REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PETRON CORPORATION,
Respondent.

CTA EB No. 2828
(CTA Case Nos. 9738 & 9741)

Present:
DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 28 2025 3:05 pm

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DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals (CTA) Special Third Division (Court in Division) Decision[2] and Resolution[3] promulgated on August 1, 2023 and October 9, 2023, respectively. In the assailed issuances, the Court in Division partially granted herein respondent Petron Corporation's claim for refund or issuance of a tax credit certificate (TCC) to the extent of ₱394,770,058.56, representing erroneously paid excise tax on petroleum products sold to international carriers and tax-exempt entities.

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[1] Rollo, pp. 7-16.
[2] Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Associate Justice Ma. Belen M. Ringpis-Liban concurring. Rollo, pp. 25-71
[3] Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Associate Justice Ma. Belen M. Ringpis-Liban concurring. Rollo, pp. 74-76.

FACTS

Respondent is a producer and importer of Jet A-1 and unleaded gasoline fuel. It operates the Petron Bataan Refinery (PBR) where it manufactures and processes crude oil into a full range of petroleum products, including Jet A-1 and unleaded gasoline fuel (*i.e.*, locally-produced). On the other hand, it imports Jet A-1 fuel in the event that the projected local production is insufficient to supply the projected demand for Jet A-1 fuel (*i.e.*, imported).

After manufacture or importation, as the case may be, Petron Corporation stores the fuel in the PBR until these are withdrawn/removed for delivery to Petron Corporation's local depots, where, in turn, it will be kept until the same is sold/delivered to various customers, including international carriers and tax-exempt entities.

Between December 1, 2015 and December 31, 2016, Petron Corporation paid excise taxes relative to locally-produced (*i.e.*, upon removal from local depots) and imported fuel (*i.e.*, upon importation) Jet A-1 fuel, pursuant to Sections 130(A)(2) and 131(A), in relation to Section 148(f) and (g), of the Tax Code.

The petroleum products removed from local depots, and upon which excise taxes had been paid, were sold subsequently to (a) various international carriers of Philippine or foreign registry, for use and consumption outside the Philippines, (b) various international carriers of foreign registry, whose countries of registry exempt Philippine carries from similar taxes, and (c) tax-exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use or consumption, *viz.*:

Subject	Fuel Purchase Period	Volume in liters	Excise Taxes Paid
Locally-produced fuel			
Jet A-1	January to December 2016	7,728,768	₱28,364,576.56
Unleaded premium gasoline	January to December 2016	865,070	3,763,054.50
Subtotal			₱32,127,631.06
Imported Jet A-1 fuel			
	December 2015	20,899,254	₱76,700,262.18
	January to December 2016	78,601,808	288,468,635.36
Subtotal			₱365,168,897.54
Total			**₱397,296,528.60**

Claims filed before the Bureau of Internal Revenue (BIR).

On November 24, 2017, Petron Corporation filed three applications[4] before the BIR, requesting the refund or issuance of tax credit certificates of the above-mentioned excise taxes paid, in the aggregate amount of ₱397,296,530.60 (administrative claims), *viz.*:

Exhibits	Fuel Purchase Period	Amount	Total
Locally-produced fuel			
"P-8," "P-9"[5]	January to December 2016		₱32,127,633.06
Imported			
"P-19-Imported," "P-20-Imported"[6]	December 2015	₱76,700,262.18	
"P-21-Imported," "P-22-Imported"[7]	January to December 2016	288,468,635.36	365,168,897.54
Total			**₱397,296,530.60**

Petron Corporation claimed to be entitled to a refund or credit of excise taxes paid, pursuant to Section 135 of the National Internal Revenue Code of 1997, as amended (Tax Code). The CIR's inaction on these administrative claims prompted Petron Corporation to file the present consolidated petitions (judicial claims) on December 20, 2017, docketed as follows:

Docket No.	Fuel Purchase Period	Amount	
Locally-produced fuel			
CTA Case No. 9741	January to December 2016		₱32,127,633.06
Imported Jet A-1			
CTA Case No. 9738	December 2015	₱76,700,262.18	
CTA Case No. 9738	January to December 2016	288,468,635.36	365,168,897.54
Total			**₱397,296,530.60**

Proceedings before the Court in Division.

