

is entitled to claim for refund or issuance of tax credit certificate of the excise taxes paid. To do so, however, the seller-claimant must comply with the requirements prescribed by law and must be able to show that its claim for refund or credit are properly substantiated.

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter “petitioner”) under *Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated October 22, 2008 and Resolution dated May 4, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 7122, the respective dispositive portions of which read, as follows:

“WHEREFORE, in view of the foregoing, the instant claim for refund or issuance of a tax credit certificate is hereby **PARTIALLY GRANTED** but in the reduced amount of **SEVENTY SIX MILLION ONE HUNDRED SIXTY SEVEN THOUSAND SIX HUNDRED TWENTY EIGHT AND 99/100 (P76,167,628.99)** as computed below:

Excise tax claimed	P	80,425,554.99
Less: Disallowed amount		<u>4,257,926.00</u>

Valid excise tax for refund	P	76,167,628.99
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SO ORDERED.”

“**WHEREFORE**, in view of the foregoing, respondent’s Motion for Partial Reconsideration is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City and may be served with legal processes, thru its counsel, at the Legal Division, BIR Revenue Region 8, 5/F Atrium Building, Makati Avenue, Makati City,

Respondent Pilipinas Shell Petroleum Corporation, on the other hand, is a domestic corporation duly organized and existing under and by virtue of the Philippines Laws, with principal office at Shell House, 156 Valero St., Salcedo Village, Makati City, and may be served with legal notices and other processes, thru its counsel.

THE FACTS

The antecedent facts, as summarized by the Former First Division, are hereunder adopted, to wit:

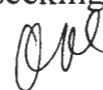


“During the period of January 2003 up to June 2003, petitioner (now respondent) sold and delivered petroleum products to various international carriers of Philippine or foreign registry for their use or consumption outside the Philippines. The foreign international carriers were registered in the countries of Panama, Singapore, Netherlands, Denmark, Norway, Malaysia and Korea which were allegedly exempt from excise or similar taxes on petroleum products by virtue of various tax treaties.

In the conduct of its operations, petitioner (now respondent) paid to the BIR excise taxes on its locally manufactured petroleum products in compliance with Section 148 of the 1997 National Internal Revenue Code (1997 NIRC). Petitioner (now respondent) allegedly made these payments upon the removal of such products from the refineries or place of production, prior to delivery, consistent with Section 130 of the 1997 NIRC. Petitioner (now respondent) also stipulated that it paid to the BIR excise taxes on imported petroleum products before the release of such products from customs custody in compliance with Section 131(A) of the same code.

Petitioner (now respondent) argued that as a result of the exemption, and pursuant to Section 135 of the 1997 NIRC, it billed the international carriers net of excise taxes. This notwithstanding, the petroleum products petitioner (now respondent) delivered to the international carriers were products with excise taxes already paid for. Due to petitioner's (now respondent) erroneous payment of excise taxes, it found it necessary to claim for a refund or issuance of a tax credit certificate.

On February 13, 2004, petitioner (now respondent) filed a formal claim for tax refund or credit with the Large Taxpayers audit Inspection Department (LTAID) Division II seeking the



recovery of excess excise taxes paid in the amount of P49,306,787.09 incurred from January 2003 to March 2003. Afterwards, on July 2, 2004, petitioner (now respondent) filed another claim for refund with the same LTaid division in the amount of P31,118,767.90 for the period of April 2003 to June 2003. Both claims amount to P80,425,554.99, the subject amount of the instant petition."

On January 3, 2005, in view of petitioner's inaction, Pilipinas Shell Petroleum Corporation elevated its case to this Court by way of Petition for Review, docketed as C.T.A. Case No. 7122.

On October 22, 2008, the Former First Division rendered a decision partially granting the Petition for Review.

On November 13, 2008, petitioner filed a "Motion for Partial Reconsideration," which was denied by the Court for being a mere scrap of paper for failure to specify the time and date of hearing as required under *Section 5, Rule 15 of the 1997 Rules of Civil Procedure, as amended*, in its Resolution dated November 25, 2008.

On December 15, 2008, petitioner filed an "Omnibus Motion (a. Motion for Reconsideration of the Order dated November 25, 2008; b. Motion to Admit Respondent's Motion for Partial Reconsideration dated



November 12, 2008)", to which an "Opposition" was filed on December 24, 2008 by the respondent.

On February 17, 2009, a Resolution was issued by the Former First Division granting petitioner's Omnibus Motion and admitting his Motion for Partial Reconsideration. Respondent was ordered to file its opposition to petitioner's Motion for Partial Reconsideration, within fifteen (15) days from notice.

On March 17, 2009, respondent filed its "Comment/Opposition".

On May 4, 2009, a Resolution was issued by the Former First Division denying petitioner's Motion for Partial Reconsideration for lack of merit.

Hence, the present Petition For Review raising the following:

ISSUES

I

WHETHER OR NOT THE FORMER FIRST DIVISION OF THE HONORABLE TAX COURT ERRED IN ORDERING THE REFUND IN FAVOR OF RESPONDENT ON THE EXCISE TAXES IT PAID ON ITS SALES AND DELIVERIES OF PETROLEUM PRODUCTS TO VARIOUS INTERNATIONAL CARRIERS FOR THEIR USE OR CONSUMPTION OUTSIDE THE PHILIPPINES MERELY



ON THE GROUND THAT RESPONDENT ENDED UP SHOULDERING THE EXCISE TAXES SINCE IT CAN NO LONGER PASS ON THE EXCISE TAX TO THE TAX-EXEMPT BUYER.

II

WHETHER OR NOT THE FORMER FIRST DIVISION ERRED IN HOLDING THAT THE PAYMENT OF EXCISE TAXES MADE BY RESPONDENT CONSTITUTE AS ERRONEOUSLY PAID TAXES MADE THAT COULD BE RECOVERED UNDER SECTION 229 OF THE TAX CODE.

III

WHETHER OR NOT THE FORMER FIRST DIVISION OF THE HONORABLE TAX COURT ERRED IN NOT APPLYING THE CASES OF MACEDA vs. MACARAIG AND PHILIPPINE ACETYLENE vs. CIR IN RESOLVING THE PRESENT CASE.

On July 1, 2009, without necessarily giving due course to the petition, We required the respondent to file its comment, not a motion to dismiss, within ten (10) days from notice.

On July 16, 2009, respondent filed an “Urgent Motion for Extension of Time to File Comment”, which the Former *En Banc* granted.

On July 27, 2009, respondent filed its comment.



On August 12, 2009, We ordered both parties to submit their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the petition shall be deemed submitted for decision.

On September 22, 2009, respondent filed its Memorandum, while on September 25, 2009, petitioner filed a "Manifestation with Motion", manifesting and moving that he is adopting all his arguments found in his Petition for Review dated June 8, 2009 as part of his Memorandum, which the Court granted.

On July 1, 2009, the petition was deemed submitted for decision.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not respondent Pilipinas Shell Petroleum Corporation is entitled to a claim for refund of erroneous excise tax payments.

Petitioner CIR's Arguments

Petitioner argues that respondent is the one directly liable to pay the excise taxes on the petroleum products from the time of its removal from the place of production before it can be delivered to various international carriers; that there is nothing in *Section 130(A)(2)* nor in any other sections



of the Tax Code that expressly exempt respondent from paying excise taxes from the date of removal of petroleum products to be delivered to international carriers or to any tax-exempt entities or agencies; that *Section 135 of the NIRC* grants excise tax exemption to international carriers and exempt entities or agencies as buyers of petroleum products and not to grant exemption to manufacturers or producers of petroleum products from payment of excise tax; under the NIRC, it is the manufacturer or producer of such products that is the one directly liable to pay the excise tax; that there was no tax erroneously or illegally collected as to entitle respondent to the grant of tax refund or issuance of tax credit certificate under *Section 229 of the NIRC*.

Respondent Pilipinas Shell Petroleum Corporation's Counter-Arguments

Respondent counter-argues that while *Section 130 (A)(2) of the 1997 Tax Code, as amended*, requires the payment of the excise tax before removal of the petroleum products from the place of production, *Section 135 (a) of the 1997 Tax Code, as amended*, however, explicitly provides that petroleum products sold to international carriers for their use and



consumption outside the Philippines are exempt from excise tax. Thus, since the petroleum products sold to international carriers are exempt from excise tax, respondent's advance payment of said tax in the amount of P76,167,628.99 is deemed erroneous; thus, respondent is entitled to a refund.

THE FORMER COURT *EN BANC*'S RULING

We deny the petition.

Section 135 of the NIRC of 1997, as amended, provides:

“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 restored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
- (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
- (c) Entities which are by law exempt from direct and indirect taxes.”



Pursuant to the above provision, the sale of petroleum products to international carriers complying with the requisites laid down under the law shall be exempt from excise tax. For an international carrier to be exempt from the payment of excise tax, *Section 135* expressly provides that petroleum products purchased by the international carrier shall be used and consumed outside of the Philippines, and the petroleum products sold to international carriers shall be stored in bonded storage tanks. While for exempt entities covered by international treaties or international agreement, in order that they will be exempted from payment of excise tax, the same *Section 135* requires that the country of registry of said foreign international carrier exempts from similar excise tax petroleum products sold to Philippine carriers or entities.

