Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8232
For: Refund

Members:
DEL ROSARIO, PJ,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
DEC 16 2014 ; 3:00 p.m.

x -x

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Pilipinas Shell Petroleum Corporation as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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1 Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

2 Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Petitioner seeks the refund or the issuance of a tax credit certificate (TCC) in the aggregate amount of Seventy-Three Million One Hundred Eleven Thousand One Hundred Fifty-Nine Pesos and 99/100 (₱73,111,159.99), representing excise taxes allegedly paid on Jet A-1 fuel sold to tax-exempt international air carriers for the period covering March 1 to April 7, 2009 pursuant to Section 135 of the National Internal Revenue Code (NIRC) of 1997.

Petitioner Pilipinas Shell Petroleum Corporation is a corporation organized and existing under the laws of the Philippines, with office address at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City.[3] *C*

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x x x x x x

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

x x x x x x

[3] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 108.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including, among others, the duty to act upon claims for refund or issuance of tax credit certificate as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is engaged among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.[4] Petitioner manufactures Jet A-1 fuel primarily for sale and delivery to foreign and domestic carriers and other customers. In certain instances, petitioner also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas.[5]

On February 4, 2011, petitioner filed a formal claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the BIR, seeking the recovery of excise taxes paid on imported Jet A-1 fuel sold to tax-exempt international air carriers for the period of March 1 to April 7, 2009 in the amount of ₱60,004,433.94,[6] computed as follows:

DESCRIPTION	VOLUME IN LITERS	EXCISE TAX RATE	AMOUNT
Sale to international carriers of Philippine or foreign registry pursuant to Section 135 of the NIRC of 1997	16,349,982	₱ 3.67	₱ 60,004,433.94
	16,349,982		**₱60,004,433.94**

On the same date, petitioner also filed a formal claim for refund or tax credit with the BIR Large Taxpayers Audit and Investigation Division II for the recovery of excise taxes paid under the Replenishment Scheme on locally-produced Jet A-1 fuel sold to tax-exempt international air carriers for

[4] Par. 3, Stipulation of Facts, JSFI, Docket, pp. 108-109.
[5] Par. 4, Statement of Facts, Petition for Review, Docket, p. 6.
[6] Exhibits "K", "K-1", and "K-2".

the period of March 21 to 31, 2009 in the aggregate amount of ₱13,106,726.05,[7] detailed as follows:

DESCRIPTION	VOLUME IN LITERS	EXCISE TAX RATE	AMOUNT
Sale to international carriers of Philippine or foreign registry pursuant to Section 6(C) of Revenue Regulations No. 3-2008	3,571,315	₱3.67	₱ 13,106,726.05
	3,571,315		**₱13,106,726.05**

Hence, petitioner's claim for refund or tax credit amounts to ₱73,111,159.99 (₱60,004,433.94 plus ₱13,106,726.05).

Due to the alleged inaction of respondent on petitioner's administrative claims for refund or issuance of tax credit certificate, petitioner filed the instant Petition for Review[8] on February 18, 2011.

Within the extended time granted by the Court,[9] respondent filed her Answer[10] through registered mail on March 29, 2011 and received by this Court on April 11, 2011, interposing the following Special and Affirmative Defenses:

> "5. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 6. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes alleged to have been erroneously or illegally collected. It provides:
>
> **'SEC. 229. Recovery of Tax Erroneously or Illegally Collected. -**

[7] Exhibits "L", "L-1" and "L-2".
[8] Petition for Review, Docket, pp. 5-23.
[9] Order, Docket, p. 58.
[10] Docket, pp. 62-69.

> 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 therefore, 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.'

It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the *clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications* ***(BPI Leasing Corporation vs. Honorable Court of Appeals)***. A perusal reading of the provision will emphasize that to validly substantiate a claim for refund, the taxes paid must be erroneously or illegally collected. Accordingly, the law granting tax exemption cannot rest on vague inference. *ℓ*

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau of Internal Revenue (BIR). A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

8. Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the **taxpayer bears the burden of establishing the factual basis of his claim for a refund.** ***(Far East Bank and Trust Company vs. CA, G.R. No. 129130, December 9, 2005, 477 SCRA 49).***

9. Furthermore, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications ***(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670)***.

10. The amount of Seventy-Three Million One Hundred Eleven Thousand One Hundred Fifty-Nine Pesos and 99/100 (Php73,111,159.99) being claimed by petitioner as alleged erroneously paid excise tax for the period of March 1 to April 7, 2009 is not properly documented.

11. Taxes collected are presumed to be in accordance with laws and regulations.

12. Taxes are essential to government's very existence ***(CIR vs. Solidbank Corporation)***. Hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered. Statutes granting tax exemptions are considered as a derogation of the sovereign authority ***(CIR vs. Fortune Tobacco Corporation)***. Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption ***(Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue)***.

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

The case was then set for pre-trial conference on May 20, 2011.[11] Respondent's Pre-Trial Brief[12] was filed on April 25, 2011; while petitioner's Pre-Trial Brief[13] was filed on May 16, 2011.

