REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 3027** *(CTA Case No. 10352)*
	Present: **RINGPIS-LIBAN, P.J., BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
-versus-	
PILIPINAS SHELL PETROLEUM CORPORATION, *Respondent.*	Promulgated: MAR 1 1 2026 3:30 PM

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* ("Petition"), filed on November 19, 2024,[1] with respondent's *Comment/Opposition [To Petition for Review dated November 11, 2024]* ("Comment"), filed on February 14, 2025.[2] The Petition assails: a) the August 14, 2024 Decision[3] of the Court's Special Second Division which granted a refund in favor of respondent amounting to Php82,640,348.00 representing erroneously paid excise tax on its Jet A-1 fuel importation during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018; and b) October 11, 2024 Resolution which affirmed the August 14, 2024 Decision.[4]

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1 *Rollo*, pp. 1-35.
2 *Id.*, at 39-50.
3 Annex "A", Petition, *Id.*, at 19-31.
4 Annex "B", Petition, *Id.*, at 32-35.

The following are the undisputed facts as provided in the original Decision, dated January 4, 2024:[5]

> [Respondent], Pilipinas Shell Petroleum Corporation, avers that sometime in May 2018, it imported Jet A-1 fuel through its refinery in Tabangao, Batangas ('First Importation'), as follows:

Arrival Date	Vessel	CRF No.	Volume in Liters
May 29, 2018	MT Sunny Dream	18CBW10	7,540,772

> Allegedly, the First Importation was made when [respondent]'s product storage tanks in Tabangao, Batangas, were operated as a Customs Bonded Warehouse ('CBW'). Hence, no excise tax was paid during importation and storage in the CBW.

> When the Tabangao product storage tanks were converted from CBW to non-CBW in September 2018, a portion of the Jet A-1 fuel from the First Importation remained in the said product storage tanks, as follows:

Vessel	CRF No.	Remaining Volume in Liters
MT Sunny Dream	18CBW10	3,963,880

> With the conversion of the product storage tanks from CBW to non-CBW, [respondent] allegedly lodged the corresponding importation details for the remaining quantity through the Bureau of Customs' ('BOC') E2M System and paid the corresponding taxes therefor at Php4.00/liter, thereby converting the remaining volume into tax-paid Jet A-1 fuel, as follows:

SAD No.	Vessel	Payment Date	Volume in Liters	Excise Tax Paid
C11011/CRF18CBW10LOC4	MT Sunny Dream	September 27, 2018	3,963,880	Php15,855,522.00

> [Respondent] further avers that the remaining excise tax-paid 3,963,880 liters of Jet A-1 fuel from the First Importation were subsequently transferred to its storage tanks in the Joint Oil Company Aviation Storage Plant ('JOCASP') at the Ninoy Aquino International Airport ('NAIA') for subsequent sale and delivery to international air carriers for use or consumption outside the Philippines.

> Also, in July 2018, respondent imported Jet A-1 Fuel through its refinery in Tabangao, Batangas ('Second Importation'), as follows:

Arrival Date	Vessel	CRF No.	Volume in Liters
July 10, 2018	MT Beluga Pacific	18CBW11	6,533,610

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[5] See Decision, dated January 4, 2024, Division Docket.

Similarly, the Second Importation was made at the time when [respondent]'s product storage tanks in Tabangao, Batangas were operated as CBW. Hence, no excise tax was paid during importation and storage in the CBW.

Like the First Importation, a portion of the Jet A-1 fuel from the Second Importation remained in the Tabangao product storage tanks when said storage tanks were converted from CBW to non-CBW, as follows:

Vessel	CRF No.	Remaining Volume in Liters
MT Beluga Pacific	18CBW11	2,820,682

[Respondent] also lodged the corresponding importation details for the remaining quantity through the BOC E2M System and paid the corresponding taxes therefor at Php4.00/liter, thereby converting the remaining volume into tax-paid Jet A-1 fuel, as follows:

SAD No.	Vessel	Payment Date	Volume in Liters	Excise Tax Paid
C11013/CRF18CBW11LOC1	MT Beluga Pacific	September 25, 2018	2,820,682	Php11,282,728.00

In September 2018, [respondent] again imported Jet A-1 fuel with a destination at the Port of Subic ('Third Importation'), as follows:

Arrival Date	Vessel	CRF No.	Volume in Liters
September 25, 2018	MT Grand Ace 12	18SUB05LOC	19,117,173

[Respondent] avers that prior to the withdrawal of the imported Jet A-1 fuel from the BOC, it lodged the corresponding importation details through the BOC E2M System and paid the corresponding taxes therefor at Php4.00/liter, as follows:

SAD No.	Vessel	Payment Date	Volume in Liters	Excise Tax Paid
C8518/CRF18SUB05LOC	MT Grand Ace 12	October 3, 2018	19,117,173	Php76,468,692.00

Allegedly, out of the 19,117,173 liters of Jet A-1 fuel from the Third Importation, 14,520,000 liters were subsequently transferred to its storage tanks in JOCASP for subsequent sale and delivery to international air carriers for use and consumption outside the Philippines.

[Respondent] further avers that for the period covering September to November 2018, [respondent] sold the aforementioned excise tax-paid Jet A-1 fuel from the First, Second, and Third importations to various international airlines for use or consumption outside the Philippines, as follows:

	Volume in Liters		
Customers	From 1st & 2nd Importations	From 3rd Importation	Total
Air China Ltd.	131,215	423,778	554,993
Air Niugini	85,940	254,043	339,983
Asiana Airlines Inc.	96,339	611,850	708,189
Cebu Air Inc.	1,329,807	2,178,615	3,508,422
China Airlines Ltd.	138,552	472,946	611,498
China Eastern Airlines Ltd.	76,216	218,087	294,303
China Southern Airlines Co. Ltd.	127,576	391,371	518,947
Federal Express Corp.	332,454	398,512	730,966
Jetstar Asia Airways Pte Ltd.	78,222	94,120	172,342
Jin Air Co. Ltd.	273,448	261,613	535,061
Korean Airlines Co. Ltd.	332,307	1,264,315	1,596,622
Philippine Airlines Inc.	2,959,029	7,101,561	10,060,590
Qantas Airways Ltd.	318,645	849,189	1,167,834
Scoot Tigerair Pte. Ltd.	50,183		50,183
Silkair Singapore Private Limited	269,158		269,158
Xiamen Airline Co. Ltd.	140,996		140,996
Total Aviation Sales (in Liters)	6,740,087	14,520,000	21,260,087
Excise Tax Rate	Php4.00/Liter	Php4.00/Liter	Php4.00/Liter
Total Excise Tax Paid	Php26,960,348.00	Php58,080,000.00	Php85,040,348.00

Allegedly, the amounts billed by [respondent] to the international airlines for the sale and delivery of Jet A-1 fuel for use and consumption outside the Philippines were denominated in foreign currency and net of excise taxes.

On March 12, 2020, [respondent] filed its Letters Application for Refund or Tax Credit, dated March 10, 2020, and Applications for Tax Credits/Refunds ('BIR Form No. 1914') with the Excise Large Taxpayers Audit Division ('ELTAD') II of the BIR, to recover the excise taxes paid during the period from September to October 2018 on Jet A-1 fuel imported for the period from May to September 2018, and sold to international air carriers for the period from September to November 2018, in the aggregate amount of P85,040,348.00, computed as follows:

Description	Volume in Liters	Excise Tax Rate	Amount
Sales to international carriers of Philippine or foreign registry under *Section 135 of the National Internal Revenue Code, as amended ("NIRC")*	6,740,087	Php4.00 per Liter	Php26,960,348.00
	14,520,000		58,080,000.00

Total	21,260,087		Php85,040,348.00

> Due to [petitioner]'s inaction, [respondent] elevated its claim before the [Court in Division] via the instant Petition for Review filed on September 17, 2020.

On January 4, 2024, the Court in Division rendered a Decision which found respondent entitled to a refund of erroneously paid excise tax on Jet A-1 Fuel importations during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018 in the amount of Php77,234,784.00.[6]

However, both petitioner and respondent filed their respective Motions for Reconsideration against such original Decision on March 4, 2024 and January 25, 2024, respectively.[7] This then resulted in the Court in Division issuing the assailed Amended Decision, dated August 14, 2024, which partially granted respondent's Motion for Reconsideration and resulted in its claim for refund being increased to Php82,640,348.00 but denied petitioner's Motion for Reconsideration.[8]

Thereafter, petitioner once more filed a Motion for Reconsideration on September 5, 2024 questioning the Amended Decision.[9] On October 11, 2024, the Court in Division issued the Assailed Resolution denying petitioner's Motion for Reconsideration and affirming the assailed Amended Decision, dated August 14, 2024.[10]

Thus, on November 19, 2024, petitioner filed the instant Petition before this Court *En Banc*, seeking to nullify both the assailed Amended Decision and assailed Resolution, and reverse the grant of refund in favor of respondent in the total amount of Php82,640,348.00.[11]

In a Resolution, dated January 31, 2025, the Court *En Banc* required respondent to file a Comment on the Petition. On February 14, 2025, respondent filed the instant Comment.[12]

Accordingly, on March 13, 2025, this Court *En Banc* submitted the case for Decision.[13]

Hence, this Decision.

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6 *Ibid.*
7 See Assailed Amended Decision, Annex "A".
8 *Ibid.*
9 See Assailed Resolution, Annex "B".
10 *Ibid.*
11 *Rollo*, pp. 1-35.
12 *Id.*, at 39-50.
13 *Rollo*.

The Issue

The issue to be resolved by this Court is whether or not the Court in Division erred in ruling that respondent has sufficiently proven its entitlement to the refund or issuance of tax credit certificate ("TCC") in the amount of Php82,640,348.00, representing alleged erroneously paid excise taxes on its Jet A-1 Fuel importation during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018.[14]

Arguments of the Parties

Petitioner's Arguments

Petitioner interposed the following arguments in support of its Petition:[15]

a) Tax refunds are in the nature of tax exemptions. As such, there must be a categorical and express provision of law allowing tax refund, otherwise, the same should not be permitted;

b) Under *Section 229 of the National Internal Revenue Code of 1997* ("*NIRC*"), only three instances are allowed upon which a taxpayer may claim for refund: a) erroneously or illegally assessed or collected internal revenue taxes, b) penalties imposed without authority, and c) any sum alleged to have been excessive or in any manner wrongfully collected. In accordance with *Section 129 of the NIRC,* respondent being an importer of Jet A-1 Fuel allegedly sold to international carriers is liable to pay excise tax due thereon. It is liable to pay the excise tax due as soon as it imports the Jet A-I Fuel. The only instance that respondent may invoke a claim for refund is the erroneous payment of the excise tax. However, the excise tax paid by respondent was legally and validly collected since it is indeed liable to pay such tax; and

c) Respondent primarily based its claim for refund on *Section 135 of the NIRC.* The Court in Division ruled that *Section 135 of the NIRC* exempts the article itself, which in this case is a petroleum product, under a specific transaction, as specifically provided in said provision. Petitioner strongly differs. *Section 135 of the NIRC* is very clear and requires no further interpretation. Usually, indirect taxes including excise tax are paid for by the buyers as it forms part of the purchase price. Furthermore, respondent became liable to pay excise tax from the time it imports the Jet A-1 Fuel. As importer, it may pass on the burden of paying the excise tax to its buyers. But, it is still liable to pay the

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14 *Id.*, at 3-4.
15 *Id.*, at 4-8.

excise tax despite the fact that it passed on the burden of the tax. If it sold fuel to an exempt entity, it is precluded from passing on the excise tax to the said exempt entity. In such case, it will bear the burden of paying excise tax. Here, respondent sold the Jet A-1 Fuel to international carriers. Applying *Section 135 of the NIRC,* it should mean that the transaction of buying fuel oil is exempt from excise tax. As such, the buyer of the fuel is not liable to pay the excise tax due thereon or, in other words, the excise tax due on the said transaction cannot be included in the purchase price as the buyer is already a tax-exempt entity. On its face, *Section 135 of the NIRC* does not grant exemption to sellers rather it provides for an enumeration wherein petroleum products when sold to tax-exempt entities enumerated therein are exempt from excise tax. Respondent was anchoring its claim for refund on *Section 135 of the NIRC.* This provision cannot be a source for respondent's claim for refund and it cannot be invoked by the sellers like herein respondent, 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 buyer, as enumerated in *Section 135* is an exempt entity. Thus, respondent cannot invoke the exemption granted to this exempt entity as a ground to claim for refund of the excise tax paid. The Court *En Banc* in the case of *Chevron Philippines, Inc. v. Commissioner of Internal Revenue,*[16] *citing Philippine Acetylene Co. v. Commissioner of Internal Revenue,*[17] *("2013 Chevron case")* provided that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax due on imported petroleum products is the direct liability of the importer who cannot invoke the excise tax exemption granted to its buyer. More importantly, there is nothing in the *NIRC* which provides for the refund of excise tax except *Section 130 (D) of the NIRC,* which simply requires the following: a) the goods are locally produced or manufactured, b) they are removed and actually exported without returning to the Philippines; and c) submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment. None of which has been complied by respondent. Petitioner submits that if respondent will be granted a refund on excise tax on fuel sold to an exempt entity under *Section 135 (c) of the NIRC,* respondent in effect, is granted a refund for excise tax based solely on the exemption enjoyed by the exempt entities. Respondent should not be allowed to obtain indirectly what it cannot obtain directly. The reason for the exempted transaction under *Section 135 (c) of the NIRC* is indeed the exemption granted to and enjoyed by an exempt entity.

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16 CTA EB No. 964, CTA Case No. 7939, September 20, 2013.

17 20 SCRA 1056.

Respondents' Arguments

Respondents countered petitioner's arguments, as follows:[18]

a) The Court in Division had already resolved the arguments raised by petitioner. Hence, the Petition should be denied outright for being pro forma and lack of merit; and

b) Under the doctrine of *Stare Decisis Et Non Quieta Movere,* the *2013 Chevron case* has already been overturned and therefore inapplicable to the instant case. In *Chevron Philippines, Inc. v. Commissioner of Internal Revenue,*[19] *("2015 Chevron case")* the Supreme Court already overturned the said ruling by the Court *En Banc.* Moreover, in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue,*[20] applying the *2015 Chevron case,* the Supreme Court ruled that upon respondent's sale of imported petroleum products to various international carriers, the tax exemption under *Section 135 (a) of the NIRC* comes into play, and consequently, the excise taxes previously paid on the said imported petroleum products are deemed erroneously or illegally paid. Thus, the excise tax paid thereon becomes a proper subject of a claim for refund under *Sections 205 and 229 of the NIRC.*

The Ruling of the Court

The Petition lacks merit.

At the onset, pursuant to *Rule 6, Section 2 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),* a "[p]etition for review [filed before the Court *En Banc]* shall contain allegations showing the jurisdiction of the Court, **a concise statement of the complete facts** and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision."[21] In the case, however, the petitioner simply provided the following under "Relevant Facts and Proceedings":

> The pertinent facts, as found by the Special Second Division and stated in its Amended Decision dated 14 August 2024, are as follows:
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> 'This resolves the following:
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> 1. Respondent's Motion for Partial Reconsideration (Re: Decision promulgated 4 January 2024) filed on January 23, 2024, with petitioner's Opposition [To Respondent's Motion for Partial Reconsideration dated January 22, 2024] filed on March 4, 2024;

[18] *Rollo,* pp. 41-45.
[19] G.R. No. 210836 (Resolution). September 1, 2015.
[20] G.R. No. 211303, June 15, 2021.
[21] Emphasis. Ours.

2. Supplemental Certification filed by the Independent Certified Public Accountant (ICPA) on January 24, 2024; and

3. Petitioner's Omnibus Motion I. For Partial Reconsideration of Decision dated January 4, 2024; II. To Admit ICPA Certification and Clear Copies of Admitted Exhibits; and III. Recall the ICPA filed on January 25, 2024, sans respondent's comment/ opposition thereto despite notice.

Both parties seek reconsideration of the Court's Decision promulgated on January 4, 2024, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review filed by Pilipinas Shell Petroleum Corporation on September 17, 2020, is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P77,234,784.00, representing the erroneously paid excise taxes on its Jet A- 1 fuel importation during the period from May to September 2018 and sold to international air carriers during the period from September to November 2018.

SO ORDERED.'

3. On 14 August 2024, the Special Second Division rendered an Amended Decision partially granting the petition for review filed by respondent which increased the amount to be refunded.

4. On 5 September 2024, petitioner filed a Motion for Partial Reconsideration.

5. On 11 October 2024, the Special Second Division issued a Resolution denying petitioner's Motion for Reconsideration.

6. Hence, this petition.

Thus, petitioner failed to provide a concise statement of the complete facts necessary for this Court *En Banc* to render an objective decision of the issues raised in the Petition. Accordingly, the instant Petition must be dismissed for failing to comply with *Rule 6, Section 2 of the RRCTA*.

Moreover, it must be emphasized that the arguments posed by petitioner in support of his position have already been raised several times before the Court in Division, particularly in his Answer to the Petition for Review filed by respondent therein, the Memorandum he filed before the Court in Division, and the Motion for Reconsideration he filed against the original Decision by the Court in Division.[22] Thus, these arguments have been squarely addressed by the Court in Division. However, while repetitive, this Court *En Banc* shall address the same once more to end these contentions.

The factual milieu of the present case is similar to the facts attending the case of *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue.*[23] In both cases, an importer of Jet A-1 Fuel is seeking the refund of excise taxes it paid upon importation of such petroleum product after it subsequently sold the same to an international carrier for the latter's use or consumption outside the Philippines. The claim for excise tax refund in both cases is hinged upon *Section 135 of the NIRC of* petroleum products. Most importantly, it involves the same parties, namely: Pilipinas Shell Petroleum Corp. (*i.e.,* the respondent in the present case) and the Commissioner of Internal Revenue (*i.e.,* the present Petitioner).

Thus, following the concept of *Stare Decisis Et Non Quieta Movere,* or "to adhere to precedents and not to unsettle things which are established,"[24] this Court *En Banc* has no other choice but to equally apply the Supreme Court's Decision in the aforementioned case to the present case. Accordingly, this Court *En Banc* declares that the excise taxes paid by respondent are indeed refundable for being erroneously collected tax pursuant to *Section 135 of the NIRC.* Simply put, since the Jet A-1 Fuel imported by respondent (and upon which excise taxes on importation have been paid by it) were subsequently sold to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines, the excise taxes paid by respondent as importer of such petroleum product are subsequently deemed erroneously paid upon such sale. Thus, respondent is entitled to the claimed refund of erroneously paid excise tax.

This conclusion reached by the Court *En Banc* was guided thoroughly by the case of *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue ("PSPC case"),*[25] to which We shall repeatedly refer in Our discussions below.

An excise tax is an indirect tax and levied on products imported or manufactured.

An excise tax under the Philippine taxation system pertains to a tax levied on goods, whether at a specific rate or *ad valorem*.[26] The *PSPC case* further noted that: "[a]n excise tax is not a tax on the exercise of a

[22] See Division Docket.
[23] G.R. No. 211303, June 15, 2021.
[24] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue.* G.R. No. 211303, June 15, 2021.
[25] G.R. No. 211303, June 15, 2021.
[26] PSPC case *citing* Section 129 of the NIRC.

privilege, but rather a levy on certain articles which are manufactured or imported for domestic consumption. It is equally settled that the accrual or liability to pay the same arises immediately upon importation or as soon as the goods come into existence when manufactured."[27]

Further, excise taxes are indirect taxes.[28] Direct taxes pertain to "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,"[29] which means, the tax incidence (*i.e.*, the actual liability to pay the tax) and tax burden (*i.e.*, the economic burden of the tax) fall upon the same person. On the other hand, indirect taxes have been defined in the *PSPC case* as referring to "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."[30]

The High Court in the *PSPC case* explained that "[t]his 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."[31]

Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the importer or manufacturer of the article. Although the burden of taxation can be passed to the buyer as a component of the price, it remains that the liability to pay the tax still pertains to the statutory taxpayer, who should therefore benefit from any tax exemption provided. It must be emphasized that the excise tax passed on to the buyer of the article is not the excise tax due. Rather, it is only a component of the cost used to determine the price of the article sold like raw material cost or distributed overhead expenses. Thus,

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27 PSPC case *citing* Petron Corporation v. Tiangco, 574 Phil. 620, 630 (2008) and Chevron Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 210836 (Resolution), September 1, 2015.

28 PSPC case *citing* Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, 591 Phil. 754, 764-767 (2008).

29 PSPC case *citing* Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, 514 Phil. 255, 266 (2005).

30 *Ibid.*

31 PSPC case *citing* Philippine Airlines, Inc. v. Commissioner of Internal Revenue, 713 Phil. 134, 146 (2013)

not being the statutory taxpayer of the excise tax, the buyer of the article should not solely benefit from any tax exemption thereto. The Supreme Court noted that knowing the "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."[32]

The object of the excise tax exemption under Section 135 of the NIRC is the petroleum product itself.

It must be emphasized that "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.'"[33] 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 certain class of property.' 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."[34]

This matter has been emphasized by the Supreme Court in the 2015 Chevron case when it ruled that the tax exemption under *Section 135 of the NIRC* is in favor of the petroleum products on which excise tax was levied in the first place, and not granted towards the persons enumerated under said provision. This only goes to show that the Supreme Court already views that the excise tax exemption under *Section 135 of the NIRC* is impersonal, the object of which is property (*i.e.*, petroleum products), rather than a tax on persons (*i.e.*, those enumerated under *Section 135 of the NIRC).*[35]

Being an impersonal tax exemption, *Section 135 of the NIRC* cannot therefore be viewed as granting an exemption primarily to the buyers who are not the statutory taxpayers but who are merely the ones to whom the burden of the excise tax was shifted upon. How can one be tax exempt if he or she is not the statutory taxpayer?[36]

Section 135 of the NIRC clearly provides, as follows:

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32 PSPC Case.
33 PSPC Case *citing* Aralar, Reynaldo B. Basic Taxation (1982 Ed.), p. 65.
34 *Ibid.*
35 PSPC Case.
36 *Ibid.*

> 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
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> (c) Entities which are by law exempt from direct and indirect taxes. (Emphasis, ours)

Section 135 of the NIRC is clearly worded showing an impersonal tax exemption wherein it is specifically stated that the ones exempt from excise tax are the petroleum products itself, and not some specific person. The "international carriers", "exempt entities or agencies" or "entities which are by law exempt from direct and indirect taxes" are merely qualifiers or descriptions of the petroleum products (*i.e.*, the persons to which the products are sold to). "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.'"[37]

It is the statutory taxpayer who should benefit from the excise tax exemption provided under Section 135 of the NIRC.

An excise tax is in the nature of a tax on property. Thus, the *PSPC case* explains that the "liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation."[38] Accordingly, this principle must be reconciled with the exemption provided under *Section 135 of the NIRC* which espouses a subsequent confirmation of excise tax exemption. In the 2015 Chevron case, the Supreme Court noted 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."[39] This subsequent confirmation

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37 PSPC Case *citing* the Concurring Opinion in said case of Associate Justice Alfredo Benjamin S. Caguioa, p. 4

38 PSPC Case.

39 *Ibid.*

of whether a petroleum product is actually subject to excise tax or tax exempt is a product of excise tax being essentially a property tax, and not a tax on persons.[40]

The *PSPC* case further explained that "[c]onsidering 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 earners. 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.'"[41]

As such, the High Court in the *PSPC case* concluded that "[b]ased 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)."[42]

Given the foregoing discussions obtained from the *PSPC case*, the excise tax exemption provided under *Section 135 of the NIRC* indeed can be claimed by the statutory taxpayer of excise tax on petroleum products, who is either the importer or manufacturer of such petroleum products. The excise tax exemption provided in said provision is an impersonal tax exemption. It does not pertain to the entities enumerated in *Section 135 of the NIRC*, but instead, refers to petroleum products, with the entities enumerated in such provision merely acting as descriptions of petroleum products which are excise tax exempt (*i.e.*, to whom should such petroleum products be sold in order for it to become excise tax exempt).

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[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

Petitioner's contention that *Section 135 of the NIRC* simply prohibits an importer or manufacturer of petroleum products from passing on the excise tax to "international carriers", "exempt entities or agencies" or "entities which are by law exempt from direct and indirect taxes", and the same should not benefit an importer or manufacturer of petroleum products considering that said provision does not clearly provide a clear tax exemption in favor of said persons, deserves no credence.

As thoroughly discussed above, the buyers of petroleum products enumerated under *Section 135 of the NIRC* only bear the tax burden of the excise taxes paid by the manufacturer/importer. This is because excise tax is an indirect tax wherein the tax incidence pertains to the importer or manufacturer of the excisable product but the tax burden may be shifted on to another (*i.e.*, buyer of the excisable goods). This tax burden is a component cost that forms part of the purchase price of the excisable goods, which are merely passed on. To recapitulate, the passing-on of the tax-burden is largely a contractual affair between the parties. Hence, the tax exemption under *Section 135 of the NIRC* does not – as it could not – merely pertain to a prohibition barring the parties from engaging in the "passing-on" of the tax burden which is but a contractual affair. Instead, *Section 135 of the NIRC* must be construed as a tax exemption which favors the statutory taxpayer of the excisable articles, *i.e.*, the manufacturer/importer of the petroleum products which are sold to international carriers, among others.[43]

The very nature of an excise tax as a property tax will result in excise tax being imposed immediately upon the importation or manufacture of the excisable product. However, under *Section 135 of the NIRC*, the imposition of such excise tax may subsequently become erroneous when the petroleum product subjected to excise tax is subsequently sold to the entities enumerated in such provision. It is in these instances that a refund of excise tax on petroleum products is allowed.

Clearly, in the instant case, respondent is the statutory taxpayer of the excise tax on petroleum considering that it is the one who imported the Jet A-1 Fuel. As such it must be the one who should benefit from any excise tax exemption conferred under *Section 135 of the NIRC*. Accordingly, respondent can file the instant claim for excise tax refund.

Since respondent has adequately proven, through the submission of sufficient competent evidence,[44] before the Court in Division that it is indeed an importer of Jet A-1 Fuel which was subsequently sold to international carriers for the latter's use and consumption outside of the Philippines, its claim for erroneously paid excise tax was properly granted by the Court in Division. Given this, the Court *En Banc* has no reason to disturb the findings made by the Court in Division in the assailed Amended Decision and assailed

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43 *Ibid.*
44 See Division Docket.

Resolution especially in this case wherein petitioner failed to present any cogent reason or adduce new evidence to do so.

ACCORDINGLY, the Petition, filed on November 19, 2024, is hereby **DENIED** for lack of merit. The assailed Amended Decision, dated August 14, 2024, and the assailed Resolution, dated October 11, 2024, of the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice