REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

CTA *EB* NO. 3085
(CTA Case No. 10502)

x - x

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 3087
(CTA Case No. 10502)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

MAR 3 1 2026 4:10pm

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DECISION

CUI-DAVID, J.:

In these consolidated *Petitions for Review*, both Pilipinas Shell Petroleum Corporation (**Shell**) and the Commissioner of

Internal Revenue (**CIR**) assail the *Decision*[1] dated September 23, 2024 and the *Resolution*[2] dated January 28, 2025, rendered by this Court's Third Division (Court in Division) in CTA Case No. 10502, entitled *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue.* The dispositive portions of the assailed *Decision* and *Resolution* are as follows:

<u>Assailed Decision dated September 23, 2024</u>:

> **ACCORDINGLY**, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱70,767,488.00, representing petitioner's erroneously paid excise taxes for its imported Jet A-1 fuel sold and delivered to tax-exempt international air carriers during the period from April to May 2019.
>
> **SO ORDERED.**

<u>Assailed Resolution dated January 28, 2025</u>:

> **FOR THESE REASONS**, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 23 September 2024)* and petitioner's *Motion for Partial Reconsideration* are both **DENIED**, for lack of merit.
>
> **SO ORDERED.**

In his *Petition for Review*[3] filed on February 12, 2025, docketed as CTA EB No. 3085, the CIR prays that the assailed *Decision* and *Resolution* be reversed and set aside, and that a new judgment be rendered denying Shell's entire claim for refund.

On the other hand, in its *Petition for Review*[4] filed on March 3, 2025, Shell prays that the assailed *Decision* and *Resolution* be set aside, and that a new one be rendered ordering the CIR to refund or issue a tax credit certificate in the amount of ₱71,182,352.00, representing its erroneously paid excise taxes on imported Jet A-1 fuel sold and delivered to tax-exempt international air carriers during the period from April to May 2019.

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[1] Division Docket – Vol. III, pp. 1025-1058.
[2] *Id.* at 1111-1115.
[3] *En Banc (EB)* Docket (CTA *EB* No. 3085), pp. 1-9.
[4] *EB* Docket (CTA *EB* No. 3087), pp. 52-65.

THE PARTIES

Shell is a corporation organized and existing under the laws of the Philippines with office address at 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, 1635 Taguig City, Philippines.[5]

The CIR, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

THE FACTS AND THE PROCEEDINGS

The relevant facts and antecedent proceedings, as narrated by the Court in Division in the assailed *Decision*, are as follows:

> On November 4, 2020, [Shell] filed its letter-application for refund or tax credit dated September 14, 2020 and *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the Excise Large Taxpayers Audit Division II of the BIR, seeking for the recovery of alleged excise taxes paid on Jet A-1 fuel imported in April 2019 which were sold to various international airlines for the period from April 9, 2019 to May 8, 2019, in the aggregate amount of ₱71,182,352.00, determined as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
Sales to international carriers of Philippine or foreign registry pursuant to Section 135 of the Tax Code	17,795,588	₱4.00 per liter	₱71,182,352.00

PROCEEDINGS BEFORE [THE COURT IN DIVISION]

> On May 17, 2021, [Shell] filed the present *Petition for Review*. The case was initially raffled to this Court's First Division.

> On October 26, 2021, [the CIR] filed his *Answer*, where he raised the following special and affirmative defenses: (1) Section 135 of the Tax Code does not automatically exempt from excise tax petroleum products sold to international

[5] *Id. at* 53, Petition for Review, The Parties.
[6] *EB* Docket (CTA *EB* No. 3085). p.2. Petition for Review, Parties.

carriers and exempt entities and agencies; (2) There is no provision in the Tax Code which provides that [Shell] is entitled to a refund or the issuance of tax credit certificate for excise taxes paid on imported Jet A-1 fuel sold to international air carriers; and (3) [Shell] is clearly asking for a refund or issuance of a tax credit certificate which the law itself does not clearly provide.

On March 22, 2022, [CIR] transmitted the *BIR Records* of the case, consisting of 190 pages in one (1) folder.

The Pre-Trial Conference was initially set on January 27, 2022, but was later reset on April 7, 2022, where [the CIR's] counsel manifested that he is waiving the right to present evidence in this case. Prior thereto, the *Pre-Trial Brief for [Shell]* was filed on March 11, 2022, while *[CIR's] Pre-Trial Brief* was filed on March 22, 2022.

On April 27, 2022, [Shell] filed a *Manifestation [On Non-Filing of Joint Stipulation of Facts and Issues]*, stating, among others, that it failed to enter into admissions and stipulation of facts with [CIR], which was noted by the Court in the Resolution dated May 6, 2022. On May 26, 2022, the Court issued the Pre-Trial Order.

During trial, [Shell] presented the following witnesses: (1) Ms. Anna Beatriz Vergel de Dios, [Shell's] Import/Additives Scheduler; (2) Mr. Matias D. Aquiatan, Jr., [Shell's] Country Operations Manager; (3) Mr. Jonathan Juanillo, [Shell's] Terminal Operations Manager at the Tabangao Depot; (4) Atty. Farida Nimfa G. Dimailig, [Shell's] Country Tax Manager; (5) Ms. Berenice Angelique L. Flores, [Shell's] Tax Advisor; (6) Ms. Maria Luz S. Verdejo, Head Librarian at the Carlos P. Romulo Library of the Department of Foreign Affairs-Foreign Service Institute; and (7) Ms. Madonna Mia S. Dayego, the Court-commissioned independent certified public accountant (ICPA).

The *Report* of the ICPA was submitted on July 5, 2022.

On August 26, 2022, [Shell] filed an *Omnibus Motion for Leave of Court: I. to Reopen the Case for Presentation of Additional Evidence; II. To Admit the Supplemental Judicial Affidavit of Atty. Farida Nimfa G. Dimailig; and III. To Defer the Filing [of] Formal Offer of Evidence.* [the CIR] failed to file his comment thereto. In the Resolution dated December 1, 2022, the Court granted the *Omnibus Motion for Leave of Court: I. to Reopen the Case for Presentation of Additional Evidence; II. To Admit the Supplemental Judicial Affidavit of Atty. Farida Nimfa G. Dimailig*, while the *[Motion] III. To Defer the Filing [of] Formal Offer of Evidence* was deemed moot. Thus, Atty. Farida Nimfa G. Dimailig was recalled to testify again.

> On August 30, 2022, [Shell] filed its *Formal Offer of Evidence Ad Cautelam with Manifestation [On Omnibus Motion for Leave of Court dated August 26, 2022 and filed on even date]*, to which [CIR] filed a *Comment (Re: Formal Offer of Evidence)* on October 4, 2022. Thereafter, [Shell] filed its *Supplemental Formal Offer of Evidence with Manifestation* on March 13, 2023; however, [CIR] failed to file comment thereto. In the Resolution dated June 6, 2023, the Court admitted all of [Shell's] offered exhibits.
>
> In the meantime, the present case was transferred to the Third Division of this Court pursuant to the Notice of Resolution dated May 31, 2023.
>
> On July 14, 2023, [the CIR] filed his *Memorandum*, while the *Memorandum for [Shell]* was submitted on July 26, 2023.
>
> The present case was considered submitted for decision on September 22, 2023.

On September 23, 2024, the Court in Division rendered the assailed *Decision*, partially granting Shell's *Petition for Review*. Citing Section 135 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and relevant jurisprudence, the Court in Division explained that the subject Jet A-1 fuel importations are tax exempt upon their sale to various international air carriers. However, the Court in Division found that while the excise taxes that Shell paid on the imported Jet A-1 fuel subsequently sold to tax-exempt international air carriers were indeed erroneous, only the amount of ₱70,767,488.00 had been sufficiently proven or substantiated.

Not satisfied, the CIR filed a *Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2024)*[7] on October 11, 2024, while Shell filed its *Motion for Partial Reconsideration*[8] on October 14, 2024.

On January 28, 2025, the Court in Division issued the equally assailed *Resolution* denying the parties' respective *Motions for Partial Reconsideration* for lack of merit.

Hence, the CIR and Shell separately filed their respective *Petitions for Review* before the Court *En Banc*, which were docketed as CTA EB No. 3085 and CTA EB No. 3087, respectively.

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[7] Division Docket – Vol. III, pp. 1059-1067.
[8] *Id.*, pp. 1071-1076.

On March 4, 2025, the Court *En Banc* ordered the consolidation of the two *Petitions for Review* pursuant to Section 1, Rule 31 of the Revised Rules of Court.[9]

Thereafter, on March 20, 2025, the Court *En Banc* issued a Resolution[10] directing the parties to file their respective comments on each other's *Petition for Review* within 10 days from notice.

In compliance, Shell filed its *Comment/Opposition [To Petition for Review dated February 7, 2025]*[11] on April 4, 2025. The CIR, however, failed to file any comment/opposition to Shell's *Petition for Review* despite the directive.[12] As such, on May 28, 2025, the instant consolidated *Petitions for Review* were submitted for decision.[13]

Hence, this Decision.

THE ISSUES

CTA EB No. 3085 (CIR's Petition for Review):

The CIR raises a single issue for resolution by the Court *En Banc*, to wit:

> WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT [SHELL] HAS SUFFICIENTLY PROVED THAT THE EXCISE TAXES IT PAID FOR THE IMPORTED JET A-1 FUEL AND SUBSEQUENTLY SOLD TO TAX-EXEMPT INTERNATIONAL AIR CARRIERS WERE ERRONEOUS AND THUS, REFUNDABLE, PURSUANT TO SECTIONS 204 AND 229 OF THE NIRC OF 1997.

CTA EB No. 3087 (Shell's Petition for Review):

Shell, on the other hand, likewise raises a single issue for resolution by the Court *En Banc*, to wit:

> WHETHER OR NOT THE HONORABLE THIRD DIVISION ERRED IN DISREGARDING THE OTHER DOCUMENTARY EVIDENCE OF [SHELL] PROVING THAT THE JET A-1 FUEL

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9 *EB* Docket (CTA *EB* No. 3085), p. 58.
10 *Id.*, p. 59.
11 *Id.* at 61-69.
12 *Id.* at 72, Records Verification dated April 23, 2025.
13 *Id.* at 73.

> SOLD TO AN AIR CARRIER NOT INCLUDED IN THE LIST ISSUED BY THE CIVIL AERONAUTICS BOARD WITH VALID FOREIGN AIR CARRIER'S PERMIT WERE USED OR CONSUMED OUTSIDE THE PHILIPPINES.

The CIR's arguments:

The CIR argues that, under Section 229, in relation to Section 129 of the NIRC of 1997, as amended, Shell may claim a refund only in cases of erroneous payment of excise taxes. Allegedly, in the instant case, the excise taxes paid by Shell were legally and validly collected, as Shell was liable to pay such taxes.

The CIR further argues that Section 135 of the NIRC of 1997, as amended, cannot be the source of Shell's right to claim a refund, as it merely enumerates entities exempt from the payment of excise taxes. The CIR posits that the proper source provision for a refund of excise taxes paid on exported domestic products is Section 130(D) of the NIRC of 1997, as amended, and that Shell should have complied with the requirements thereof.

In its *Comment/Opposition [To Petition for Review dated February 7, 2025]*, Shell submits that the arguments raised by the CIR are a mere rehash of arguments previously raised and already found to be without merit in the assailed *Decision* dated September 23, 2024. Hence, Shell asserts that the *Petition for Review* filed by the CIR should be denied outright for being *pro forma* and for lack of merit, citing the case of *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*[14]

Nevertheless, Shell counters that, in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*[15] ("***2021 PSPC case***"), the Supreme Court, echoing its earlier ruling in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*[16] ("***2015 Chevron case***"), allowed the refund or issuance of a tax credit certificate for excise taxes illegally or erroneously paid on imported petroleum products sold to various international carriers, pursuant to Section 135(a), in relation to Sections 204 and 229 of the NIRC of 1997, as amended. For Shell, it is a

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[14] G.R. No. 159938, January 22, 2007 [Per J. Garcia, First Division].
[15] G.R. No. 211303, June 15, 2021 [Per J. Perlas-Bernabe, *En Banc*].
[16] G.R. No. 210836, September 1, 2015 [Per J. Bersamin, *En Banc*].

well-established hornbook doctrine that once a court has laid down a principle of law applicable to a specific set of facts, it will adhere to that principle and apply it to all future cases involving substantially identical facts (*stare decisis et non quieta movere*).

Shell's arguments:

For its part, Shell avers that, in the assailed *Decision*, the Court in Division held that because Shell's customer, Deutsche Lufthansa AG, was not included in the list of foreign air carrier with a valid Foreign Air Carrier's Permit (**FACP**) as shown in the Civil Aeronautics Board Certification list, the excise taxes paid on the Jet A-1 fuel sold to Deutsche Lufthansa AG should be disallowed. For the Court in Division, without a valid FACP, it could not determine whether the subject imported fuel products were used or consumed outside the Philippines.

Shell, however, submits that the Aviation Service Returns (**ASRs**),[17] the Certification issued by the Civil Aviation Authority of the Philippines (**CAAP**),[18] and the Certification issued by the Department of Foreign Affairs (**DFA**)[19] sufficiently prove that the imported Jet A-1 fuel sold to Deutsche Lufthansa AG was used or consumed outside the Philippines.

According to Shell, it submitted ASRs covering transactions with Deutsche Lufthansa AG. It also adds that the ASRs clearly show the airline's destination is outside the Philippines. For Shell, the ASRs covering transactions with Deutsche Lufthansa AG prove that the imported Jet A-1 fuel sold to Deutsche Lufthansa AG was used or consumed outside the Philippines.

Further, Shell asserts that the CAAP and DFA Certifications show that the country of registry of Deutsche Lufthansa AG is Germany and that the Philippines has an existing Air Service Agreement with Germany. Thus, notwithstanding the absence of the FACP of Deutsche Lufthansa AG, Shell submits that it was still able to establish that the imported Jet A-1 fuel sold to Deutsche Lufthansa AG was consumed outside the Philippines, as supported by the

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[17] Exhibits P-68-562 to P-68-565.
[18] Exhibits P-40-1 and P-62-5.
[19] Exhibits P-41-10 and P-62-7.

ASRs, the CAAP Certification, the DFA Certification, and the Air Transport Agreement with Germany.

THE COURT *EN BANC'S* RULING

Before delving into the merits of the instant consolidated cases, the Court *En Banc* must first determine whether the present *Petitions for Review* were timely filed.

The present Petitions for Review were seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) states:

> SEC. 3. *Who may appeal; period to file petition.* — . . .
>
> . . . .
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Records show that the CIR received the assailed *Resolution* on January 30, 2025. Accordingly, the CIR had fifteen (15) days therefrom, or until February 14, 2025, to file a *Petition for Review* before the Court *En Banc.*

Evidently, the filing of the CIR's *Petition for Review* on February 12, 2024, was on time. Hence, the Court *En Banc* properly acquired jurisdiction over the same.

On the other hand, Shell likewise received the assailed *Resolution* on January 30, 2025. Counting 15 days therefrom, Shell had until February 14, 2025, to file its *Petition for Review.*

On February 14, 2025, Shell filed a *Motion for Extension of Time to File Petition for Review,*[20] seeking an additional period of 15 days, or until March 1, 2025, to file its *Petition for Review.* Said *Motion* was granted by the Court *En Banc* in a Resolution[21] dated February 17, 2025.

Considering that March 1, 2025 fell on a Saturday, Shell's filing of its *Petition for Review* on the next working day, March 3, 2025, was timely. Accordingly, the Court *En Banc* likewise has jurisdiction to take cognizance of Shell's *Petition for Review.*

The Court *En Banc* now resolves the merits of the consolidated *Petitions.*

<u>In CTA *EB* No. 3085</u>

The Court in Division committed no reversible error in granting Shell's claim for refund of excise taxes under Sections 204 and 229 of the NIRC of 1997, as amended.

The *Petition for Review* filed by the CIR is bereft of merit.

A careful examination of the CIR's arguments in his *Petition for Review* reveals that they merely reiterate the same contentions previously raised, addressed, and rejected by the Court in Division in the assailed *Decision* dated September 23, 2024, and *Resolution* dated January 28, 2025. As such, the Court *En Banc* finds no cogent reason to deviate from the findings of the Court in Division that Shell, as the statutory taxpayer that paid the excise taxes on petroleum products sold to international air carriers, is entitled to a refund or tax credit of the excise taxes it previously paid, pursuant to Section 135, in relation to Sections 204 and 229 of the NIRC of 1997, as amended.

Notably, the ruling of the Court in Division is firmly anchored in both law and jurisprudence. As aptly discussed in assailed *Decision*:

[20] *EB* Docket (CTA *EB* No. 3087), pp. 1-4.
[21] *Id.* at 51.

> [I]n *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation ("2014 Pilipinas Shell case")*, which involved the same parties, the Supreme Court categorically declared that [Shell], as the statutory taxpayer who paid the excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid pursuant to Section 135 of the NIRC, as amended, to wit:
>
> > 'x x x We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC**.'
>
> Moreover, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue* ("*2015 Chevron* case"), the exemption granted under Section 135 of the NIRC of 1997, as amended, was discussed as follows:
>
> > "Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous; and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products**."[22]

It bears emphasis that the Supreme Court has definitively settled the CIR's arguments in the *2021 PSPC case*, which was cited by the Court in Division in the assailed *Decision* dated September 23, 2024. Notably, in the *2021 PSPC case,* the Supreme Court also elucidated the conceptual distinctions earlier discussed in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[23] (*2014 PSPC case*) vis-à-vis its subsequent pronouncements in the *2015 Chevron case.*

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[22] Division Docket – Vol. III, pp. 1036-1037.
[23] G.R. No. 188497, February 19, 2014 [Per J. Villarama, Jr., First Division].

Given that the Supreme Court has squarely ruled on the matter, this Court has no recourse but to strictly uphold and apply such ruling. Until modified or reversed by the Supreme Court, the doctrine laid down in the *2021 PSPC case* remains binding. By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[24]

Thus, as the statutory taxpayer that paid the excise taxes on petroleum products sold to international air carriers, Shell is entitled to a refund or tax credit of the excise taxes it paid, pursuant to Section 135, in relation to Sections 204 and 229 of the NIRC of 1997, as amended.

In CTA *EB* No. 3087

Shell sufficiently established its entitlement to the full refund.

In the assailed *Decision* dated September 23, 2024, the Court in Division partially granted Shell's claim for refund or issuance of a tax credit certificate covering excise taxes paid on imported Jet A-1 fuel sold and delivered to tax-exempt international air carriers for the period from April to May 2019. While Shell applied for a refund or tax credit in the total amount of **₱71,182,352.00**, the Court in Division allowed the claim only in the reduced amount of **₱70,767,488.00**. The Court in Division ruled that only sales of imported Jet A-1 fuel to airlines with a valid FACP may qualify for a refund or issuance of a tax credit certificate for erroneously paid excise taxes. Since Shell's customer, Deutsche Lufthansa AG, was not included in the list of international air carriers with a valid FACP, the sale of 103,716 liters of Jet A-1 fuel, with corresponding excise taxes paid in the amount of ₱414,864.00, was disallowed. Thus:[25]

> In sum, [Shell] sufficiently proved that the excise taxes it paid for the imported Jet A-1 fuel and subsequently sold to tax-exempt international air carriers were erroneous and thus, refundable, pursuant to Sections 204 and 229 of the NIRC of 1997, but only in the reduced amount of ₱70,767,488.00, computed as follows:

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[24] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003 [Per C.J., Davide, Jr., First Division].

[25] Division Docket – Vol. III, p. 1057.

Particulars	Volume in Liters	Amount of Excise Taxes Paid at ₱4.00
Volume/Amount of Excise Tax Claim per Petition for Review	17,795,588	₱71,182,352.00
Less: Sales made to international carrier without valid FACP	103,716	414,864.00
Volume/Amount of Refundable Excise Taxes	**17,691,872**	**₱70,767,488.00**

In denying Shell's *Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2024)*, the Court in Division explained that "*without an FACP, the Court cannot determine whether the subject imported fuel products were used or consumed outside the Philippines.*"[26]

In its *Petition* before the Court *En Banc*, Shell asserts that, notwithstanding the absence of an FACP, the ASRs, the CAAP Certification, and the DFA Certification, sufficiently establish that the Jet A-1 fuel sold in this case was used or consumed outside the Philippines. Hence, Shell prays the Court *En Banc* to revisit the *assailed Decision* and *Resolution* of the Court in Division and rule that the excise taxes paid on imported Jet A-1 fuel sold and delivered to Deutsche Lufthansa AG, an international air carrier that refueled in the Philippines during the period from April to May 2019, are refundable pursuant to Section 229, in relation to Section 135(a) of the NIRC of 1997, as amended.

Shell's *Petition* is impressed with merit.

Section 135 of the NIRC of 1997, as amended, states:

> 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;

[26] *Id.* at 1115.

(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;

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

As pointed out by the Court in Division, for the sale of petroleum products to an international air carrier to qualify for excise tax exemption under Section 135 (a) of the NIRC of 1997, as amended, Shell must establish the following:

1. Proof of foreign registry of the international air carriers, or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights;

2. Proof that the imported Jet A-1 fuel was used or consumed outside the Philippines; and

3. Proof that the imported Jet A-1 fuel sold to international air carriers was stored in a bonded storage tank, and disposed of in accordance with applicable rules and regulations.

As correctly found by the Court in Division, Shell was able to satisfy the *first* and *third* requirements. The Court *En Banc* quotes with approval the findings of the Court in Division, as follows:

Proof of foreign registry of the international air carriers, or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights

As to the *first* requirement, [Shell] presented the Certifications issued by the Civil Aviation Authority of the Philippines (CAAP) dated March 31, 2021 and February 22, 2022. Later on, another Certificate dated August 12, 2022 was issued to correct some information due to typographical error to confirm the countries of registry of the international air carriers to whom the [Shell] sold and delivered Jet A-1 fuel, based on the aircraft registration code as provided by such international airline customers and as appearing in the Aviation Service Returns.

As to [Shell's] international air-carrier customers which are of Philippine registry, namely, Philippine Airlines, Inc., Cebu Air, Inc., and Philippines AirAsia, Inc., [Shell] presented the Certification from the Civil Aeronautics Board (CAB) dated March 24, 2021 which certifies that:

> *"a. Philippine Airlines, Inc. has been granted a franchise permit through Presidential Decree No. 1590 from June 11, 1978 to present,*
>
> *b. Cebu Air, Inc. has been granted a franchise permit through Republic Act No. 7151 (R.A. 7151), which was approved on August 30, 1991, from the date of effectivity of R.A. 7151 to present; and*
>
> *c. Philippines AirAsia, Inc., through its predecessor Asian Spirit, Inc., has been granted a franchise th[r]ough Republic Act No. 9183 (R.A. 9183), which was approved on January 09, 2003.*
>
> *The said airlines are authorized to operate and maintain air transport services in the Philippines and between the Philippines and other countries, and that R.A. 9183, R.A. 7151 and P.D. 1590 authorized Philippines AirAsia, Inc., Cebu Air, Inc. and Philippine Airlines, Inc. to operate international flights from the date of effectivity of R.A. 7151 and P.D. 1590 to present, including the year 2019."*

Considering the said pieces of evidence, the Court finds that [Shell] satisfied the *first* requirement.

. . . .

Proof that the imported Jet A-1 fuel sold to international air carriers were stored in a bonded storage tank and had been disposed of in accordance with the rules and regulations

[A]s to the *third* requirement, [Shell] presented the following witnesses to explain the process and documentation of the receipts and withdrawals of imported Jet A-1 fuel at [Shell's] storage tanks in Tabangao Refinery through the Tabangao Depot and its subsequent delivery to: (1) Joint Oil Company

Aviation Storage Plant at the Ninoy Aquino International Airport in Manila (JOCASP); (2) Clark Aviation Services, Inc. facility in the Clark International Airport in Pampanga (CASI), and (3) storage facility leased from Total Oil and Gas Resources, Inc., formerly the Total Bulk Corporation, near Mactan Cebu International Airport in Mandaue, Cebu (TOGRI) for eventual sale to international carriers:

. . . .

Based on their testimonies, the liters of imported Jet A-1 fuel that are stored in product tanks are withdrawn from the Tabangao Refinery to be delivered to intermediate storage facilities in JOCASP, CASI, and TOGRI. Deliveries to JOCASP, CASI and TOGRI are eventually sold and delivered to international air carriers refueling in the international airports.

Furthermore, these fuel withdrawn from the Tabangao Refinery and delivered to JOCASP and CASI pass through the Tabangao Depot and are delivered by lorries or tank trucks. Those withdrawn from the Tabangao Refinery and delivered to TOGRI are delivered straight from Tabangao Refinery by barge and do not pass through the Tabangao Depot. Once in JOCASP, CASI and TOGRI, the same are then sold and delivered to international air carriers which are refueling in the international airports.

The importation, as well as the withdrawal, of Jet A-1 fuel in the Tabangao Refinery are recorded and summarized in the Official Register Book (ORB), which is jointly signed by an authorized representative of petitioner and the Revenue Officer on Premises (ROOP). The ORB indicates the receipts and removals of Jet A-1 fuel for a certain period and the running balance of stored Jet A-1 fuel for that period.

Aside from the ORB, removals of Jet A-1 fuel are recorded in the Daily Product Deliveries Report (DPDR) which shows the date of removal of the Jet A-1 fuel, its shipment reference number, the Withdrawal Certificate (WC) covering the same, and the amount of excise tax paid thereon. Before the removal of the imported Jet A-1 fuel from the Tabangao Refinery, the WC is prepared and signed by the ROOP and a representative of [Shell]. The WC shows the source of the Jet A-1 fuel, its destination, the date of its withdrawal, and its volume at the time withdrawn.

Upon removal of the imported Jet A-1 fuel from the Tabangao Refinery through the Tabangao Depot for deliveries to JOCASP and CASI or directly from the Tabangao Refinery for deliveries to TOGRI, the Jet A-1 fuel is accompanied by a Bulk Delivery Note (BDN), which provides the date of the

> transfer of the imported Jet A-1 fuel, its volume, its source, and its destination.
>
> From JOCASP, CASI and TOGRI, the Jet A-1 fuel is eventually delivered to customer international air carriers via a specialized vehicle which pumps the Jet A-1 fuel directly into the tank of the air carrier. The specialized vehicle is equipped with a meter that determines the volume of Jet A-1 fuel pumped into the air carrier.
>
> The sales and deliveries of imported Jet A-1 fuel to international air carriers are supported by ASRs and [Shell's] Invoices. In an ASR, the customer acknowledges the receipt from [Shell] of a particular volume of Jet A-1 fuel. On the other hand, the [Shell's] Invoice indicates the quantity, unit price, any other charges, and the total amount due for the Jet A-1 fuel sold and delivered to the customer. The ASR is either printed through the Data Capture System (DCS) used by [Shell] or manually prepared when the system is down. With the DCS, the details of the delivery are immediately captured by [Shell's] computer system, enabling it to generate a report on a daily basis.
>
> A Monthly Supplier Sales Report (MSSR) may be generated by the DCS to summarize the daily deliveries to air carrier customers. It indicates the ASR number and date, the customer, the aircraft registration number, the volume of Jet A-1 fuel delivered to that customer, the destination of the aircraft, and the invoice number, and date. A Daily Product Movement Report Subject to Excise Tax Claim is also prepared, which is the summary of all transactions for the day including receipts from Tabangao Refinery.
>
> Based on the foregoing, the Court finds that [Shell] satisfied the *third* requirement.[27] (Citations omitted)

The controversy lies in Shell's compliance with the *second* requirement, *i.e.*, proof that the imported Jet A-1 fuel was used or consumed outside the Philippines. The Court in Division held that the 103,716 liters of Jet A-1 fuel sold by Shell to Deutsche Lufthansa AG, with corresponding excise taxes paid in the amount of ₱414,864.00, should be disallowed for failure to prove that the said Jet A-1 fuel sold to Deutsche Lufthansa AG was used or consumed outside the Philippines.

The Court *En Banc* does not agree.

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[27] *Id.* at 1048-1049;1054-1057.

Records show that the ASRs[28] submitted by Shell indicated the details of the Jet A-1 fuel deliveries made to international air carriers, including the origin and destination of the international carriers. In fact, the Court in Division itself acknowledged the probative value of the ASRs in the assailed *Decision*, stating:

> Furthermore, the Aviation Service Returns (ASRs) submitted by [Shell], indicated the details of the Jet A-1 fuel deliveries made by [Shell] to international air carriers, including the origin and destination of the international carriers. **It can be seen from each of the ASRs that the route of the international air carrier named therein (whether of foreign or Philippine registry) is only between the Philippines and other country, thereby proving that the sold imported Jet A-1 fuel was used or consumed outside the Philippines**.[29] (Emphasis and underscoring supplied)

As Shell aptly asserted, the ASRs covering its transactions with Deutsche Lufthansa AG, marked as Exhibits **P-68-562** to **P-68-565**, clearly show the airline's destination to be outside the Philippines. Hence, notwithstanding the absence of a valid FACP of Deutsche Lufthansa AG, Shell was able to sufficiently establish that the imported Jet A-1 fuel sold to Deutsche Lufthansa AG was used or consumed outside the Philippines.

As Shell has complied with all the requirements for its sale of petroleum products to Deutsche Lufthansa AG to be exempt from excise taxes under Section 135(a) of the NIRC of 1997, Shell is therefore entitled to the full amount of its refund claim.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue in **CTA *EB* No. 3085** is **DENIED**, for lack of merit.

On the other hand, the *Petition for Review* filed by Pilipinas Shell Petroleum Corporation in **CTA *EB* No. 3087**, is **GRANTED**. Accordingly, the assailed *Decision* dated September 23, 2024, and the *Resolution* dated January 28, 2025, of the Court in Division, insofar as they granted a refund or tax credit only in the reduced amount of ₱70,767,488.00, are hereby **SET ASIDE**, and a new one is hereby rendered.

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[28] Exhibits P-68-562 to P-68-565.
[29] Division Docket – Vol. III, p. 1049.

The Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR,** in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of Pilipinas Shell Petroleum Corporation, in the amount of **₱71,182,352.00**, representing its erroneously paid excise taxes on imported Jet A-1 fuel sold and delivered to tax-exempt international air carriers for the period from April to May 2019.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(With Concurring and Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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 consolidated cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- **PILIPINAS SHELL PETROLEUM CORPORATION,** *Respondent.*	**CTA EB No. 3085** (CTA Case No. 10502)

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PILIPINAS SHELL PETROLEUM CORPORATION, *Petitioner,* -versus- **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA EB No. 3087** (CTA Case No. 10502) Present: **RINGPIS-LIBAN,** PJ **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** and **ANGELES,** *JJ.* Promulgated: MAR 3 1 2026 4:10

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CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, *J.*:

I agree in the denial of the Commissioner of Internal Revenue's Petition for Review in CTA EB No. 3085, for wanting in merit. I, however, lodge my dissent on the grant of Pilipinas Shell Petroleum Corporation (PSPC)'s Petition for Review in CTA EB No. 3087.

To be sure, it was aptly observed that PSPC was able to prove that 103,716 liters of Jet A-1 fuel sold by PSPC to Deutsche Lufthansa AG (DLAG), with corresponding excise taxes of ₱414,864.00, were consumed or used outside the Philippines, through the presentation of the corresponding Aviation Service Returns.[1]

Still, PSPC is not entitled to the refund of foregoing amount because DLAG is *not* an international air carrier within the purview of Section 135(a) of the 1997 National Internal Revenue Code (NIRC), as amended. Said provision reads:

> **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** directly importing petroleum products, 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;[2]

Section 135(a) of the NIRC, as amended, is unequivocal in that the petroleum products must be sold to international carriers. Indeed, the *ponencia* mentioned that for one to be entitled to refund based thereon, there must be "[p]roof of foreign registry of the international air carriers, or in case of Philippine-registered air carriers, the latter's proof of authority to operate international flights."[3] DLAG failed to attain the required status of an international air carrier, for lack of Foreign Air Carrier Permit (FACP) in its favor.

An FACP is a permit issued by the Civil Aeronautics Board (CAB), and approved by the President of the Philippines, authorizing a foreign carrier to engage in foreign air transportation.[4] CAB Economic Regulation No. 1 requires an FACP, as a condition *sine qua*

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1 Pages 17 and 18, Decision in CTA EB Nos. 3085 and 3087.
2 Emphasis mine.
3 Page 14, Decision in CTA EB Nos. 3085 and 3087.
4 Rule I, Par. 1.3.11, Implementing Rules and Regulations of Executive Order 29, Series of 2011 Re: Civil Aviation, IRR-EO 29, May 2, 2011.

non before any foreign carrier is granted operating rights.[5] In other words, the absence of FACP does not merely cast doubt on the carrier's foreign registry; it negates its legal status as an "international carrier" itself. Therefore, without an FACP, the carrier cannot be deemed an "international carrier" within the contemplation of Section 135(a) of the NIRC, regardless of its claimed foreign registration. Precisely, the CTA in Division is correct in disallowing the refund of excise taxes pertaining to PSPC's sale of Jet A-1 fuel to DLAG, *viz.*:

> ...**[PSPC]'s customer [DLAG] was not included in the list with a FACP**. Thus, the sale of 103,716 liters of Jet A-1 fuel thereto, with corresponding excise tax payment of ₱414,864.00, is disallowed.[6]

As a result, PSPC's Petition for Review in CTA EB No. 3087, mainly praying for an additional refund of ₱414,864.00 pertaining to said transaction necessarily fails.

ACCORDINGLY, I VOTE to: (1) **DENY** the Petitions for Review in CTA EB Nos. 3085 and 3087, for lack of merit; and (2) **AFFIRM** *in toto*, the Decision[7] dated September 23, 2024 and Resolution[8] dated January 28, 2025 in CTA Case No 10502.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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5 *Id.*, Rule III, Par. 3.1.
6 Page 30, Decision in CTA Case No. 10502. *Rollo*, p. 46. Boldfacing mine.
7 Penned by Associate Justice Catherine T. Manahan (Ret.). Associate Justices Marian Ivy F. Reyes-Fajardo and Henry S. Angeles, concurring.
8 Penned by Associate Justice Catherine T. Manahan (Ret.). Associate Justices Marian Ivy F. Reyes-Fajardo and Henry S. Angeles, concurring.