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THIRD DIVISION

[G.R. No. 180402, February 10, 2016]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PILIPINAS SHELL PETROLEUM CORPORATION, RESPONDENT.

D E C I S I O N

REYES, J.:

Assailed in the present Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 13, 2007 rendered by the Court of Tax Appeals (CTA) *en banc* in CTA EB Case No. 279, which affirmed the Decision[3] dated November 28, 2006 of the CTA Second Division in CTA Case No. 6554, ordering the refund or issuance of a tax credit certificate in favor of respondent Pilipinas Shell Petroleum Corporation (Pilipinas Shell) for the excise taxes it paid on petroleum products sold to international carriers. Petitioner Commissioner of Internal Revenue (CIR) also assailed the CTA Resolution[4] dated October 18, 2007 denying its motion for reconsideration.

Antecedent Facts

Pilipinas Shell sold and delivered petroleum products to various international carriers of the Philippines or foreign registry for their use outside the Philippines for the period of November 2000 to March 2001. A portion of these sales and deliveries was sourced by Pilipinas Shell from Petron Corporation (Petron) by virtue of a "loan or borrow agreement" between them. The excise taxes paid by Petron were passed on to Pilipinas Shell and the latter, in turn, sold these to international carriers net of excise taxes. The other portion was sourced by Pilipinas Shell from its tax-paid inventories.[5]

Pilipinas Shell subsequently filed two separate claims for the refund or credit of the excise taxes paid on the foregoing sales, totaling P49,058,733.09. Due to the inaction of the Bureau of Internal Revenue (BIR) on its claims, Pilipinas Shell decided to file a petition for review with the CTA.[6]

On November 28, 2006, the CTA Second Division rendered its Decision granting Pilipinas Shell's claim but at a reduced amount of P39,305,419.49.[7] Said amount was computed based on Pilipinas Shell's sales and deliveries of petroleum products to international carriers sourced from its own tax-paid inventories. The claim for refund/credit of the excise taxes from the sales and deliveries coming from the portion sourced from Petron was disallowed by the CTA on the ground that Pilipinas Shell is not the proper party to claim the same.

The CIR filed a motion for reconsideration of the CTA decision but it was denied by the CTA in its Resolution[8] dated February 23, 2007. Hence, it filed a petition for

review before the CTA *en banc*.[9]

On July 13, 2007, the CTA *en banc* rendered the assailed decision dismissing the BIR's petition for lack of merit and affirming the assailed CTA decision and resolution. Its motion for reconsideration having been denied per assailed Resolution[10] dated October 18, 2007, the CIR now comes to this Court on petition for review.

The arguments raised by the CIR are basically the same as those raised before the CTA Second Division and *en banc*, that is, Pilipinas Shell is not entitled to a refund/credit of the excise taxes paid on its sales and deliveries to international carriers for the following reasons: (1) excise taxes are levied on the manufacturer/producer prior to sale and delivery to international carriers and, regardless of its purchaser, said taxes must be shouldered by the manufacturer/producer or in this case, Pilipinas Shell; (2) the excise taxes paid by Pilipinas Shell do not constitute taxes erroneously paid as they are rightfully due from Pilipinas Shell as manufacturer/producer of the petroleum products sold to international carriers; (3) the intent of the law - Section 135 of the National Internal Revenue Code (NIRC) - is to exempt the international carriers from paying the excise taxes but not the manufacturer/producer; and (4) BIR Ruling No. 051-99, Revenue Regulations No. 5-2000 and other BIR issuances allowing tax refund/credit of excise taxes paid on petroleum products sold to tax-exempt entities or agencies should be nullified for being contrary to Sections 129, 130 and 148 of the NIRC.[11]

For its part, Pilipinas Shell argued, among others, that the excise tax exemption on petroleum products sold to international carriers is based on principles of international comity and to insist on its payment under the circumstances and suggest that it be recovered by the manufacturer as part of its selling price would be to render meaningless its purpose.[12]

Ruling of the Court

The Court need not unnecessarily belabor the arguments posed by the parties as these have already been squarely dealt with recently in G.R. No. 188497 entitled "*Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*."[13]

In said case, the same respondent in this case, Pilipinas Shell, sought a refund/credit of the excise taxes allegedly paid erroneously on sales and deliveries of gas and fuel oils to various international carriers during the period of October to December 2001. As in the present case, Pilipinas Shell alleged that it was exempt from payment of excise taxes levied on its petroleum products sold and delivered to international carriers of foreign registry. The same petitioner in this case, the CIR, as represented by the Office of the Solicitor General, objected to the tax refund/credit granted by the CTA, also on the same ground raised in the present case - that the excise tax on petroleum products is levied on the manufacturer of the petroleum product regardless of its purchaser or buyer and that the grant of exemption under Section 135 of the NIRC simply means that the manufacturer cannot pass on to the international carrier-buyer the excise taxes it paid on its petroleum products.

Initially, the Court sustained CIR's arguments, reversed the CTA ruling and denied

Pilipinas Shell's claim for tax refund/credit. In a Decision[14] dated April 25, 2012, the Court concluded that Pilipinas Shell's locally manufactured petroleum products are subject to excise tax under Section 148 of the NIRC. The Court also ruled that the exemption from excise tax payment on petroleum products under Section 135(a) "merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods."[15]

In a Resolution[16] dated February 19, 2014, however, the Court addressed the argument of Pilipinas Shell in its motions for reconsideration that Section 135(a) intended the tax exemption to apply to petroleum products at the point of production, among others. The Court found merit in Pilipinas Shell's motions for reconsideration and consequently directed the CIR to issue a tax credit certificate to Pilipinas Shell. The dispositive portion of the resolution reads:

> WHEREFORE, the Court hereby resolves to:
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> (1) **GRANT** the original and supplemental motions for reconsideration filed by respondent Pilipinas Shell Petroleum Corporation; and
> (2) **AFFIRM** the Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of fax Appeals *En Banc* in CTA EB No. 415; and **DIRECT** petitioner Commissioner of Internal Revenue to refund or to issue a tax credit certificate to Pilipinas Shell Petroleum Corporation in the amount of P95,014,283.00 representing the excise taxes it paid on petroleum products sold to international carriers from October 2001 to June 2002.
>
> **SO ORDERED.**[17]

In granting Pilipinas Shell's motions for reconsideration, the Court ruled:

> We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, **we agree that there is a need to re-examine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention**.
>
> The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty,

> inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.
>
> The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:
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> x x x x
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> With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "Hankering" would not be discouraged. This scenario does not augur well for the Philippines-growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.**
>
> In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135(a) of the NIRC.**[18] (Citation omitted and emphases ours)

Under the doctrine of *stare decisis*,[19] the Court must adhere to the principle of law laid down in *Pilipinas Shell* and apply the same in the present case, especially since the facts, issues, and even the parties involved are exactly identical. Thus, the Court hereby holds that Pilipinas Shell's claim for refund/tax credit must be granted pursuant to *Pilipinas Shell*, as its petroleum products sold to international carriers for the period of November 2000 to March 2001 are exempt from excise tax, these international carriers being exempt from payment of excise tax under Section 135(a) of the NIRC.

The Court further notes that during the pendency of this case, the Court, sitting *en banc*, rendered a decision in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*,[20] which likewise involved the refund of excise taxes paid on the importation of petroleum products. Applying the principle enunciated in *Pilipinas Shell*, the Court granted therein petitioner Chevron Philippines, Inc.'s motion for reconsideration and directed therein respondent CIR to refund the excise taxes paid on the petroleum products sold to Clark Development Corporation in the period from August 2007 to December 2007, or to issue a tax credit certificate. The Court stated that while the claims in *Pilipinas Shell* and *Chevron* were premised on different