REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PETRON CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10438

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN [illegible] 2:47 pm

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that judgment be rendered by this Court ordering the respondent to refund in favor of petitioner in the amount of ₱34,397,783.90, representing excise taxes paid during the period January 1, 2019 to December 31, 2019 for imported and locally-produced liquefied petroleum gas (LPG), which were subsequently sold and delivered to various tax-exempt entities.[1]

THE PARTIES

Petitioner Petron Corporation is a domestic corporation duly organized and existing under Philippine law.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 000-168-801-00000, with address at 40 Ground Floor, San Miguel Head Office Complex, San Miguel Avenue, Wack-Wack Greenhills, City of Mandaluyong.[3]

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[1] Statement of the Case, Pre-Trial Order dated March 23, 2022, Docket – Vol. I, p. 279.
[2] Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 478 to 497.
[3] Exhibit "P-3", Docket – Vol. I, pp. 498 to 499.

Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund as provided by law.[4]

THE FACTS OF THE CASE

On December 7, 2020, petitioner filed with the Excise Large Taxpayers Audit Division II of the Bureau of Internal Revenue (BIR) its *Application for Tax Credits/Refunds* (BIR Form No. 1914),[5] together with its letter of even date,[6] requesting for the issuance of tax refund, for the alleged excise taxes paid on its importation of LPG, during the period from January 1, 2019 to December 31, 2019, which were subsequently sold to tax-exempt entities, in the total amount of ₱19,076,958.86.

On the same date, petitioner filed with the Excise Large Taxpayers Audit Division II of the BIR another *Application for Tax Credits/Refunds* (BIR Form No. 1914),[7] together with its letter likewise of even date,[8] requesting for the issuance of tax refund, for the alleged excise taxes paid on its importation of LPG, during the same period, which were subsequently sold to tax-exempt entities, in the total amount of ₱15,320,825.04.

On December 29, 2020, petitioner filed the present *Petition for Review*.[9]

Respondent's *Answer* was filed on March 22, 2021,[10] interposing the following special and affirmative defenses, to wit: (1) petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; (2) The amount of ₱34,397,783.90 being claimed by petitioner was not properly documented; (3) petitioner must prove that the amount sought to be refunded are erroneously paid taxes within the purview of Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997; (4) petitioner is not entitled to refund of excise taxes allegedly paid for the period January 1, 2019 to December 31, 2019, on its imported and locally-produced LPG which were subsequently sold to tax-exempt entities in the amount of ₱34,397,783.90; and (5) claims for refund of excise taxes paid is authorized only by Section 130 (D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 183.
[5] Exhibit "P-8", Docket – Vol. I, p. 508.
[6] Exhibit "P-7", Docket – Vol. I, pp. 517 to 522.
[7] Exhibit "P-10", Docket – Vol. I, p. 532.
[8] Exhibit "P-9", Docket – Vol. I, pp. 523 to 529.
[9] Docket – Vol. I, pp. 7 to 36.
[10] Docket – Vol. I, pp. 130 to 138.

On the same date, respondent filed a *Manifestation*,[11] stating that the *BIR Records* for this case is on file with the Second Division under CTA Case No. 10436.

Respondent's Pre-Trial Brief was filed on June 7, 2021,[12] while petitioner's *Pre-Trial Brief* was submitted on July 29, 2021.[13] The Pre-Trial Conference was initially set on August 5, 2021,[14] but was later reset to, and held on, February 3, 2022.[15]

On March 4, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[16] which was admitted and approved by this Court in its Resolution dated March 15, 2022,[17] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated March 23, 2022 was then issued.[18]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Ma. Clarissa C. Arguelles,[19] petitioner's Tax Manager; (2) Ms. Marissa U. Viray,[20] petitioner's Accounting Services Manager; (3) Mr. Jake Martin A. Magana,[21] petitioner's OIC-Commercial Services Manager; (4) Mr. Ric Alvin A. Estacio,[22] petitioner's Luzon Industrial Sales Executive; (5) Mr. Joey P. Ortega,[23] petitioner's Rosario Terminal Manager; and (6) Ms. Normita L. Villaruz,[24] the Court-commissioned independent certified public accountant (ICPA).[25]

The *Report* of the ICPA was posted on June 6, 2022.[26]

On November 8, 2022, petitioner filed its *Formal Offer of Evidence*,[27] to which respondent filed his *Comment (Re: Formal Offer of Evidence)* on November

[11] Docket – Vol. I, pp. 126 to 128.
[12] Docket – Vol. I, pp. 143 to 146.
[13] Docket – Vol. I, pp. 149 to 166.
[14] Notice of Pre-Trial Conference dated May 24, 2021, Docket – Vol. I, pp. 141 to 142; Notice of Hearing via Video Conference (For Pre-trial Conference) dated July 30, 2021, Docket – Vol. I, pp. 170 to 171.
[15] Notice of Resetting dated October 6, 2021, Docket – Vol. I, p. 169; Notice of Hearing via Video Conference (For Pre-trial Conference) dated January 31, 2022, Docket – Vol. I, pp. 173 to 174; Minutes of the hearing held on, and Order dated, February 3, 2022, Docket – Vol. I, pp. 175 to 178.
[16] Docket – Vol. I, pp. 183 to 190.
[17] Docket – Vol. I, pp. 192 to 193.
[18] Docket – Vol. I, pp. 279 to 287.
[19] Exhibit "P-36", Docket – Vol. I, pp. 67 to 85; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket – Vol. I, pp. 303 to 305.
[20] Exhibit "P-37", Docket – Vol. I, pp. 199 to 212; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket – Vol. I, pp. 303 to 305.
[21] Exhibit "P-39", Docket – Vol. I, pp. 401 to 409; Minutes of the hearing held on, and Order dated September 8, 2022, Docket – Vol. I, pp. 412 to 414.
[22] Exhibit "P-38", Docket – Vol. I, pp. 105 to 113; Minutes of the hearing held on, and Order dated September 8, 2022, Docket – Vol. I, pp. 412 to 414.
[23] Exhibit "P-40", Docket – Vol. I, pp. 41 to 51; Minutes of the hearing held on, and Order dated October 11, 2022, Docket – Vol. I, pp. 460 to 462.
[24] Exhibit "P-41", Docket – Vol. I, pp. 421 to 440; Minutes of the hearing held on, and Order dated October 11, 2022, Docket – Vol. I, pp. 460 to 462.
[25] *Oath of Commission* dated April 6, 2022, Docket – Vol. I, p. 300; Minutes of the hearing held on, and Order dated, April 6, 2022, Docket – Vol. I, pp. 299, and 301 to 302, respectively.
[26] Exhibit "P-42", Docket – Vol. I, pp. 350 to 379.

10, 2022.[28] Thereafter, in the Resolution dated March 3, 2023,[29] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-789 to P-1247", "P-1285", "P-1765 to P-1776", "P-1783 to P-1825", "P-1996", "P-2049 to P-2079", "P-2332", "P-2613 to P-2663", "P-2772", "P-3649", "P-4204", "P-4566", "P-4800", "P-4801", "P-4802", "P-4823", "P-5093 to P5101", "P-5890 to P-5903", "P-6182 to P-6218", "P-6243 to P-6267", "P-6325 to P-6395", "P-7190", "P-7549 to P-7580", "P-7634 to P-7754", "P-8429 to P-8478", "P-8508", "P-8526 to P-8561", "P-8604 to P-8674", "P-9215 to P-9216", "P-9507", "P-9574", "P-9587", "P-9752 to P-9876", "P-10115", "P-10562", "P-10757", "P-10819", "P-11131", "P-11142", "P-11410", "P-11976", "P-11987", "P-11988", "P-12166", "P-12167", "P-12338", "P-12545", "P-12568", "P-12833", "P-13044 to P-13094", "P-13123", "P-13193", "P-13205", "P-13260", "P-13322 to P-13447", "P-13552 to P-13554", "P-13948", "P-14101", "P-14549 to P-14635", "P-15711", "P-15719", "P-15726", and "P-15883 to P-15890", for not being found in the records.

Petitioner then posted its *Omnibus Motion for Reconsideration to Reopen the Proceedings, and to Recall the Independent Certified Public Accountant* on March 23, 2023.[30] In the Minute Resolution dated March 31, 2023,[31] the Court granted petitioner's *Motion to Reopen the Proceedings, and to Recall the Independent Certified Public Accountant,* and set the recall of the ICPA on May 9, 2023, while the resolution of petitioner's *Motion for Reconsideration* was held in abeyance.

The *Supplemental Report* of the ICPA was submitted on May 4, 2023.[32]

During the hearing held on May 9, 2023, petitioner presented its recalled witness, Ms. Normita L. Villaruz.[33]

On May 15, 2023, petitioner filed its *Supplemental Offer of Evidence*,[34] to which respondent filed his *Comment (Re: Supplemental Formal Offer of Evidence)* on May 16, 2023.[35] In the Resolution dated September 15, 2023,[36] the Court admitted petitioner's offered exhibits, *except* (1) ICPA Exhibits "P-15964-2456 to P-15964-2555", "P-15967-53", "P-15967-600", "P-15967-1075", "P-15967-1561", "P-15967-1997", and "P-15967-2093", for not being found in the records; and (2) ICPA Exhibit "P-15968", for failure to present the original for comparison. In the same Resolution, the Court partially granted petitioner's *Motion for Reconsideration,* and admitted Exhibits "P-1285", "P-2332", "P-3649", "P-4204", "P-4566", "P-4800", "P-4801", "P-4802", "P-7190", "P-10757", and "P-13193"; but still ***denied*** the admission of Exhibits "P-789 to P-1247", "P-

[27] Docket – Vol. I, pp. 463 to 476.
[28] Docket – Vol. II, pp. 535 to 537.
[29] Docket – Vol. II, pp. 540 to 543.
[30] Docket – Vol. II, pp. 544 to 558.
[31] Docket – Vol. II, p. 562.
[32] Exhibit "P-46", Docket – Vol. II, pp. 570 to 578.
[33] Exhibit "P-47", Docket – Vol. II, pp. 585 to 595; Minutes of the hearing held on May 9, 2023, Docket – Vol. II, p. 597.
[34] Docket – Vol. II, pp. 600 to 606.
[35] Docket – Vol, II, pp. 608 to 610.
[36] Docket – Vol. II, pp. 619 to 626.

1765 to P-1776", "P-1783 to P-1825", "P-1996", "P-2049 to P-2079", "P-2613 to P-2663", "P-2772", "P-4823", "P-5093 to P5101", "P-5890 to P-5903", "P-6182 to P-6218", "P-6243 to P-6267", "P-6325 to P-6395", "P-7549 to P-7580", "P-7634 to P-7754", "P-8429 to P-8478", "P-8508", "P-8526 to P-8561", "P-8604 to P-8674", "P-9215 to P-9216", "P-9507", "P-9574", "P-9587", "P-9752 to P-9876", "P-10115", "P-10562", "P-10819", "P-11131", "P-11142", "P-11410", "P-11976", "P-11987", "P-11988", "P-12166", "P-12167", "P-12338", "P-12545", "P-12568", "P-12833", "P-13044 to P-13094", "P-13123", "P-13205", "P-13260", "P-13322 to P-13447", "P-13552 to P-13554", "P-13948", "P-14101", "P-14549 to P-14635", "P-15711", "P-15719", "P-15726", and "P-15883 to P-15890".

In the meantime, respondent filed a *Manifestation* on August 3, 2023,[37] stating that he will not be presenting any witness in this case.

Petitioner filed a *Motion to Reopen Proceedings (with Motion to Defer the Filing of Memorandum)* on October 6, 2023,[38] and a *Supplemental Motion to Reopen Proceedings (with Motion for Reconsideration)* on October 13, 2023.[39] Respondent, however, failed to file his comment on both motions.[40]

The Court then issued its Resolution on April 29, 2024,[41] which granted petitioner's *Motion for Reconsideration* , and finally admitted Exhibits "P-789 to P-1247", "P-1765 to P-1776", "P-1783 to P-1825", "P-1996", "P-2049 to P-2079", "P-2613 to P-2663", "P-2772", "P-4823", "P-5093 to P5101", "P-5890 to P-5903", "P-6182 to P-6218", "P-6243 to P-6267", "P-6325 to P-6395", "P-7549 to P-7580", "P-7634 to P-7754", "P-8429 to P-8478", "P-8508", "P-8526 to P-8561", "P-8604 to P-8674", "P-9215 to P-9216", "P-9507", "P-9574", "P-9587", "P-9752 to P-9876", "P-10115", "P-10562", "P-10819", "P-11131", "P-11142", "P-11410", "P-11976", "P-11987", "P-11988", "P-12166", "P-12167", "P-12338", "P-12545", "P-12568", "P-12833", "P-13044 to P-13094", "P-13123", "P-13205", "P-13260", "P-13322 to P-13447", "P-13552 to P-13554", "P-13948", "P-14101", "P-14549 to P-14635", "P-15711", "P-15719", "P-15726", and "P-15883 to P-15890", "P-15967-53", "P-15967-600", "P-15967-1561", and "P-15967-1997".

Respondent's *Memorandum* was submitted on October 23, 2023;[42] while petitioner filed its *Memorandum* on June 3, 2024.[43]

The present case was considered submitted for decision on June 19, 2024.[44]

[37] Docket – Vol. II, pp. 614 to 616.
[38] Docket – Vol, II, pp. 629 to 649.
[39] Docket – Vol, II, pp. 663 to 669.
[40] Records Verification dated January 16, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 682.
[41] Docket – Vol. II, pp. 685 to 689.
[42] Docket – Vol. II, pp. 672 to 680.
[43] Docket – Vol. II, pp. 690 to 729.

THE STIPULATED ISSUE

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "Whether Petitioner is entitled to the refund or issuance of a Tax Credit Certificate in the amount of **Thirty Four Million Three Hundred Ninety Seven Thousand Seven Hundred Eighty Three Pesos and 90/100 Centavos (₱34,397,783.90)**, representing excise taxes paid during the period January 1, 2019 to December 31, 2019 on Petitioner's locally produced and imported Liquified Petroleum Gas ('LPG' for brevity), which were subsequently sold and delivered to various tax-exempt entities."[45]

Petitioner's arguments:

Petitioner argues that both its administrative and judicial claims for refund or tax credit were timely filed; that the locally produced and imported tax-paid LPG sold and delivered to various tax-exempt entities are exempt from excise tax, and any excise tax paid on their removal was erroneously paid as: (i) the advance excise tax deposits made by petitioner for January 1, 2019 to December 31, 2019 were sufficient to cover the total excise taxes due and paid on total actual removals of all petroleum products from the Petron Bataan Refinery (PBR) and depots, (ii) the excise taxes due on importation of LPG are duly supported, (iii) the total LPG sales, deliveries, and collections to various tax-exempt entities are supported, (iv) the actual volume and the corresponding amounts of the excise taxes due and paid on LPG removals from PBR which were transferred to various terminals and depots for January 1, 2019 to December 31, 2019 includes LPG sold and delivered to various tax-exempt entities; and that petitioner is entitled to a refund in the amount of ₱34,397,783.90, representing erroneous excise taxes paid on petroleum products exempt under Section 135 of the NIRC of 1997, as amended.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to refund of excise taxes allegedly paid for the period January 1, 2019 to December 31, 2019, on its imported and locally-produced LPG which were subsequently sold to tax-exempt entities in the amount of ₱34,397,783.90; and that claims for refund of excise taxes paid is authorized only by Section 130(D) of the NIRC of 1997, as amended.

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[44] Minute Resolution dated June 19, 2024, Docket – Vol. II, p. 731.
[45] Statement of Issue, JSFI, Docket – Vol. I, p. 185.

THE COURT'S RULING

The present *Petition for Review* is denied for lack of merit.

Governing provisions for refund claims.

Sections 204(C) and 229 of the NIRC of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[46]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[47] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[48]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it timely filed its refund claim, it must likewise prove that the subject excise taxes paid are erroneous, illegal, or wrongful.

Petitioner timely filed both its administrative and judicial claims.

Based on Sections 204(C) and 229 of the NIRC of 1997, the two (2)-year prescriptive period should be reckoned from the date of actual payment of excise taxes.

a. Excise tax on imported LPG:

Excise taxes on imported articles, in general, are paid by the owner or importer upon importation and prior to removal thereof from the customshouse as provided in Section 131(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be <u>paid by the owner or importer</u> to the Customs**

[46] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[47] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[48] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Officers, conformably with the regulations of the Department of Finance and <u>before the release of such articles from the customshouse,</u> or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

xxx xxx xxx." *(Emphasis and underscoring added)*

In the present case, for the imported LPG, petitioner's payment of duties and taxes is supported by importation documents, *i.e.*, Bureau of Customs (BOC) *Single Administrative Documents* (SADs), *Statement of Settlement of Duties and Taxes* (SSDTs), BOC Payment Receipts, *Bills of Lading*, supplier invoices, and BIR *Authority to Release Imported Goods* (ATRIG).[49]

The earliest payment for the excise tax on importation was made on January 18, 2019, as evidenced by the SAD and SSDT.[50] From said date, petitioner had until January 18, 2021 within which to file its administrative and judicial claim for refund.

Considering that petitioner filed its administrative claim for refund on December 7, 2020,[51] while its judicial claim for refund on December 29, 2020,[52] petitioner timely filed its administrative and judicial claims for refund within two (2) years from date of payment of the excise taxes on imported LPG in accordance with Sections 204(C) and 229 of the NIRC of 1997.

b. Excise tax on locally manufactured or produced LPG:

On the other hand, excise taxes on locally produced or manufactured petroleum products are, in general, paid by the manufacturer or producer before the removal of the domestic products from the place of production pursuant to Section 130(A)(2) of the NIRC of 1997, as amended, to wit:

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

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* —

xxx xxx xxx

[49] Exhibits "P-6136" to "P-6267", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[50] Exhibits "P-6219" and "P-6219-1", USB (submitted on June 8, 2022).
[51] Exhibit "P-7" and "P-8", Docket – Vol. I, pp. 517 to 522 and 508, respectively.
[52] Docket – Vol. I, pp. 7 to 40.

> (2) *Time for Filing of Return and Payment of the Tax.* — **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: xxx." *(Emphasis and underscoring added)*

Thus, pursuant to the aforequoted Sections 204(C) and 229 of the NIRC of 1997, in relation to the afore-quoted provision of Section 130(A)(2) of the same Code, petitioner's administrative and judicial claims should be filed within two (2) years from the earliest date of removal of the locally produced petroleum products from the place of production.

For locally produced LPG, the excise tax due is paid by petitioner on a daily basis, upon removal of locally produced products from the PBR. Petitioner avails of the BIR's Electronic Filing and Payment System (eFPS),[53] as evidenced by *Excise Tax Returns* (BIR Forms No. 2200-P), with attached *Summary of Removals and Excise Tax Due on Petroleum Products Chargeable Against Payments*, and *eFPS Payment Details*.[54]

Records reveal that the earliest removal of petitioner's locally produced LPG from petitioner's place of production, was made on January 2, 2019, and for which the corresponding excise tax was paid on even date.[55] Thus, petitioner had two (2) years from January 2, 2019 or until January 2, 2021, within which to file both its administrative and judicial claims for refund.

Considering that petitioner filed its administrative claim for refund on December 7, 2020,[56] while its judicial claim for refund on December 29, 2020,[57] petitioner timely filed its administrative and judicial claims for refund within the two (2) year prescriptive period provided under Sections 204(C) and 229, in relation to Section 130(A)(2), of the NIRC of 1997.

In sum, petitioner timely filed its administrative and judicial claims for refund of excise taxes paid on imported and locally produced or manufactured LPG.

The excise taxes paid on imported and locally manufactured LPG sold to tax-exempt entities are erroneously or illegally collected.

[53] Par. 68, petitioner's *Memorandum*, Docket – Vol. II, p. 710; Q&A No. 24, Exhibit "P-36", Docket – Vol. I, p. 72.
[54] Exhibits "P-101" to "P-6055" and "P-6056" to "P-6135", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[55] Par. 73, petitioner's *Memorandum*, Docket – Vol. II, p. 711; Q&A No. 23, Exhibit "P-36" Docket – Vol. I, p. 72; Exhibit "P-141", USB (submitted on June 8, 2022).
[56] Exhibits "P-9" and "P-10", Docket – Vol. I, pp. 523 to 529 and 532, respectively.
[57] Docket – Vol. I, pp. 7 to 40.

Respondent argues that based on Section 129 of the NIRC of 1997, petitioner being a manufacturer of petroleum products sold to exempt agencies is liable to pay excise taxes due thereon. In other words, petitioner is liable to pay the excise tax upon the fuel it manufactured as soon as they are in existence. The only instance that petitioner may invoke a claim for refund is the erroneous payment of the excise tax. However, respondent stresses that the excise tax paid by petitioner was legally and validly collected since it is indeed liable to pay such tax.

Also, respondent disagrees with petitioner's argument that Section 135 of the NIRC of 1997 exempts the article itself, or the petroleum product. He states that indirect taxes including excise tax are paid by the buyers as it forms part of the purchase price. According to respondent, if petitioner sold the LPG to an exempt entity, petitioner is precluded from passing on the excise tax to the said exempt entity and bears the burden of paying the said tax.

Respondent further posits that on its face, Section 135 of the NIRC of 1997 does not grant exemption to sellers rather it provides for an enumeration wherein petroleum products when sold to international carriers and entities enumerated therein are exempt from excise tax. He contends that Section 135 cannot be a source for petitioner's claim for refund and it cannot be invoked by the sellers like herein petitioner, but only by the buyers who are exempt entities. In the case at hand, the petroleum product sold is subject to excise tax for it is a fact that the buyers as enumerated in Section 135 are the exempt entities. Thus, respondent asserts the excise tax from manufacturing petroleum products is the direct liability of the manufacturer. Therefore, according to respondent, petitioner cannot invoke the exemption granted to these exempt entities as a ground to claim for refund of the excise tax paid.

The Court disagrees with respondent.

The present claim for refund is governed by the following provisions of the NIRC of 1997, as amended:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported.** The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> xxx xxx xxx." *(Emphasis added)*
>
> "SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **<u>Petroleum products</u> 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;
>
> (c) **Entities which are by law exempt from direct and indirect taxes**." *(Emphases and underscoring added)*

A plain reading of the foregoing provision reveals that the words *"petroleum products"* were never qualified. The law did not distinguish whether the petroleum products sold were locally-manufactured or were imported, in order for there to be an excise tax exemption. Where the law does not distinguish, courts should not distinguish.[58] Thus, the exemption given under Section 135 of the NIRC of 1997 may be resorted regardless of whether the subject LPG was locally-manufactured or imported, so long as the conditions therein are complied with by the refund-claimant.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation (2014 Pilipinas Shell* case*)*,[59] the Supreme Court categorically declared that the local manufacturer/seller, as the statutory taxpayer, who paid the excise taxes on petroleum products sold to international carriers, is entitled to a refund or credit of the excise taxes paid pursuant to Section 135 of the NIRC, to wit:

> "xxx 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 added)*

Moreover, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue (2015 Chevron* case*)*,[60] the exemption granted under Section 135 of the NIRC of 1997, as amended, was discussed as follows:

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[58] *Manila International Airport Authority vs. Court of Appeals, et al.*, G.R. No. 155650, July 20, 2006.
[59] G.R. No. 188497, February 19, 2014.
[60] G.R. No. 210836, September 1, 2015.

> "Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous, and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products**." *(Emphases added)*

Although the exemption in the *2015 Chevron* case was premised on Section 135(c) of the NIRC of 1997, while the *2014 Pilipinas Shell* case was premised on Section 135(a) of the same law, the Supreme Court held in the *2015 Chevron* case that "[n]otwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC, the basic tax principle applicable was the same in both cases – that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed."

Furthermore, in the *2014 Pilipinas Shell* case, the Supreme Court held therein that "exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent." In contrast, the Supreme Court held in the *Chevron* case that "Section 135 (c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place."

Notably, in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[61] the Supreme Court elucidated on certain conceptual distinctions in the *2014 Pilipinas Shell* case vis-à-vis the Court's subsequent pronouncements in the *2015 Chevron* case, holding that Section 135 confers an impersonal tax exemption, to wit:

> "**II.**
>
> By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a specific rate or *ad valorem*. As case law characterizes, **an excise tax is not a tax on the exercise of a privilege, but rather a levy on certain articles which are manufactured or imported for domestic consumption. It is equally settled that that the accrual or liability to pay the same arises immediately upon**

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

importation or as soon as the goods come into existence when manufactured.

Furthermore, excise taxes are **indirect taxes, as opposed to direct taxes**. Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of **tax incidence** (or the actual liability to pay the tax) and **tax burden** (the economic burden of the tax incident).

On the one hand, **direct taxes** are 'those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,' which means, the tax incidence and tax burden fall upon the same person.

On the other, **indirect taxes** are 'those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered**.' As jurisprudence explains, 'this **shifting process**, otherwise known as '**passing on**,' is largely a **contractual affair** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the **manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the **owner or importer** (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law**. To this end, **the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**.'

Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. **Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the statutory taxpayer, who must correspondingly benefit from any tax exemption**. In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not *per se* the excise tax liability imposed under Section 129 of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that '**[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers**. The fact that [statutory taxpayer/importer], on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer.' **This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the 'exemption' granted under Section 135 governing excise taxes.**

III.

At its core, the purpose of a grant of tax exemption is 'some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption.' However, the **object of the grant of tax exemption** is not necessarily a natural person similar to how 'the objects of taxation are either persons, property[,] and property rights within the jurisdiction of the taxing authority.' As such, generally speaking, the object of tax exemptions may either be **personal or impersonal**. Personal exemptions conceptually pertain to those 'granted directly in favor of such persons as are within the contemplation of the law granting the exemption.' On the other hand, an impersonal exemption may be said to exist when a tax exemption is 'granted directly in favor of a <u>certain class of property</u>.' If the tax exemption is impersonal in nature, then, regardless of who transacts with the property, the exemption should still apply. This framework of personal and impersonal tax exemptions underpins the exemption granted under Section 135 on excisable articles.

Notably, the Court, in the 2014 Pilipinas Shell Resolution, stated that the 'exemption from payment of excise tax' under Section 135 is 'conferred on international carriers who purchased the petroleum products of respondent'; thus, in said case, the tax exemption under Section 135 covering said products was characterized as a grant of a personal tax exemption.

However, in the subsequent case of 2015 Chevron, the Court effectively abandoned the foregoing characterization, and instead, correctly categorized that the tax exemption under Section 135 is '**in favor of the petroleum products on which the excise tax was levied in the first place**.' As such, the Court, in 2015 Chevron, validated the nature of Section 135 as a provision conferring an impersonal tax exemption, which, in fact, cogently squares with the nature of excise taxes being a tax on property, rather than a tax on persons.

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.'

The impersonal nature of the tax exemption is also expressed in the wording itself of Section 135:

xxx xxx xxx

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 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**.'

IV.

At this juncture, it is likewise relevant to mention that since an excise tax is in the nature of a property tax, it is thus erroneous to consider the operation of a tax exemption thereto in the same way as a transactional tax, wherein every purchaser and seller may be considered as a statutory taxpayer for every succeeding transaction, only ending with the final consumer. **Rather, the exemption under Section 135 must be reconciled with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation.**

The Court, in the 2015 Chevron, had already settled that the true status of the goods, whether ultimately taxable or tax-exempt, is **actually conditional** or **subject to confirmation** upon the sale of the articles to any of the entities enumerated under Section 135. This conditional taxability can actually be seen in another related provision in the Tax Code, *i.e.*, Section 131 thereof:

> Section 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> **In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are <u>subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities</u>, the purchasers or recipients shall be considered the importers thereof, and <u>shall be liable for the duty and internal revenue tax due on such importation.</u>**
>
> xxx xxx xxx (Emphasis and underscoring supplied)

As may be gleaned from Section 131 as above-cited, although certain articles may be free from excise taxes upon importation, they may subsequently become subject to the same depending on the subsequent buyer. This is essentially the same principle of **subsequent confirmation** espoused by the 2015 Chevron, and is also a necessary consequence of excise tax being a property tax, and not a tax on persons.

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. In turn, the petroleum products become exempt from excise taxes once it is determined that they are to be sold to, among others, international carriers. This reflects Section 135's wording, *i.e.*, that the petroleum products are considered as tax-exempt once they are 'sold to [*inter alia*] x x x [i]nternational carriers.'

Based on *(a)* the nature of excise taxes as a property tax and an indirect tax, and *(b)* the principle that a buyer, when shouldering the tax burden, does not become the statutory taxpayer, **it is thus clear that the purchaser of local products** (such as international carriers) **cannot be deemed to have been conferred a tax exemption when it has not been imposed a tax liability**. In the ordinary course of things, international carriers do not manufacture or import petroleum products and hence, are not statutory taxpayers to which the exemption under Section 135 could pertain. If anything, international carriers merely bear the tax burden when the costs therefor are passed on to them by the actual manufacturers or importers. However, as earlier discussed, the 'passing on' of the tax burden is largely a contractual affair between the parties and should not determine the tax incidence imposed by law unless the contrary is provided. **As such, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).**"

Thus, the Supreme Court already rebutted respondent's claim herein that petitioner as the seller cannot claim a refund under Section 135 of the NIRC, as only the buyer who are exempt entities can invoke the same. As explained by the High Court, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and ***not*** the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers and exempt entities).

Applying the foregoing, upon petitioner's sale of its imported and locally manufactured LPG to various tax-exempt entities, the status of the said sold petroleum product as tax-exempt solidifies. Consequently, the excise taxes it previously paid on the imported and locally manufactured LPG became erroneously or illegally collected taxes that are proper subject of a claim for refund or credit under Sections 204(C) and 229 of the NIRC of 1997.

However, in this case, petitioner failed to sufficiently prove its entitlement to the claim for refund or issuance of tax credit certificate.

As previously quoted above, this claim for refund is governed by Sections 204(C) and 229, in relation to Sections 129 and 135, of the NIRC of 1997, as amended.

Based on the foregoing, the following are the basic requirements for the entitlement to the claim for refund or issuance of tax credit certificate:

1. That petitioner's claim was filed within the two (2)-year prescriptive period as provided for under Sections 204(C) and 229 of the NIRC of 1997;

2. That the entity to which the petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes; and

3. That petitioner is the statutory taxpayer and actually paid the claimed excise taxes on the same petroleum products sold to the exempt entity.

For the *first* requirement, as discussed earlier, it is already found that petitioner timely filed its administrative and judicial claims for refund of excise taxes paid on imported and locally produced or manufactured LPG. Hence, the *first* requirement was complied with.

Anent the *second* requirement, petitioner avers that it sold LPG to tax-exempt entities which are registered with the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), and Clark Development Corporation (CDC) for the period January to December 2019.

Section 12(c) of Republic Act (RA) No. 7227,[62] as amended by RA No. 9400,[63] recognizes national and local tax exemption on business enterprises within the Subic Special Economic Zone (SSEZ). Likewise, Section 24 of RA No. 7916,[64] as amended by RA No. 8748,[65] business establishments operating within the ECOZONE are exempt from national and local taxes, excise tax included, the same being a national tax.

Examination of the submitted PEZA *Certifications* and *Certificates of Registration and Tax Exemption* (CRTEs) issued by SMBA and CDC shows that there is no CRTE submitted for Cebu Swallow Eishin Corp., and all PEZA *Certifications* and CRTEs were marked "Reproduction of Photocopied Document".[66] Notably, the Court-commissioned ICPA, Ms. Normita L. Villaruz, stated the following in her report:[67]

> "2. The original copies of the Certificates of Registration and Tax Exemption are retained by the customers and electronics [*sic*] copies were provided to Petron.
>
> We validated the registration and tax exemption of the customers of Petron with the respective government agencies and confirmed the authenticity of the scanned copy certificates except for the following customers:

Name of Entities	Registration Certification Number	Validity Period
SUBIC BAY TOWN CENTER, INC.	2010-0117	August 30, 2018 – August 29, 2021
JOHNSON CONTROLS-HITACHI AIR CONDITIONING PHILIPPINES, INC.	1997-0022	June 18, 2018 – June 17, 2021
NIDEC SUBIC PHILIPPINES CORPORATION	1999-0024	December 04, 2018 – December 03, 2021
EIGHT INTEGRATED DEVELOPMENT CORP.	2018-510	November 09, 2018 – November 8, 2021
SWALLOW GLOVE CEBU CORPORATION FORMERLY CEBU SWALLOW-EISHIN CORPORATION	92-056	January 1, 2019 – June 30, 2019
DAIKI OM ALUMINIUM INDUSTRY (PHILIPPINES), INC.	10-79	For the year 2019

[62] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.
[63] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.
[64] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.
[65] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995."
[66] Exhibits "P-13498" to "P-13551", USB (submitted on June 8, 2022).
[67] Exhibit "P-42", Docket – Vol. I, pp. 366 to 367.

FCC (PHILIPPINES) CORP.	93-55	January 1, 2019 – June 30, 2019"

However, in the ICPA *Supplemental Report* dated May 2, 2023,[68] the ICPA indicated:

> "4. As stated on page 4 (C) (6) of our **Report dated June 06, 2022**, we requested Clark Development Corporation (CDC) to provide Certificate of Registration of Petron's customers to confirm their registration and eligibility for tax-exemption under Republic Act 9400 of CDC.
>
> We received from CDC a response letter dated June 09, 2022, signed by the Officer-in-Charge, Business Development and Business Enhancement Group, confirming the issuance of Certificate of Registration and Tax Exemption (CRTE No. 2018-510) to Eight Integrated Development Corp. (EIDC) for the period January 1, 2019 to December 31, 2019 (**Exhibit P-15965**)."

Further, the PEZA *Certifications* and CRTEs submitted are valid only for the period indicated therein, *i.e.*, January 1, 2019 to June 30, 2019, July 1, 2019 to December 31, 2019, and/or for the year 2019 only.

Notably, petitioner sold 17,198,891.95 kilograms (kgs) of LPG to the following business enterprises based on the invoices issued by petitioner and findings of the ICPA, *viz.*:[69]

Customer Name	Volume (kgs)
Air Liquide Pipeline Utilities Services	124,040.00
Swallow Glove Cebu Corporation	3,441.00
Creative Diecast Phils. Corp.	591,396.31
Daiki OM Aluminium Industry (Philippines), Inc.	2,996.80
Eau De Coco, Inc.	52,116.64
FCC (Philippines) Corp.	666,467.64
Gunma Gohkin Philippines Corporation	1,142,087.54
House Technology Industries Pte., Ltd.	5,704,793.18
Kodec Precision Inc.	856,830.00
Lufthansa Technik Philippines, Inc.	70,674.26
Mahle Filter Systems Philippines Corporation	94,170.70
Makoto Metal Technology, Inc.	503,089.00
Metalcrest Technologies Inc.	573,658.35
Phil. BXT Corp.	593,110.00
Philippine Associated Smelting and Refining Corporation	1,029,800.00
Philippine Iino Corporation	35,438.00

[68] Exhibit "P-46", Docket – Vol. II, p. 572.
[69] *Schedule of Sales – 2019 LPG*, USB (submitted on June 9, 2022); and Exhibits "P-6268" to "P-9876", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).

Philippine Tonan Corporation	201,907.00
Pilipinas NM, Inc.	195,180.00
Phil. Batteries Incorporated	588,075.00
Quest Dental Material Corporation	27,623.00
Ricoh Imaging Products (Philippines) Corporation	3,519.00
Taiyo Yuden (Philippines), Inc.	17,822.00
Tann Philippines, Inc.	291,882.97
TMX Philippines, Inc.	26,939.00
Toa Kiko Cebu Corporation	46,932.00
Tsuneishi Heavy Industries (Cebu), Inc.	508,794.00
Yamashin Cebu Filter Manufacturing Corp.	152,199.00
Yasaka Philippines International Corporation	132,489.00
Zama Precision Industry Manufacturing Philippines, Inc.	833,248.59
Subic Bay Town Center, Inc.	262,510.00
Johnson Controls-Hitachi Air Conditioning Philippines, Inc.	173,451.00
Nidec Subic Philippines Corporation	1,528,140.00
Eight Integrated Development Corp.	130,844.97
Cebu Swallow Eishin Corp.	24,396.00
Brenton Int'l Venture Commercial	8,830.00[70]
Total	**17,198,891.95**

Petitioner is claiming for refund the excise taxes paid on the foregoing LPG sold to tax-exempt entities, thus:[71]

Exhibit No.	Particulars	Volume of Sales (kgs)	Excise Tax Rate	Excise Taxes
"P-7", "P-8"	Importation of LPG	9,538,479.43	₱2.00	₱ 19,076,958.86
"P-9", "P-10"	Locally produced LPG	7,660,412.52	₱2.00	₱ 15,320,825.04
	Total claim	**17,198,891.95**		**₱34,397,783.90**

However, sales to the aforementioned entities with PEZA *Certifications* and CRTEs not validated by the ICPA, Cebu Swallow Eishin Corp., and Brenton Int'l Venture Commercial, cannot form part of petitioner's claim for refund.

Consequently, petitioner's sales to tax-exempt entities are reduced by the following disallowed sales of 2,330,530.82 kgs., to wit:[72]

Customer Name	Volume (kgs)
Subic Bay Town Center, Inc.	262,510.00
Johnson Controls-Hitachi Air Conditioning Philippines, Inc.	173,451.00
Nidec Subic Philippines Corporation	1,528,140.00
Swallow Glove Cebu Corporation (January to June 2019)	2,923.00
Daiki OM Aluminium Industry (Philippines), Inc.	2,996.80

[70] Par. II(C)(4), Exhibit "P-42", Docket – Vol 1, p. 368.
[71] Exhibit "P-42", Docket – Vol. 1, p. 352.
[72] *Schedule of Sales – 2019 LPG*, USB submitted on June 9, 2022; and Exhibits "P-6268" to "P-9876", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).

FCC (Philippines) Corp. (January to June 2019)	327,284.02
Cebu Swallow Eishin Corp.	24,396.00
Brenton Int'l Venture Commercial	8,830.00
Total	**2,330,530.82**

Furthermore, petitioner's sales to tax-exempt entities supported by invoices dated in the year 2020 in the aggregate volume of 717,114.60 kgs. should likewise be disallowed for being outside the validity period of the PEZA *Certifications* and CRTEs, to wit:[73]

Customer Name	Volume (kgs)
Air Liquide Pipeline Utilities Services	11,000.00
Creative Diecast Phils. Corp.	43,578.00
FCC (Philippines) Corp.	52,867.43
Gunma Gohkin Philippines Corporation	55,679.43
House Technology Industries Pte., Ltd.	215,187.72
Kodec Precision Inc.	58,330.00
Lufthansa Technik Philippines, Inc.	6,913.00
Mahle Filter Systems Philippines Corporation	3,576.14
Makoto Metal Technology, Inc.	13,860.00
Metalcrest Technologies Inc.	56,131.91
Phil. BXT Corp.	26,950.00
Philippine Associated Smelting and Refining Corporation	40,410.00
Philippine Iino Corporation	1,349.00
Philippine Tonan Corporation	3,920.00
Pilipinas NM, Inc.	16,070.00
Phil. Batteries Incorporated	29,910.00
Quest Dental Material Corporation	570.00
Taiyo Yuden (Philippines), Inc.	615.00
Tann Philippines, Inc.	8,410.00
TMX Philippines, Inc.	564.00
Toa Kiko Cebu Corporation	1,426.00
Tsuneishi Heavy Industries (Cebu), Inc.	12,500.00
Yamashin Cebu Filter Manufacturing Corp.	3,365.00
Yasaka Philippines International Corporation	3,275.00
Zama Precision Industry Manufacturing Philippines, Inc.	42,171.00
Eight Integrated Development Corp.	8,485.97
Total	**717,114.60**

Moreover, it is also noted that petitioner submitted its sales invoices to support its sales to tax-exempt entities for the taxable year 2019. The same were offered as Exhibits "P-6288" to "P-9876",[74] and the Court admitted these

[73] *Schedule of Sales – 2019 LPG*, USB (submitted on June 9, 2022); and Exhibits "P-6268" to "P-9876", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[74] Petitioner's *Formal Offer of Evidence*, Docket – Vol. I, p. 471.

exhibits as evidence.[75] However, the sales invoices found in the USB marked as Exhibit "P-43-2" upon which total sales are based are marked as Exhibits "P-6268" to "P-9876". Essentially, petitioner's sales invoices marked as Exhibits "P-6268" to "P-6287" are not offered as evidence and should be disregarded. Thus, the sales volume in the total of 138,137.47 kgs. should be excluded from petitioner's total sales to tax-exempt entities, broken down as follows:[76]

Customer Name	Volume (kgs)
Gunma Gohkin Philippines Corporation	7,993.70
House Technology Industries Pte., Ltd.	66,819.55
Kodec Precision Inc.	8,190.00
Philippine Associated Smelting and Refining Corporation	19,950.00
Phil. Batteries Incorporated	7,990.00
Tann Philippines, Inc.	8,530.34
Zama Precision Industry Manufacturing Philippines, Inc.	16,362.88
Eight Integrated Development Corp.	2,301.00
Total	**138,137.47**

Thus, a total of 14,013,109.06 kgs of LPG constitute petitioner's valid sales to tax-exempt entities:

Total sales in kgs per claim		17,198,891.95
Less: Disallowed sales		
a) To entities with CRTEs not validated by the ICPA	2,330,530.82	
b) Supported by invoices dated in the year 2020	717,114.60	
c) Supported by invoices not offered as evidence	138,137.47	3,185,782.89
Total valid sales in kgs.		**14,013,109.06**

The foregoing total valid sales in kgs. is broken down, according to petitioner's customers, as follows:[77]

Customer Name	Valid Sales (kgs)
Air Liquide Pipeline Utilities Services	113,040.00
Swallow Glove Cebu Corporation	518.00
Creative Diecast Phils. Corp.	547,818.31
Eau De Coco, Inc.	52,116.64
FCC (Philippines) Corp.	286,316.19
Gunma Gohkin Philippines Corporation	1,078,414.41
House Technology Industries Pte., Ltd.	5,422,785.91

[75] Resolutions dated March 3, 2023, September 15, 2023, and April 29, 2024, Docket – Vol. II, pp. 541, 625, and 689, respectively.
[76] *Schedule of Sales – 2019 LPG*, USB (submitted on June 9, 2022); and Exhibits "P-6268" to "P-9876", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[77] *Schedule of Sales – 2019 LPG*, USB (submitted on June 9, 2022); and Exhibits "P-6268" to "P-9876", USB submitted on June 8, 2022 and USB (submitted on October 6, 2023).

Kodec Precision Inc.	790,310.00
Lufthansa Technik Philippines, Inc.	63,761.26
Mahle Filter Systems Philippines Corporation	90,594.56
Makoto Metal Technology, Inc.	489,229.00
Metalcrest Technologies Inc.	517,526.44
Phil. BXT Corp.	566,160.00
Philippine Associated Smelting and Refining Corporation	969,440.00
Philippine Iino Corporation	34,089.00
Philippine Tonan Corporation	197,987.00
Pilipinas NM, Inc.	179,110.00
Phil. Batteries Incorporated	550,175.00
Quest Dental Material Corporation	27,053.00
Ricoh Imaging Products (Philippines) Corporation	3,519.00
Taiyo Yuden (Philippines), Inc.	17,207.00
Tann Philippines, Inc.	274,942.63
TMX Philippines, Inc.	26,375.00
Toa Kiko Cebu Corporation	45,506.00
Tsuneishi Heavy Industries (Cebu), Inc.	496,294.00
Yamashin Cebu Filter Manufacturing Corp.	148,834.00
Yasaka Philippines International Corporation	129,214.00
Zama Precision Industry Manufacturing Philippines, Inc.	774,714.71
Eight Integrated Development Corp.	120,058.00
TOTAL	**14,013,109.06**

The excise tax paid thereon *may* then be claimed for refund pursuant to Sections 129 and 135, of the NIRC of 1997, as amended.

As to the *third* requirement, as earlier discussed, petitioner is the statutory taxpayer as the manufacturer or producer and importer. Thus, its excise tax payments on petroleum products (including LPG) sold to tax-exempt entities are deemed erroneously or illegally collected and may be the subject of claim for refund or issuance of tax credit certificate, pursuant to Section 135(c) of the NIRC of 1997, as amended.

The Court shall now proceed to determine whether petitioner was able to substantiate its claim by sufficient evidence, whether (a) the excise tax on the petroleum product (*i.e.*, LPG) subject of the present claim are indeed duly paid; and (b) there is a sale and delivery of the same petroleum products to a tax-exempt entity.

It is represented that petitioner operates the PBR, where crude oil is processed into a full range of petroleum products, including LPG.[78] The LPG is stored and comingled with imported LPG as allowed by Commingling Permit No. ELTRD (P)—028-02-19-26998 dated February 6, 2019, which is valid until December 31, 2019.[79]

[78] Par. 11, petitioner's *Memorandum*, Docket – Vol. II, p. 693.
[79] Exhibit "P-5", Docket – Vol. I, p. 516.

Petitioner pays excise taxes on locally produced LPG before their removal from the PBR at the rate of ₱2.00 per kilogram pursuant to Section 148(j) of the NIRC of 1997, as amended. Likewise, petitioner pays excise taxes on imported LPG at the same rate before removal or release from the custody of the BOC at various ports.[80]

The locally-produced and imported LPG are then withdrawn from the PBR and delivered either to petitioner's customers or to petitioner's various depots in the following locations: (1) Mandaue Depot, (2) Ormoc Depot, (3) Pasig Depot, (4) Rosario Depot, (5) San Fernando Depot, and (6) Batangas Depot for eventual sale and delivery to its customers, including tax-exempt entities.[81]

The ICPA reports that petitioner makes advance excise tax deposits for its locally-produced LPG for taxable year 2019, and on September 2, 2019, petitioner applied its Tax Subsidy Availment Certificates (TSAC) issued by the BIR to the Armed Forces of the Philippines Commissary and Exchange Services, in the amount of ₱950,000.00, in the aggregate amount of ₱22,840,201,039.50, *viz.*:[82]

Month	**Excise Tax Amount**
January 2019	₱ 2,545,000,000.00
February 2019	2,370,000,000.00
March 2019	3,235,000,000.00
April 2019	2,295,000,000.00
May 2019	775,000,000.00
August 2019	98,201,039.50
September 2019	2,295,000,000.00
October 2019	3,180,000,000.00
November 2019	3,319,000,000.00
December 2019	2,728,000,000.00
TOTAL	**₱22,840,201,039.50**

However, an examination of the payment confirmation details[83] submitted shows that the amount ₱180,000,000.00 should be disallowed for not being properly supported. The said payment is supported by: (1) a BIR *eFPS Payment Details* for the tax period March 12, 2019 but shows an amount of ₱0.00, and (2) an unvalidated bank *BIR Payment Slip* for the tax period March 13, 2019 in the amount of ₱120,000,000.00.[84]

[80] Pars. 12 and 14, petitioner's *Memorandum*, Docket – Vol. II, pp. 693 to 694.
[81] Pars. 13 and 15, petitioner's *Memorandum*, Docket – Vol. II, pp. 693 to 694, and par. 16, *Petition for Review*, Docket – Vol. I, p. 10.
[82] *Annex B*, Exhibit "P-42", Docket – Vol. I, p. 374. Refer also to par. II(A)(1), Exhibit "P-42", Docket – Vol. I, pp. 357 to 358.
[83] Exhibits "P-6056" to "P-6135", USB (submitted on June 8, 2022).
[84] Exhibit "P-6079", USB (submitted on June 8, 2022). Note that both the *eFPS Payment Details* and *BIR Payment Slip* are marked as Exhibit "P-6079". Refer also to *Summary of Exhibits – Payment of Advance Deposit*, USB (submitted on June 9, 2022).

Thus, the total excise tax payments for the taxable year 2019 should be adjusted to ₱22,660,201,039.50 (₱22,840,201,039.50 less ₱180,000,000.00).

As of December 31, 2018, the end of the previous taxable period, petitioner had a balance of advance excise tax deposits of ₱732,366,747.19, as evidenced by *Excise Tax Return* (BIR Form No. 2200-P) for the month of December 2018.[85] Thus, total advance excise tax deposits available for the taxable year 2019 amount to ₱23,392,567,786.69 (₱732,366,747.19 plus ₱22,660,201,039.50).

Per the ICPA *Report*, petitioner's excise taxes due and paid on all locally-manufactured petroleum products for the taxable year 2019 amount to ₱22,931,747,768.85:[86]

	Excise Tax Amount
LPG	₱ 393,527,018.86
All other petroleum products	22,538,220,749.79
TOTAL	**₱22,931,747,768.65**

Based on the foregoing, petitioner's total advance excise tax deposits available of ₱23,392,567,786.69 are enough to cover its excise taxes due and paid for the taxable year 2019 amounting to ₱22,931,059,893.83. In fact, the ICPA found that there is an overstatement in petitioner's balance of excess advance excise tax deposits as of December 31, 2019, which "does not have any impact on the claim for refund" of petitioner.[87]

Additionally, the *third* requirement likewise needs petitioner to prove that the claimed excise taxes on the same petroleum products paid in the year 2019 were sold to its customers that are tax-exempt entities. This is especially crucial since petitioner has a beginning balance of advance excise tax deposits of ₱732,366,747.19. In order to verify the same, the movement of petitioner's LPG from local production or importation including the payment of excise taxes due and withdrawal should be traced all the way to the delivery of the same to the tax-exempt entities.

The following documents, among others, are petitioner's proof that excise taxes on the locally-produced and imported LPG are paid, and that the LPG were withdrawn from the PBR and subsequently sold and delivered to petitioner's tax-exempt clients, to wit:

[85] Exhibit "P-101", USB (submitted on June 8, 2022).
[86] Par. II(A)(4) and (5), Exhibit "P-42", Docket – Vol. I, pp. 360 to 361.
[87] Par. II(A)(5) and (6), Exhibit "P-42", Docket – Vol. I, pp. 361 to 363.

1. **SAP-generated Official Registry Books (ORBs)**[88] and **Manual ORBs filed with the BIR** for the year 2019[89] - monthly record wherein transactions in quantity or volume of receipts and removals of petroleum and other petroleum products, including imported and locally-manufactured LPG is entered;[90]

2. ***Excise Tax Returns*** **with Schedule 1** ***Summary of Removals and Excise Tax Due on Petroleum Products Chargeable Against Payments***;[91]

3. ***Cargo Outturn Certificates*** **(COCs)**[92] – are SAP-generated internal documents prepared at the PBR which support the recording of the removals of petroleum and other petroleum products from the Refinery in the ORB and in the General Ledger;[93] ***Cargo Intake Certificates*** **(CICs)**[94] – SAP-generated internal documents prepared at the PBR which support the receipt of imported LPG by the Refinery in the Manual ORB and in the General Ledger;[95] and ***Liquidation Statements***[96] – prepared at the terminal/depot which show the movement of receipts and issuances of LPG including those that are sold to various tax-exempt entity;[97]

4. ***Withdrawal Certificates*** **(WCs);**[98]

5. ***Sales Invoices***;[99]

6. ***Delivery Notes*** ;[100] and

7. ***Cash Receipts***.[101]

Petitioner's Summary of Monthly SAP Generated ORB shows the following:[102]

[88] Exhibits "P-13486" to "P-13497", USB (submitted on June 8, 2022) and USB submitted on October 6, 2023).
[89] Exhibits "P-15962-1" to "P-15962-12", (USB submitted on May 4, 2023).
[90] Q&A No. 13, Exhibit "P-37", Docket – Vol. I, p. 202.
[91] Exhibits "P-101" to "P-6055", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[92] Exhibits "P-13681" to "P-13802", "P-14108" to "P-14546", and "P-15090" to "P-15279", USB (submitted on June 9, 2022).
[93] Q&A No. 20, Exhibit "P-37", Docket – Vol. I, p. 205.
[94] Exhibits "P-13803" to "P-13942", "P-14547" to "P-14986", and "P-15280" to "P-15469", USB (submitted on June 9, 2022) and USB (submitted on October 6, 2023).
[95] Q&A No. 13, Exhibit "P-37", Docket – Vol. I, p. 203.
[96] Exhibits "P-15643" to "P-15961", USB (submitted on June 9, 2022) and USB (submitted on October 6, 2023).
[97] Par. II(D)(1), Exhibit "P-42", Docket – Vol. I, p. 369.
[98] Exhibits "P-13560" to "P-13680", "P-13943" to "P-14107", and "P-14987" to "P-15089", USB (submitted on June 9, 2022) and USB (submitted on October 6, 2023).
[99] Exhibits "P-6288" to "P-9876", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[100] Exhibits "P-9877" to "P-13485", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[101] Exhibits "P-15470" to "P-15642", USB (submitted on June 8, 2022).
[102] USB (submitted on June 9, 2022).

Exhibit No.		Total Amount of Excise Taxes for all Petroleum Products
"P - 13486"	January	3,558,138,629.39
"P - 13487"	February	2,686,961,427.62
"P - 13488"	March	3,355,611,299.00
"P - 13489"	April	2,775,961,230.00
"P - 13490"	May	801,500,275.86
"P - 13491"	June	106,566,303.50
"P - 13492"	July	34,040,538.00
"P - 13493"	August	555,248,115.50
"P - 13494"	September	2,416,948,753.50
"P - 13495"	October	3,520,247,158.00
"P - 13496"	November	3,750,757,730.50
"P - 13497"	December	3,512,292,691.12
	Total	**27,074,274,151.99**

For the year 2019, petitioner's withdrawals of LPG from the PBR are supported by *Excise Tax Return* (BIR Form No. 2200-P) with attached *Summary of Removals and Excise Tax Due on Petroleum Products Chargeable Against Payments.*[103] The ICPA's *Monthly Summary of Breakdown of Quantity Removed and Equivalent Excise Taxes Due of All Petroleum Products* shows the following, among others:[104]

		Tax Rate P2.00 - LPG	
Reference Annex	2019	Qty in Kilo	Tax Amount (B)
D_1	JANUARY	35,695,272.00	P 71,390,544.00
D_2	FEBRUARY	27,442,961.00	54,885,922.00
D_3	MARCH	23,731,094.00	47,462,188.00
D_4	APRIL	19,417,619.00	38,835,238.00
D_5	MAY	1,856,455.43	3,712,910.86
D_6	JUNE	-	-
D_7	JULY	-	-
D_8	AUGUST	-	-
D_9	SEPTEMBER	15,511,471.00	31,022,942.00
D_{10}	OCTOBER	28,635,653.00	57,271,306.00
D_{11}	NOVEMBER	25,196,405.00	50,392,810.00
D_{12}	DECEMBER	19,276,579.00	38,553,158.00
	Total	**196,763,509.43**	**₱393,527,018.86**

However, the Court finds that the foregoing consists of petitioner's withdrawals of all LPG, and not just the quantity sold to its tax-exempt customers.

[103] Exhibits "P-101" to "P-6055", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).
[104] Annex D, Exhibit "P-42", Docket – Vol. I, p. 376. Refer also to USB (submitted on June 8, 2022).

The ICPA prepared a Comparison of Excise Taxes per SAP Generated ORB vs Per Excise Tax Return, thus:[105]

	Per SAP-Generated ORB which included LPG	Identified adjustments in the monthly SAP-Generated ORB						Per Excise Tax Returns (ETR) - BIR Form 2200-P of Petron Bataan Refinery for ALL Petroleum Products duly filed with BIR via EFPS			
Month	Total Amount of Excise Taxes per monthly SAP-Generated ORB	Jet A-1 paid thru Product Replenishment Debit Memo	Export products paid thru Product Replenishment Debit Memo	Bonded	Adjusted amount of Excise Taxes per monthly SAP-Generated ORB	VARIANCE	Net Amount Filed and Paid per ETR via EFPS	Period of ETR	Excise Taxes per ETR for ALL products including LPG	eFiling Reference of Daily ETR can be found from the following Annexes	Total Amount of Excise Taxes for LPG per ETR
2019								2019			
January	3,558,138,629.39	(338,170,408.00)	(449,674,974.00)	69,420,150.00	2,839,713,397.39	(461,567.98)	P 2,839,251,829.41	January	P 2,839,293,649.41	C_1	71,390,544.00
February	2,686,961,427.62	(338,319,404.00)	-	75,078,950.00	2,423,720,973.62	(60,724.94)	2,423,660,248.68	Februay	2,423,659,798.68	C_2	54,885,922.00
March	3,355,611,299.00	(306,480,468.00)	(182,527,902.00)	84,189,082.28	2,950,792,011.28	(544,180.80)	2,950,247,830.48	March	2,950,247,830.48	C_3	47,462,188.00
April	2,775,961,230.00	(271,766,808.00)	-	85,890,900.00	2,590,085,322.00	(660,925.88)	2,589,424,396.12	April	2,589,424,396.12	C_4	38,835,238.00
May	801,500,275.86	(9,228,072.00)	-	19,080,000.00	811,352,203.86	3,213,259.80	814,565,463.66	May	814,565,463.66	C_5	3,712,910.86
June	106,566,303.50	-	-	990,000.00	107,556,303.50	2,792,507.71	110,348,811.21	June	110,348,811.21	C_6	-
July	34,040,538.00	-	-	702,000.00	34,742,538.00	2,615,998.10	37,358,536.10	July	35,577,088.10	C_7	-
August	555,248,115.50	(94,667,420.00)	(373,100,215.50)	1,062,000.00	88,542,480.00	1,345,142.74	89,887,622.74	August	89,853,622.74	C_8	-
September	2,416,948,753.50	(214,177,636.00)	(361,669,396.00)	67,134,257.10	1,908,235,478.60	(9,901,634.82)	1,898,333,843.78	September	1,898,333,843.78	C_9	31,022,942.00
October	3,520,247,158.00	(342,727,312.00)	(442,344,865.50)	111,210,678.23	2,846,385,658.73	901,570.20	2,847,287,228.93	October	2,847,287,228.93	C_{10}	57,271,306.00
November	3,750,757,730.50	(380,552,884.00)	-	91,735,087.05	3,461,939,933.55	(46,155,732.34)	3,415,784,201.21	November	3,415,784,201.21	C_{11}	50,392,810.00
December	3,512,292,691.12	(290,030,928.00)	(367,555,167.00)	97,873,614.00	2,952,580,210.12	(35,208,375.79)	2,917,371,834.33	December	2,917,371,834.33	C_{12}	38,553,158.00
	27,074,274,151.99	(2,586,121,340.00)	(2,176,873,020.00)	P 704,366,716.65	23,015,646,510.64	(82,124,663.99)	22,933,521,846.66		P 22,931,747,768.65		P 393,527,018.86

However, without a breakdown of the amounts pertaining to the excise taxes due on LPG, the Court cannot verify the above findings of the ICPA.

On the other hand, as to petitioner's excise taxes on importations for the taxable year 2019, the same amounts to ₱441,546,100.00:[106]

	Volume in Kilograms	Excise Tax Rate	Excise Taxes Due and Paid to BOC
Petron Bataan Refinery	81,944,252	₱2.00	₱ 163,888,504.00
Batangas	94,704,274	₱2.00	189,408,548.00
Mandaue, Cebu	33,326,406	₱2.00	66,652,812.00
Tacloban	6,255,412	₱2.00	12,510,824.00
Tagaloan	4,542,706	₱2.00	9,085,412.00
Total Importations of LPG	**220,773,050**		**₱441,546,100.00**

The foregoing excise taxes on importations for the taxable year 2019 are also supported by BOC SADs, SSDTs, BOC Payment Receipts, *Bills of Lading*, supplier invoices, and ATRIG.[107] An examination of these documents shows that the same are in order, and petitioner has proven that it paid the excise taxes in the amount of ₱441,546,100.00 on its importation of LPG from Petron Singapore Trading Pte. Ltd. for the taxable year 2019. This amount is enough to cover the excise taxes due and paid for imported LPG for the same taxable period amounting to ₱82,472,338.00.[108]

However, the Summary of Withdrawals of LPG per WC (BIR Form No. 2231) for petitioner's locally-produced LPG shows a total volume of 32,104,850 kgs. with corresponding excise taxes of ₱63,690,659.00, while total

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[105] *Annex I*, Exhibit "P-42", USB (submitted on June 8, 2022).

[106] *Annex G*, Exhibit "P-42", Docket – Vol. I, p. 379. Refer also to II(B)(1), Exhibit "P-42", Docket – Vol. I, pp. 365 to 366.

[107] Exhibits "P-6136" to "P-6267", USB (submitted on June 8, 2022) and USB (submitted on October 6, 2023).

[108] Par. II(A)(4), Exhibit "P-42", Docket – Vol. I, p. 360.

volume of withdrawals and corresponding excise taxes for its imported LPG is not summarized, a portion of the table is shown below:[109]

Exhibit No.	WC	Issuing Plant	Receiving Plant	Remarks	Local or Imported?	WC
P - 13943	66733	Batangas	San Fernando Terminal	Tank Truck Transfer	Imported	✓
P - 13944	66786	Batangas	San Fernando Terminal	Tank Truck Transfer	Imported	✓
P - 13945	440900	PLT	Gasul Pasig	Tank Truck Transfer	Imported	✓
P - 13946	855311	PLT	Gasul Pasig	Tank Truck Transfer	Imported	✓
P - 13947	855315	PLT	Gasul Pasig	Tank Truck Transfer	Imported	✓

The ICPA reports that the "quantity of removals and transfers of locally-produced LPG to the four terminals located in Mandaue, Ormoc, Pasig and Batangas from the daily Withdrawal Certificate per BIR Form 2231 which were duly signed and attested by the Internal Revenue Officer on premise [*sic*] (vessel transfer)" and the "quantity of removals of imported and locally-produced LPG from Batangas terminal to San Fernando, Rosario, and Pasig from COC, CIC and WC (tank transfers)" were traced. Movement and transfers of "locally-produced LPG from Terminals to Industrial from COC, Withdrawal Certificate and Liquidation Statement" and "imported LPG from terminals to Industrial from COC and Liquidation Statement" were likewise traced.[110]

The ICPA prepared schedules of Liquidation Statements Consolidated Schedule of Sales for each of petitioner's terminals wherein the invoices issued are compared with the Delivery Notes and Liquidation Statements.[111] Portions of the subject schedules are shown hereafter:

LOCATION	DATE	INVOICE NO.	VOLUME	AMOUNT of Excise Taxes	With Sales Invoice provided	Ref Delivery Note	With Delivery Notes provided	Page to LS Terminal	PER VVC Page No. Industrial	Amount per LS	Importation	Excise Tax Due
Mandaue	01 18 2019	1010070684	1,100.00	2,200.00	✓	8008109891	✓	1	1	2,669.00		✓
Mandaue	01 18 2019	1010070690	310.00	620.00	✓	8008109888	✓	1	1			✓
Mandaue	01 18 2019	1010070693	361.00	722.00	✓	8008109894	✓	1	1			✓
Mandaue	01 18 2019	1010070694	898.00	1,796.00	✓	8008109901	✓	1	1			✓
Mandaue	01 19 2019	1010072793	2,180.00	4,360.00	✓	8008112161	✓	1	1	3,980.00		✓

LOCATION	DATE	INVOICE NO.	VOLUME	AMOUNT of Excise Taxes	With Sales Invoice provided	Ref Delivery Note	With Delivery Notes provided	Page to LS Terminal	PER VVC Page No. Industrial	Amount per LS	Importation	Excise Tax Due
Rosario (Industrial Customers)	01 07 2019	1010050628	8,530.34	17,060.68	✓	8008085936	✓	1, 2, 3 , 4, 5, 6	1 , 2	124,873.00		✓
Rosario (Industrial Customers)	01 07 2019	1010050644	7,848.36	15,696.72	✓	8008085666	✓	1, 2, 3 , 4, 5, 6	1 , 2			✓
Rosario (Industrial Customers)	01 07 2019	1010050656	8,514.52	17,029.04	✓	8008085354	✓	1, 2, 3 , 4, 5, 6	1 , 2			✓
Rosario (Industrial Customers)	01 07 2019	1010050661	8,558.29	17,116.58	✓	8008084029	✓	1, 2, 3 , 4, 5, 6	1 , 2			✓
Rosario (Industrial Customers)	01 07 2019	1010050666	7,993.70	15,987.40	✓	8008083876	✓	1, 2, 3 , 4, 5, 6	1 , 2			✓

LOCATION	DATE	INVOICE NO.	VOLUME	AMOUNT of Excise Taxes	With Sales Invoice provided	Ref Delivery Note	With Delivery Notes provided	Page to LS Terminal	PER VVC Page No. Industrial	Amount per LS	Importation	Excise Tax Due
Ormoc	01 04 2019	1010047311	10,100.00	20,200.00	✓	8008079350	✓	1	1, 2, 3, 4	10,100.00		✓
Ormoc	01 07 2019	1010051759	9,850.00	19,700.00	✓	8008084142	✓	1	1, 2, 3, 4	9,850.00		✓
Ormoc	01 10 2019	1010055532	9,710.00	19,420.00	✓	8008091676	✓	1	1, 2, 3, 4	9,710.00		✓
Ormoc	01 14 2019	1010061576	10,370.00	20,740.00	✓	8008096920	✓	1	1, 2, 3, 4			✓
Ormoc	01 15 2019	1010062395	10,180.00	20,360.00	✓	8008101292	✓	1	1, 2, 3, 4	10,180.00		✓

[109] USB (submitted on June 9, 2022).
[110] Par. II(D)(1), Exhibit "P-42", Docket – Vol. I, p. 369.
[111] USB (submitted on June 9, 2022).

LOCATION	DATE	INVOICE NO.	VOLUME	AMOUNT of Excise Taxes	With Sales Invoice provided	Ref Delivery Note	With Delivery Notes provided	PER VVC Page No. Industrial	Page to LS Terminal	Amount per LS	Importation	Excise Tax Due
Pasig Gasul	01 16 2019	1010064817	1,920.00	3,840.00	✓	8008103122	✓	1	1	17,822.00	✓	
Pasig Gasul	01 16 2019	1010064820	4,001.00	8,002.00	✓	8008103127	✓	1	1		✓	
Pasig Gasul	01 16 2019	1010065511	7,261.00	14,522.00	✓	8008103229	✓	1	1		✓	
Pasig Gasul	01 16 2019	1010065521	3,000.15	6,000.30	✓	8008105265	✓	1	1		✓	
Pasig Gasul	01 16 2019	1010065522	1,640.00	3,280.00	✓	8008105282	✓	1	1		✓	

LOCATION	DATE	INVOICE NO.	VOLUME	AMOUNT of Excise Taxes	With Sales Invoice provided	Ref Delivery Note	With Delivery Notes provided	Page to LS Terminal	PER VVC Page No. Industrial	Amount per LS	Importation	Excise Tax Due
San Fernando (Transshipment)	01 02 2019	1010049057	5,220.00	10,440.00	✓	8008079984	✓	1, 2, 3	1, 2	5,220.00		✓
San Fernando (Transshipment)	01 03 2019	1010049047	8,210.00	16,420.00	✓	8008080934	✓	1, 2, 3	1, 2	18,501.00		✓
San Fernando (Transshipment)	01 03 2019	1010049063	2,301.00	4,602.00	✓	8008081260	✓	1, 2, 3	1, 2			✓
San Fernando (Transshipment)	01 03 2019	1010053251	7,990.00	15,980.00	✓	8008081970	✓	1, 2, 3	1, 2			✓
San Fernando (Transshipment)	01 04 2019	1010049427	8,190.00	16,380.00	✓	8008083247	✓	1, 2, 3	1, 2	8,190.00		✓

Nonetheless, it should be noted that the foregoing consists of petitioner's sales of <u>all</u> LPG, and not just the quantity sold to its tax-exempt customers. Without references corresponding to the exhibit number of the invoices and WCs, it is difficult for the Court to ascertain the veracity of the ICPA's findings.

Apropos, Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals is clear, the findings and conclusions of the ICPA shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification. Correspondingly, since the appreciation of the evidence still lies within the sound discretion of the Court,[112] the Court is free to adopt or reject the findings of the ICPA.[113]

In this case, upon examination and consideration of the documents submitted before this Court, petitioner failed to convincingly prove that the LPG on which the claimed excise taxes paid in the year 2019 were indeed sold to tax-exempt entities in the same year, considering that the quantity of LPG removed (with the corresponding excise taxes) which were subsequently sold to tax-exempt entities cannot be traced to the excise tax returns and importation documents.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.[114]

[112] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services, Pte. Ltd., et seq.*, G.R. Nos. 226548 & 227691 and 226682-83, February 15, 2023.
[113] *Tullett Prebon (Philippines), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 257219 [Formerly UDK No. 16941], July 15, 2024.
[114] Refer to *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

Thus, for failure to sufficiently prove that the LPG sold to the tax-exempt entities are the same which petitioner paid excise taxes in the year 2019, petitioner failed to comply with the *third* requirement for the entitlement to the claim for refund or issuance of tax credit certificate.

It bears stressing that tax refunds derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State.[115] Consequently, petitioner's claim for tax refund must fail in light of the basic doctrine that tax refund partakes of the nature of a tax exemption which should be construed *strictissimi juris* against the taxpayer.

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

[115] Refer to *Gulf Air Company, Philippine Branch (GF) vs. Commissioner of Internal Revenue*, G.R. No. 182045, September 19, 2012.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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