Upon Petron Corporation's motion, the cases were consolidated on February 5, 2020.[8]

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4 Applications for Tax Credits/Refunds (BIR Form No. 1914); For locally-produced fuel, see Exhibits "P-19," "P-20," "P-21," and "P-22," Docket (CTA Case No. 9738) - Vol. 6, pp. 2804-2810; For imported fuel, see Exhibits "P-8" and "P-9, "CTA Case No. 9741, Vol. 1, pp. 352-359

5 Exhibits "P-8" and "P-9, Docket (CTA Case No. 9741) - Vol. 1, pp. 352-359.

6 Exhibits "P-19" and "P-20," Docket (CTA Case No. 9738) - Vol. 6, pp. 2804-2810.

7 Exhibits "P-21" and "P-22," Docket (CTA Case No. 9738) - Vol. 6, pp. 2811-2817;

8 Resolution dated February 5, 2020; Docket (CTA Case No. 9738) - Vol. 4, p. 1834.

During trial, Petron Corporation presented the following company employees and officials as witnesses: (a) Ma. Clarissa C. Arguelles, Tax Manager; (b) Michael F. Manzano, Commercial Services Manager; (c) Leon G. Pausing II, Industrial Trade Head, and previously, Selling Systems, Training and Development National Manager and National Account Sales Manager; (d) Allan V. Peczon, Area Sales Manager-Mindanao, Industrial Trade, and previously, Area Sales Manager-Key Accounts, Industrial Trade; (e) Allan James T. Tenorio – Terminal Manager, Joint Oil Companies Aviation Fuel Storage Plant/Ninoy Aquino International Airport; (f) Richard L. Wong, Terminal Manager, Iloilo Depot; and (g) Marissa U. Viray – Operations Finance Manager.

Respondent also engaged the services of a Court-commissioned Independent Certified Public Accountant (ICPA); the consolidated ICPA Report was submitted to the Court in Division on October 15, 2020.

Petron Corporation filed its Formal Offer of Evidence,[9] consisting of the above-enumerated testimonies, the consolidated ICPA Report, as well as documentary exhibits tending to establish, among others, the following assertions: (a) that respondent is a manufacturer and importer of petroleum products; (b) that, between December 2015 and December 31, 2016, it produced and/or imported Jet A-1 and unleaded premium gasoline; (c) that the fuel so produced and/or imported were stored in the PBR; (d) that, upon removal from the PBR, it paid the corresponding excise taxes due thereon; (e) that the fuels so removed from the PBR were transferred to its local depots; and (f) that the fuels so transferred to the local depots were sold and delivered subsequently (i) to various international carriers for use and consumption outside the Philippines or (ii) to tax-exempt entities during the period covering January 1 to December 31, 2016.

The CIR did not object to respondent's Formal Offer of Evidence; consequently, the Court in Division admitted all exhibits thus offered. Significantly, the CIR no longer presented its own evidence for the

[9] Docket (CTA Case No. 9738) – Vol. 6, pp. 2445-2563.

consolidated cases;[10] it also did not file any memorandum, as allowed by the Court in Division,[11] in accordance with the rules.[12]

RULING OF THE COURT IN DIVISION

In the Assailed Decision, the Court in Division granted the aggregate amount of ₱394,770,058.56 out of ₱397,296,530.60 of Petron Corporation's judicial claims for refund or issuance of a tax credit certificate, *viz.*:

Particulars	CTA Case No. 9738		CTA Case No. 9741				Consolidated
	Jet A-1 Fuel		Jet A-1 Fuel		Unleaded Gasoline		
	Volume[a]	Amount[b]	Volume[a]	Amount[b]	Volume[a]	Amount[b]	Total
Amount of Claim	99,501,062	₱365,168,897.54	7,728,768	₱28,364,578.56	865,070	₱3,763,054.50	₱397,296,530.60
Less downward adjustments:							
Not traced:							
to WC-Mactan depot	159,329	₱584,737.43	NA	NA	NA	NA	₱584,737.43
to SAP PMMT – Kalibo ITP	30,000	110,100.00	NA	NA	NA	NA	110,100.00
to Iloilo LS – Kalibo ITP	30,000	110,100.00	NA	NA	NA	NA	110,100.00
Sales deliveries to local destinations:							
Davao ITP	148,034	543,284.78	NA	NA	NA	NA	543,284.78
Kalibo ITP	15,407	56,543.69	NA	NA	NA	NA	56,543.69
Sales/Deliveries sourced from importation not subject to claim:							
JOCASP/ NAIA Depot	10,842	39,790.14	NA	NA	NA	NA	39,790.14
Difference of Sales/Deliveries per Schedule of Claim and Actual LS – Issuance:							
Davao ITP	3	11.01	NA	NA	NA	NA	11.01
Out-of-period removals	NA	NA	199,942	733,787.14	-	-	733,787.14
Sales/Deliveries to domestic air carriers with local destination:							
JOCASP/NAIA depot	NA	NA	20,980	76,996.60	-	-	76,996.60
Mactan depot	NA	NA	64,049	235,059.83	-	-	235,059.83
Kalibo ITP	NA	NA	4,305	15,799.35	-	-	15,799.35
DMIA/Clark depot	NA	NA	5,521	20,262.07	-	-	20,262.07
Subtotal	393,615	₱1,444,567.05	294,797	₱1,081,904.99	-	-	₱2,526,472.04
Total	**99,107,447**	**₱363,724,330.49**	**7,433,971**	**₱27,282,673.57**	**865,070**	**₱3,763,054.50**	**₱394,770,058.56**

[a] in Liters
[b] at ₱3.67 per Liter

[10] Per Resolution dated April 27, 2022; Docket (CTA Case No. 9738) - Vol. 8, pp. 2959.
[11] Per Records Verification Report, dated July 21, 2022, Docket (CTA Case No. 9738) - Vol. 8, pp. 2954-2957, p. 3037.
[12] Rule 42, Section 9, Rules of Court, in relation to Rule 7, Section 1, Revised Rules of the Court of Tax Appeals.

We summarize the Court in Division's discussion as follows.

First, Petron Corporation's administrative and judicial claims were timely filed.

Second, based on the Supreme Court's pronouncements in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*[13] and *Chevron Phils., Inc. v. Commissioner of Internal Revenue,*[14] Section 135 of the Tax Code grants an exemption from the payment of excise tax in favor of manufacturers and importers of petroleum products, such as respondent Petron Corporation, provided that the petroleum products have been sold to international carriers and tax-exempt entities. When the fact of such subsequent sale is established, the prior payment of excise tax becomes erroneous; thus, subject to refund.

Third, Petron Corporation demonstrated that its *locally-manufactured* Jet A-1 and unleaded premium gasoline fuels are initially held in storage in the PBR. Thereafter, it removes *Jet A-1 fuel* from the PBR and transfers the same to other depots, into-plane facilities (ITPs), and Petron Corporation refuellers, awaiting eventual sale and delivery to international carriers and tax-exempt entities. On the other hand, *unleaded premium gasoline* is transferred from the PBR to SL Harbor depot; later on, these are delivered directly to customers, including tax-exempt entities.

Respondent presented proof that it paid the required excise tax before the removal of these locally-manufactured petroleum products from the PBR and that such tax was not passed on or charged to their customers upon subsequent sale. Further, it submitted documents which accounted for the movements of its locally manufactured petroleum products from the PBR to the local depots, showing that these were sold and delivered ultimately to international carriers and/or tax-exempt entities. The unexplained variances in the movements noted from the supporting documents were regarded as downward adjustments, reducing the amount refundable to Petron Corporation.

Fourth, Petron Corporation established that it paid the initial taxes and duties applicable to its *imported* Jet A-1 fuel at the time of its

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[13] G.R. No. 188497 (Resolution), February 19, 2014, 727 Phil 506-540.
[14] G.R. No. 210836 (Resolution), September 1, 2015, 768 Phil 37-98

arrival in the Philippines and that such tax was not passed on or charged to their customer upon subsequent sale. Upon release from customs custody, the importation was transferred to the PBR for storage; respondent recorded the volume received in its books before it allowed the importation to be stored together with locally-manufactured fuel. This *commingling* was allowed by BIR permit.

Respondent also presented documents which accounted for the movements of its imported fuel from the PBR to various local depots ITPs, and refuellers, until the same is delivered and sold to end customers/ various airline companies.

Fifth, Petron Corporation presented sufficient evidence to establish that the buyers of the petroleum products involved the present claim were international carriers and tax-exempt entities.

The Court in Division's denial of its subsequent motion for reconsideration prompted the CIR to file the present petition.

The CIR's Arguments

We reproduce below Petitioner's assignment of error:

> THE HONORABLE COURT IN THE DIVISION ERRED IN RULING THAT [PETRON CORPORATION] IS ENTITLED TO REFUND/TAX CREDIT IN TOTAL AMOUNT OF THREE HUNDRED NINETY FOUR MILLION SEVEN HUNDRED SEVENTY THOUSAND FIFTY EIGHT AND 56/100 PESOS (PHP394,770,058.56), REPRESENTING ERRONEOUSLY PAID EXCISE TAX ON PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS AND TAX-EXEMPT ENTITIES.

It advances only one theory in support of its assignment of error: that Petron Corporation, as the manufacturer and importer of the subject petroleum products sold to international carriers, is liable to pay excise taxes on petroleum products thus manufactured and imported. The exemption under Section 135 of the Tax Code is only in favor of international carriers and other agencies. Thus, the excise taxes paid by respondent upon manufacture or importation, as the case may be, was legally and validly collected; there being no erroneous payment, Petron Corporation is not entitled to the refund or credit sought.

Petron Corporation's Arguments

In its Comment,[15] respondent points out that the arguments in the instant petition are a mere rehash of those already raised in CIR's respective Answers in CTA Case Nos. 9738[16] and 9741.[17]

Petron Corporation maintains that it is entitled to the refund sought based on the exemption under Section 135(a) of the Tax Code, which is extended to manufacturers and importers of petroleum products if the same have been sold to international carriers and tax-exempt entities. Contrary to the CIR's position, it is not an exemption in favor of the latter/purchasers of fuel. It stresses that the excise taxes paid upon manufacture or importation of its fuel products were not passed on to its customers; the sales were billed and collected from said customers net of excise tax.

ISSUE

The sole question for the Court's resolution is: Did the Court in Division err in declaring Petron Corporation's excise tax payments on its locally-manufactured and imported petroleum products as erroneous and, thus, subject to refund?

OUR RULING

The Petition for Review is unmeritorious.

At the outset, We observe that the sole argument advanced by the CIR attacks Petron Corporation's **legal personality** to avail of the tax exemption under Section 135 of the Tax Code; that respondent's claim for refund is unjustified because the tax benefit it invokes is available exclusively to international carriers and tax-exempt entities. Other than this independent **legal question**, the CIR does not raise any argument disputing the Court in Division's **findings of fact**, including the timeliness of Petron Corporation's administrative and judicial claims.

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[15] Rollo, pp. 78-86.
[16] Docket (CTA Case No. 9738) - Vol. 1, pp. 128-136.
[17] Docket (CTA Case No. 9741) - Vol. 1, pp. 103-110.

The Court's review sought in the present case[18] shall be limited to "those specified in the assignment of errors or closely related to or dependent on an assigned error and properly argued in the appellant's brief."[19] Rule 51, Section 8 of the Rules of Court provides:

> Section 8. Questions that may be decided. — **No error** which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein **will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief,** save as the court may pass upon plain errors and clerical errors. (Emphasis supplied)

Petron Corporation shall enjoy exemption from excise taxes on its locally-manufactured or imported petroleum products sold subsequently to international carriers and tax-exempt entities.

Section 129 of the Tax Code provides that "[e]xcise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported." Excise tax liability attaches to the petroleum product itself "immediately upon importation or as soon as the goods come into existence when manufactured."[20]

The person liable for excise taxes on *domestic products* (*e.g.*, locally-manufactured fuel) shall be "the *manufacturer or producer*, before removal of domestic products from place of production."[21] On the other hand, excise taxes on *imported articles* shall be paid by the "owner or *importer* x x x before the release of such articles from the customs house."[22]

Following the **general rule**, Petron Corporation shall be liable to pay excise taxes on its locally-produced Jet A-1 and unleaded premium gasoline before removal from the PBR and imported Jet A-1 fuel before

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[18] Pursuant to Rule 8, Section 4(b), an appeal from a decision or ruling of the Court in Division shall be by petition for review before the Court *En Banc*, as provided under Rule 43 of the Rules of Court.

[19] *Macaslang v. Spouses Zamora*, G.R. No. 156375, May 30, 2011, 664 Phil 337-361.

[20] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 211303, June 15, 2021.

[21] Section 130(A)(2), Tax Code.

[22] Section 131(A), Tax Code.

release from customs custody. The payments in satisfaction of this excise tax liability were correct and validly collected.

However, Section 135 of the Tax Code provides an **exemption** from the general excise tax liability relative to petroleum products, particularly, those *sold* to either of the three categories of entities enumerated thereunder:

> SECTION 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;
>
> (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**. (Emphases supplied.)

It must be borne in mind that Section 135 enumerates the conditions which must be satisfied to avail of the excise tax exemption. To be sure, the three categories of entities are not the parties sought to be exempted from excise tax; they are listed as requisites to the entitlement of the tax exemption. The Supreme Court already clarified this in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue (Pilipinas Shell 2021)*,[23] *viz.*:

> As worded, the object of Section 135 itself is not the enumerated persons but rather, the "**petroleum products sold**." Palpably, <u>**based on Section 135's phraseology, the enumerated persons are merely descriptive of the petroleum products, *i.e.*, the persons to which the products are sold to. As such, the wording of Section 135 hews more closely with the character of impersonal tax exemptions, which is, in turn, consistent with the nature of excise taxes as taxes not on persons but on the goods/articles**</u>. As equally

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

> observed by Associate Justice Alfredo Benjamin S. Caguioa, "[t]he succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. **Paragraphs (a), (b)[,] and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative**." (Emphasis in the original.)

The manufacturer or importer of petroleum products remains to be the **statutory taxpayer**; as such, Petron Corporation stands to be benefitted when Section 135 is engaged; ***not*** the international carriers and tax-exempt entities that purchase respondent's petroleum products but do not have any obligation to pay excise taxes on said articles/goods. The Supreme Court discussed further:

> Being an impersonal tax exemption, Section 135 cannot be therefore interpreted as an exemption primarily conferred to the buyers because "they are not under any legal duty to pay the excise tax." To reiterate, upon the buyers' purchase of the articles, the "excise tax" they pay, if any, is, in reality, a mere passed-on cost that forms part of the purchase price. Hence, while purchasers bear the economic burden, they do not, by the mere fact of assuming the passed-on costs, become legally regarded as statutory taxpayers. In this regard, Associate Justice Henri Jean Paul B. Inting aptly observed that "a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune from therefrom."

Contrary to the CIR's theory, the excise tax exemption under Section 135 of the Tax Code shall benefit Petron Corporation, as the manufacturer or importer of petroleum products.

Petron Corporation met the requisites for exemption under Section 135 of the Tax Code; the excise taxes paid previously upon manufacture and importation were collected in error.

At first instance, petroleum manufacturers/importers are liable to pay excise taxes when they take out the fuel from their refineries or from the customs house, as the case may be. However, this liability is qualified by Section 135 of the Tax Code, such that the tax-paid petroleum products become exempt from excise taxes when established that these are sold subsequently to any one of the following: (1) international carriers of Philippine or foreign registry on their use or consumption outside the Philippines (*international carriers*); (2) exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption (*tax-exempt entities by treaty*); or (3) entities which are by law exempt from direct and indirect taxes (*tax-exempt entities by law*).[24]

When it is shown that the tax-paid petroleum products have become tax-exempt within the context of Section 135 of the Tax Code, the excise taxes which were previously paid thereon shall then be regarded as "erroneously or illegally collected," and, thus, subject to refund pursuant to Section 229 of the Tax Code.[25]

In these lights, a claim of refund or credit based on Sections 229 and 135 of the Tax Code shall be granted only upon proof of the following: *First*, the **excise taxes sought to be refunded were paid** upon removal/release of the petroleum products from the refinery or customs house, as the case may be (First Requisite). *Second*, the petroleum products have become **tax-exempt**, *e.g.*, these have been sold subsequently to any of the above-enumerated groups (Second Requisite).

Whether Petron Corporation met the two requisites above is a **factual question**. However, as stated above, **the CIR did not impute any error upon the Court in Division's findings of fact** leading to the partial grant of respondent's judicial claims. Following Rule 51, Section 8 of the Rules of Court, such factual question is not part of the instant appeal; We shall not pass upon unassigned errors.

At any rate, even if We relax the aforementioned rule, We still do not find any reason to reverse or modify of the assailed issuances.

As will be discussed below, the Court in Division's findings of fact are supported by substantial evidence; thus, as a rule, these

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[24] See *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 211303, June 15, 2021.

[25] See *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 211303, June 15, 2021.

findings are binding upon this Court.[26] Significantly, the CIR did not dispute these findings; it waived its right to present rebuttal evidence during trial and did not even file a Memorandum.

First Requisite: The excise taxes sought to be refunded were duly paid.

Petron Corporation's excise tax payments on **locally-produced** Jet A-1 fuel and unleaded premium gasoline were supported by *Excise Tax Returns or BIR Forms 2200-P*[27] relative to applications for payment through the BIR Electronic Payment System, in accordance with Revenue Regulations No. 01-02,[28] and *Product Replenishment Certificates* and *Product Replenishment Debit Memos*,[29] to evidence the application of credits upon removal of fuel from the PBR without actual cash payment of excise taxes due, in accordance with Revenue Regulations No. 03-08.[30] The difference noted between the amount of excise taxes that *should have been paid*[31] and the *actual amount* of excise taxes paid was also accounted for.[32]

On the other hand, the excise tax payments made relative to **imported** Jet A-1 fuel were supported by the *Import Entry and Internal Revenue Declaration*,[33] *Statements of Settlement Duties and Taxes, Single Administrative Documents*,[34] *Bills of Lading, Commercial Invoices*,[35] *Customs Payment Receipts*,[36] *Bureau of Customs Certifications for Entry/Certificate of Payment*,[37] *Certificates of Independent Survey*,[38] *Authority to Release Imported Goods (ATRIG)*,[39] and *Reports of Survey*,

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26 Rule 43, Section 10, Rules of Court, in relation to Rule 8, Section 4(b), Revised Rules of the Court of Tax Appeals.
27 Exhibits "P-6" to "P-7-1."
28 SUBJECT: Prescribing the Use of New Excise Tax Return Forms, February 22, 2002.
29 Exhibit "P-257."
30 SUBJECT: Grant of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers, January 22, 2008.
31 Volume of removals in liters x Applicable Excise Tax Rate. Excise Tax is ₱3.67 and ₱4.35 per liter for Jet A-1 fuel and unleaded premium gasoline, respectively.
32 Page 57 of the Consolidated ICPA Report, Exhibit "P-189-imported," Docket (CTA Case No. 9738) - Vol. 4, p. 2000.
33 Exhibits. "P-204-1-imported' to "P-204-12-imported."
34 Exhibits "P-8-imported," "P-9-imported," "P-11-imported," "P-12-imported," "P-13-imported," "P-14-imported," "P-15-imported," "P-16-imported," "P-17-imported" and "P-18-imported."
35 Exhibits "P-203-1-imported" to "P-203-10-imported."
36 Exhibits "P-204-13-imported" to "P-204-36-imported."
37 Exhibits "P-204-37-imported" to "P-204-48-imported."
38 Exhibits. "P-204-61-imported" to "P-204-70-imported."
39 Exhibits "P-204-49-imported" to "P-204-60-imported."

among others.[40] Respondent also explained difference noted between the amount of excise taxes that *should have been paid*[41] and the *actual amount* of excise taxes paid.[42]

The ATRIG is also *prima facie* evidence of the fact of importation (*e.g.*, volume, date, etc.); that each importation had been made in accordance with Revenue Memorandum Order No. 35-02.[43]

Moreover, the above payments/application of credits corresponded to the taxable period subject of the present claim.

Second Requisite: The tax-paid petroleum products were sold subsequently to international carriers and tax-exempt entities.

- **Movements of fuel inventory**

Imported fuel was stored together with locally-produced fuels in the **PBR**, pursuant to Commingling Permit Nos. ELTRD (P)-028-01-15-12537[44] and ELTRD (P)-028-01-16-15847.[45] Thereafter, the petroleum products are delivered/transferred to Petron Corporation's **depots**, then to **third-party storage facilities** (e.g., other depots, ITPs, refuellers), for delivery to/loading into the **end-consumers**: the international carriers and/or tax-exempt entities. For unleaded premium gasoline, in particular, volumes withdrawn from the **PBR** are transferred to **SL Harbor depot** and delivered directly to customers, including tax-exempt entities.

All such **movements of fuel** are supported by corresponding entries in the *Official Register Book, Liquidation Statements,* and respondent's *books of account* (*i.e.*, GL-SAP system). These coincide with the procedures laid out in Revenue Regulations No. 13-77,[46] RR No.

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40 Exhibits "P-7-imported" to "P-18-7-1-imported" and "P-203-imported" to "P-204-70-imported."
41 Volume of removals in liters x Excise Tax of ₱3.67 per liter for Jet A-1 fuel.
42 Page 9 of the Consolidated ICPA Report, Exhibit "189-imported," Docket (CTA Case No. 9738) - Vol. 4, p. 1952.
43 SUBJECT: Prescribing the Guidelines and Procedures in the Processing and Issuance of Authority to Release Imported Goods (ATRIG) for Excise and Value-Added Tax Purposes,
44 Exhibit "P-202-1-imported."
45 Exhibit "P-202-2-imported."
46 SUBJECT: Petroleum Products Regulations, October 10, 1977.

03-08,[47] Revenue Memorandum Order No. 35-02,[48] and Revenue Memorandum Circular No. 024-12.[49] There is also nothing in the records that suggests non-compliance on the part of petitioner with the prescribed procedure.

The ICPA noted variances[50] (in volume/pricing) as a result of its comparison of relevant documents and records supporting the movements of fuel; Petron Corporation did not provide explanations for these differences. Accordingly, the Court in Division disallowed the amount of ₱2,526,472.04 from the claim, representing those excise taxes related to the unexplained variances.

- Sales to **international carriers and tax-exempt entities** had been established.

Petron Corporation presented the *Sales Invoices* issued for each sale; these were traced to the corresponding entries in its *books of account*, as well as the *Liquidation Statements, Aviation Delivery Receipts* and *Delivery Notes*, showing that (i) the fuels were sold and delivered to international carriers or to tax-exempt entities and (ii) the destination of these vendees is a foreign country.[51]

The identity of its customers as **international carriers** is verified by *Civil Aeronautics Board (CAB) Certifications*,[52] showing that its customers that are (i) international carriers of f**oreign registry** with valid Foreign Air Carrier's Permit to operate international air transport services between the Philippines and their country of registration or (ii) **Philippine-registered** international carriers with permit to operate domestic and international air transportation services. Further,

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[47] SUBJECT: Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment, January 22, 2008.

[48] SUBJECT: Prescribing the Guidelines and Procedures in the Processing and Issuance of Authority to Release Imported Goods (ATRIG) for Excise and Value-Added Tax Purposes, October 28, 2002.

[49] SUBJECT: Clarifying the Issue on the Maintenance and Submission of Official Register Books on Tax-Paid Petroleum Products Stored on Formerly Bonded Storage Facilities, May 2, 2012.

[50] Pages 95 to 96 of the Consolidated ICPA Report, Exhibit "189-imported," Docket (CTA Case No. 9738) - Vol. 5, p. 2038.

[51] Pages 32-44 (Locally-manufactured fuel) and 81-94 (Imported fuel) of the Consolidated ICPA Report Exhibit "189-imported," Docket (CTA Case No. 9738) - Vol. 4, pp. 1975-1987 and Vol. 5, pp. 2024-2037.

[52] Exhibits "P-23-imported" to "P-31-imported," Docket (CTA Case No. 9738) - Vol. 6, pp. 2818-2831.

respondent maintained and submitted the *Official Register Book* as prescribed under of Revenue Regulations No. 13-77[53] and Revenue Memorandum Circular No. 024-12,[54] showing that subject fuel was stored, transferred, and disposed of, with all such movements accounted for, in accordance with the applicable regulations.

On the other hand, Petron Corporation sold and delivered locally-manufactured Jet A-1 fuel[55] and unleaded premium gasoline[56] to the following **tax-exempt entities**: the Defense Energy Support Center of the United States Department of Defense (DESC), the United States of America in the Philippines (US Embassy), Asian Development Bank (ADB), and Omni Aviation Corporation. Significantly, the CIR did not dispute the tax-exempt status of these entities.

In any case, We have verified that no excise tax was passed on and/or billed to these entities, on account of their respective tax privileges.

Fuel sold to *DESC*[57] is exempt from excise tax by virtue of the privilege given to materials and supplies acquired by or on behalf of the United States Armed Forces, as set out in Article VII of the *Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines.*

Fuel sold to the *US Embassy*[58] is likewise exempt from excise tax on the *principle of reciprocity*.[59] As confirmed by the Department of

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53 SUBJECT: Petroleum Products Regulations, October 10, 1977.

54 SUBJECT: Clarifying the Issue on the Maintenance and Submission of Official Register Books on Tax-Paid Petroleum Products Stored on Formerly Bonded Storage Facilities, May 2, 2012.

55 See Exhibit "P-347," USB, Exhibit "P-249-2."

56 See Exhibit "P-378," USB, Exhibit "P-249-2."

57 Exhibits "P-331-3," "P-328-6," "P-331-4," "P-331-5," "P-330-1," "P-327-17," "P-330-2," "P-330-3," "P-330-4," "P-330-5," "P-330-6," "P-330-7," "P-330-8," "P-330-9," "P-330-10," "P-330-11," "P-327-20," "P-330-12," "P-330-13," "P-330-14," "P-330-15," "P-330-16," "P-330-17," "P-330-18," P-330-19," "P-330-20," "P-330-21," "P-330-22," "P-330-23," "P-330-24," "P-330-25," "P-330-26," "P-330-27," "P-330-28," "P-330-29," "P-330-30," "P-330-31," "P-330-32," "P-330-33," "P-330-34," P-330-35," "P-330-36," "P-330-37," "P-330-38," "P-330-39," "P-330-40," "P-330-41," "P-330-42," "P-330-43," "P-330-44," "P-330-45," "P-330-46," "P-330-47," "P-330-48," "P-330-49," "P-330-50," "P-330-51," "P-330-52," "P-330-53," "P-330-54," "P-330-55," "P-330-56," and "P-327-45," USB, Exhibit "P-249-2."

58 Exhibits "P-374-5," "P-374-13," and "P-374-21," USB, Exhibit "P-249-2."

59 See DA ITAD BIR Ruling No. 101-08, November 24, 2008.

Foreign Affairs, the United States government does not tax petroleum products purchased by the Philippine Embassy in the United States.[60]

Respondent also sold fuel to *Omni Aviation Corporation*, an enterprise located within the *Clark Special Economic Zone*.[61] Under Republic Act No. 9400,[62] "Clark FEZ enterprises shall be entitled to the freeport status of the zone and a 5% preferential income tax rate on its gross income, in lieu of national and local taxes."[63]

Lastly, fuel sold to *ADB* is exempt from excise taxes by virtue of Article IX,[64] Section 34 of the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank*,[65] which exempts ADB from all taxation in the Philippines, as well as any obligation for the payment, withholding, or collection of any tax.

As a recap, Petron Corporation has demonstrated its entitlement to the excise tax exemption under Section 135 of the Tax Code. The benefit under Section 135 *retroacts* to the moment the excise tax liability attached to the articles/goods and *erases* the tax effect thereon. "Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, **any excise taxes which were previously paid thereon would then be considered as 'erroneously or illegally collected,' and therefore, subject to refund.**"[66]

All in all, there is no reason for Us to deviate from the Court in Division's ruling.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the CTA Special Third Division Decision and Resolution promulgated on August 1, 2023 and October 9, 2023, respectively, in CTA Case Nos. 9738 and 9741, as consolidated, are **AFFIRMED**.

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[60] Page 33 of the Consolidated ICPA Report, Exhibit "189-imported," Docket (CTA Case No. 9738) - Vol. 4, p. 1976.
[61] Exhibits "P-375-3," "P-375-5," and "P-375-7," USB, Exhibit "P-249-2."
[62] Amendment to R.A. No. 7227, Bases Conversion and Development Act of 1992, March 20, 2007.
[63] *Purisima v. Lazatin*, G.R. No. 210588, November 29, 2016, 801 Phil 395-427.
[64] Exhibit "P-156," Docket (CTA Case No. 9738) - Vol. 8, p. 3770.
[65] Exhibit "P-155," Docket (CTA Case No. 9738) - Vol. 8, pp. 3763-3777.
[66] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 211303, June 15, 2021.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice