CTA Form No. 8

22-000650-0071

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 11046, 11102 & 11193

SHELL PILIPINAS CORPORATION, (FORMERLY PILIPINAS SHELL PETROLEUM CORPORATION)
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HABIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LAYUG CELICIOUS-SY & VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Avenue, Ortigas Center
1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **April 21, 2026,** a Decision was renldered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 27, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Co urt III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SHELL PILIPINAS CORPORATION (FORMERLY PILIPINAS SHELL PETROLEUM CORPORATION), Petitioner,	CTA Case Nos. **11046, 11102 and 11193**
	Present:
	BACORRO-VILLENA, *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 21 2026; 4:05PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court are the consolidated Petitions for Review filed by petitioner Shell Pilipinas Corporation (formerly Pilipinas Shell Petroleum Corporation) (**petitioner/Shell Pilipinas**) pursuant to Section 3(a),[1] Rule 8, in relation to Section 3(a)(2),[2] Rule 4, of the Revised

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[1] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the **inaction** of the **Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Emphasis and underscoring supplied)

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Rules of the Court of Tax Appeals[3] **(RRCTA)**. They seek a declaration from the Court that petitioner is entitled to a refund or issuance of a tax credit certificate (**TCC**) for the alleged erroneously or illegally paid excise taxes on the imported bunker fuel oil (**fuel oil**) which was subsequently sold and delivered to Pioneer Float Glass Manufacturing, Inc. (**PFGMI**), a claimed tax-exempt entity, during the period of 01 January 2021 to 31 August 2021 in the aggregate amount of ₱135,540,000.00.[4] Previously, the petitions have been separately and respectively docketed as CTA Case Nos. 11046,[5] 11102,[6] and 11193.[7]

In **CTA Case No. 11046**, petitioner seeks to be entitled to a refund or issuance of a TCC in the amount of **₱60 million**, representing the excise taxes it allegedly erroneously paid to respondent on the fuel oil imported from **December 2020 to March 2021**, and was subsequently sold and delivered to PFGMI in **January 2021 to April 2021**. It also prays for the Court to order respondent Commissioner of Internal Revenue (**respondent/CIR**) to grant petitioner a refund or tax credit in the said amount of ₱60 million.

In **CTA Case No. 11102**, petitioner requests to be declared entitled to a refund of or issuance of a TCC amounting to **₱30 million**. This amount represents the excise taxes allegedly erroneously paid to respondent on fuel oil imported from **March 2021 to June 2021**, and was sold and delivered to PFGMI in **May 2021 to June 2021**. Petitioner also

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

(2) Inaction **by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis and underscoring supplied)

3 A.M. No. 05-11-07-CTA dated 22 November 2005.
4 See Stipulation of Issues, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume II, pp. 887-888.
5 Filed on 19 December 2022, id., Volume I, pp. 5-27.
6 Filed on 17 March 2023, Division Docket (CTA Case No. 11102), pp. 6-26.
7 Filed on 16 June 2023, Division Docket (CTA Case No. 11193), pp. 6-28.

asks the Court to order respondent to grant a refund or tax credit in the same amount of ₱30 million.

In **<u>CTA Case No. 11193</u>**, petitioner asks for the refund of or the issuance of a TCC amounting to **₱45,540,000.00**. This amount represents the excise taxes allegedly erroneously paid on fuel oil imported from **June 2021 to August 2021**, and was sold and delivered to PFGMI in **July 2021 to September 2021**. Petitioner also seeks a Court order directing respondent to grant a refund or tax credit in the same amount of ₱45,540,000.00.

<u>PARTIES TO THE CASE</u>

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the 41st Floor, The Finance Center, 26th Street corner 9th Avenue, Bonifacio Global City, Brgy. Fort Bonifacio, Taguig City, Metro Manila.[8] It is registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. 14829.[9] It is also registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer Identification No. (**TIN**) 000-164-757-00000[10] and authorized to use Computerized Accounting System (**CAS**) with Permit No. 0213-ELTRD-CAS-00196 dated 12 February 2013.[11]

Pursuant to its Amended Articles of Incorporation (**AOI**),[12] petitioner is engaged to purchase, acquire, import, manufacture, refine, transport, use and store any and all kinds of petroleum and petroleum products, components, additives, lubricants, bitumen, chemical and/or petro-chemical products; and to market, distribute and sell at wholesale, export, exchange, deal in and dispose of such products and by-products which may be produced, developed and made therefrom.

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8 See Amended Articles of Incorporation (AOI) of Shell Pilipinas Corporation, Exhibit "P-23", Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume IV, p. 1505.
9 See Certificate of Filing of Amended AOI, id., p. 1501.
10 Exhibit "P-32", USB (Exhibit "P-29-2").
11 Exhibits "P-17" and "P-17-1", Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1421-1431.
12 Exhibit "P-23", supra at note 8, p. 1504.

Respondent, on the other hand, is the duly appointed CIR who is empowered to perform the duties of his or her office, including, among others, the duty to act on and approve claims for refund as provided by law. He or she may be served with summons, notices and other court processes at the BIR National Office Building, Diliman, Quezon City.[13]

FACTS OF THE CASE

Petitioner previously produced various petroleum products, including fuel oil, through its own refinery in Tabangao, Batangas (**Tabangao Refinery**), for sale and delivery to several customers, including those located and registered within the Philippine Economic Zone Authority (**PEZA**).[14] However, in August 2020, petitioner discontinued production and opted to import petroleum products, thus converting the Tabangao Refinery to Tabangao Import Facility (subsequently referred as "Shell Import Facility Tabangao" [**SHIFT**]).[15]

Thereafter, on the following dates, petitioner imported fuel oil through SHIFT and paid the excise taxes thereon:[16]

Reference	Volume in liters	Date Paid	Amount Paid
C1022715	38,798,717	17 December 2020	₱232,792,302.00
C648	48,675,667	15 January 2021	292,054,002.00
C2249	48,236,004	22 February 2021	289,416,024.00
C3626	46,065,213	18 March 2021	276,391,278.00
C6296	47,807,263	11 May 2021	286,843,578.00
C7849	38,697,102	17 June 2021	232,182,612.00
C7850	9,666,914	17 June 2021	58,001,484.00
C9259	48,393,183	21 July 2021	290,359,098.00
C10635	46,196,783	17 August 2021	277,180,698.00

Subsequently, petitioner sold a portion of the above imported fuel oil to PFGMI, a claimed PEZA-registered entity.[17] Consequently, the said

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13 See Par. 1, I. Stipulation of Facts, JSFI, supra at note 4, p. 887.

14 See Par. 5, Statement of Facts, Petition for Review, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, p. 7.

15 Id.

16 Summarized from the tables alleged in the Petition for Reviews in CTA Case Nos. 11046, 11102 and 11193.

17 See Par. 7, Petition for Review, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, p. 8.

fuel oil was withdrawn from SHIFT (through the Tabangao Depot Zone) and delivered to PFGMI's premises at the Asahi Special Economic Zone (**ASEZ**) at 730 MH Del Pilar Street, Brgy. Pinagbuhatan, Pasig City, for the eventual use in the latter's PEZA-registered operations, particularly the manufacture and production of float glass for exports.[18] The details of the said deliveries are as follows:[19]

Period	Volume	Excise Tax Rate	Excise Tax Amount
January 2021	2,500,000	₱6.00	₱15,000,000.00
February 2021	2,700,000	6.00	16,200,000.00
March 2021	2,300,000	6.00	13,800,000.00
April 2021	2,500,000	6.00	15,000,000.00
May 2021	2,500,000	6.00	15,000,000.00
June 2021	2,500,000	6.00	15,000,000.00
July 2021	2,500,000	6.00	15,000,000.00
August 2021	2,500,000	6.00	15,000,000.00
September 2021	2,590,000	6.00	15,540,000.00
Total Excise Amount			**₱135,540,000.00**

According to petitioner, PFGMI is a PEZA-registered entity and exempt from all internal revenue taxes for its purchases of raw materials and supplies used for its PEZA-registered operations pursuant to Republic Act (**RA**) No. 7916,[20] as amended by RA 8748[21] and Executive Order (**EO**) No. 226.[22] Relative thereto, Section 135[23] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, states that sale of petroleum products to entities which are, by virtue of a law, exempt for direct and indirect taxes is exempt from excise tax.

Acting on the above legal bases, petitioner filed three (3) separate Applications for Tax Credits/Refunds (BIR Form No. 1914) with the BIR, along with accompanying Letter-Requests for the refund or issuance of a TCC for the excise taxes paid on the fuel oil which was subsequently sold and delivered to PFGMI (collectively, **administrative claims**), for the following periods and respective amounts, to wit:

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18 Id.

19 Summarized from the tables alleged in the Petition for Reviews in CTA Case Nos. 11046, 11102 and 11193.

20 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.

21 AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

22 THE OMNIBUS INVESTMENTS CODE OF 1987.

23 **SEC. 135**. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*

Case	Sale Period	Filing Date	Excise Tax
CTA Case No. 11046	January to April 2021	26 October 2021[24]	₱60,000,000.00
CTA Case No. 11102	May to June 2021	28 December 2021[25]	30,000,000.00
CTA Case No. 11193	July to September 2021	01 April 2022[26]	45,540,000.00

Considering respondent's inaction on its administrative claims for refund or tax credit and since the two (2)-year period under Section 229[27] of the NIRC of 1997, as amended, was about to lapse, petitioner filed the instant Petitions for Reviews with this Court on 19 December 2022,[28] 17 March 2023[29] and 16 June 2023.[30] However, during the pendency of the petitions before this Court, the BIR denied one (1) of petitioner's administrative claims, particularly the claim for refund of ₱30 million (through the Denial Letter[31] dated 10 October 2023). Petitioner received the said denial on 21 November 2023.[32]

PROCEEDINGS BEFORE THE COURT

CTA CASE NO. 11046

Alleging respondent's inaction on its claim for refund or issuance of a TCC, on 19 December 2022, petitioner filed its Petition for Review,[33] praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱60 million, representing excise taxes it paid from December 2020 to March 2021 on the imported fuel oil (which was subsequently sold and delivered to PFGMI). The case was docketed as CTA Case No. 11046 and raffled to this Court's Second Division.[34]

24 Exhibits "P-21" and "P-21-1", Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume IV, pp. 1476-1478.
25 Exhibits "P-21-2" and "P-21-3", id., pp. 1479-1481.
26 Exhibits "P-21-4" and "P-21-5", id., pp. 1482-1484.
27 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*
28 Supra at note 5.
29 Supra at note 6.
30 Supra at note 7.
31 See Exhibit "R-3", BIR Records 11046, pp. 587-588.
32 See handwritten notation in the lower right of Exhibit "R-3", id.
33 Supra at note 5.
34 Then composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

On 05 January 2023, the Second Division issued Summons[35] to respondent.

Within the extended period,[36] on 07 March 2023, respondent filed his or her Answer.[37] There, respondent cited the following special and affirmative defenses: (1) petitioner is liable for excise taxes on the imported fuel oil pursuant to Section 129[38] of the NIRC of 1997, as amended; (2) petitioner failed to prove that the excise taxes paid thereon are erroneously or illegally collected; (3) petitioner cannot anchor its refund claim on Section 135 of the same law considering that it pertains to the exemption of the buyers and is not applicable to the importer, manufacturer or seller of petroleum products; and (4) tax refunds are in the nature of tax exemptions and, therefore, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

On 08 March 2023, respondent transmitted to the Second Division the BIR Records of CTA Case No. 11046, consisting of one (1) folder with 1257 pages.[39] The Second Division noted the same in a Minute Resolution dated 09 March 2023.[40] Meanwhile, on 10 March 2023, the Second Division issued a Notice of Pre-Trial Conference[41] and set the case for Pre-Trial Conference on 29 August 2023.

In the *interim*, due to the reorganization of the Divisions of the Court of Tax Appeals (**CTA**),[42] the case was transferred to the First Division.[43]

Subsequently, on 15 August 2023, petitioner filed a "Motion for Consolidation with Motion to Amend Caption and Motion for Postponement [of Pre-Trial Conference]",[44] praying for the

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35 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, p. 330.

36 See Motion for Extension of Time to File Answer, id., pp. 332-335; Resolution dated 10 February 2023, id., p. 338.

37 Id., pp. 339-348.

38 **SEC.129.** *Goods and Services Subject to Excise Taxes.*

39 See Compliance, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, pp. 352-354.

40 Id., p. 356.

41 Id., pp. 350-351.

42 Pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court), see Minute Resolution dated 29 May 2023, id., p. 357.

43 Then composed of Presiding Justice Roman G. Del Rosario (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

44 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, pp. 358-363.

consolidation of CTA Case No. 11046 with CTA Case Nos. 11102 (raffled to the Second Division) and 11193 (raffled to the First Division), the amendment of the case caption to reflect petitioner's new corporate name, and the postponement of the Pre-Trial Conference pending the resolution of the said motions.

In the Resolution dated 24 August 2023,[45] the First Division ordered respondent to comment on petitioner's Motion for Consolidation and granted the amendment of the case caption, and the deferment of the pre-trial.

Subsequently, respondent filed his or her Pre-Trial Brief[46] and "Comment (on Petitioner's Motion for Consolidation)"[47] on 24 August 2023 and 13 September 2023, respectively. Thereafter, in a Minute Resolution dated 03 October 2023,[48] the First Division made the following actions: (1) granted the Motion for Consolidation and consolidated CTA Case Nos. 11102 and 11193 with CTA Case No. 11046 (the case bearing the lowest docket number); (2) confirmed the Second Division's Resolution dated 08 September 2023[49] (which granted the consolidation of CTA Case No. 11102 with CTA Case No. 11046); (3) set, anew the Pre-Trial Conference for the consolidated cases on 23 November 2023; and (4) directed the parties to file their respective consolidated pre-trial briefs.

CTA CASE NO. 11102

Again, claiming inaction on respondent's part, on 17 March 2023, petitioner filed a Petition for Review,[50] praying that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱30 million, representing excise taxes paid by petitioner from March to June 2021 on imported fuel oil, which was subsequently sold and delivered to PFGMI. The case was docketed as CTA Case No. 11102 and raffled to this Court's Third Division.

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45 Id., pp. 388-389.
46 Id., pp. 390-394.
47 Id., pp. 399-401.
48 Id., pp. 403-404.
49 Division Docket (CTA Case No. 11102), pp. 311-312.
50 Supra at note 6.

On 11 April 2023, the Third Division issued Summons[51] to respondent. On 16 May 2023, respondent filed a "Motion for Extension of Time to File Answer"[52] and prayed for an additional thirty (30) days, or until 16 June 2023 to file an Answer.

In the *interim*, the case was transferred to the Second Division[53] pursuant to Administrative Circular No. 01-2023.[54]

After the Second Division granted the extension of time to respondent,[55] the Answer[56] was filed on 16 June 2023. Similar to the arguments in CTA Case No. 11046, respondent claimed that: (1) petitioner is liable for excise taxes on the imported fuel oil pursuant to Section 129 of the NIRC of 1997, as amended; (2) petitioner failed to prove that the excise taxes paid thereon are erroneously or illegally collected; (3) petitioner cannot anchor its refund claim on Section 135 of the same law considering that it pertains to the exemption of the buyers and is not applicable to the importer, manufacturer or seller of petroleum products; and (4) tax refunds are in the nature of tax exemptions and, therefore, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

Thereafter, respondent transmitted the BIR Records consisting of one (1) folder with 541 pages,[57] which the Second Division noted in the Minute Resolution of 05 July 2023.[58]

While the case was set for Pre-Trial Conference on 10 October 2023,[59] petitioner filed the similar "Motion for Consolidation with Motion to Amend Caption and Motion for Postponement [of Pre-Trial Conference]".[60] In the Resolution dated 08 September 2023,[61] the Second Division granted the consolidation of CTA Case No. 11102 with CTA Case

51 Division Docket (CTA Case No. 11102), p. 257.
52 Id., pp. 259-262.
53 Then composed of Associate Justice (now Presiding Justice) Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Ma. Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.
54 Reorganizing the Divisions of the Court. See Minute Resolution dated 15 June 2023, Division Docket (CTA Case No. 11102), p. 274.
55 See Minute Resolution dated 16 June 2023, id., p. 263-B.
56 Id., pp. 264-272.
57 See Compliance filed on 27 June 2023, id., pp. 276-278.
58 Id., p. 280.
59 See Notice of Pre-Trial Conference dated 21 June 2023, id., pp. 275-275-A.
60 Filed on 15 August 2023, id., pp. 281-286.
61 Supra at note 49.

No. 11046, the amendment of case caption and the postponement of the pre-trial.

CTA CASE NO. 11193

On 16 June 2023, petitioner also filed a Petition for Review,[62] praying that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for the aggregate amount of ₱45,540,000.00, representing excise taxes paid by petitioner on imported fuel oil, which was subsequently sold and delivered to PFGMI. The case was docketed as CTA Case No. 11193 and raffled to this Court's First Division.[63]

On 06 July 2023, the First Division issued Summons[64] to respondent.

After the First Division granted an extension of time to respondent,[65] the Answer[66] was filed on 06 September 2023. There, respondent reiterated the arguments that he or she raised in the Answers for the other two (2) cases and maintained that petitioner is not entitled to a refund.

Petitioner also filed the "Motion for Consolidation with Motion for Postponement",[67] requesting the consolidation of CTA Case No. 11193 with CTA Case No. 11046, both pending before the same Court Division. After respondent filed the Comment,[68] the First Division consolidated the cases and further directed respondent to transmit the BIR Records.[69] In compliance, respondent transmitted the BIR Records consisting of one (1) folder with 772 pages,[70] which the First Division noted through a Minute Resolution dated 13 October 2023.[71]

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62 Supra at note 7.
63 Supra at note 43.
64 Division Docket (CTA Case No. 11193), p. 348.
65 See Motion for Additional Time to file Answer filed on 04 August 2023, id., pp. 351-353; Minute Resolution dated 09 August 2023, id., p. 355.
66 Id., pp. 368-381.
67 Filed on 15 August 2023, id., pp. 356-360.
68 See "Comment (Re: Petitioner's Motion for Consolidation with Motion for Postponement dated 15 August 2023)", id., pp. 364-366.
69 See Minute Resolution dated 03 October 2023, id., p. 386.
70 See Compliance filed on 06 October 2023, id., pp. 388-390.
71 See Minute Resolution dated 13 October 2023, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume I, p. 410.

CONSOLIDATED CASES

On 20 November 2023, petitioner and respondent filed their respective consolidated Pre-Trial Briefs.[72]

During the 23 November 2023 Pre-Trial Conference,[73] the First Division granted the parties a period of twenty (20) days, or until 13 December 2023, to file their Joint Stipulation of Facts and Issues (**JSFI**) and to file petitioner's Motion to Commission an Independent Certified Public Accountant (**ICPA**). Further, the First Division set the hearing dates for the presentation of witnesses, the possible commissioning of the ICPA and the marking of the parties' evidence.

Thereafter, the parties filed their JSFI[74] on 13 December 2023, which the Court approved,[75] thus terminating the pre-trial. Accordingly, the Pre-Trial Order[76] was issued on 12 March 2024.

On 18 January 2024, petitioner filed a "Motion to Avail of the Provisions of Section 5, Rule 12 of the [RRCTA] with Submission of Judicial Affidavit of Rose Ann Apostol-Valix",[77] requesting the appointment of Rose Ann Apostol-Valix (**Apostol-Valix**) as the ICPA. The First Division granted this request during the 17 March 2024 hearing and ordered ICPA Apostol-Valix to submit her ICPA Report by 26 April 2024.[78] Within the extended period,[79] petitioner filed the ICPA Report[80] together with a USB[81] (containing the softcopies of the supporting documents) on 29 April 2024 through private courier.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following

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72 See "Pre-Trial Brief for Petitioner", id., pp. 853-868; "Consolidated Respondent's Pre-Trial Brief", id., pp. 869-872.
73 See Order dated 23 November 2023, id., Volume II, pp. 882-885.
74 Id., pp. 887-901.
75 See Resolution dated 10 January 2024, id., pp. 908-909.
76 Id., pp. 958-989.
77 Id., pp. 910-919.
78 See Order dated 17 March 2024, id., pp. 991-992.
79 See "Motion for Extension to File Report of Independent Certified Public Accountant ("ICPA")" filed on 29 April 2024, id., Volume III, pp. 1006-1008; Minute Resolution dated 03 May 2024, id., p. 1113.
80 Exhibit "P-29", id., pp. 1059-1109.
81 Exhibit "P-29-2".

witnesses, namely: (1) Berenice Angelique L. Flores (**Flores**), petitioner's Senior Tax Advisor; (2) Farida Nimfa G. Dimailig (**Dimailig**), petitioner's Country Tax Manager; and (3) ICPA Apostol-Valix.

Flores' testimony, as contained in her Judicial Affidavit,[82] was offered to prove, among others, that: (1) upon importation, the fuel oil is stored in petitioner's SHIFT where the monitoring and removals thereof are recorded in the monthly Official Register Books (**ORBs**); (2) when the fuel oil is withdrawn from SHIFT, a Withdrawal Certificate (**WC**) is prepared to indicate its source, its destination, date of withdrawal, volume withdrawn, and that excise taxes thereon are paid; (3) the sale and delivery of fuel oil are also accompanied with a Bulk Delivery Note (**BDN**) which reflects the fuel oil's date of transfer, volume, source and destination; (4) the tax exemption is determined at the stage of sale negotiation, particularly when it executes a 'Supply Agreement' with the customer and the latter is able to present sufficient documents to prove that it is tax-exempt; (5) in this case, when the fuel oil is sold and delivered to PFGMI's premises in ASEZ, an "Application for Permit to Bring Goods from the Customs Territory into the Zone" is filed and a Permit will be issued to allow entry; (6) PFGMI will present to petitioner the following: (*i*) its PEZA Certificate of Registration (**COR**) No. 18-143[83] showing that it is a duly-registered ECOZONE export enterprise in ASEZ; (*ii*) BIR ruling No. OT-0195-2020 dated 19 February 2020[84] confirming its tax exemption under the relevant laws; and (*iii*) a certification[85] that the fuel oil will be used in the production of float glass; and (7) due to PFGMI's exemption from excise taxes, petitioner timely filed three (3) administrative claims for a refund of the erroneously paid taxes.

During cross-examination, Flores confirmed that she determines the qualification for tax exemption after she reviews the supporting documents that customer submits, that is, at the stage of sale negotiation.[86] Petitioner did not conduct any redirect examination.[87]

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[82] Exhibit "P-27", Judicial Affidavit of Berenice Angelique L. Flores, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume II, pp. 608-625.
[83] Exhibit "P-16", id., Volume III, p. 1416.
[84] Exhibit P-16-1", id., pp. 1417-1419.
[85] Exhibit "P-16-2", id., p. 1420.
[86] TSN dated 10 July 2024, pp. 8-10.
[87] Id., p. 10.

Dimailig's testimony, on the other hand, as contained in her Judicial Affidavit,[88] was offered to prove mainly that petitioner's bases for tax exemption are anchored on RA 7916, as amended, Presidential Decree (**PD**) No. 66,[89] EO 226, and Section 135 in relation to Sections 204[90] and 229 of the NIRC of 1997, as amended. Dimailig reiterated that PFGMI is a PEZA-registered enterprise and thus, exempt from excise taxes on the purchases of goods and services used in the PEZA-registered operations. Therefore, the invoices which petitioner issued to PFGMI do not include excise taxes on the sold fuel oil.

On cross-examination, Dimailig emphasized that based on the abovementioned legal provisions, the BIR issued a ruling that confirmed PFGMI's tax exemption.[91] Petitioner did not conduct redirect examination.[92]

When ICPA Apostol-Valix took the witness stand, she testified through her Judicial Affidavit[93] and declared that: (1) she performed a walkthrough with petitioner's process owners to ascertain the importation process and document flow in connection with the importation of fuel oil, the payment of taxes thereon, the withdrawal from SHIFT and the eventual sale and delivery thereof to PFGMI (that is the subject of the instant case); (2) petitioner paid excise taxes totaling ₱135,540,000.00 on fuel oil imported from December 2020 to June 2021 which was sold and delivered to PFGMI, a tax-exempt entity, from January to September 2021; (3) the imported fuel oil that PFGMI actually received is exempt from excise taxes, thus petitioner billed and collected amounts net of excise tax for said sales; (4) petitioner is entitled to a refund of the erroneously paid excise taxes pursuant to Section 135(c)[94] of the NIRC of 1997, as amended; and (5) she determined the authenticity and due execution of the supporting documents by comparing them with the originals, computer print-outs and certified true copies (**CTCs**) thereof.

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88 Exhibit "P-28", Division Docket (CTA Case No. 11046), Volume II, pp. 762-768.

89 CREATING THE EXPORT PROCESSING ZONE AUTHORITY AND REVISING REPUBLIC ACT NO. 5490.

90 **Sec. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*

91 TSN dated 10 July 2024, pp. 15-16.

92 Id., p. 17.

93 Exhibit "P-70", Judicial Affidavit of Ms. Rose Anne Apostol-Valix, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1123-1130.

94 **SEC. 135.** *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*

...

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

On cross-examination, ICPA Apostol-Valix admitted that she assumed that the documents she examined were also submitted to the BIR when petitioner filed its administrative claims. She also clarified that based on her interpretation of the Tax Code and the relevant BIR ruling, petitioner's sale of imported fuel oil to PFGMI is exempted from excise taxes.[95]

On redirect examination, ICPA Apostol-Valix declared that some of the documents she examined to determine the merit of petitioner's claim for refund are the PFGMI's PEZA COR, the Letter-Requests (which petitioner had filed with the BIR) and the PFGMI's certifications.[96] No re-cross examination was conducted.[97]

Without other witnesses to present, on 22 July 2024, petitioner filed its "Formal Offer of Evidence"[98] (**FOE**) and offered Exhibits "**P-1**" to "**P-70**", inclusive of sub-markings, in support of its claim for refund. Respondent filed his or her "Comment (Re: Petitioner's [FOE])" thereto on 29 July 2024.[99] In the Resolution dated 08 October 2024,[100] the First Division admitted all of petitioner's offered exhibits.

On respondent's part, Revenue Officer (**RO**) Liza Lyn Senina-Arabit (**Senina-Arabit**) was presented as the sole witness. Through her Judicial Affidavit,[101] she testified that: (1) she was one (1) of the assigned officers, authorized by Letter of Authority (**LOA**) No. LOA-124-2022-00000076/eLA202000030796[102] dated 02 December 2022, to evaluate petitioner's claim for refund; (2) through a Memorandum dated 10 October 2023[103] addressed to Large Taxpayers Service's (then) Officer-in-Charge - Assistant Commissioner Jethro M. Sabariaga (**OIC-Asst. Comm. Sabariaga**), she recommended the denial for the claim of refund due to the following: (*i*) petitioner failed to prove that the excise taxes were not billed to the exempt buyer; (*ii*) it did not provide the WCs' complete details; and (*iii*) it did not present the duplicate original delivery receipts; and (3) due to said findings, respondent issued the

95 TSN dated 10 July 2024, pp. 24-27.
96 Id., p. 28.
97 Id.
98 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1168-1211.
99 Id., Volume IV, pp. 1525-1528.
100 Id., pp. 1543-1544.
101 Exhibit "R-5", Judicial Affidavit of Revenue Officer Liza Lyn Senina-Arabit, id., pp. 1162-1167.
102 Exhibit "R-1", BIR Records 11046, p. 537.
103 Exhibit "R-2", id., pp. 559-566.

Denial Letter dated 10 October 2023[104] rejecting petitioner's claim of ₱30 million.

During the cross-examination, RO Senina-Arabit confirmed she referred to PFGMI as the exempt buyer in her Judicial Affidavit. She also confirmed that PFGMI is exempt from both direct and indirect taxes. She did not also deny that petitioner sold the fuel oil (subject of the instant case) to PFGMI and paid by the latter. As for the requirements, under Revenue Memorandum Order (**RMO**) No. 19-2006,[105] she averred that BDNs are not included as a requirement in the list.[106]

On redirect examination, while RO Senina-Arabit confirmed that fuel oil was sold to PFGMI, she could not verify if it was a part of the subject importations due to the incomplete details in the supporting documents.[107] No re-cross examination was conducted.[108]

On 19 November 2024, respondent filed his or her FOE[109] and submitted Exhibit "**R-1**" to "**R-4**" as supporting documents to the sole witness's testimony. After petitioner's Comment,[110] the First Division admitted all of respondent's offered exhibits.[111] It then directed the parties to submit their respective memoranda.

Accordingly, on 26 March 2025, petitioner filed its Memorandum[112] while respondent filed his or her Memorandum[113] on 27 March 2025. In the Minute Resolution of 21 April 2025,[114] the consolidated cases were submitted for decision.

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104 Supra at note 31.
105 Prescribing the Guidelines and Procedures for the Processing of Pending Claims for Tax Credit/Refund of Excise Tax paid on Petroleum Products.
106 TSN dated 14 November 2024, pp. 9-13.
107 Id., p. 14.
108 Id.
109 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume IV, pp. 1556-1560.
110 See "Comment [On Respondent's Formal Offer of Evidence dated November 19, 2024]", id., pp. 1563-1567.
111 See Resolution dated 20 February 2025, id., pp. 1575-1576.
112 Id., pp. 1577-1598.
113 Id., pp. 1600-1612.
114 Id., p. 1616.

ISSUE

As the parties so stipulated in their JSFI[115], the sole issue for the Court's determination is —

> WHETHER PETITIONER SHELL PILIPINAS CORPORATION IS ENTITLED TO THE REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) FOR THE ALLEGEDLY ERROENOUSLY PAID EXCISE TAXES ON THE FUEL OIL IMPORTED FROM DECEMBER 2020 TO MARCH 2021, MARCH TO JUNE 2021 AND JUNE TO AUGUST 2021, WHICH WAS SUBSQUENTLY SOLD TO PIONEER FLOAT GLASS MANUFACTURING, INC. (PFGMI) FOR THE PERIODS OF JANUARY 2021 TO APRIL 2021, MAY TO JUNE 2021 AND JULY TO SEPTEMBER 2021, RESPECTIVELY.

ARGUMENTS

In support of the above, petitioner contends that both the administrative and judicial claims for refund or tax credit were timely filed pursuant to Sections 204 and 229 of the NIRC of 1997, as amended. It averred that the excise taxes were paid on 17 December 2020, 18 March 2021 and 17 June 2021, respectively. Considering that the administrative claims were filed on 26 October 2021, 28 December 2021 and 01 April 2022, while the judicial claims were filed on 19 December 2022, 17 March 2023 and 16 June 2023, petitioner maintains that all the administrative and judicial claims were filed within the two (2)-year prescriptive period.

As for the claim of tax exemption, petitioner asserts that under Section 135 of the NIRC of 1997, as amended, petroleum products sold to entities who are, by law, exempt from direct and indirect taxes, are also exempt from excise taxes. Applying the foregoing, petitioner invokes the relevant provision under RA 7916 and argues that PFGMI, being a PEZA-registered entity, will not be subjected to internal revenue taxes for the purchases of good and services that are delivered to ASEZ.

Petitioner further highlights that the BIR itself, through BIR Ruling No. OT-0195-2020, has already declared that PFGMI is exempt

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115 II. Stipulation of Issues, JSFI, supra at note 74, pp. 887-888.

from paying excise taxes on the purchases of fuel oil that are used directly in the production of float glass at ASEZ.

Lastly, petitioner claims that it presented sufficient evidence to prove that it had duly paid the excise taxes on the imported fuel oil. It also submits that the said excise taxes were not passed to PFGMI when the fuel oil was sold and delivered to it.

On the other hand, respondent argues that under Section 129 of the NIRC of 1997, as amended, petitioner, as importer, is liable to pay the excise taxes on the subject fuel oil purchased abroad. Referring to the cross-examination of Flores, respondent points out that the fuel oil was already delivered prior to the sale of the imported fuel oil to petitioner's SHIFT prior to the actual sale, hence, presupposing that excise taxes were then duly paid.

Reiterating his or her arguments in the Answer, respondent insists that Section 135 of the NIRC of 1997, as amended is only applicable to buyers who are considered as exempt entities and not to importers such as petitioner. Citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals,*[116] respondent echoes the Supreme Court ruling therein that seller of products and services may not claim tax exemption on the basis that it is sold to a tax-exempt entity.

RULING OF THE COURT

After a careful review of the case records and the parties' contrasting arguments, this Court finds partial merit in the instant consolidated Petitions for Review.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously** or **illegally** collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[117] Thus –

[116] G.R. No. L-19707, 17 August 1967.

[117] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, 14 January 2015.

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (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.[118]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides -

> ...
>
> 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.[119]
>
> ...

From the foregoing, it is clear that in cases of recovery of erroneously paid or illegally collected tax, *both* the administrative claim

118 Italics in the original text, emphasis and underscoring supplied.
119 Italics in the original text and emphasis supplied.

for refund and the filing of the suit or the judicial claim for refund should be made before the expiration of two (2) years from the *date of payment* of the tax. 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 underscore 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."[120]

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.[121]

Ergo, for the subject claim for refund to prosper, petitioner must not only have established that it has timely filed its refund claim, but it must have also proven that the subject excise tax paid is an "erroneous or illegal tax."

PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND.

Records show that from December 2020 to March 2021, March to June 2021, and June to August 2021, petitioner imported fuel oil through SHIFT, and paid the corresponding excise taxes thereon, as follows:

Vessel	SAD[122] No.	SAD Date	Volume Paid (in Liters)	Rate	Amount of Excise Tax	Payment Date (stated in SSDT[123])
Mt Muskie	C1022715[124]	16 December 2020	38,798,717	₱6.00	₱232,792,302.00	17 December 2020[125]

[120] *Commissioner of Internal Revenue v. San Miguel Corporation, et seq.*, G.R. Nos. 180740 & 180910, 11 November 2019.

[121] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[122] Single Administrative Document.

[123] Statement of Settlement of Duties and Taxes.

[124] Exhibits "P-1-3" and "P-1-3-1", Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1216- 1217.

[125] Exhibit "P-1-4", id., p. 1219.

Mt SCF Provider	C648[126]	13 January 2021	48,675,667	6.00	292,054,002.00	15 January 2021[127]
Mt Silver Orla	C2249[128]	19 February 2021	48,236,004	6.00	289,416,024.00	22 February 2021[129]
Mt Silver Linda	C3626[130]	17 March 2021	46,065,213	6.00	276,391,278.00	18 March 2021[131]
Mt Yankul Silver	C6296[132]	10 May 2021	47,807,263	6.00	286,843,578.00	11 May 2021[133]
Mt Yankul Silver	C7849[134]	15 June 2021	38,697,102	6.00	232,182,612.00	17 June 2021[135]
Mt Yankul Silver	C7850[136]	15 June 2021	9,666,914	6.00	58,001,484.00	19 August 2021[137]
Mt Silver Esther	C9259[138]	19 July 2021	48,393,183	6.00	290,359,098.00	21 July 2021[139]
Mt Silver Orla	C10635[140]	16 August 2021	46,196,783	6.00	277,180,698.00	17 August 2021[141]
TOTAL			372,536,846		₱2,235,221,076.00	

The following are the pertinent dates relative to petitioner's claims for refund or tax credit, *viz.*:

A. <u>CTA Case No. 11046</u>

SAD No.	Payment Date	Two (2)-Year Prescriptive Period	Filing of Administrative Claim	Filing of Judicial Claim
C1022715	17 December 2020	17 December 2022	26 October 2021[142]	19 December 2022[143]
C648	15 January 2021	15 January 2023		
C2249	22 February 2021	22 February 2023		
C3626	18 March 2021	18 March 2023		

B. <u>CTA Case No. 11102</u>

SAD No.	Payment Date	Two (2)-Year Prescriptive Period	Filing of Administrative Claim	Filing of Judicial Claim
C3626	18 March 2021	18 March 2023	28 December 2021[144]	17 March 2023[145]
C6296	11 May 2021	11 May 2023		
C7849	17 June 2021	17 June 2023		

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126 Exhibit "P-2-3-1", id., p. 1231.
127 Exhibit "P-2-4", id., p. 1233.
128 Exhibits "P-3-3" and "P-3-3-1", id., pp. 1244-1245.
129 Exhibit "P-3-4", id., p. 1247.
130 Exhibit "P-4-3-1", id., p. 1260.
131 Exhibit "P-4-4-1", id., p. 1263.
132 Exhibits "P-5-3" and "P-5-3-1", id., pp. 1274-1275.
133 Exhibit "P-5-4", id., p. 1277.
134 Exhibits "P-6-3" and "P-6-3-1", id., pp. 1289-1290.
135 Exhibit "P-6-4", id., p. 1292.
136 Exhibit "P-7-3-1", id., p. 1305.
137 Exhibit "P-7-4-1", id., p. 1309.
138 Exhibits "P-8-3" and "P-8-3-1", id., pp. 1319-1320.
139 Exhibit "P-8-4", id., p. 1323.
140 Exhibits "P-9-3" and "P-9-3-1", id., pp. 1335-1336.
141 Exhibit "P-9-4", id., p. 1339.
142 Exhibits "P-21" to "P-21-1", supra at note 24.
143 Supra at note 5. Since 17 December 2022 falls on a Saturday, the deadline shall be on the next working day, that is, 19 December 2022.
144 Exhibits "P-21-2" to "P-21-3", supra at note 25.
145 Supra at note 6.

C. <u>CTA Case No. 11193</u>

SAD No.	Payment Date	Two (2)-Year Prescriptive Period	Filing of Administrative Claim	Filing of Judicial Claim
C7849	17 June 2021	17 June 2023	01 April 2022[146]	16 June 2023[147]
C7850	19 August 2021	19 August 2023		
C9259	21 July 2021	21 July 2023		
C10635	17 August 2021	17 August 2023		

Considering that the filings of the administrative and judicial claims were all done within the respective two (2)-year prescriptive periods, the present refund claims have not prescribed.

This Court shall now proceed to resolve to determine whether petitioner was able to prove by sufficient evidence that the subject excise taxes paid are erroneous or illegal.

THE EXCISE TAXES PAID ON IMPORTED FUEL OIL SOLD TO PFGMI, A PEZA-REGISTERED ENTITY, ARE ERRONEOUSLY OR ILLEGALLY COLLECTED.

Respondent avers that petitioner, being an importer of bunker fuel oil, is liable to pay the excise taxes thereon. The only instance that petitioner may invoke a claim for refund is the erroneous payment of the excise tax. Unfortunately, no such error exists in this case because the excise taxes were legally and validly collected from petitioner as the statutory taxpayer.

Respondent also contends that Section 135 of the NIRC of 1997, as amended, cannot serve as the basis for petitioner's claim for refund of the excise taxes paid on the ground that the provision applies exclusively to exempt entities, such as PFGMI, and not to importers like petitioner.

We cannot sustain respondent.

146 Exhibits "P-21-4" to "P-21-5", supra at note 26.
147 Supra at note 7.

In relation to the afore-quoted Sections 204(C)[148] and 229[149] of the NIRC of 1997, as amended, the present claims for refund or issuance of a TCC are governed by the following provisions of the NIRC of 1997, as amended, *viz*:

> ...
>
> SEC. 129. *Goods and Services Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported** as well as services performed in the Philippines. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good or service performed shall be referred to as '*ad valorem* tax.'
>
> ...
>
> 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 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.
>
> ...
>
> SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **Petroleum products <u>sold</u> to the following are <u>exempt</u> 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;

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148 Supra at p. 18.

149 Id.

> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
>
> (c) **Entities which are by law exempt from direct and indirect taxes.**[150]
>
> ...

In *Chevron Philippines, Inc. v. Commissioner of Internal Revenue,*[151] the Supreme Court held that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC of 1997, as amended, and exempt from excise tax, is **deemed illegal or erroneous**, to wit:

> ...
>
> 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 <u>deemed illegal or erroneous</u>; 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.**
>
> ...

Relevantly, as the Supreme Court clarified in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,*[152] "[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 [of the NIRC of 1997, as amended], any excise taxes which were previously paid thereon would then be considered as '**erroneously or illegally collected**' and, therefore, subject to refund." Moreover, the Supreme Court explained that "the tax exemption under Section 135 [of the NIRC of 1997, as amended] must correspondingly benefit the one

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150 Italics in the original text, emphasis and underscoring supplied.
151 G.R. No. 210836, 01 September 2015; Italics in the original text, emphasis and underscoring supplied.
152 G.R. No. 211303, 15 June 2021.

who actually bears the liability to pay the same (*i.e.*, the importers or 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)."

Pursuant to Section 135(c)[153] of the NIRC of 1997, as amended, petroleum products sold to entities that are by law exempt from direct and indirect taxes are exempt from excise tax. The phrase "which are by law exempt from direct and indirect taxes" describes the entities to whom the petroleum products must be sold to render the exemption operative. Section 135(c) of the NIRC of 1997, as amended, should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied. The exemption cannot be granted to the buyers, *i.e.*, the entities that are by law exempt from direct and indirect taxes, because they are not under any legal duty to pay the excise tax.[154]

Clearly, upon petitioner's sale of petroleum products to entities that are by law exempt from direct and indirect taxes, the status of the sold petroleum products as tax-exempt solidifies. Consequently, the excise taxes previously paid on these petroleum products become erroneously or illegally collected taxes. These taxes are then the proper subject of a claim for refund or credit under Sections 204(C)[155] and 229[156] of the NIRC of 1997, as amended.

Following the above disquisitions, to be entitled to a refund or the issuance of a TCC, the following must be demonstrated: (1) the entity to which the taxpayer-claimant sold the petroleum products is an entity exempt by law from both direct and indirect taxes; and (2) the taxpayer-claimant, as the statutory taxpayer, paid the excise taxes claimed on the petroleum products sold to the exempt entity.

Relative thereto, Section 24 of RA 7916,[157] or "The Special Economic Zone Act of 1995", as amended by RA 8748,[158] provides –

153 Supra at pp. 22-23.
154 *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 151.
155 Supra at p. 18.
156 Id.
157 Supra at note 20.
158 Supra at note 21

> ...
>
> **Sec. 24.** *Exemption from National and Local Taxes.* – Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In *lieu* thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.
>
> ...

Pursuant to the provision above, business establishments operating within the ECOZONE are exempt from national and local taxes. In *lieu* thereof, the said enterprises shall pay five percent (**5%**) of its gross income to the national government and the municipality or city where it is located.

In this case, petitioner presented the PEZA COR No. 18-143 dated 22 November 2018[159] certifying that PFGMI is an ECOZONE Export Enterprise at the ASEZ. Simply put, it is a PEZA-registered entity. Consequently, PFGMI enjoys fiscal incentives pursuant to Section 23 of RA 7916, *viz* –

> ...
>
> **Sec. 23.** *Fiscal Incentives.* - **Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives** as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.[160]
>
> ...

Section 1, Rule XV of the Rules and Regulations to Implement Republic Act No. 7916, Otherwise Known as "The Special Economic Zone Act of 1995" (**IRR of RA 7916**), Section 17 of PD 66, and Article 77(1), Book VI of EO 226, state that merchandise or supplies brought

159 Exhibit "P-16", supra at note 83.
160 Italics in the original text and emphasis supplied.

into the ECOZONE are not subject to customs and internal revenue laws and regulations, to wit –

> ...
>
> Rule XV of the IRR of RA 7916
>
> ...
>
> **RULE XV**
>
> *Incentives to ECOZONE Export and Free Trade Enterprises*
>
> SECTION 1. *Exemption from Duties and Taxes on Merchandise.* — Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the ECOZONE Restricted Area by an ECOZONE Export or Free Trade Enterprise to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufacture, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, **shall not be subject to customs and internal revenue laws and regulations of the Philippines** nor to local tax ordinances.[161]
>
> ...
>
> PD 66
>
> ...
>
> **Section 17.** *Tax Treatment of Merchandise in the Zone.* (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, **shall not be subject to customs and internal revenue laws and regulations** nor to local tax ordinances, the provisions of law to the contrary notwithstanding.[162]
>
> ...
>
> EO 226
>
> ...
>
> **Article 77.** *Tax Treatment of Merchandise in the Zone.*

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161 Italics and emphasis in the original text and supplied.
162 Italics and emphasis in the original text and supplied.

> (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, **shall not be subject to customs and internal revenue laws and regulations** nor to local tax ordinances, the provisions of law to the contrary notwithstanding.[163]

...

It is clear from the foregoing provisions that supplies brought into the ECOZONE by a duly-registered PEZA export or free trade enterprise and to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise, whether directly or indirectly related in such activity, **shall not be subject to customs and internal revenue laws and regulations.**

Relative thereto, petitioner presented the following documents to support that the fuel oil purchased from petitioner had been actually delivered to ASEZ, thereby proving that the imported fuel oil sold to PFGMI was used and consumed inside PEZA zone (for use) in the latter's PEZA-registered operations, particularly, the manufacture and production of float glass for export, *viz* –

Particulars	Exhibit No.
PFGMI's Application for Permit to Bring Goods from the Customs Territory into the Zone filed with PEZA to authorize delivery of fuel oil from petitioner to ASEZ	"P-14", "P-14-1" and "P-14-2"[164]
Supply Agreement executed between petitioner and PFGMI	"P-15"[165]
Amendment to the Supply Agreement entered into by petitioner and PFGMI	"P-15-1"[166]
Certification from PFGMI that purchases of fuel oil made by PFGMI from petitioner from July to September 2021 were	"P-16-2"[167]

[163] Italics and emphasis in the original text and supplied.
[164] Division Docket (CTA Case No. 11046), Volume III, pp. 1378-1383.
[165] Id., pp. 1384-1412.
[166] Id., pp. 1413-1415.
[167] Supra at note 85.

used in the production of float glass to supply heat to furnace for melting of raw materials and cullet	

Hence, it is clear that PFGMI is indeed an entity exempt by law from direct and indirect taxes. Thus, the excise taxes paid by petitioner to the Government, as the statutory taxpayer, on the petroleum products (*i.e.*, fuel oil) sold to PFGMI are considered as erroneously or illegally collected and may be refunded by petitioner.

PETITIONER SUFFICIENTLY PROVED THAT IT HAD ERRONEOUSLY PAID THE EXCISE TAXES ON IMPORTED FUEL OIL SOLD TO PFGMI, A TAX-EXEMPT PEZA-REGISTERED ENTERPRISE, BUT ONLY IN THE AMOUNT OF ₱134,940,000.00.

Process Flow of Importation of Fuel Oil

The records show that the process of importation of fuel oil starts when petitioner's Trading and Supply Department, upon determining the need and requirements for importation, contacts its regular suppliers and gives the volume requirements for the fuel oil which petitioner intends to import.[168] If the prospective supplier expresses interest in meeting petitioner's volume requirements, the Trading and Supply Department commences negotiations regarding the price of the fuel oil. As soon as petitioner and the supplier agree on the price, petitioner places its order to purchase fuel oil. Petitioner also receives Proforma Invoice to be submitted to the BIR and Bureau of Customs (**BOC**) from the supplier, which indicates the quantity of fuel oil, purchased.[169] The shipper prepares a Bill of Lading (**BL**) and furnishes the same to petitioner and the supplier, together with other documents such as Load Port Survey Report (**LPSR**), among others.[170]

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168 See Part II, Par. A, page 7 of the Report on the Results of the Procedures Performed to validate Judicial Claim for Refund or Tax Credit in relation to Excise Taxes paid during the period from December 2020 to August 2021 for imported fuel oil sold to Pioneer Float Glass Manufacturing Inc. for the period from January to September 2021 (hereinafter referred as "**ICPA Report**"), Division Docket, Volume III, p. 1072.

169 Id.

170 Id.

After giving internal advice from the Trading and Supply Department to the Tax Department and Finance Department, and prior to the arrival of the imported fuel oil, petitioner through its broker, lodges the importation details and upholds the supporting documents through the BOC's Electronic-to-Mobile System (**E2M System**). The E2M System was implemented to automate the importation declaration and payment of taxes and import duties to the BOC.[171]

After which, petitioner, through broker, generates the Single Administrative Document (**SAD**), which contains all the information encoded through the E2M System and an assessment of the taxes and duties to be paid on a particular importation.[172]

Upon payment of taxes and duties due under its tentative liquidation through, the BOC will generate the Statement of Settlement of Duties and Taxes (**SSDT**) through the E2M System.[173]

In order to release the SSDT to the importer or broker, the BOC requires Shell to present the Authority to Release Imported Goods (**ATRIG**) issued by the BIR. An ATRIG constitutes permission from the BIR to withdraw the fuel oil from SHIFT after the settlement of the taxes and duties due thereon. For taxable importation, the fuel oil cannot be withdrawn by Shell without the ATRIG.[174]

Subsequently, petitioner presents the SSDT to the port authorities who will allow the discharge of the imported fuel oil to the tanks in the SHIFT. In addition, upon full discharge of the products from the vessel, meaning full transfer of the last batch of fuel oil to the tanks in Tabangao, petitioner executes a Certificate of Quantity Received (**CQR**), which indicates the quantity of the products received, among others, at the SHIFT. Since the fuel oil is usually discharged over the course of several days depending on volume, the date of last discharge is indicated as the 'Date Received' in the CQR.[175]

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171 See Part II, Pars. C, D and G, pages 8 and 10 of the ICPA Report, id., p. 1073 and p. 1075, respectively.
172 Id.
173 Id.
174 See Part II, Par. F, page 9 of the ICPA Report, id., p. 1074.
175 See Part II, Par. H, pages 10-11 of the ICPA Report, id., pp. 1075-1076.

Here, records show that from December 2020 to August 2021, petitioner imported 372,536,846 liters of fuel oil through SHIFT, and paid the corresponding excise taxes in the amount of ₱2,235,221,076.00, as follows:

Sequence Number	**Period of Importation**	**BOC Ref**	**Volume in Liters Imported**	**Excise Tax**
1	December 2020 to March 2021	C1022715	38,798,717	₱232,792,302.00
2		C648	48,675,667	292,054,002.00
3		C2249	48,236,004	289,416,024.00
4		C3626	46,065,213	276,391,278.00
5	March to June 2021	C6296	47,807,263	286,843,578.00
6		C7849	38,697,102	232,182,612.00
7	June to August 2021	C7850	9,666,914	58,001,484.00
8		C9259	48,393,183	290,359,098.00
9		C10635	46,196,783	277,180,698.00
Total			**372,536,846**	**₱2,235,221,076.00**

The foregoing importations of fuel oil are supported by the following exhibits:

Seq. No.	**Bill of Lading**	**LPSR**	**Invoice**	**SAD**	**Assessment Notice**	**SSDT**	**ATRIG**	**CQR**	**OR**
1	"P-42"[176]	"P-1-1"[177]	"P-1-2"[178] "P-1-7"[179]	"P-1-3"[180] "P-1-3-1"[181]	"P-1-3-2"[182]	"P-1-4"[183] "P-1-4-1"[184]	"P-1-5"[185]	"P-1-6[186]	"P-1-8"[187]
2	"P-42"[188]	"P-2-1"[189]	"P-2-2"[190]	"P-2-3"[192]	"P-2-3-2[194]	"P-2-4"[195]	"P-2-5"[197]	"P-2-6"[198]	"P-2-8"[199]

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176 Page 1 of Exhibit "P-42", USB (Exhibit "P-29-2).
177 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1213-1214.
178 Id., 1215.
179 Id., pp. 1223-1225.
180 Id., p. 1216.
181 Id., p. 1217.
182 Id., p. 1218.
183 Id., p. 1219.
184 Id., p. 1220.
185 Id., p. 1221.
186 Id., p. 1222.
187 Id., p. 1226.
188 Page 2 of Exhibit "P-42", USB (Exhibit "P-29-2).
189 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1227-1228.
190 Id., p. 1229.
192 Id., p. 1230.
194 Id., p. 1232.
195 Id., p.1233.
197 Id., p. 1235.
198 Id., p. 1236.
199 Id., p. 1240.

x - x

			“P-2-7”[191]	“P-2-3-1”[193]		“P-2-4-1”[196]			
3	“P-42”[200]	“P-3-1”[201]	“P-3-2”[202] “P-3-7”[203]	“P-3-3”[204] “P-3-3-1”[205]	“P-3-3-2”[206]	“P-3-4”[207] “P-3-4-1”[208]	“P-3-5”[209]	“P-3-6”[210]	“P-3-8”[211]
4	“P-42”[212]	“P-4-1”[213]	“P-4-2”[214] “P-4-7”[215]	“P-4-3”[216] “P-4-3-1”[217]	“P-4-3-2”[218]	“P-4-4”[219] “P-4-4-1”[220]	“P-4-5”[221]	“P-4-6”[222]	“P-4-8”[223]
5	“P-42”[224]	“P-5-1”[225]	“P-5-2”[226] “P-5-7”[227]	“P-5-3”[228] “P-5-3-1”[229]	“P-5-3-2”[230]	“P-5-4”[231] “P-5-4-1”[232]	“P-5-5”[233]	“P-5-6”[234]	“P-5-8”[235]
6	“P-42”[236]	“P-6-1”[237]	“P-6-2”[238] “P-6-7”[239]	“P-6-3”[240] “P-6-3-1”[241]	“P-6-3-2”[242]	“P-6-4”[243]	“P-6-5”[245]	“P-6-6”[246]	“P-6-8”[247]

191 Id., pp. 1237-1239.
193 Id., p. 1231.
196 Id., p. 1234.
200 Page 3 of Exhibit “P-42”, USB (Exhibit “P-29-2).
201 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1241-1242.
202 Id., p. 1243.
203 Id., pp. 1251-1254.
204 Id., p. 1244.
205 Id., p. 1245.
206 Id., p. 1246.
207 Id., p. 1247.
208 Id., p. 1248.
209 Id., p. 1249.
210 Id., p. 1250.
211 Id., p. 1255.
212 Page 4 of Exhibit “P-42”, USB (Exhibit “P-29-2).
213 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1256-1257.
214 Id., p. 1258.
215 Id., pp. 1266-1269.
216 Id., p. 1259.
217 Id., p. 1260.
218 Id., p. 1261.
219 Id., p. 1262.
220 Id., p. 1263.
221 Id., p. 1264.
222 Id., p. 1265.
223 Id., p. 1270.
224 Page 5 of Exhibit “P-42”, USB (Exhibit “P-29-2).
225 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1271-1272.
226 Id., p. 1273.
227 Id., pp. 1281-1284.
228 Id., p. 1274.
229 Id., p. 1275.
230 Id., 1276.
231 Id., p. 1277.
232 Id., p. 1278.
233 Id., p. 1279.
234 Id., p. 1280.
235 Id., p. 1285.
236 Page 6 of Exhibit “P-42”, USB (Exhibit “P-29-2).
237 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1286-1287.
238 Id., p. 1288.
239 Id., pp. 1296-1299.
240 Id., p. 1289.
241 Id., p. 1290.
242 Id., p. 1291.
243 Id., p. 1292.
245 Id., p. 1294.
246 Id., p. 1295.
247 Id., p. 1300.

						"P-6-4-1"[244]			
7	"P-42"[248]	"P-7-1"[249]	"P-7-2"[250] "P-7-7"[251]	"P-7-3"[252] "P-7-3-1"[253]	"P-7-3-2"[254]	"P-7-4"[255] "P-7-4-1"[256]	"P-7-5"[257]	"P-7-6"[258]	"P-7-8"[259]
8	"P-42"[260]	"P-8-1"[261]	"P-8-2"[262] "P-8-7"[263]	"P-8-3"[264] "P-8-3-1"[265]	"P-8-3-2"[266]	"P-8-4"[267] "P-8-4-1"[268]	"P-8-5"[269]	"P-8-6"[270]	"P-8-8"[271]
9	"P-42"[272]	"P-9-1"[273]	"P-9-2"[274] "P-9-7"[275]	"P-9-3"[276] "P-9-3-1"[277]	"P-9-3-2"[278]	"P-9-4"[279] "P-9-4-1"[280]	"P-9-5"[281]	"P-9-6"[282]	"P-9-8"[283]

A comparison of the volume of fuel oil as reflected in the BLs, LPSRs and Invoices with those shown in the initial SADs for importations from December 2020 to August 2021 shows that those bear the same total volume in metric tons of 357,440.70 MT or 372,183,297 liters of fuel oil:

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244 Id., p. 1293.
248 Page 7 of Exhibit "P-42", USB (Exhibit "P-29-2).
249 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1301-1302.
250 Id., p. 1303.
251 Id., pp. 1311-1314.
252 Id., p. 1304.
253 Id., p. 1305.
254 Id., pp. 1306-1307.
255 Id., p. 1308.
256 Id., p. 1309.
257 Id., p. 1310.
258 Id., p. 1311.
259 Id., p. 1315.
260 Page 8 of Exhibit "P-42", USB (Exhibit "P-29-2).
261 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1316-1317.
262 Id., p. 1318.
263 Id., pp. 1327-1330.
264 Id., p. 1319.
265 Id., p. 1320.
266 Id., pp. 1321-1322.
267 Id., p. 1323.
268 Id., p. 1324.
269 Id., p. 1325.
270 Id., p. 1326.
271 Id., p. 1331.
272 Page 9 of Exhibit "P-42", USB (Exhibit "P-29-2).
273 Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, pp. 1332-1333.
274 Id., p. 1334.
275 Id., pp. 1343-1346.
276 Id., p. 1335.
277 Id., p. 1336.
278 Id., pp. 1337-1338.
279 Id., p. 1339.
280 Id., p. 1340.
281 Id., p. 1341.
282 Id., p. 1342.
283 Id., p. 1347.

SAD No.	Vessel	Per Liters	Amount of Excise Tax	Exhibit Reference
C-1022715	MUSKIE	38,798,717.00	₱232,792,302.00	"P-1-3"[284]
C-648	SCF PROVIDER	48,331,405.00	289,988,430.00	"P-2-3"[285]
C-2249	SILVER ORLA	48,236,004.00	289,416,024.00	"P-3-3"[286]
C-3626	SILVER LINDA	46,061,900.00	276,371,400.00	"P-4-3"[287]
C-6296	YANKUL SILVER	47,807,263.00	286,843,578.00	"P-5-3"[288]
C-7849	YANKUL SILVER	38,697,102.00	232,182,612.00	"P-6-3"[289]
C-7850	YANKUL SILVER	9,660,940.00	57,965,640.00	"P-7-3"[290]
C-9259	SILVER ESTHER	48,393,183.00	290,359,098.00	"P-8-3"[291]
C-10635	SILVER ORLA	46,196,783.00	277,180,698.00	"P-9-3"[292]
		372,183,297.00	**₱2,233,099,782.00**	

ICPA Apostol-Valix matched the total volume of 372,183,297 liters as indicated in the invoices, BLs and initial SADs with those of the ATRIGs and SSDTs and found no discrepancy, to wit –

ATRIG					Initial SSDT		
Exhibit Reference	Control	Product	Quantity Release	Excise Tax	Exhibit Reference	Receipt No	Excise Tax Paid
"P-1-5"[293]	ELTRDOIL181012	Fuel Oil	38,798,717.00	₱ 232,792,302.00	"P-1-4"[294]	R1029366	₱ 232,792,302.00
"P-2-5"[295]	ELTRDOIL182329	Fuel Oil	48,331,405.00	289,988,430.00	"P-2-4"[296]	R1110	289,988,430.00
"P-3-5"[297]	ELTRDOIL184172	Fuel Oil	48,236,004.00	289,416,024.00	"P-3-4"[298]	R3669	289,416,024.00
"P-4-5"[299]	ELTRDOIL185539	Fuel Oil	46,061,900.00	276,371,400.00	"P-4-4"[300]	R5600	276,371,400.00
"P-5-5"[301]	ELTRDOIL188820	Fuel Oil	47,807,263.00	286,843,578.00	"P-5-4"[302]	R9566	286,843,578.00
"P-6-5"[303]	ELTRDOIL191159	Fuel Oil	38,697,102.00	232,182,612.00	"P-6-4"[304]	R16370	232,182,612.00
"P-7-5"[305]	ELTRDOIL191162	Fuel Oil	9,660,940.00	57,965,640.00	"P-7-4"[306]	R12055	57,965,640.00

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284 Supra at note 180.
285 Supra at note 192.
286 Supra at note 204.
287 Supra at note 216.
288 Supra at note 228.
289 Supra at note 240.
290 Supra at note 252.
291 Supra at note 264.
292 Supra at note 276.
293 Supra at note 185.
294 Supra at note 183.
295 Supra at note 197.
296 Supra at note 195.
297 Supra at note 209.
298 Supra at note 207.
299 Supra at note 221.
300 Supra at note 219.
301 Supra at note 233.
302 Supra at note 231.
303 Supra at note 245.
304 Supra at note 243.
305 Supra at note 257.
306 Supra at note 255.

"P-8-5"[307]	ELTRDOIL193115	Fuel Oil	48,393,183.00	290,359,098.00	"P-8-4"[308]	R14223	290,359,098.00
"P-9-5"[309]	ELTRDOIL194770	Fuel Oil	46,196,783.00	277,180,698.00	"P-9-4"[310]	R16305	277,180,698.00
			372,183,297.00	₱2,233,099,782.00			₱2,233,099,782.00

Due to an increase of 353,549 liters in the fuel oil received by petitioner, the final excise taxes it paid amounted to ₱2,235,221,076.00, as supported by the following final SADs and final SSDTs –

	Final Adjusted SAD				Final Adjusted SSDT		
Seq No.	Exhibit Ref	SAD No.	Volume in Liters	Amount of Excise Tax Paid	Exhibit Ref	Receipt No	Excise Tax Paid
1	"P-1-3-1"[311]	C-1022715	38,798,717.00	₱232,792,302.00	"P-1-4-1"[312]	R2407	₱232,792,302.00
2	"P-2-3-1"[313]	C-648	48,675,667.00	292,054,002.00	"P-2-4-1"[314]	R4101	292,054,002.00
3	"P-3-3-1"[315]	C-2249	48,236,004.00	289,416,024.00	"P-3-4-1"[316]	R8709	289,416,024.00
4	"P-4-3-1"[317]	C-3626	46,065,213.00	276,391,278.00	"P-4-4-1"[318]	R9881	276,391,278.00
5	"P-5-3-1"[319]	C-6296	47,807,263.00	286,843,578.00	"P-5-4-1"[320]	R12556	286,843,578.00
6	"P-6-3-1"[321]	C-7849	38,697,102.00	232,182,612.00	"P-6-4-1"[322]	R16370	232,182,612.00
7	"P-7-3-1"[323]	C-7850	9,666,914.00	58,001,484.00	"P-7-4-1"[324]	R16368	58,001,484.00
8	"P-8-3-1"[325]	C-9259	48,393,183.00	290,359,098.00	"P-8-4-1"[326]	R18372	290,359,098.00
9	"P-9-3-1"[327]	C-10635	46,196,783.00	277,180,698.00	"P-9-4-1"[328]	R19064	277,180,698.00
			372,536,846.00	₱2,235,221,076.00			₱2,235,221,076.00

The importation, as well as the withdrawals of fuel oil, are recorded and summarized in the ORBs, which are jointly signed by an authorized representative of Shell and the Revenue Officer on Premises (**ROOP**). The ORB indicates the receipts and removals of fuel oil for

307 Supra at note 269.
308 Supra at note 267.
309 Supra at note 281.
310 Supra at note 279.
311 Supra at note 181.
312 Supra at note 184.
313 Supra at note 193.
314 Supra at note 196.
315 Supra at note 205.
316 Supra at note 208.
317 Supra at note 217.
318 Supra at note 220.
319 Supra at note 229.
320 Supra at note 232.
321 Supra at note 241.
322 Supra at note 244.
323 Supra at note 253.
324 Supra at note 256.
325 Supra at note 265.
326 Supra at note 268.
327 Supra at note 277.
328 Supra at note 280.

certain period and the running balance of stored fuel oil for the period.[329] The withdrawals are also covered by WCs which indicate the destination of the fuel. Fuel oil sold to PFGMI are delivered to its' premises in the ASEZ.[330]

It is noted that a WC is also prepared and signed by the ROOP of the BIR and Shell representative. The WC shows the source of the fuel oil, its destination, the date of its withdrawal, and its volume at the time withdrawn. Since the taxes in imported fuels are paid upon importation, it is indicated in the WC that the same is "tax-paid". This means that the fuel oil was then withdrawn from the imported stock and the excise tax thereon has already been paid to the BOC.[331]

Based on the ORBs, the ICPA was able to verify that 150,337,355 liters of fuel oil were withdrawn from Tabangao Depot and only 22,590,000 liters thereof were supported by WCs with details of delivery to PFGMI, summarized as follows:

Month	Total Fuel oil Withdrawn from ORB (in Liters) (Exhibit "P-58"[332])	Total Fuel oil Withdrawn supported by WCs (in Liters) (Exhibit "P-61"[333])
January 2021	17,286,720	2,500,000
February 2021	14,398,948	2,700,000
March 2021	17,133,750	2,300,000
April 2021	15,007,870	2,500,000
May 2021	19,267,495	2,500,000
June 2021	16,137,611	2,500,000
July 2021	17,128,548	2,500,000
August 2021	17,486,013	2,500,000
September 2021	16,490,380	2,590,000
TOTAL	**150,337,335**	**22,590,000**

As explained by petitioner's witness, Flores, a WC and a BDN accompany the fuel oil upon removal for delivery to PFGMI's premises

[329] See Part III, Par. 2, page16 of the ICPA Report, Division Docket (CTA Case Nos. 11046, 11102 & 11193), Volume III, p. 1081.
[330] See Part III, Par. 4, page 34 of the ICPA Report, id., p. 1099.
[331] Q&A No. 13, Exhibit "P-27", id., Volume II, p. 611.
[332] Summarized as Annex J in the ICPA Report. Exhibit "P-58" found in USB (Exhibit "P29-2").
[333] Summarized as Annex M in the ICPA Report. Exhibit "P-61" found in USB (Exhibit "P29-2").

in ASEZ. The WC and BDN indicate the quantity and destination of the deliveries.[334]

Then, whenever fuel oil is delivered to PFGMI, a document titled "Application for Permit to Bring Goods from the Customs Territory into the Zone" (**PEZA Form No. 8105**) must be filed and a Permit is issued to allow entry of the fuel oil into PFGMI's premises in ASEZ. The Permit describes the product brought into the zone, the use of the goods in the zone, the name and address of the supplier, the date and the PEZA-registered entity' name. PFGMI provides this Permit to petitioner for the fuel oil sold and delivered to it.[335]

From the 22,590,000 liters of fuel oil with BDNs, only 22,560,000 liters which were delivered to PFGMI are supported by PEZA Form No. 8105, detailed as follows:

Period	Product Description	Volume in Liter	Use of good in the Zone	Exhibit Reference[336]
January 2021	Regular Fuel Oil	2,530,000	Production Use	"P-40", pp. 1-30
February 2021	Regular Fuel Oil	2,710,000	Production Use	"P-40", pp. 31-58
March 2021	Regular Fuel Oil	2,230,000	Production Use	"P-40", pp. 59-94
April 2021	Regular Fuel Oil	2,500,000	Production Use	"P-40", pp. 95-120
May 2021	Regular Fuel Oil	2,500,000	Production Use	"P-40", pp. 121-144
June 2021	Regular Fuel Oil	2,500,000	Production Use	"P-40", pp. 145-168
July 2021	Regular Fuel Oil	2,500,000	Production Use	"P-40", pp. 169-196
August 2021	Regular Fuel Oil	2,500,000	Production Use	"P-40", pp. 197-218
September 2021	Regular Fuel Oil	2,590,000	Production Use	"P-40", pp. 219-246
TOTAL		**22,560,000**		

However, it is noted that there were instances when the volume declared per BDNs is higher than that shown in the PEZA Form No. 8105, or *vice versa*, summarized as follows –

Delivery No.	Volume per BDN	Exhibit Reference[337]	Volume per PEZA Form No. 8105	Exhibit Reference	Difference	Remarks
718122422	20,000.00	"P-62" p.20	30,000.00	"P-40" pp.7-8	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.

334 Q&A Nos. 13, 14, 15, 16, and 17, Exhibit "P-27", Division Docket (CTA Case No. 11046), Volume II, pp. 611-612.
335 Q&A No. 22, id., p. 614.
336 Found in USB (Exhibit "P-29-2").
337 Id.

718152908	20,000.00	"P-62" p.32	30,000.00	"P-40" pp.11-12	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
718192312	30,000.00	"P-62" p.41	20,000.00	"P-40" pp.13-14	10,000.00	Declared volume per PEZA Form No. 8105 is lower.
718227050	20,000.00	"P-62" p.45	30,000.00	"P-40" pp.15-16	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
718262475	20,000.00	"P-62" p.51	30,000.00	"P-40" pp.17-18	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
718262487	30,000.00	"P-62" p.53	20,000.00	"P-40" pp.17-18	10,000.00	Declared volume per PEZA Form No. 8105 is lower.
718262513	20,000.00	"P-62" p.56	30,000.00	"P-40" pp.17-18	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
718893152	30,000.00	"P-62" p.90	20,000.00	"P-40" pp.31-32	10,000.00	Declared volume per PEZA Form No. 8105 is lower.
718893203	20,000.00	"P-62" p.93	30,000.00	"P-40" pp.31-32	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
718992930	20,000.00	"P-62" p.118	30,000.00	"P-40" pp.35-36	(10,000.00)	Declared volume per PEZA Form No. 8105 is higher.
719850867	30,000.00	"P-62" p.213	-	None	30,000.00	No supporting PEZA Form No. 8105.
720004631	20,000.00	"P-62" p.239	-	None	20,000.00	No supporting PEZA Form No. 8105.
720077206	20,000.00	"P-62" p.254	-	None	20,000.00	No supporting PEZA Form No. 8105.

From the foregoing, deliveries of fuel oil made to PFGMI, without the supporting PEZA Form No. 8105 totaling to 70,000 liters, should not form part of the refund claim. Likewise, those deliveries with lower volume indicated in the PEZA Form No. 8105 compared to the volume indicated *per* BDNs should also not be part of the refund claim.

Petitioner also presented, among others, the following documentary evidence, proving the sales and delivery of fuel oil to PFGMI and the subsequent billing and collection of said fuel oil, net of excise tax –

	Document	Exhibit Reference
1	Sales Invoice (SI)	"P-65"[338]
2	ZF2 Display	"P-66"[339]
3	Proof of payments	"P-67"[340]
4	Liquidation report (LR)	"P-64"[341]

338 Id.
339 Id.
340 Id.
341 Id.

Thus, petitioner sufficiently proved that the excise taxes it paid on the importation of fuel oil, which was subsequently sold and delivered to PFGMI, a PEZA-registered entity, were erroneous, thus refundable pursuant to Sections 204(C) and 229 of the NIRC of 1997, but in the reduced amount of ₱134,940,000.00, computed as follows –

Description	Volume in Liters
Volume of fuel oil subject of claim	22,590,000.00
Less:	
Deliveries supported by WCs, BDNs and SIs but not supported by PEZA Form No. 8105	70,000.00
Fuel oil delivered is lower per PEZA Form No. 8105 than WCs, BDNs and SIs	30,000.00
Properly substantiated	**22,490,000.00**
Excise Tax Rate	₱6.00
Refundable Excise Tax	**₱134,940,000.00**

Substantial justice dictates that the government should not keep money that does not belong to it.[342] Taking all the above circumstances together, it is evident that petitioner sufficiently established, by preponderance of evidence, that it is entitled to the refund or issuance of TCC in the total amount of ₱134,940,000.00, representing the erroneously or illegally paid excise taxes on imported fuel oil, which was subsequently sold and delivered to PFGMI, a tax-exempt entity.

WHEREFORE, with the foregoing premises, the consolidated Petitions for Review filed by petitioner Shell Pilipinas Corporation (formerly Pilipinas Shell Petroleum Corporation) (CTA Case No. 11046, CTA Case No. 11102 and CTA Case No. 11193) filed on 19 December 2022, 17 March 2023 and 16 June 2023, respectively, are hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱134,940,000.00**, representing excise taxes paid for the periods from December 2020 to March 2021, March to June 2021, and June to August 2021 on imported fuel oil sold to Pioneer Float Glass Manufacturing, Inc. for the periods from January to April 2021, May to June 2021 and July to September 2021, respectively.

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342 See *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice