



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 3, 2020 which reads as follows:*

**“G.R. No. 211779 – PILIPINAS SHELL PETROLEUM CORPORATION, petitioner, versus COMMISSIONER OF INTERNAL REVENUE, respondent.**

RESOLUTION

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Pilipinas Shell Petroleum Corporation (PSPC) seeks the reversal and setting aside of the Decision<sup>2</sup> dated June 25, 2013 and Resolution<sup>3</sup> dated March 3, 2014 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB No. 841. The CTA EB denied PSPC’s petition for review<sup>4</sup> and affirmed the ruling of the Decision<sup>5</sup> dated March 30, 2010 and Resolution<sup>6</sup> dated October 17, 2011 of the CTA Special Second Division (CTA Division), which denied PSPC’s claim for refund or issuance of tax credit for excise taxes it paid on petroleum products sold to international carriers.

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<sup>1</sup> *Rollo*, pp. 39-100.

<sup>2</sup> *Id.* at 8-29. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring.

<sup>3</sup> *Id.* at 31-34.

<sup>4</sup> *Id.* at 461-489.

<sup>5</sup> *Id.* at 313-323. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

<sup>6</sup> *Id.* at 448-460. Penned by Associate Justice Erlinda P. Uy with Associate Justice Juanito C. Castañeda, Jr., concurring and Associate Justice Olga Palanca-Enriquez, on leave.

### The Facts

The facts, as found by the CTA Division, are summarized as follows:

PSPC, a corporation organized and existing under the laws of the Philippines, is engaged, among others, in the business of manufacturing, processing, treating, and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof.<sup>7</sup>

On December 27, 2005, PSPC filed a formal claim for refund or tax credit with the Bureau of Internal Revenue (BIR) Large Taxpayers Audit and Investigation Division II, seeking the recovery of excise taxes paid on its importations of Jet A-1 fuel which it allegedly sold to tax-exempt international air carriers for the period covering March to April 2004 in the aggregate amount of ₱42,314,358.66.<sup>8</sup>

Due to respondent Commissioner of Internal Revenue's (CIR) inaction and in order to toll the running of the two-year prescriptive period for judicially claiming a tax refund/credit under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, PSPC filed a petition for review<sup>9</sup> with the CTA Division, seeking to refund the amount of ₱38,738,367.19.<sup>10</sup>

On March 30, 2010, the CTA Division denied PSPC's claim for refund for lack of merit and insufficiency of evidence. The CTA Division found that while PSPC indeed sold Jet A-1 fuel to international carriers, it cannot sufficiently be ascertained whether these were taken from the imported Jet A-1 fuel subject of the instant case because the sales were made prior to the importation and payment of excise taxes.<sup>11</sup>

In its Resolution dated October 17, 2011, the CTA Division denied PSPC's motion for reconsideration.<sup>12</sup> The CTA Division reiterated its ruling that PSPC failed to sufficiently prove that the fuel sold to international carriers were sourced from the imported tax-paid

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<sup>7</sup> *Rollo*, p. 9.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 137-157.

<sup>10</sup> *Id.* at 9-10.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 325-339.

Jet A-1 fuel covered by Import Entry and Internal Revenue Declaration (IEIRD) Nos. 796-04 and 856-04.<sup>13</sup>

Aggrieved, PSPC appealed to the CTA EB. The CTA EB resolved to give due course to the petition and ordered the parties to submit their respective memoranda.<sup>14</sup>

During the pendency of its appeal, PSPC requested to avail of the services of an independent certified public accountant (ICPA) to prepare a Supplemental Report showing that the Jet A-1 fuel delivered to the international carriers came from the importation subject of the case.<sup>15</sup>

The CIR opposed the said motion,<sup>16</sup> and subsequently filed its Memorandum.<sup>17</sup>

In a Resolution<sup>18</sup> dated August 31, 2012, the CTA EB ruled that considering the issues raised by PSPC in its motion to avail of an ICPA and considering further that the CIR already filed its Memorandum,<sup>19</sup> PSPC was directed to submit its memorandum.<sup>20</sup> In compliance thereto, PSPC filed its Memorandum<sup>21</sup> on October 12, 2012.<sup>22</sup>

### *CTA EB Ruling*

In the assailed Decision, the CTA EB upheld the ruling of the CTA Division that PSPC failed to show that Jet A-1 fuel sold to international carriers were sourced from the imported Jet A-1 fuel subject of the instant claim.

Further, the CTA EB ruled that Section 135 of the NIRC of 1997, as amended, upon which PSPC's refund claim was based, does not explicitly grant oil companies selling their imported petroleum

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<sup>13</sup> Id. at 11-12.

<sup>14</sup> Id. at 12.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 12, 505-515.

<sup>18</sup> Id. at 524-526. Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

<sup>19</sup> Id. at 527-558.

<sup>20</sup> Id. at 12-13.

<sup>21</sup> Id. at 527-558.

<sup>22</sup> Id. at 12-13.

products to international carriers the exemption from payment of excise taxes. According to the CTA EB, the exemption from excise tax payment on petroleum products under Section 135(a) is conferred on the international carriers which purchased the same for their use or consumption outside the Philippines. Oil companies, like PSPC, which sold petroleum products to international carriers are not entitled to a refund of the excise taxes previously paid thereon.<sup>23</sup>

In assailed Resolution, the CTA EB denied PSPC's motion for reconsideration for lack of merit.<sup>24</sup>

Hence, this Petition.

### The Issue

Whether the CTA EB erred in affirming the CTA Division's ruling denying PSPC's claim for refund of excise taxes paid on petroleum products sold to international carriers.

### The Court's Ruling

The Petition lacks merit.

PSPC anchors its claim for refund or tax credit of erroneously paid excise taxes on Section 135(a) of the NIRC of 1997, as amended. Said provision reads:

**SEC. 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[.]

It has been settled in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*<sup>25</sup> that the statutory taxpayer — *i.e.*, the manufacturer, producer and importer of petroleum products —

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<sup>23</sup> Id. at 21-26.

<sup>24</sup> Id. at 33.

<sup>25</sup> G.R. No. 188497, February 19, 2014, 717 SCRA 53.

who is directly liable to pay the excise tax due thereon, is entitled to a refund or credit of the excise taxes it paid for **petroleum products sold to international carriers**, the latter having been granted exemption from the payment of said excise tax under Section 135(a) of the NIRC, amended. The Court explained that this construction of Section 135(a) is in fulfillment of the country's commitment to the international agreement and practice to exempt aviation fuel from excise tax and other impositions and prohibit the passing of the excise tax to international carriers who buy petroleum products from local manufacturers/sellers.<sup>26</sup>

Moreover, in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*,<sup>27</sup> the Court *En Banc* clarified that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed. In this regard, the excise taxes that the manufacturer, producer or importer paid for the production or importation of petroleum products **subsequently sold to the entities or agencies named in Section 135** are considered erroneous and should be credited or refunded to the manufacturer or importer in accordance with Section 229<sup>28</sup> of the NIRC of 1997, as amended.

Based on the foregoing, it was erroneous for the CTA EB to rule that PSPC may not claim a refund of the excise taxes paid on its importation of Jet A-1 fuel pursuant to Section 135(a) of the NIRC of 1997, as amended. Prevailing jurisprudence has clarified that Section 135 of the NIRC of 1997, as amended, effectively covers excise taxes paid by the manufacturers or importers on the production or importation of petroleum products, provided it be sufficiently shown that the petroleum products, upon which excise taxes were paid, were subsequently sold to international carriers or to the other entities or agencies named in said provision.

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<sup>26</sup> Id. at 77-78.

<sup>27</sup> G.R. No. 210836, September 1, 2015, 768 SCRA 414, 429.

<sup>28</sup> 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.

In this case, however, the CTA Division found PSPC's evidence insufficient to establish that its imported Jet A-1 fuels, upon which the claimed excise taxes were paid, were the very same fuels subsequently sold to international carriers within the period subject of the instant case. The CTA Division explained, *viz.*:

As revealed by petitioner, all throughout the process of withdrawals and delivery of the Jet A-1 Fuel, the same went from one bonded storage tank to another. Upon release from Customs, the imported Jet A-1 Fuel were stored at bonded storage tanks in the Tabangao, Batangas refinery and commingled with the locally-manufactured stocks pursuant to the Commingling Permit. From the Tabangao refinery, the imported Jet A-1 Fuel were transferred to bonded storage tanks at the Pandacan depot. From Pandacan, it went again to bonded storage tanks at the Joint Oil Company Aviation Storage Plant (JOCASP) in the Ninoy Aquino International Airport and UPS Clark in the Diosdado Macapagal International Airport in Pampanga from where the imported Jet A-1 Fuel were delivered to domestic and international carriers.

In its Memorandum dated August 8, 2011, petitioner further narrates the details of the withdrawals and the subsequent sale of Jet A-1 Fuel to international and domestic air carriers, including the occurrence of in-transit losses in support of its claimed excise taxes, *viz.*:

x x x x

21. When the imported tax-paid Jet A-1 Fuel subject of this claim were transferred in various batches from the Tabangao Refinery to the Pandacan Depot, the respective WCs, i.e., WC Nos. 39468, 39496, 39566 and 39595, covering each removal erroneously contained the notation "Excise Tax to Be Paid in Pandacan," instead of "tax-paid."

x x x x

While the Withdrawal Certificates (WCs) contained the notation "Excise Tax to Be Paid in Pandacan", **this Court cannot ascertain whether the Jet A-1 fuel covered by the WCs actually pertain to the imported tax-paid Jet A-1 fuel. It bears stressing that petitioner's imported and locally-manufactured Jet A-1 fuel were commingled and stored in the same storage tank. Thus, in order for the Court to verify the trail of stocks of petitioner's imported and locally-manufactured Jet A-1 fuel at the Tabangao refinery on a first-in, first-out basis, petitioner should have submitted the ORB of the Tabangao refinery showing**

**daily stock balances and daily inventory movement of both locally manufactured and imported Jet A-1 fuels for the months of March and April 2004 and some other documents which would sufficiently establish that the Jet A-1 fuel indicated in the WCs came from the imported stocks.**

Moreover, this Court noted a discrepancy upon comparison of the volume of Jet A-1 fuel as indicated in the aforesaid WCs and in the summary of petitioner's receipts and removals per ORB-Tabangao refinery for the months of March and April 2004.

It was observed that part of the 6,707,329 liters of imported tax-paid Jet A-1 fuel was allegedly withdrawn on March 31, 2004 per WC no. 39496 with a volume of 2,382,552 liters. On the other hand, the ORB summary for the month of April 2004 reflected that the entire 6,707,329 liters of imported tax-paid Jet A-1 fuel were received by the Tabangao refinery only in April 2004.

In addition, the Court noticed that per the Tabangao refinery's ORB summary for the month of March 2004, all of the imported Jet A-1 fuels of 4,822,469 liters received in March were also withdrawn by the refinery in the same month. Thus, the refinery's Jet A-1 fuel inventory of 2,949,226 liters as of March 31, 2004 pertains to locally-manufactured Jet A-1 fuels.

**While petitioner proved that it sold Jet A-1 fuel to international and domestic air carriers in April 2004, petitioner failed to sufficiently prove that such sales were sourced from the imported tax-paid Jet A-1 fuel covered by IEIRD Nos. 796-04 and 856-04. Although petitioner submitted the detailed ORBs of the Pandacan Depot for the months of March and April 2004 and detailed ORB of JOCASP for April 2004, the receipts and removals recorded therein cannot be ascertained to be coming from the imported tax-paid Jet A-1 fuel without the detailed ORB of the Tabangao refinery for the months of March and April 2004. Further, petitioner failed to present the detailed ORB of UPS Clark Depot for April 2004 and the WCs relating to the deliveries made by JOCASP and UPS Clark Depot to tax-exempt international carriers and taxable domestic air carriers. These WCs are material in determining whether there were indeed erroneous notations therein that made petitioner pay a second round of excise taxes on its deliveries to taxable domestic air carriers. x x x<sup>29</sup> (Emphasis supplied and underscoring in the original)**

In addition to the foregoing, the CTA EB found significant discrepancies in PSPC's documentary evidence as regards the dates when the importations subject of the present petition were made,<sup>30</sup>

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<sup>29</sup> *Rollo*, pp. 17-19.

<sup>30</sup> *Id.* at 19-20.

which further supports the CTA Division's finding that while PSPC indeed sold Jet A-1 fuels to international carriers, it failed to clearly show that such sales were sourced from the imported petroleum products upon which the claimed excise taxes were paid.

In filing the present petition, PSPC wants the Court to review the foregoing findings of the CTA EB, reexamine the evidence and determine on the basis thereof whether it is entitled to amount of the refund claimed. However, this cannot be done in the instant case. Well-settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.<sup>31</sup> It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.<sup>32</sup>

Furthermore, factual findings of the CTA are accorded respect and are deemed conclusive.<sup>33</sup> As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation.<sup>34</sup> Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.<sup>35</sup>

Here, the CTA Division and EB made their findings after an exhaustive examination of the evidence on record. PSPC, however, failed to show that the CTA EB committed any gross error or abuse in making this factual determination.

It bears to emphasize that tax refunds are in the nature of a claim for tax exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi*

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<sup>31</sup> *General Milling Corporation v. Viajar*, G.R. No. 181738, January 30, 2013, 689 SCRA 598, 606.

<sup>32</sup> *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015, 761 SCRA 173, 181.

<sup>33</sup> *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 & 206309, January 17, 2018, 851 SCRA 518, 540.

<sup>34</sup> *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011, 657 SCRA 70, 84-85, citing *Commissioner of Internal Revenue v. Court of Appeals*, February 25, 1999, 303 SCRA 614, 621.

<sup>35</sup> *Id.* at 85, citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561-562.

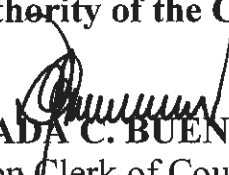



scrutinized and must be duly proven.<sup>36</sup> The burden is on the taxpayer to prove the factual basis of its claim for refund.<sup>37</sup> In this case, however, PSPC has not met its burden of proof in establishing the factual basis for its claim for refund. Thus, the Court finds no reason to disturb the ruling of the CTA EB.

**WHEREFORE**, premises considered, the present Petition for Review is **DENIED**. The Decision dated June 25, 2013 and Resolution dated March 3, 2014 of the Court of Tax Appeals *en banc* in CTA EB No. 841 are hereby **AFFIRMED**.

**SO ORDERED.”**

By authority of the Court:

  
LIBRADA C. BUENA  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**179-A**

BANIQUED & BANIQUED  
Counsel for Petitioner  
Suite 803, 8<sup>th</sup> Floor, Jollibee Centre  
San Miguel Avenue, Ortigas Center  
1605 Pasig City

Court of Tax Appeals  
National Government Center  
Diliman, 1101 Quezon City  
(CTA EB No. 841)  
(CTA Case No. 7421)

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Amorsolo St., Legaspi Village  
1229 Makati City

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Bureau of Internal Revenue  
Litigation Division  
Room 403, BIR National Office Bldg.  
Diliman, 1101 Quezon City

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<sup>36</sup> *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

<sup>37</sup> *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417, 430.

