petitioner respectfully submit that the removals of locally-produced diesel fuel oil with the total volume of 8,098,889 L @ air can be traced with Exhibits P-1020, P-987, P-954, to wit:

	SAP-generated ORB	**COC**	**WC**
	P-1020	P-987	P-954
Volume (in L @ air)	9,003,482	8,098,889	8,098,889
Delivered from	PBR	SL-PanAsia	SL-PanAsia
Consignee	SL-PanAsia	[MDPI]	[MDPI]

...

However, this Court notes that petitioner has still failed to provide a reconciliation that would confirm that the said removals of locally produced diesel fuel oil with a total volume of 18,627,050 L @ air can be found in or traced within the detailed transaction listings in the corresponding SAP-generated ORBs, which reflect the breakdown of the amounts paid *per* ETR.

Again, as explained in the assailed Decision, the aforesaid lack of reconciliation coupled with the fact that the amounts paid *per* the corresponding ETRs tied up with the SAP-generated ORBs[29], suggests that these removals fall outside the scope of the subject refund claims.

29

Excise Tax Payments *per* ETR [a]	**Exhibit No.**	**Excise Tax Payments *per* SAP-generated ORB [b]**	**Exhibit No.**	**Net Adjustments [c]**	**Net Amount Filed and Paid [d] = [b] – [c]**	**Difference [e] = [a] – [d]**
₱103,776,249.50	"P-399"	₱107,596,184.00	"P-1016"	(₱3,819,934.50)	₱103,776,249.50	₱–
76,746,540.52	"P-460"	74,393,008.03	"P-1017"	₱2,353,532.50	76,746,540.53	(0.01)
81,671,341.00	"P-474"	97,464,420.00	"P-1019"	(₱15,793,079.00)	81,671,341.00	–
93,464,773.80	"P-489"	101,503,961.80	"P-1020"	(₱8,039,188.00)	93,464,773.80	–

Thus, the Court remains unable to determine whether the excise tax payments corresponding to the removals of locally produced diesel fuel oil with a total volume of 18,627,050 L @ air, amounting to ₱46,567,625.00, were included in the excise tax payments totalling ₱773,902,402.00 (with an adjusted amount of ₱773,900,222.00), which are the subject of the present refund claims.

Moreover, it bears stressing that this Court is not bound by the findings of the court-commissioned ICPA. The ICPA Report is a tool or guide to aid the Court in the resolution of the case. It is only persuasive in nature and not conclusive upon the Court. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), provides:

> ...
>
> SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.** (Emphasis supplied)
>
> ...

Thus, while the ICPA is commissioned to assist the Court in determining the merits of a taxpayer's case, its findings and conclusions are not conclusive upon the Court. The Court remains free to either fully or partially adopt, or entirely disregard, the ICPA's findings after conducting its own verification and evaluation of the evidence on record. In other words, the Court will still examine and verify the documents audited or reviewed by the ICPA. Moreover, in the exercise of its sound discretion, the Court may render judgment without considering the ICPA Report. Clearly, petitioner cannot rely solely on the ICPA's findings to substantiate its claim, as the ultimate determination rests with the Court based on the evidence submitted by the parties.

This Court reiterates, for emphasis, that proof of payment of the subject taxes is essential in refund cases. While the collection of taxes may theoretically be found to be illegal or erroneous, the claimant cannot be refunded amounts that were not actually paid or remitted to the government.

In this case, petitioner failed to fully substantiate the present refund claims, as it did not provide proof demonstrating that the disallowed excise tax payments corresponding to the removals of 18,627,050 L @ air of locally produced diesel fuel oil were indeed paid and remitted to the Bureau of Internal Revenue (**BIR**). Given this crucial consideration, the Court affirms the disallowance of ₱46,567,625.00.

In light of the foregoing discussion, this Court finds no compelling reason to modify or overturn the assailed Decision.[30]

WHEREFORE, premises considered, respondent's "Motion for Reconsideration (Re: Decision promulgated 15 August 2024)" and petitioner's "Motion for Partial Reconsideration (Re: Decision dated August 15, 2024)" are **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

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30 Supra at note 7.