On June 9, 2011, the parties filed their Joint Stipulation of Facts and Issues.[14] As ordered by the Court,[15] they filed a Supplemental Joint Stipulation of Facts and Issues[16] on June 30, 2011. These were approved in a Resolution[17] dated July 6, 2011, which also terminated the pre-trial. Thereafter, a Pre-Trial Order[18] was issued by the Court on August 18, 2011.*C*

[11] Docket, p. 72.
[12] Docket, pp. 73-78.
[13] Docket, pp. 80-89.
[14] Docket, pp. 108-111.
[15] Resolution, Docket, p. 113.
[16] Docket, pp. 119-124.
[17] Docket, p. 126.
[18] Docket, pp. 137-145.

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

Petitioner presented Nicasio Manuel, Garry B. Galvez, Pamela B. Harder, Damaso Pastrana, Atty. Nigel T. Avila, Maria Luz Salting-Verdejo, and Benjamin P. Valdez, the Court-commissioned Independent Certified Public Accountant (CPA)[19], as its witnesses.

Petitioner filed its Formal Offer of Exhibits with Motion for Permanent Marking[20] on October 5, 2012. Respondent filed its Comment[21] on petitioner's Formal Offer of Exhibits on October 11, 2012.

In the Resolutions dated March 1, 2013[22] and June 14, 2013[23], this Court admitted petitioner's exhibits except Exhibits "BBBB-158" to "BBBB-461", "CCCC-42", "CCCC-63" to "CCCC-70" "CCCC-74", "CCCC-129", "FFFF-16", "FFFF-203", "FFFF-293", "FFFF-376", "FFFF-420", "FFFF-462", "FFFF-475", and "FFFF-548" for petitioner's failure to submit them in Court.

Petitioner's documentary exhibits are as follows:

Exhibits:	Description
A	Withdrawal Certificate ("WC") No. 2008-00001854 dated March 17, 2009.
A-1	Withdrawal Certificate No. 2008-00001886 dated March 21, 2009.
A-4 to A-10	Withdrawal Certificates from Tabangao to Pandacan.
B	Product Replenishment Debit Memo No. 2008-00000544 dated February 9, 2009.

[19] Docket, p. 295.
[20] Docket, pp. 320-360.
[21] Docket, pp. 761-764.
[22] Docket, pp. 789-791.
[23] Docket, pp. 916-917.

B-1	Product Replenishment Debit Memo No. 2008-00000642 dated March 18, 2009.
C	Import Entry and Internal Revenue Declaration No. 95806295 (Reference No. 2009-0035), with ETA on February 19, 2009, dated March 20, 2009.
C-1	Certificate of Quantity Received ("CQR") dated February 24, 2009.
C-2	Authority to Release Imported Goods No. 2007-00026291 dated February 24, 2009.
C-3	Import Entry Declaration No. 27105644 dated February 18, 2009.
C-4	Import Entry Declaration No. 27105565 dated February 26, 2009.
C-5	Tax Invoice No. 90333305/P dated March 9, 2009.
C-6	Bill of Lading No. 1363-01 dated February 13, 2009.
C-7	Security Bank Official Receipt No. 000599 dated March 20, 2009.
C-8	Security Bank Official Receipt No. 000541 dated February 18, 2009 with the amount P45,326,231.35.
C-9	Security Bank Official Receipt No. 000554 dated February 26, 2009 with the amount of P4,525,366.53.
D	Import Entry and Internal Revenue Declaration No. 95806943 (Reference Number 2009-0067) with ETA on March 17, 2009, dated April 16, 2009.
D-1	Import Entry Declaration No. 27183344 dated March 16, 2009.
D-2	Import Entry Declaration No. 27204414 dated March 24, 2009.
D-3	Bill of Lading No. 1666-01 dated March 10, 2009.
D-4	Tax Invoice No. 90336501/P dated April 2, 2009.

D-5	Certificate of Quantity Received dated March 20, 2009.
D-6	Authority to Release Imported Goods No. 2007-00026916 dated March 17, 2009.
D-7	Security Bank Official Receipt No. 000627 dated April 16, 2009 with the amount P7,896,521.39.
D-8	Security Bank Official Receipt No. 000583 dated March 16, 2009 with the amount P11,774,723.96.
D-9	Security Bank Official Receipt No. 000601 dated March 24, 2009 with various amounts in the aggregate of P1,256,149.25.
E	Sales Invoice No. 917376550 issued by Chevron Philippines Inc. dated March 31, 2009.
E-1	Sales Invoice No. 917376553 issued by Chevron dated March 31, 2009.
H	Withdrawal Certificate with number 00001688 dated February 21, 2009.
I	Aviation Service Return bearing Receipt No. 215700 dated March 3, 2009 for customer Air Asia.
J	Sales Invoice to Air Asia with number 110107598 dated March 3, 2009.
K	Letter dated January 24, 2011 addressed to the Bureau of Internal Revenue.
K-1	Letter stamp marked "BUREAU OF INTERNAL REVENUE RECEIVED 4 FEB 2011 LT EXCISE AUDIT II".
K-2	Application for Tax Credits/Refunds (BIR Form 1914) attached to Letter dated 24 January 2011.
L	Letter dated January 25, 2011 addressed to the Bureau of Internal Revenue.
L-1	Letter stamp marked "BUREAU OF INTERNAL REVENUE RECEIVED 4 FEB 2011 LT EXCISE AUDIT II".
L-2	Application for Tax Credits/Refunds (BIR Form 1914) attached to the Letter dated 25 January 2011.

M	Judicial Affidavit of Nicasio Manuel dated August 25, 2011.
M-1	Signature of Nicasio Manuel on the Judicial Affidavit dated August 25, 2011.
N	Official Register Book for the period March 1 to March 31, 2009.
O	Judicial Affidavit of Garry Galvez dated October 3, 2011.
O-1	Signature of Garry Galvez on the Judicial Affidavit dated October 3, 2011.
P	Official Register Book for the period April 1 to April 30, 2009.
Q	Pilipinas Shell Petroleum Corporation Product Transfer Advice with Delivery No. 96407746 dated March 5, 2008.
R	Certification from Qatar Airways on use for international operations of 4,600,626 liters of AVTUR for the period March 1 to April 3, 2009.
R-2	Aviation Service Return with Ticket No. 0901840.
S	Civil Aviation Authority of the Philippines ("CAAP") dated June 21, 2012.
T	List of Countries Granting Reciprocal Tax Exemption to Philippine-Registered Airline Carriers issued by the Department of Foreign Affairs ("DFA") dated October 16, 1990.
U	Letter of the Department of Foreign Affairs dated May 3, 2007.
U-1	List of Countries Granting Reciprocal Tax Exemption to Philippines Registered/ Designated Air Carriers attached to the Letter of the DFA dated May 3, 2007.
W	J.P. Morgan Chase Bank, N.A. Advice of Credit dated April 16, 2009 per Reference No. T37SWIC023166 by order of Philippine Airlines Inc. in the amount of USD706,101.01.
W-1	Central Billing System-Generated Report: Clearing Document 101301589 for Philippine Airlines, Inc.

X	Daily Stock Movement Report dated February 23, 2009.
Y	Judicial Affidavit of Pamela Harder dated November 4, 2011.
Y-1	Signature of Pamela Harder on the Judicial Affidavit dated November 4, 2011.
Z	Judicial Affidavit of Damaso Pastrana on the Judicial Affidavit dated December 5, 2011.
Z-1	Signature of Damasao Pastrana in the Judicial Affidavit dated December 5, 2011.
AA	Certification of Civil Aeronautics Board dated November 28, 2011 re Hong Kong Express Airways, Ltd.
BB	Certification of the Foreign Service Institute of the Department of Foreign Affairs dated December 5, 2011 re Air Service Agreement between Philippines and Japan.
BB-1	Air Services Agreement between the Government of Japan and the Government of the Republic of the Philippines.
CC	Air Service Agreement between the Government of Malaysia and the Government of the Republic of the Philippines.
DD	Air Transport Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of the Philippines.
EE	Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar.
FF	Agreement between the Government of the Republic of the Philippines and the Government of the People's Republic of China Relating to Civil Air Transport.
GG	Agreement between the Government of the Republic of the Philippines and the Government of Hong Kong Concerning Air Services.
HH	Air Transport Agreement between the Government of the Republic of the Philippines

	and the Government of the Republic of Singapore.
II	Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Korea.
JJ	Agreement between the Government of the Republic of the Philippines and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for Air Services between and beyond the Republic of the Philippines and the Brunei Darussalam.
KK	Letter dated December 5, 2011 issued by the Office of the Legal Affairs of the Department of Foreign Affairs with attached list of Countries with which the Philippines has binding Air Services agreements that have provisions that mandate the Philippines to grant their international carriers tax exemption on purchases of fuel and that grant reciprocal tax exemption privileges to Philippine carriers.
MM	Judicial Affidavit of Atty. Nigel T. Avila dated February 3, 2012.
MM-1	Signature of Atty. Nigel T. Avila on the Judicial Affidavit dated February 3, 2012.
NN	Sales Invoice of Pilipinas Shell Petroleum Corporation with number 110108766 dated April 1, 2009.
OO	Printout of Atlas Invoice for Asiana Airlines with number A702283357.
PP	Sales Invoice generated under our SAP Program and issued to PAL-Domestic dated March 1, 2007.
QQ to QQ-2	SAP Printouts denominated as *Aviation/Astra Nova (F4) Display: Overview of Billing Items* and *Aviation/Astra Nova (F4) Display: Item Conditions* under Billing Document No. 110107598.
RR	Sales Invoice with number 110107649 dated March 5, 2009.
RR-1	SAP Printouts denominated as *Aviation/Astra Nova (F4) Display: Overview of Billing Items.*

RR-2 to RR-3	SAP Printouts denominated as *Aviation/Astra Nova (F4) Display: Item Conditions* under Billing Document No. 110107649.
SS	Sales Invoice with number 110107632 dated March 4, 2009.
SS-1	SAP Printouts denominated as *Aviation/Astra Nova (F4) Display: Overview of Billing Items.*
SS-2 to SS-3	SAP Printouts denominated as *Aviation/Astra Nova (F4) Display: Item Conditions* under Billing Document No. 110107632.
TT	Central Billing System – Generated Report, Aviation Invoicing for Period 01/03/09 to 07/03/09: Input Reconciliation.
TT-1	Central Billing System - Generated Report, Aviation Accounting for Period 01/03/09 to 07/03/09: Proceeds Report.
TT-2	Central Billing System – Generated Report Aviation Accounting for Period 01/03/09 to 07/03/09: Aviation Totals by Product.
TT-3	Central Billing System – Generated Report Aviation Accounting for Period 01/03/09 to 07/03/09: Intra Group Commissions Aviation Trade (Comm. Type-A).
TT-4	Central Billing System - Generated Report Aviation Accounting for Period 01/03/09 to 07/03/09: Summary of Invoices Charged to You for Collection.
TT-5	Central Billing System - Generated Report Aviation Accounting for Period 01/03/09 to 07/03/09: Aviation Summary - Return No. 759.
UU	J.P. Morgan Chase Bank, N.A. Advice of Credit dated April 15, 2009 per Reference No. T37SWIC023142 by order of Shell Aviation Central Settlements Shell Aviation Ltd. York Road in the amount of USD3,900,756.56.
VV	Judicial Affidavit of Ms. Maria Luz Salting-Verdejo dated March 15, 2012.
VV-1	Signature of Ms. Maria Luz Salting-Verdejo on the Affidavit dated March 15, 2012.
WW	Permit to Use Computerized Accounting System dated June 4, 2003.

XX	Supplemental Judicial Affidavit of Damaso Pastrana dated April 4, 2012.
XX-1	Signature of Damaso Pastrana on the Supplemental Affidavit dated April 4, 2012.
YY	Certification from Large Taxpayers Field Operations Division dated May 29, 2012.
ZZ	Payment Form 0605 dated May 2, 2008.
AAA	Product Replenishment Certification No. 2008-00000259.
BBB	Supplemental Judicial Affidavit of Nicasio Manuel dated May 31, 2012.
BBB-1	Signature of Nicasio Manuel on the Supplemental Affidavit dated May 31, 2012.
CCC	Judicial Affidavit of Benjamin P. Valdez dated May 23, 2012.
CCC-1	Signature of Benjamin P. Valdez on the Affidavit dated May 23, 2012.
DDD	Civil Aeronautics Board ("CAB") Certification dated January 14, 2011 issued by Carmelo L. Arcilla, Executive Director.
DDD-1	CAB Certification dated March 16, 2010 issued by Carmelo L. Arcilla, Executive Director.
DDD-2	CAB Certification dated June 29, 2009 issued by Carmelo L. Arcilla, Executive Director.
AAAA-1 to AAAA-476	Printouts of PSPC's Computerized Accounting System Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts).
BBBB-1 to BBBB-157	Central Payment System ("CPS") Documents Evidencing Payments from International Carriers.
CCCC-1 to CCCC-41; CCCC-43 to CCCC-62; CCCC-64 to CCCC-69; CCCC-71 to CCCC-73; CCCC-75 to	Aviation Service Returns ("ASRs") of Various Airlines.

CCCC-128; CCCC-130 to CCCC-931	
EEEE-1 to EEEE-476	Sales Invoices for International Sales.
FFFF-1 to FFFF-15; FFFF-17 to FFFF-202; FFFF-204 to FFFF-292; FFFF-294 to FFFF-375; FFFF-377 to FFFF-419; FFFF-421 to FFFF-461; FFFF-463 to FFFF-474; FFFF-476 to FFFF-547; FFFF-549 to FFFF-638	Various Product Transfer Advice from Pandacan to JOCASP.
GGGG	Summary of Fund Transfer Evidencing Payments from International Carriers (specifically for Philippine Airlines or PAL transactions).
HHHH-1 to HHHH-5	Certificate of Inward Remittances.
IIII-1 to IIII-15	Certifications from Various Air Carriers.
JJJJ	Summary of Aviation Turbo Fuel Deliveries.
JJJJ-1	Details of Jet Aviation Turbo Fuel Deliveries to Various International Carriers Subject to Tax Specific Tax Claims Without Exceptions.
JJJJ-2	Details of Jet Aviation Turbo Fuel Deliveries to Various International Carriers Subject to Specific Tax Claims Not Duly Supported by Documents.
KKKK-1 to KKKK-44	Reconciliation of ORBs and Various Product Transfer Advice (Pandacan).
LLLL-1	Summary Table of Aviation Turbo Fuel Importations and Deliveries.

MMMM	Summary of Aviation Turbo Fuel Deliveries Sourced from Beginning Inventory of Pandacan.
MMMM-1 to MMMM-19	Documents Supporting the Withdrawals, Sales and Deliveries Sourced from Beginning Inventory of Pandacan.
NNNN	Report dated July 19, 2012 with stamp "Received" by this Honorable Court on July 20, 2012.
NNNN-1	Signature of Mr. Benjamin P. Valdez
OOOO	Judicial Affidavit of Benjamin P. Valdez dated July 23, 2012.
OOOO-1	Signature of Benjamin P. Valdez on the Affidavit dated July 23, 2012.

When it was respondent's turn to present her evidence, counsel for respondent manifested that respondent will no longer present evidence on the ground that only legal issues are involved in the case.[24]

Petitioner submitted its Memorandum[25] on August 22, 2013; while respondent filed her Memorandum[26] on September 9, 2013.

On October 22, 2013, petitioner filed a Motion to Suspend Proceedings[27] of the instant case pending final resolution before the Supreme Court of the case entitiled *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[28] *(Shell case)*, which held that petitioner is not entitled to claim for refund of excise taxes paid on marine fuel sold to international vessels and that petitioner is not entitled to claim exemption under Section 135 of the NIRC of 1997.

[24] Resolution, Docket, pp. 920-921.
[25] Docket, pp. 941-982.
[26] Docket, pp. 989-1007.
[27] Docket, pp. 1013-1017.
[28] 671 SCRA 241.

Respondent filed her Comment[29] to petitioner's motion on November 8, 2013, praying for the continuance of the instant case despite the non-finality of the *Shell case* as the same will not render moot the case pending before the High Court.

Petitioner filed its Reply to respondent's Comment on November 19, 2013.

In a Resolution[30] dated January 20, 2014, this Court denied the motion to suspend proceedings for lack of merit. Considering that there was no motion for reconsideration as per Records Verification[31] dated February 20, 2014, the case was submitted for decision in a Resolution[32] dated February 27, 2014.

Petitioner filed a Manifestation[33] on September 9, 2014, praying that this Court would resolve the instant case in accordance with the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[34]. The manifestation was noted by the Court in a Resolution[35] dated September 17, 2014.

As stipulated by the parties, the following are the issues[36] for the Court's consideration:

1. Whether or not petitioner has complied with the requirements under Section 229 of the National Internal Revenue Code of 1997, as amended, for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected.

[29] Docket, pp. 1026-1030.
[30] Docket, pp. 1043-1045.
[31] Docket, p. 1046.
[32] Docket, p. 1048.
[33] Docket, pp. 1049-1051.
[34] G.R. No. 188497, February 19, 2014.
[35] Docket, pp. 1053-1054.
[36] Stipulation of Issues, JSFI, Docket, pp. 110-111.

2. Whether or not petitioner is entitled to the recovery of excise taxes paid on Jet A-1 fuel allegedly sold to tax-exempt international air carriers for the period March 1 to April 7, 2009.

Pertinent to resolving the instant case are Sections 204(C) and 229 of the NIRC of 1997, as amended, to wit:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. - The Commissioner may -

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. 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."

"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."

From the foregoing, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:[37]

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

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

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

The Court finds it prudent to determine first the timeliness of the filing of petitioner's claim for refund.

Records indicate that the earliest importation arrived on February 19, 2009[38] for which the first payment of excise

[37] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 960, September 9, 2013.
[38] Exhibits "C" and "C-1".

tax for this importation was made on February 18, 2009.[39] Counting from February 18, 2009, petitioner therefore had until February 18, 2011 within which to file both its administrative and judicial claims.

As gleaned from the records of the present case, petitioner filed its administrative claim for refund with the BIR on February 4, 2011[40] and its judicial claim via Petition for Review on February 18, 2011. Petitioner, therefore, has complied with the mandatory two-year prescriptive period.

Anent respondent's contention that petitioner failed to exhaust administrative remedies since it filed the instant Petition for Review merely fourteen (14) days after filing the administrative claim, the same is untenable.

The taxpayer is given two years from his erroneous payment of tax within which to file his written claim for refund. However, if the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.[41]

The Court will now determine whether petitioner is entitled to a refund or tax credit.

Petitioner sells and delivers Jet A-1 fuel to its various domestic and international customers, including international carriers of Philippine or foreign registry that are exempt from excise taxes under Section 135 of the NIRC of 1997, as amended. To quote:

> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or*

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[39] Exhibits "C-3" and "C-8".
[40] Exhibits "K", "K-1", "K-2", "L", "L-1", and "L-2".
[41] *Gibbs, et. al. vs. Collector of Internal Revenue, et. al.,* G.R. No. L-13453, February 29, 1960.

Agencies. - Petroleum products sold to the following are exempt from excise tax:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

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

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

Petitioner argued that imported Jet A-1 fuel when sold under the circumstances provided under Section 135 of the

NIRC of 1997, as amended, should not be subject to excise tax. It contended that the exemption referred to in Section 135 pertains to the product as a consequence of the privileges enjoyed by the entities under the circumstances set therein and that no excise tax should have been due on the product itself when it came into existence. Consequently, since excise tax attaches to the goods as they come into existence, the taxpayer who paid for the excise tax erroneously, such as the manufacturer or the importer, as the case may be, will have the right to claim for refund of the erroneous tax payment made.

On the other hand, respondent posits that there is nothing under Section 135 of the NIRC of 1997, as amended, which explicitly grants exemption from the payment of excise tax in favor of oil companies selling their petroleum products to international carriers. Respondent cited the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[42], involving the same parties and the same issues, which ruled as follows:

> "**Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers.** Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. **Consequently, the oil companies which sold such petroleum products to international**

[42] G.R. No. 188497, April 25, 2012.

> **carriers are not entitled to a refund of excise taxes previously paid on the goods."** *(Emphasis supplied)*

However, this ruling was overturned by the Supreme Court in the same case, in its Resolution[43] dated February 19, 2014. The Supreme Court held that 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, to wit:

> "We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that **there is a need to reexamine the effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers**, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.
>
> xxx xxx xxx
>
> The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author[44] in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

[43] G.R. No. 188497, February 19, 2014.

[44] Antony Seely, *Taxing Aviation Fuel* (Standard Note SN00523, last updated 02 October 2012), House of Commons Library, accessed at www.parliament.uk/briefing-paper/SN00523.pdf.

> Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.

With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of 'tankering' would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.**

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. 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." *(Emphasis supplied)*

Inasmuch as the international carriers to which petitioner sold Jet A-1 fuel are exempt from excise taxes under Section 135(a) of the NIRC of 1997, as amended, petitioner as the statutory taxpayer who is liable to directly pay the excise tax on the Jet A-1 fuel can claim the refund or tax credit of the paid excise taxes.

The Court will now determine if petitioner is entitled to the refund or issuance of tax credit certificate in the aggregate amount of ₱73,111,159.99, representing excise taxes paid on Jet A-1 fuel sold to tax-exempt international air carriers pursuant to Section 135 of the NIRC of 1997 for the period covering March 1 to April 7, 2009.

As regards petitioner's compliance with the first requisite, *viz.*, that the claimed excise taxes in the total amount of ₱73,111,159.99 were erroneously or illegally paid, records show that petitioner is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof;[45] that it manufactures Jet A-1 fuel in its refinery in Tabangao, Batangas utilizing imported crude as raw material; and that in certain instances, petitioner also imports finished Jet A-1 fuel through its refinery in Tabangao, Batangas[46] primarily for sale and delivery to foreign and domestic air carriers and other customers.

In February 2009, petitioner's Tabangao Refinery was shut down to give way to the annual preventive maintenance.[47] Hence, on February 19, 2009 and March 17, 2009, petitioner imported 12,489,864 liters (the "First Importation") and 3,245,963 liters (the "Second

[45] Par. 3, Stipulation of Facts, JSFI, Docket, pp. 108-109.
[46] Par. 4, Statement of Facts, petitioner's Memorandum, Docket, p. 942.
[47] Judicial Affidavit, Docket, pp. 177-178.

Importation"), respectively, of Jet A-1 fuel which arrived at the port of Batangas and which were completely discharged on February 21, 2009 and March 19, 2009, respectively. The Import Entry and Internal Revenue Declarations (IEIRD) for the foregoing importations, which were finalized on March 20, 2009 on the First Importation and April 16, 2009 on the Second Importation, showed that petitioner paid to the Bureau of Customs in Batangas the corresponding duties, taxes and fees, including excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel. The details of petitioner's importation and payment of excise taxes are as follows:[48]

EXHIBIT NO.	ARRIVAL DATE	IEIRD NO.	IEIRD DATE	VOLUME IN LITERS	AMOUNT OF EXCISE TAXES PAID	DATE OF PAYMENTS
C to C-9	February 19, 2009	95806295	March 20, 2009	12,489,864	₱ 45,837,800.88[49]	Feb. 18 and 26, 2009
D to D-9	March 17, 2009	95806943	April 16, 2009	3,245,963	11,912,684.21	Mar. 16 and 24, 2009
Total				**15,735,827**	**₱57,750,485.09**	

The First Importation covered by IEIRD No. 95806295 dated March 20, 2009[50] is supported by the following documents:

a. Certificate of Quantity Received;[51]
b. Authority to Release Imported Goods (ATRIG);[52]
c. Machine Validated Import Entry Declaration No. 27105644;[53]
d. Machine Validated Import Entry Declaration No. 27105565;[54]
e. Tax Invoice;[55]
f. Bill of Lading No. 1363-01;[56]

[48] Par. 7, Statement of Facts, petitioner's Memorandum, Docket, pp. 942-943.
[49] Reflected in IEIRD is P45,902,704.83, difference is due to volume and excise tax adjustment.
[50] Exhibit "C".
[51] Exhibit "C-1".
[52] Exhibit "C-2".
[53] Exhibit "C-3".
[54] Exhibit "C-4".
[55] Exhibit "C-5".
[56] Exhibit "C-6".

g. Security Bank Official Receipt dated March 20, 2009;[57]
h. Security Bank Official Receipt dated February 18, 2009;[58] and
i. Security Bank Official Receipt dated February 26, 2009.[59]

The Second Importation covered by IEIRD No. 95806943 dated April 16, 2009[60] is supported by the following documents:

a. Machine Validated Import Entry Declaration No. 27183344;[61]
b. Machine Validated Import Entry Declaration No. 27204414;[62]
c. Bill of Lading No. 1666-01;[63]
d. Tax Invoice;[64]
e. Certificate of Quantity Received;[65]
f. Authority to Release Imported Goods (ATRIG);[66]
g. Security Bank Official Receipt dated April 16, 2009;[67]
h. Security Bank Official Receipt dated March 16, 2009;[68] and
i. Security Bank Official Receipt dated March 24, 2009.[69]

Likewise within the same period of March 2009, petitioner purchased imported Jet A-1 fuel from Chevron (Philippines) Corporation, which correspondingly paid to the Bureau of Customs in Tabangao, Batangas excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel.[70]

[57] Exhibit "C-7".
[58] Exhibit "C-8".
[59] Exhibit "C-9".
[60] Exhibit "D".
[61] Exhibit "D-1".
[62] Exhibit "D-2".
[63] Exhibit "D-3".
[64] Exhibit "D-4".
[65] Exhibit "D-5".
[66] Exhibit "D-6".
[67] Exhibit "D-7".
[68] Exhibit "D-8".
[69] Exhibit "D-9".
[70] Par. 7, Petition for Review, Docket, p. 7.

The details of petitioner's purchases of imported Jet A-1 fuel from Chevron are as follows:

EXHIBIT NO.	INVOICE NO.	INVOICE DATE	DELIVERY DATE	VOLUME IN LITERS	INVOICE AMOUNT
E	917376550	31-Mar-09	31-Mar-09	2,385,000	₱51,095,286.00
E-1	917376553	31-Mar-09	31-Mar-09	1,611,724	₱34,702,996.48
TOTAL				**3,996,724**	

From the foregoing importations of Jet A-1 fuel in the total of 19,732,551 liters (15,735,827 plus 3,996,724), petitioner avers that it sold a total of 16,349,982 liters, with excise tax payments of ₱60,004,433.94, to various international air carriers for the period March 1 to April 7, 2009 for their use or consumption outside the Philippines, detailed as follows:

CUSTOMERS	VOLUME IN LITERS
Air Asia	455,485.00
Air Hongkong	245,139.00
Asiana Airlines	273,552.00
China Airlines	736,581.00
China Southern	266,345.00
Hongkong Express	132,667.00
Japan Airlines	2,476,431.00
Jet Star Asia Airways	297,928.00
Korean Airlines	1,960,237.00
Philippine Airlines-International	2,014,264.00
Qantas Airways	741,811.00
Qatar Airways	3,827,445.00
Royal Brunei Airlines	223,835.00
Singapore Airlines	2,114,696.00
Tiger Airways	583,566.00
TOTAL AVIATION SALES	**16,349,982.00**
Excise Tax Rate	₱3.67
TOTAL EXCISE TAX	**₱60,004,433.94**

Meanwhile, on March 17, 2009, petitioner started withdrawing locally-produced Jet A-1 fuel intended for sale to international carriers for their use or consumption outside the Philippines.[71]

[71] Par. 15, petitioner's Memorandum, Docket, p. 946.

Pursuant to the Replenishment Scheme under Revenue Regulations No. 3-2008 dated January 22, 2008, petitioner paid excise taxes on the said removals through Product Replenishment Debit Memo[72].

The details of petitioner's removal and payment of excise taxes are as follows:

DATE OF REMOVAL	WITHDRAWAL CERTIFICATE	PAID THRU PRDM NO.	VOLUME IN LITERS	AMOUNT OF EXCISE TAX PAID
17-Mar-09	2008-00001854	2008-0000544	358,006	₱ 1,313,882.02
21-Mar-09	2008-00001886	2008-0000544 and 2008-0000642	3,213,309	11,792,844.03
			3,571,315	**₱13,106,726.05**

The above transactions were supported by the following documents:

a. Withdrawal Certificates;[73]
b. Product Replenishment Debit Memo;[74] and
c. Product Replenishment Certificate.[75]

The locally produced Jet A-1 fuels were eventually sold by petitioner to various international air carriers for the latter's use or consumption outside the Philippines from March 21 to 31, 2009, as follows:

CUSTOMERS	VOLUME IN LITERS
Air Asia	83,021.00
Air Hongkong	50,174.00
Asiana Airlines	72,330.00
China Airlines	153,869.00
China Southern	60,333.00
Hongkong Express	30,822.00
Japan Airlines	492,483.00
Jet Star Asia Airways	70,291.00

[72] Par. 16, petitioner's Memorandum, Docket, p. 946.
[73] Exhibits "A-1".
[74] Exhibits "B" and "B-1".
[75] Exhibits "AAA".

Korean Airlines	495,499.00
Philippine Airlines-International	454,360.00
Qantas Airways	189,093.00
Qatar Airways	773,181.00
Royal Brunei Airlines	50,073.00
Singapore Airlines	482,668.00
Tiger Airways	113,118.00
TOTAL AVIATION SALES	**3,571,315.00**
Excise Tax Rate	₱3.67
TOTAL EXCISE TAX	**₱13,106,726.05**

To prove that the foregoing airlines were registered in the countries that grant reciprocal tax exemption to Philippine-registered airline carriers, petitioner secured from the Department of Foreign Affairs (DFA)[76] a list of countries that grant such exemptions with their corresponding dates of effectivity, as well as, Certification[77] issued by the Civil Aviation Authority of the Philippines (CAAP) indicating the nationality and country of registration of the aircrafts listed therein. Likewise, Certifications[78] issued by the Civil Aeronautics Board (CAB) were submitted to prove that the airline companies to whom petitioner sold Jet A-1 fuel during the period subject of the present claim have been issued Foreign Air Carrier Permits (FACP) by the CAB that allow them to operate on international route.

Petitioner also presented, among others, additional documentary evidence to prove the sale and delivery of Jet A-1 fuel to international carriers, which were duly examined by the Court-commissioned Independent CPA, to wit:

1. **Withdrawal Certificates (WCs)**[79] – which show the removal of imported Jet A-1 fuel from petitioner's refinery at Tabangao, Batangas to Pandacan Depot which shall be delivered to Joint Oil Company Aviation Storage Plant (JOCASP) and to Lubwell Facility

[76] Exhibits "KK", "T", and "U" to "U-1".
[77] Exhibit "S".
[78] Exhibits "DDD", "DDD-1", and "DDD-2".
[79] Exhibits "A-1" to "A-10".

in Clark for eventual sale and delivery to the various international and domestic carriers;

2. **Official Register Books (ORBs)**[80] – which indicate the documentation relevant to the receipts and withdrawals of Jet A-1 fuel at the Tabangao refinery, Pandacan installation and JOCASP, as prepared by the BIR personnel, the Revenue Officer on Premises (ROOP), and petitioner's representative;

3. **Certificate of Inward Remittances**[81] - to prove receipt of payment by petitioner through fund transfer or inward remittances for the sale and delivery of Jet A-1 fuel to international carriers;

4. **Printouts of Petitioner's Computerized Accounting System Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts)**[82] – to show printouts of the reports generated under petitioner's computerized accounting system to support sales and deliveries to various customers;

5. **Aviation Service Returns**[83] - which show the volume of Jet A-1 fuel delivered to the international carrier;

6. **Sales Invoices for International Sales**[84] – to prove petitioner's sale and delivery of Jet A-1 fuel to international air carriers;

7. **Central Payment System (CPS), documents evidencing payments from international**

[80] Exhibits "N", "N-1", and "P".
[81] Exhibits "HHHH-1" to "HHHH-5".
[82] Exhibits "AAAA-1" to "AAAA-476".
[83] Exhibits "CCCC-1" to "CCCC-41", "CCCC-43" to "CCCC-62", "CCCC-71" to "CCCC-73", "CCCC-75" to "CCCC-128", and "CCCC-130" to "CCCC-931".
[84] Exhibits "EEEE-1" to "EEEE-476".

carriers[85] – to show the computation and payment of excise taxes based on the sale and delivery of Jet A-1 fuel to various carriers including in-transit losses indicated therein;

8. **Certification from various air carriers**[86] - to show that the international carriers purchased from petitioner Jet A-1 fuel for its international operations; and

9. **Product Transfer Advice**[87] - to prove the source of Jet A-1 fuel, which were delivered to JOCASP and subsequently sold to exempt international carriers.

As ascertained by the Independent CPA and further verified by this Court, out of the total claim of ₱73,111,159.99, only the amount of ₱63,161,734.94, as summarized below, was properly supported by relevant documents:[88]

	VOLUME IN LITERS		
CUSTOMERS	**FROM IMPORTATION**	**FROM LOCAL PRODUCTION**	**TOTAL**
Air Asia	239,948	83,021	322,969
Air Hongkong	208,383	50,174	258,557
Asiana Airlines	202,981	72,330	275,311
China Airlines	648,827	153,869	802,696
China Southern	233,230	60,333	293,563
Hongkong Express	116,056	30,822	146,878
Japan Airlines	1,991,250	492,483	2,483,733
Jet Star Asia Airways	255,309	70,291	325,600
Korean Airlines	1,690,720	495,499	2,186,219
Philippine Airlines	1,653,861	454,360	2,108,221
Qantas Airways	694,762	189,093	883,855
Qatar Airways	3,379,442	773,181	4,152,623
Royal Brunei Airlines	186,481	50,073	236,554

[85] Exhibits "BBBB-1" to "BBBB-157".
[86] Exhibits "IIII-1" to "IIII-15".
[87] Exhibits "FFFF-1" to "FFFF-15", "FFFF-17" to "FFFF-202", "FFFF-204" to "FFFF-292", "FFFF-294" to "FFFF-375, "FFFF-377" to "FFFF-419", "FFFF-421" to "FFFF-461", "FFFF-463" to "FFFF-474", "FFFF-476" to "FFFF-547, and "FFFF-549" to "FFFF-638".
[88] See Exhibits "JJJJ-1" of the Independent CPA Report for details.

Singapore Airlines	1,773,829	482,668	2,256,497
Tiger Airways	363,888	113,118	477,006
TOTAL AVIATION SALES	**13,638,967**	**3,571,315**	**17,210,282**
Excise Tax Rate	₱3.67	₱3.67	₱3.67
TOTAL EXCISE TAX	**₱50,055,008.89**	**₱13,106,726.05**	**₱63,161,734.94**

The remaining amount of ₱9,949,425.05[89] consisting of 2,711,015 liters of Jet A-1 fuel should be denied from the claim for the following reasons:

FINDINGS	VOLUME IN LITERS	EXCISE TAX AT ₱3.67
Sourced from local purchases	2,041,738	₱ 7,493,178.46
Not Duly Supported by relevant documents	299,019	1,097,399.73
No Aviation Service Returns	370,258	1,358,846.86
TOTAL	**2,711,015**	**₱9,949,425.05**

Based on the foregoing, it is clear that within the period March 1, 2009 to April 7, 2009, petitioner imported and locally manufactured, then sold and delivered Jet A-1 fuel to international carriers, for which the corresponding excise taxes were paid by petitioner upon importation or removal.

In sum, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate but in the reduced amount of ₱63,161,734.94 representing excise taxes paid by it on petroleum products sold to international carriers from March 1, 2009 to April 7, 2009, computed as follows:

Claimed Excise Taxes	₱ 73,111,159.99
Less: Disallowed Excise Taxes	9,949,425.05
Substantiated Excise Taxes	**₱63,161,734.94**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of

[89] See Exhibit "JJJJ-2" of the Independent CPA Report for details.

₱63,161,734.94 to petitioner Pilipinas Shell Petroleum Corporation, representing excise taxes paid by petitioner on petroleum products sold to international carriers from March 1, 2009 to April 7, 2009.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division