The Former First Division found that respondent's sale of petroleum products complied with the prescribed requisites. Respondent presented testimonial and documentary evidence to prove its entitlement to the refund. As aptly ruled by the Former First Division:

“As can be gleaned from the independent CPA report, the claimed excise tax of P80,425,554.99 pertained to petitioner's (now respondent) exempt sales and deliveries of petroleum



products to international carriers. Also, petitioner's (now respondent) documents have proven that petitioner (now respondent) sold and delivered petroleum products to international carriers of foreign registry and paid the excise taxes due thereon for the period January 2003 to June 2003. Furthermore, except for the amount of P4,257,926.00, petitioner's (now respondent) claim for refund or tax credit for the excise taxes paid on exempt sales of petroleum products were duly substantiated by proper documentary evidence."

Considering that the petroleum products sold to international carriers are exempt from excise tax, then it follows that respondent's advance payments of the excise tax are erroneous since they are not supposed to be paid at all, pursuant to *Section 135 of the NIRC of 1997, as amended*.

Pursuant to *Section 229 of the NIRC of 1997, as amended*, a taxpayer may recover erroneously or illegally collected taxes provided that the administrative and judicial claims for refund have been filed, within two years from the date of the payment of the tax.

The Former First Division correctly ruled that both the administrative and judicial claims for refund were filed on time, thusly:

"In the instant case, the earliest date of removal of the subject petroleum products from the place of production is January 5, 2003. Counting from this date, the administrative claims filed on February 13, 2004 and July 2, 2004 for the periods January to March 2003 and April to June 2003,



respectively, and this instant Petition for Review filed on January 3, 2005 falls within the two-year period”.

As regards the third issue, petitioner contends that the cases of *Maceda vs. Macaraig*, 223 SCRA 217, and *Philippine Acetylene Co. vs. Commissioner of Internal Revenue*, 20 SCRA 1056, are applicable in the case at bar.

We do not agree.

In the case of *Philippine Acetylene Co. vs. Commissioner of Internal Revenue*, *supra*, the Supreme Court ruled that sales tax being passed on to the purchaser as part of the purchase price of the commodity is a tax on the seller, and not on the buyer. Thus, if the buyer happens to be tax exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax not on the buyer but on the seller. However, the said case is not applicable to the instant case for the facts are different. In the *Philippine Acetylene* case, the party asking for the refund is the seller-producer based on the exemption granted under the law to the buyer, National Power Corporation and Voice of America. In this case, the law itself exempts, from excise tax, the sale of the petroleum products made by respondent to international



carriers. Respondent is not anchoring its claim on the tax status of its buyer, but rather on the clear specific provision of *Section 135 of the NIRC of 1997, as amended*.

The case of *Maceda vs. Macaraig, supra*, is likewise not applicable, as it involved different factual circumstances. The cited case refers to the Supreme Court's Resolution on the Motion for Reconsideration of petitioner Ernesto Maceda. A perusal of the original decision of the Supreme Court in *Maceda vs. Macaraig, 197 SCRA 771*, shows that the case involved a refund by the National Power Corporation (the end user) of the excise tax included in the purchase price of fuel it purchased from various petroleum companies. At the time, the controlling statute was the *NIRC of 1977, as amended*.

The Maceda case cannot apply to the case at bar since the refund claimant was the National Power Corporation, who is not the manufacturer, and its basis for a refund was the tax exemptions granted to it under its charter; whereas, in the case at bar, the refund claimant is the manufacturer, herein respondent Pilipinas Shell, and the basis for its claim is *Section 135 of the NIRC of 1997, as amended*, and related provision governing the sale of fuel to international vessels for their use outside the Philippines.



Clearly, both the Maceda case and Philippine Acetylene case involved facts and law, which are essentially different from the facts and law in the case at bar. In *Hacienda Bino vs. Candico Cuenca, et. al.*, 456 SCRA 300, the Supreme Court ruled:

“Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Where the facts are essentially different, however, *stare decisis* does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variance is introduced.”

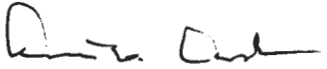
Finding no reversible error, we affirm the assailed Decision dated October 22, 2008 and Resolution dated May 4, 2009 of the Former First Division.

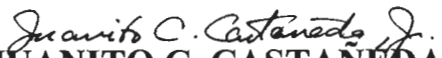
WHEREFORE, premises considered, the instant “Petition for Review” is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

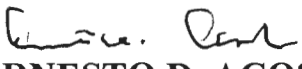

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice