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EN BANC

[G.R. No. 210836, September 01, 2015]

CHEVRON PHILIPPINES INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

R E S O L U T I O N

BERSAMIN, J.:

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 deemed illegal or erroneous, 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.

The Case

Before the Court is the *Motion for Reconsideration* filed by petitioner Chevron Philippines, Inc. (Chevron)[1] vis-a-vis the resolution promulgated on March 19, 2014,[2] whereby the Court's Second Division denied its petition for review on *certiorari* for failure to show any reversible error on the part of the Court of Tax Appeals (CTA) *En Banc*. The CTA *En Banc* had denied Chevron's claim for tax refund or tax credit for the excise taxes paid on its importation of petroleum products that it had sold to the Clark Development Corporation (CDC), an entity exempt from direct and indirect taxes.

The *Motion for Reconsideration* was later on referred to the Court *En Banc* after the Second Division noted that the CTA *En Banc* had denied Chevron's claim for the tax refund or tax credit based on the ruling promulgated in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation (Pilipinas Shell)* on April 25, 2012,[3] but which ruling was meanwhile reversed upon reconsideration by the First Division through the resolution promulgated on February 19, 2014.[4] The Court *En Banc* accepted the referral last June 16, 2015.

Antecedents

Chevron sold and delivered petroleum products to CDC in the period from August 2007 to December 2007.[5] **Chevron did not pass on to CDC the excise taxes paid on the importation of the petroleum products sold to CDC in taxable year 2007**;[6] hence, on June 26, 2009, it filed an administrative claim for tax refund or issuance of tax credit certificate in the amount of P6,542,400.00.[7] Considering that respondent Commissioner of Internal Revenue (CIR) did not act on

the administrative claim for tax refund or tax credit, Chevron elevated its claim to the CTA by petition for review on June 29, 2009.[8] The case, docketed as CTA Case No. 7939, was raffled to the CTA's First Division.

The CTA First Division denied Chevron's judicial claim for tax refund or tax credit through its decision dated July 31, 2012,[9] and later on also denied Chevron's *Motion for Reconsideration* on November 20, 2012.[10]

In due course, Chevron appealed to the CTA *En Banc* (CTA EB No. 964), which, in the decision dated September 30, 2013,[11] affirmed the ruling of the CTA First Division, stating that there was nothing in Section 135(c) of the NIRC that explicitly exempted Chevron as the seller of the imported petroleum products from the payment of the excise taxes; and holding that because it did not fall under any of the categories exempted from paying excise tax, Chevron was not entitled to the tax refund or tax credit.

The CTA *En Banc* noted that:

> Considering that an excise tax is in the nature of an indirect tax where the tax burden can be shifted, Section 135(c) of the NIRC of 1997, as amended, should be construed as prohibiting the shifting of the burden of the excise tax to tax-exempt entities who buys petroleum products from the manufacturer/seller by incorporating the excise tax component as an added cost in the price fixed by the manufacturer/seller.
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> The above discussion is in line with the pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation* (*Shell* case), involving Shell's claim for excise tax refund for petroleum products sold to international carriers. The Supreme Court held that the exemption from excise tax payment on petroleum products under Section 135(a) of the NIRC of 1997, as amended, is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the petroleum products sold, x x x
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> Accordingly, petitioner is not entitled to any refund or issuance of tax credit certificate on excise taxes paid on its importation of petroleum products sold to CDC pursuant to the doctrine laid down by the Supreme Court in the *Shell* case.[12]

Chevron sought reconsideration, but the CTA *En Banc* denied its motion for that purpose in the resolution dated January 7, 2014.[13]

Chevron appealed to the Court,[14] but the Court (Second Division) denied the petition for review on *certiorari* through the resolution promulgated on March 19, 2014 for failure to show any reversible error on the part of the CTA *En Banc*.

Hence, Chevron has filed the *Motion for Reconsideration,* submitting that it was entitled to the tax refund or tax credit because ruling promulgated on April 25, 2012 in *Pilipinas Shell*,[15] on which the CTA *En Banc* had based its denial of the claim of Chevron, was meanwhile reconsidered by the Court's First Division on February 19, 2014.[16]

Issue

The lone issue for resolution is whether Chevron was entitled to the tax refund or the tax credit for the excise taxes paid on the importation of petroleum products that it had sold to CDC in 2007.

Ruling of the Court

Chevron's *Motion for Reconsideration* is meritorious.

Pilipinas Shell concerns the manufacturer's entitlement to refund or credit of the excise taxes paid on the petroleum products sold to international carriers exempt from excise taxes under Section 135(a) of the NIRC. However, the issue raised here is whether the importer (*i.e.*, Chevron) was entitled to the refund or credit of the excise taxes it paid on petroleum products sold to CDC, a tax-exempt entity under Section 135(c) of the NIRC. Notwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC, the basic tax principle applicable was the same in both cases - 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.

Accordingly, the excise taxes that Chevron paid on its importation of petroleum products subsequently sold to CDC were illegal and erroneous, and should be credited or refunded to Chevron in accordance with Section 204 of the NIRC.

We explain.

Under Section 129[17] of the NIRC, as amended, excise taxes are imposed on two kinds of goods, namely: (a) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (b) things imported. Undoubtedly, the excise tax imposed under Section 129 of the NIRC is a tax on property.[18]

With respect to imported things, Section 131 of the NIRC declares that excise taxes on imported things shall be paid by the owner or importer to the Customs officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, unless the imported things are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption. For this purpose, the statutory taxpayer is the importer of the things subject to excise tax.

Chevron, being the statutory taxpayer, paid the excise taxes on its importation of the petroleum products.[19]

Section 135 of the NIRC states:

> SEC. 135. **Petroleum Products Sold to International Carriers and Exempt Entities or Agencies**. - Petroleum products sold to the following are exempt from excise tax:
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> (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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> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreement for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
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> **(c) Entities which are by law exempt from direct and indirect taxes**. (Emphasis supplied.)

Pursuant to Section 135(c), *supra,* 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 in order to render the exemption *operative*. Section 135(c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers - that is, 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.

CDC was created to be the implementing and operating arm of the Bases Conversion and Development Authority to manage the Clark Special Economic Zone (CSEZ).[20] As a duly-registered enterprise in the CSEZ, CDC has been exempt from paying direct and indirect taxes pursuant to Section 24[21] of Republic Act No. 7916 (*The Special Economic Zone Act of 1995*), in relation to Section 15 of Republic Act No. 9400 (Amending Republic Act No. 7227, otherwise known as the *Bases Conversion Development Act of 1992*).[22]

Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customshouse, Chevron was bound to pay, and actually paid such taxes. But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007 (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). Before then, Chevron

did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products.

Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or the credit of the excise taxes thereby paid, *viz*.:

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

It is noteworthy that excise taxes are considered as a kind of indirect tax, the liability for the payment of which may fall on a person other than whoever actually bears the burden of the tax.[23] Simply put, the statutory taxpayer may shift the economic burden of the excise tax payment to another - usually the buyer.

In cases involving excise tax exemptions on petroleum products under Section 135 of the NIRC, the Court has consistently held that it is the statutory taxpayer, not the party who only bears the economic burden, who is entitled to claim the tax refund or tax credit.[24] But the Court has also made clear that this rule does not apply where the law grants the party to whom the economic burden of the tax is shifted by virtue of an exemption from both direct and indirect taxes. In which case, such party must be allowed to claim the tax refund or tax credit even if it is not considered as the statutory taxpayer under the law.[25]

The general rule applies here because Chevron did not pass on to CDC the excise taxes paid on the importation of the petroleum products, the latter being exempt from indirect taxes by virtue of Section 24 of Republic Act No. 7916, in relation to Section 15 of Republic Act No. 9400, not because Section 135(c) of the NIRC exempted CDC from the payment of excise tax.

Accordingly, conformably with Section 204(C) of the NIRC, *supra*, and pertinent jurisprudence, Chevron was entitled to the refund or credit of the excise taxes erroneously paid on the importation of the petroleum products sold to CDC.