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SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

Velasco, Jr., J., no part.

Reyes, J., on leave.

EN BANC

[G.R. No. 210836. September 1, 2015]

CHEVRON PHILIPPINES INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; TAX REFUND OR CREDIT OF EXCISE TAXES PAID; CHEVRON IS ENTITLED TO A TAX REFUND OR CREDIT FOR THE EXCISE TAXES PAID ON THE IMPORTATION OF PETROLEUM PRODUCTS THAT IT SOLD TO CLARK DEVELOPMENT CORPORATION; EXPLAINED. — Under Section 129 of the National Internal Revenue Code of 1997, as amended, excise taxes are imposed on two (2) 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. 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

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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. x x x 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). As a duly-registered enterprise in the CSEZ, CDC has been exempt from paying direct and indirect taxes pursuant to Section 24 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*). 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. x x x 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. Simply put, the statutory taxpayer may shift the economic burden of the excise tax payment to another

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– 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. 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. 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.

VILLARAMA, JR., *J.*, *separate concurring opinion*:

1. TAXATION; TAX REFUND OR CREDIT OF EXCISE TAXES PAID; THE LEGAL BASIS FOR EXEMPTION FROM EXCISE TAX ON PETROLEUM PRODUCTS FOR THE THREE INSTANCES PROVIDED IN SECTION 135 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) IS NOT THE SAME; EXPLAINED; RULING OF THE COURT IN *COMMISSIONER OF INTERNAL REVENUE VS. PILIPINAS SHELL PETROLEUM CORPORATION* GRANTING THE TAX REFUND OF PILIPINAS SHELL PURSUANT TO SECTION 135(a) IS PRIMARILY BASED ON THE GOALS OF THE CHICAGO CONVENTION AND THE CURRENT STATE OF THE AVIATION INDUSTRY.— The view that the rationale in *Pilipinas Shell* precludes similar claims for refund under Section 135(b) and (c) is simply unfounded. The legal basis for exemptions from excise tax on petroleum is not the same for each of the three instances enumerated in Section 135. Understandably, the discussion in *Pilipinas Shell* concerning a refund claim under Section 135(a) makes reference to a distinct

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historical and policy context of the tax exemption of aviation fuel for international carriers. On the other hand, Section 135(b) pertains to our government's obligations under international and bilateral agreements conditioned on reciprocal grant of exemption from similar taxes on petroleum products sold to Philippine carriers, entities or agencies. With respect to Section 135(c), the provision merely recognizes the fiscal incentives and privileges granted by the legislature to certain entities, among which is the Clark Development Corporation (CDC), to which petitioner sold petroleum products allegedly without passing on the customs duties and excise tax previously paid by petitioner. The Court in *Pilipinas Shell* maintained that Section 135(a) prohibits the passing of the excise tax to the exempt entities and agencies that purchase petroleum products from local oil companies. This statement would be redundant under Section 135(c) which covers buyers expressly conferred exemption from both direct and indirect taxes. Moreover, unlike Section 135(b) which is based on the principle of reciprocity, Section 135(a) applies to *all* international carriers pursuant to the provisions of the Chicago Convention. The exemption of aviation fuel used in international flights is mainly "enshrined in the legal framework of international aviation." Section 135(a) states that petroleum products sold to international carriers are exempt from the payment of excise tax if (a) these petroleum products sold to international carrier are bonded in a storage tank; and (b) the disposition thereof shall be in accordance with the duly promulgated rules and regulations of the Secretary of Finance. It is to be noted that under Section 130(A)(2), excise taxes on locally manufactured products are paid before removal from the place of production while excise taxes on imported petroleum products are paid before removal from customs custody. Thus, the petroleum products sold and delivered to international carriers are sourced from tax-paid inventories. Since these petroleum products sold to international carriers are billed net of excise taxes, the question arises whether the manufacturer/importer/seller, such as petitioner oil company, is allowed to refund the excise taxes it paid. Interpretation of our national tax laws should be geared towards fulfilling our treaty obligations and avoid consequences that will not help promote air safety and sound development of international aviation. Upon considerations of these primary goals of the Chicago Convention and the current state of the aviation industry, the

Court in *Pilipinas Shell* thus found it imperative to re-examine the effect of denying the claims for refund of excise taxes paid by the local oil companies.

2. ID.; ID.; PREVIOUS RULINGS OF THE COURT RECOGNIZED PEZA-REGISTERED ENTERPRISES, LIKE THE CLARK DEVELOPMENT AUTHORITY (CDC), AS PROPER PARTIES TO FILE A CLAIM FOR REFUND OF EXCISE TAXES PASSED ON TO THEM BY THE SELLERS OF PETROLEUM PRODUCTS.— It was thus postulated that international carriers and tax exempt entities as *buyers* could not benefit from Section 135 of the NIRC considering that this Court has consistently ruled they are not entitled to a refund or credit of the excise taxes paid on the petroleum products because they are not the statutory taxpayers. the provision simply exempts them from paying the excise taxes passed on by manufacturers, sellers and importers to buyers of petroleum products. In my humble view, such is not the correct interpretation of Section 135 as applied to the present controversy involving a tax-exempt entity under paragraph (c). CDC was created pursuant to Executive Order(EO) No. 80 issued on April 3, 1993 by President Fidel V. Ramos, as the operating and implementing arm of the Bases Conversion Development Authority (BCDA) to manage the Clark Special Economic Zone Authority (CSEZ). It is an entity duly registered with the Philippine Economic Zone Authority (PEZA). Pursuant to Section 23 of R.A. 7916, CDC is entitled to the fiscal incentives provided for under Presidential Decree (PD) No. 66, or those provided under Book VI of EO No. 226. x x x The aforesaid statement in the dissent clearly runs counter to the previous rulings of this Court recognizing PEZA-registered enterprises, which by law are exempt from both direct and indirect taxes, as proper parties to file a claim for refund of excise taxes passed on to them by the sellers of petroleum products.

DEL CASTILLO, *J.*, *dissenting opinion*:

1. TAXATION; TAX REFUND OR CREDIT OF EXCISE TAXES PAID; THE NATIONAL INTERNAL REVENUE CODE (NIRC) DOES NOT DISTINGUISH BETWEEN PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS AND THOSE SOLD TO TAX-EXEMPT ENTITIES.— To begin with, the ratiocination adopted therein applies only to international carriers under

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Section 135(a) of the NIRC, and not to tax-exempt entities under paragraphs (b) and (c) of the same provision. Also, said ruling creates an unreasonable classification or distinction between petroleum products sold to international carriers, and those sold to tax-exempt entities, because manufacturers, sellers, and importers would be allowed to claim a tax refund or credit only under Section 135(a) of the NIRC but not under paragraphs (b) and (c) of the same provision. This is unfair considering that the NIRC does not make a distinction between them. More important, the prospect of declining sales of aviation jet fuel sold to international carriers on account of the unwillingness of major domestic oil companies to shoulder the burden of excise tax, which in a way encourages "tankering," hinges on speculation. Neither is it a legal justification to grant manufacturers a refund or credit of the excise taxes paid on petroleum products sold to international carriers.

2. ID.; ID.; GRANTING TAX REFUND OR CREDIT TO CHEVRON FOR THE EXCISE TAXES PAID ON THE IMPORTATION OF PETROLEUM PRODUCTS SOLD TO CLARK DEVELOPMENT CORPORATION WOULD CONSTITUTE JUDICIAL LEGISLATION.— I cannot subscribe to petitioner's postulation that the denial of its claim would result in serious adverse consequences on the supply of fuel to tax-exempt entities under Section 135(c) of the NIRC as oil companies would be unwilling to sell petroleum products to customers operating within the special economic zone. This is not only unsubstantiated but is also not a legal ground to grant petitioner's claim for tax refund or credit. It bears stressing that tax refunds, just like tax exemptions must not rest on vague, uncertain or indefinite inference but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken, as taxes are the lifeblood of the government. Thus, unless there is a clear grant of tax exemption or refund in the law, the Court cannot grant petitioner's claim for tax refund or credit as this would constitute judicial legislation, which is not allowed.

3. ID.; ID.; SECTION 135 OF THE NIRC IS NOT A REFUND PROVISION.— Notably, Section 135 of the NIRC is not a refund provision as it does not provide for a tax refund in favor of the buyers, *i.e.*, international carriers and tax-exempt entities, and the sellers of petroleum products. Thus, there is no legal

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basis to grant petitioner's claim for tax refund or credit. Besides, if the lawmakers intended to allow manufacturers, sellers, and importers to claim a refund of excise taxes paid on petroleum products sold to international carriers and tax-exempt entities under Section 135 of the NIRC, they would have expressly provided for it, just like in Section 130(D) of the same Code, which categorically allows the refund or credit of excise taxes paid on goods which are locally produced or manufactured and subsequently exported. Obviously, the absence of a tax refund provision in the NIRC in favor of these manufacturers, sellers, and importers of petroleum products only proves that the lawmakers never intended to grant such kind of refund.

4. ID.; ID.; SECTION 135 OF THE NIRC IS ALSO NOT A TAX EXEMPTION IN FAVOR OF MANUFACTURERS, SELLERS, AND IMPORTERS OF PETROLEUM PRODUCTS.— Neither can Section 135 of the NIRC be construed as a tax exemption in favor of manufacturers, sellers, and importers, which would allow them to claim a refund or credit of the excise taxes paid on the petroleum products sold to international carriers and tax-exempt entities. In fact, a simple reading of the provision clearly shows that it is a tax exemption in favor of the buyers, the international carriers and tax-exempt entities under Section 135 of the NIRC. And as the Court in its April 25, 2012 Decision in *Pilipinas Shell* has previously said, "the tax exemption being enjoyed by the buyer cannot be the basis of a claim for exemption by the manufacturer, seller, or importer." Thus, petitioner cannot use this provision to claim an exemption from the payment of excise tax. However, while Section 135 of the NIRC is construed as a tax exemption in favor of the buyers, we have consistently ruled that they are not entitled to a refund or credit of the excise taxes paid on the petroleum products because they are not the statutory taxpayers. If so, how could the international carriers and the tax-exempt entities under Section 135 of the NIRC, as buyers, benefit from such exemption? The answer is simple. Section 135 of the NIRC exempts them from paying excise taxes passed on by manufacturers, sellers, and importers to buyers of petroleum products. An excise tax, as we have often said, is an indirect tax wherein the tax liability falls on one person but the burden thereof can be shifted or passed on to another person, such as the consumer. Thus, pursuant to Section 135 of the NIRC,

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manufacturers, sellers, and importers have no choice but to shoulder the burden of the excise tax as their buyers, the international carriers and the tax-exempt entities under the said provision, are exempt from paying excise tax on petroleum products.

5. ID.; ID.; ID.; SECTION 135 OF THE NIRC MERELY PROHIBITS THE SHIFTING OR PASSING ON OF THE BURDEN OF EXCISE TAX TO INTERNATIONAL CARRIERS AND TAX-EXEMPT ENTITIES.— Section 135 of the NIRC should simply be construed as prohibition on the shifting or passing on of the burden of excise tax to international carriers and tax-exempt entities, which purchase petroleum products from manufacturers, sellers, and importers. As aptly explained in the Decision dated April 25, 2012 in *Pilipinas Shell,* Section 135 of the NIRC merely allows international carriers or, in this case, tax-exempt entities, to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers, sellers, or importers. In other words, while generally excise taxes paid by manufacturers, sellers, and importers may be shifted or passed on to their buyers, Section 135 of the NIRC provides for an exception as it prohibits manufacturers, sellers, and importers from shifting or passing on the excise taxes they paid on the petroleum products sold to international carriers and tax-exempt entities under the said provision.

LEONEN, *J.*, *dissenting opinion*:

1. TAXATION; TAX REFUND OR CREDIT OF EXCISE TAXES PAID; THE COURT'S RULING IN *COMMISSIONER OF INTERNAL REVENUE VS. PILIPINAS SHELL PETROLEUM CORPORATION* IS NOT APPLICABLE; SAID RULING GRANTING TAX REFUND OF EXCISE TAXES PAID BY PILIPINAS SHELL ON THE IMPORTATION OF PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS SHOULD BE ABANDONED; A DENIAL OF THE CLAIM DOES NOT VIOLATE ANY TREATY OBLIGATIONS WE HAVE WITH OTHER COUNTRIES.— [T]he ruling in *Pilipinas Shell* is not applicable because that case involved the sale of petroleum products to international carriers. Also, the ruling in *Pilipinas Shell* should be abandoned because it

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provides an interpretation that is not within the text of the law. Similar to the *Pilipinas Shell* case, this case involves a claim over refund of excise taxes paid on petroleum products sold to a tax-exempt entity, Clark Development Corporation. Section 135(c) of the National Internal Revenue Code of 1997 provides that entities exempt from paying excise taxes include entities that are exempt from paying direct and indirect taxes. However, a close reading of *Pilipinas Shell* reveals that the binding force of its ruling depended on assumed effects—potential violations of our commitment under international air treaty agreements and potential harm to our economy—which may be relevant only to a particular buyer, i.e., an international carrier. The same assumed scenario cannot apply to an entity like Clark Development Corporation, a government-owned and controlled corporation that is exempt by law from direct and indirect taxes. In its February 19, 2014 Resolution of the *Pilipinas Shell* case, this court, through the First Division, maintained its interpretation of Section 135(a) of the National Internal Revenue Code of 1997 as an excise tax exemption in favor of international carriers, such that international carriers are allowed to purchase petroleum products from the manufacturers or sellers net of the excise tax. Yet, this court conceded that the same provision could be used as basis for allowing the manufacturers' claim over refund of excise taxes previously paid on petroleum products sold to international carriers in view of the probable pernicious effects of denying their refund claim. I dissent from the majority and vote to deny Chevron's claim over tax refund. It is my opinion that the rule in *Pilipinas Shell* should be abandoned. A denial of Pilipinas Shell's, or any other manufacturer's, claim over refund does not violate any treaty obligations we have with other countries. Section 135(a) of the National Internal Revenue Code of 1997 effectively satisfies our treaty obligations in our bilateral air service agreements with other countries, as it actually prohibits the local manufacturers from passing on the excise tax to international carriers. Further, the obligation of local manufacturers not to shift the burden of the excise tax to international carriers was recognized in Presidential Decree No. 1359, a precursor to the present tax code, which grants foreign international carriers tax exemption on fuel used in international trade and travel[.] x x x International carriers can invoke their exemption from excise taxes on petroleum products upon purchase. Hence, the

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international carriers cannot be said to be without remedy. Parenthetically, the Chicago Convention refers to exemption from customs duty, inspection fees, or similar duties and charges of fuel, lubricating oils, and other articles on board an aircraft of a contracting state, not from excise tax. There is no international convention or treaty agreement compelling us to grant tax exemptions to local manufacturers.

2. ID.; ID.; ID.; ID.; RULING OF THE COURT IN *COMMISSIONER OF INTERNAL REVENUE VS. PILIPINAS SHELL PETROLEUM CORPORATION* IS BASED ON ASSUMED EFFECTS, WHICH MAY OR MAY NOT HAPPEN.— This much was conceded in the precedent *Pilipinas Shell* case when it maintained that "Section 135 (a) . . . prohibits the passing of the excise tax to international carriers who buys [sic] petroleum products from local manufacturers/sellers[.]" However, this court arrived at a different conclusion after taking into consideration 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." It is premature and purely speculative to say that to deny the domestic manufacturers or sellers their refund claims would result in a cessation in the supply of fuel oils to international carriers or an increase in oil prices and in "tankering." These assumed effects may or may not happen, and it was inappropriate for this court then to overturn its first ruling based on these assumptions. Indeed, such argument is a consideration that should be addressed to the legislature and not to the courts that are not authorized to view laws from the standpoint of their results. Since there is no ambiguity or vagueness in the law, its plain provisions should be applied coupled with the principle that tax refunds, as in tax exemptions, must be clearly provided by law.

3. ID.; ID.; CHEVRON CANNOT CLAIM EXEMPTION FROM THE PAYMENT OF EXCISE TAXES USING CLARK DEVELOPMENT CORPORATION'S TAX FREE-PRIVILEGE TO BUY PETROLEUM PRODUCTS UNDER SECTION 135 (c) OF THE NATIONAL INTERNAL REVENUE CODE.— *Philippine Acetylene* held that the sales tax must be paid by the manufacturer even though the sale is made to tax-exempt entities like the National Power Corporation, an agency of the

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Philippine government, and the Voice of America, an agency of the United States government. Like the percentage tax on sales, the excise tax on petroleum products is a direct liability of the manufacturer or producer or importer. Applying the same principle in this case, it is my opinion that Chevron cannot claim exemption from the payment of excise taxes using Clark Development Corporation's tax-free privilege to buy petroleum products under Section 135(c) of the National Internal Revenue Code of 1997.

4. **ID.; ID.; SECTION 135 (a) AND (c) SHOULD BE INTERPRETED TO MEAN THAT THE EXCISE TAXES PAID BY MANUFACTURERS OR IMPORTERS CANNOT BE SHIFTED TO INTERNATIONAL CARRIERS AND EXEMPT ENTITIES AS BUYERS OF PETROLEUM PRODUCTS.—** Excise taxes on petroleum products are indirect taxes by nature because the tax-paying manufacturer or importer can shift the burden of the tax to the buyer. It is in this context that the tax exemption provision in Section 135 of the National Internal Revenue Code of 1997 should be understood. In other words, Section 135(a) and (c) should be interpreted to mean that the excise tax paid by manufacturers or importers cannot be shifted to international carriers and exempt entities as buyers of petroleum products. Had the legislature intended to grant the tax exemption in favor of manufacturers or importers, it should have been expressly declared as in the case of locally manufactured products that were intended for exportation. Majority of the members of this court may believe in the wisdom and prudence of granting the tax exemption to the manufacturers or importers of petroleum products on the basis of Sections 135 and 204 of the National Internal Revenue Code of 1997. But such belief, however well-meaning and sincere, cannot bestow upon this court the power to change or amend the law. This court's power and function are limited merely to applying the law objectively. It cannot indulge in expansive construction to suit its sympathies and appreciations. Otherwise, it would be exceeding its role and invading the realm of legislation.

APPEARANCES OF COUNSEL

Shirley D. Sison and *Leo L. San Juan* for petitioner.
The Solicitor General for respondent.

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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

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[1] *Rollo,* pp. 519-531.

[2] *Id*. at 518.

[3] G.R. No. 188497, 671 SCRA 241.

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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 ₱6,542,400.00.[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

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[4] G.R. No. 188497, 717 SCRA 53.

[5] *Rollo,* pp. 154-155.

[6] *Id*. at 155-156.

[7] *Id*. at 153.

[8] *Id*. at 119-152.

[9] *Id*. at 98-118.

[10] *Id*. at 90-96.

[11] *Id*. at 76-88.

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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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> x x x x x x 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]

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[12] *Id*. at 84-87.

[13] *Id*. at 69-74.

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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.

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[14] *Id*. at 26-65.

[15] *Supra* note 3.

[16] *Supra* note 4.

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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:

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[17] SEC. 129. **Goods Subject to Excise Taxes. –** Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. 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 shall be referred to as *"ad valorem tax."* (as amended, Executive Order No. 273).

[18] Vitug and Acosta, *Tax Law and Jurisprudence*, Third Edition (2006), p. 26.

[19] *Rollo,* pp. 155-156.

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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;

(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

(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

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[20] See Executive Order No. 80 (April 3, 1993).

[21] **SECTION 24. Exemption from Taxes Under the National Internal Revenue Code.** — Any provision of existing laws, rules and regulations to

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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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the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x

[22] Sec. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* x x x

x x x x x x x x x

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.

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x x x x x x x x x

(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

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[23] *Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 180909, January 19, 2011, 640 SCRA 203, 219.

[24] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 198759, July 1, 2013, 700 SCRA 322, 332.

[25] *Id*. at 334.

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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.

WHEREFORE, the Court **GRANTS** petitioner Chevron Philippines, Inc.'s *Motion for Reconsideration*; **DIRECTS** respondent Commissioner of Internal Revenue to refund the excise taxes in the amount of ₱6,542,400.00 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 of that amount to Chevron Philippines, Inc.

No pronouncement on costs of suit.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, and *Perez, JJ.,* concur.

Villarama, Jr., J., see separate concurring opinion.

Sereno, C.J., Carpio, Mendoza, and *Perlas-Bernabe, JJ.,* join the dissent of *J.* del Castillo.

Del Castillo and Leonen, *JJ*., see dissenting opinions.

Jardeleza, J., no part.

Reyes, J., on leave.

SEPARATE CONCURRING OPINION

VILLARAMA, JR., *J.*:

With all due respect to my esteemed colleague, Justice Mariano C. Del Castillo, I disagree with his proposed abandonment of our ruling in *Commissiner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[1] which reversed the earlier decision promulgated on April 25, 2012.

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[1] G.R. No. 188497, February 19, 2014, 717 SCRA 53.

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In its motion for reconsideration of the Resolution[2] denying the appeal from the Court of Tax Appeals (CTA) decision, petitioner argues that the rationale in *Pilipinas Shell* is applicable to this case involving a claim for refund of petroleum products sold to a tax-exempt entity under Section 135(c) of the NIRC.

The ruling in *Pilipinas Shell* is assailed on grounds that:

1. The ratiocination adopted in said case applies only to international carriers under Section 135 (a) of the NIRC, and not to tax-exempt entities under paragraphs (b) and (c). It thus creates an unreasonable distinction since manufacturers, sellers and importers would be allowed to claim a tax refund or credit only under Section 135 (a) but not under paragraphs (b) and (c).
2. It was mere speculation to cite prospect of declining sales of aviation or jet fuel to international carriers due to unwillingness of major domestic oil companies to shoulder the burder of excise tax, that would encourage "tankering."
3. If the lawmakers had intended to allow manufacturers, sellers and importers to claim a refund of excise taxes paid on petroleum products sold to international carriers and tax-exempt entities under Section 135, they would have expressly provided for it, just like in Section 130 (d) which allows refund or credit of excise taxes paid on locally produced or manufactured goods subsequently exported.
4. International carriers and tax exempt entities as *buyers* could not benefit from Section 135 of the NIRC considering that this Court has consistently ruled they are not entitled to a refund or credit of the excise taxes paid on the petroleum products because they are not the statutory taxpayers. The provision simply exempts them from paying the excise taxes passed on by manufacturers, sellers and importers to buyers of petroleum products.

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[2] Resolution (Second Division) dated March 19, 2014 where this Court denied the petition "for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdcition." *Rollo*, p. 518.

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Claim for refund under Section 135(a)

The view that the rationale in *Pilipinas Shell* precludes similar claims for refund under Secdtion 135(b) and (c) is simply unfounded. The legal basis for exemptions from excise tax on petroleum is not the same for each of the three instances enumerated in Section 135. Understandably, the discussion in *Pilipinas Shell* concerning a refund claim under Section 135(a) makes reference to a distinct historical and policy context of the tax exemption of aviation fuel for international carriers. On the other hand, Section 135(b) pertains to our government's obligations under international and bilateral agreements conditioned on reciprocal grant of exemption from similar taxes on petroleum products sold to Philippine carriers, entities or agencies.

With respect to Section 135(c), the provision merely recognizes the fiscal incentives and privileges granted by the legislature to certain entities, among which is the Clark Development Corpration (CDC), to which petitioner sold petroleum products allegedly without passing on the customs duties and excise tax previously paid by petitioner.

The Court in *Pilipinas Shell* maintained that Section 135(a) prohibits the passing of the excise tax to the exempt entities and agencies that purchase petroleum products from local oil companies. This statement would be redundant under Section 135(c) which covers buyers expressly conferred exemption from both direct and indirect taxes. Moreover, unlike Section 135(b) which is based on the principle of reciprocity, Section 135(a) applies to *all* international carriers pursuant to the provisions of the Chicago Convention. The exemption of aviation fuel used in international flights is mainly "enshrined in the legal framework of international aviation."

Section 135(a) states that petroleum products sold to international carriers are exempt from the payment of excise tax if (a) these petroleum products sold to international carrier are bonded in a storage tank; and (b) the disposition thereof

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shall be in accordance with the duly promulgated rules and regulations of the Secretary of Finance. It is to be noted that under Section 130(A)(2), excise taxes on locally manufactured products are paid before removal from the place of production while excise taxes on imported petroleum products are paid before removal from customs custody. Thus, the petroleum products sold and delivered to international carriers are sourced from tax-paid inventories.

Since these petroleum products sold to international carriers are billed net of excise taxes, the question arises whether the manufacturer/importer/seller, such as petitioner oil company, is allowed to refund the excise taxes it paid.

Interpretation of our national tax laws should be geared towards fulfilling our treaty of obligations and avoid consequences that will not help promote air safety and sound development of international aviation. Upon considerations of these primary goals of the Chicago Convention and the current state of the aviation industry, the Court in *Pilipinas Shell* thus found it imperative to re-examine the effect of denying the claims for refund of excise taxes paid by the local oil companies.

Factual basis of local cited consequences

The reality is that excise tax is an indirect tax usually passed on to the purchaser of the petroleum products. It is reasonable to conclude that non-recovery of this cost by the manufacturers and importers of petroleum products would affect business decisions resulting in higher prices or deprioritizing aviation customers. However, the dissent dismisses this scenario as mere speculation despite the huge sum subject of the present case similar claims for refund filed by oil companies in accordance with the rules and regulation issued by the BIR.

Parenthetically, even airline companies of the developed countries are facing financial challenges due to "very high fixed costs" of fleets of aircraft and aircraft staff salaries. Their precarious financial condition necessitated adjustments to minimize operating expenses and enable them to offer cheap budget fares to the travelling public. Such survival strategies

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help avert bankruptcy which will result in the loss of employment to thousands of airline personnel, inconvenience to business travelers, and negatively impact the tourism industry.

Further, "tankering," the act of carrying a full fuel tank to avoid paying the tax while travelling outside one's national territory, is not just an imagined effect cited in *Pilipinas Shell*. In the 1997 study[3] conducted by the Secretariat of the Organization for Economic Cooperation and Development (OECD), the occurrence of "tankering" was already recognized. It stated that "[M]ore tankering would occur as a result of an unevenly applied fuel charge, and this might lead to an increase in CO_2 emissions due to the additional weight carried by aircraft."

Claims for refund under Section 135(c)

It is argued that a claim for refund of the excise taxes paid on petroleum products sold to a tax-exempt entity under Section 135(c) should be denied as there is nothing therein that provides a tax refund in favor of the buyers and the sellers of petroleum products. The dissent further points out that such provision for the refund of excise tax by manufacturers, sellers and importers of petroleum products should have been expressly included in Section 130(D) which allows refund or credit of excise taxes paid on locally produced or manufactured goods subsequently exported. And while Section 135 is construed as a tax exemption in favor of the buyers, this Court has consistently ruled that they are not entitled to a refund or credit of the excise taxes paid on the petroleum products because they are not the statutory taxpayers.

It was thus postulated that international carriers and tax exempt entities as *buyers* could not benefit from Section 135 of the NIRC considering that this Court has consistently ruled they are not entitled to a refund or credit of the excise taxes paid

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[3] "Special Issues in Carbon/Energy Taxation: Marine Bunker Fuel Charges" *http://www.oecd.org/official documents/publicdisplaydocumentpdf/?doclanguage=en&cote=ocde/gd(97)78.*

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on the petroleum products because they are not the statutory taxpayers. The provision simply exempts them from paying the excise taxes passed on by manufacturers, sellers and importers to buyers of petroleum products.

In my humble view, such is not the correct interpretation of Section 135 as applied to the present controversy involving a tax-exempt entity under paragraph (c).

CDC was created pursuant to Executive Order(EO) No. 80 issued on April 3, 1993 by President Fidel V. Ramos, as the operating and implementing arm of the Bases Conversion Development Authority (BCDA) to manage the Clark Special Economic Zone Authority (CSEZ).[4] It is an entity duly registered with the Philippine Economic Zone Authority (PEZA). Pursuant to Section 23 of R.A. 7916, CDC is entitled to the fiscal incentives provided for under Presidential Decree (PD) No. 66, or those provided under Book VI of EO No. 226.[5]

In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[6] we held that the grant of exemption to PEZA-registered enterprise within a special economic zone is broad and express, as it covers both direct and indirect taxes, including the value-added tax (VAT).

In *Commissioner of Customs v. Phil. Phosphate Corporation*,[7] we interpreted the exemption granted under Section 17 of P.D. No. 66 which provided for the creation of the Export Processing Zone Authority (now PEZA), as applicable to both customs duties and internal revenue taxes. We thus affirmed the CTA decision granting the refund of customs duties paid on petroleum products which was passed on as part of the selling price to respondent, as enterprise registered with EPZA.

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[4] Sec. 1.

[5] The Omnibus Investments Code of 1987.

[6] 491 Phil. 317 (2005).

[7] 481 Phil. 31 (2004).

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Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue[8] involved petitioner's claim for refund of excise taxes passed on by Petron. One of the issues identified by the Court in the case was whether the CTA should have granted the claim for refund. In resolving the said issue, the Court ruled that the CTA erred when it disallowed petitioner's claim due to its failure to present invoices as there is nothing in CTA Circular No. 1-95 that requires its presentation. The Court also categorically stated that there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise.

More recently, the Court in *Commissioner of Internal Revenue v. Philippine Associated Smelting and Refining Corporation*[9] resolved the issue of whether respondent, a PEZA-registered enterprise, is the proper party to claim the tax credit/refund on the excise taxes paid on the petroleum products purchased from Petron. We thus held:

> The next pivotal question then that must be resolved is whether PASAR has the legal personality to file the claim for the refund of the excise taxes passed on by Petron. The petitioner insists that PASAR is not the proper party to seek a refund of an indirect tax, such as an excise tax or Value Added Tax, because it is not the statutory taxpayer. The petitioner's argument, however, has no merit.
>
> The rule that it is the statutory taxpayer which has the legal personality to file a claim for refund finds no applicability in this case. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, the Court distinguished between the kinds of exemption enjoyed by a claimant in order to determine the propriety of a tax refund claim. "**If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax**. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim." In PASAR's case, Section 17 of P.D. No. 66, as affirmed in *Commissioner of Customs*, specifically declared that supplies, including petroleum

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[8] 500 Phil. 149 (2005).

[9] G.R. No. 186223, October 1, 2014, 737 SCRA 328.

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products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemptions includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund.[10] (Boldface in original text)

A similar ruling was made in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[11] which held that since PAL is exempt from direct and indirect taxes under its franchise, it is endowed with the legal personality to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer. The Court explained at length the basis for the rule:

> x x x Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund. Accordingly, 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 who is entitled to claim as a tax refund based thereon and not the party who merely bears its economic burden.
>
> For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*:
>
> > **The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.** Section 130(a)(2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return

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[10] *Id*. at 337.

[11] G.R. No. 198759, July 1, 2013, 700 SCRA 322, 338-339.

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> shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.
>
> Even if Petron Corporation passed on to Silkair the burden of the tax, the additonal amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser. (Emphasis supplied)

However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from the *Silkair*.

To elucidate, in *Maceda*, the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter specifically granted it an exemption from both direct and indirect taxes, viz:

> x x x [T]he Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation.** This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately**

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> **less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR.** (Emphasis and underscoring supplied)

Notably, the Court even discussed the *Maceda* ruling in *Silkair*, highlighting the relevance of the exemptions in NPC's charter to its claim for tax refund:

> Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting party. **It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes.**
>
> Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Lone Distance Company*, this Court clarified the ruling in *Maceda v. Macaraig, Jr.*, *viz*.:
>
> > It may be so that in *Maceda v. Macaraig, Jr*., the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of Maceda being that an exemption from "*all taxes*" excludes indirect taxes, **unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption.** Wrote the Court:
> >
> > > x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, **both direct and indirect taxes** on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter]

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> amended the tax exemption by simplifying the same law in general terms, it succinctly exempts NPC from "all forms of taxes, duties[,] fees..."
>
> The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before...
>
> x x x x x x x x x
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals.
>
> The exemption granted under Section 135(b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction. (Emphasis and underscoring supplied)
>
> Based on these rulings, it may be observed that **the propriety of a tax refund is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax**. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.[12] (Additional emphasis supplied)

The aforesaid statement in the dissent clearly runs counter to the previous rulings of this Court recognizing PEZA-registered enterprises, which by law are exempt from both direct and indirect taxes, as proper parties to file a claim for refund of excise taxes passed on to them by the sellers of petroleum products.

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[12] *Id*. at 331-336.

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Claim for refund by manufacturers, sellers or importers of petroleum products sold to international carriers, international agencies and other tax-exempt entities

It is evident from the dissent that its denial of the claim for refund of excise taxes filed by petitioner under Section 135(c) is essentially anchored on our pronouncement in the 2012 decision in *Pilipinas Shell* which cited the 1967 case of *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*.[13] Petitioner in said case sought relief from this Court when the CTA denied its appeal from the decision of the CIR. The Court upheld the CTA insofar as it ruled petitioner as manufacturer or producer of oxygen and acetylene gases sold to the National Power Corporation (NPC) cannot claim exemption from the payment of sales tax simply because its buyer - the NPC - is exempt from the payment of all taxes.

It is submitted that *Philippine Acetylene* is not controlling in cases involving claims for refund under Section 135. Said case was decided under the Old Tax Code and not under the 1997 NIRC where Section 135 was included as a new provision. Also, said case involved percentage or sales tax and not excise tax imposed on the production and importation of petroleum products.

FROM THE FOREGOING, I VOTE TO:

1. **GRANT** the present Motion for reconsideration; and
2. **DIRECT** respondent Commissioner of Internal revenue to refund or to issue a tax credit certificate to Chevron Philippines, Inc. in the a ount of ₱6,542,400.00 representing the excise taxes it paid on the petroleum products sold to Clark Development Corporation from August to December 2007.

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[13] 127 Phil. 461 (1967).

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DISSENTING OPINION

DEL CASTILLO, *J.*:

Tax refunds and exemptions derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State.[1] Consequently, a taxpayer must justify its claim for refund or exemption by words too plain to be mistaken and too categorical to be misinterpreted.[2]

Factual Antecedents

Petitioner Chevron Philippines, Inc. is engaged in the importation, distribution, marketing, and sale of petroleum products in the Philippines.[3] For the period August to December 2007, petitioner sold and delivered to Clark Development Corporation (CDC)[4] petroleum products, to wit:

Product	Volume	Price
Gold 95-ron ("Gold")	570,000 liters	₱16,421,207
Silver 95-ron ("Silver")	934,000 liters	₱25,348,966[5]

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[1] *Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*, G.R. No. 182045, September 19, 2012, 681 SCRA 377, 389.

[2] *Id*.

[3] *Rollo*, p. 28.

[4] "CDC is a government-owned and controlled corporation established under Executive Order (EO) No. 80, Series of 1993 as the operating and implementing arm of the Bases Conversion and Development Authority (BCDA). It manages the Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). It is a duly registered CSEZ enterprise operating within the CFZ, thus it enjoys, under Section 5 of EO No. 80, all the applicable incentives in the Subic Special Economic and Free Port Zone under Republic Act (RA) No. 7227 as well as those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may thereafter be enacted." (*Id*. at 103.)

[5] *Id*. at 99.

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However, since Section 135(c)[6] of the 1997 National Internal Revenue Code (NIRC) exempts CDC from paying excise taxes on petroleum products, petitioner did not pass on to CDC the excise taxes it paid under Section 131(A)[7] of the NIRC.[8] Instead, it filed on June 26, 2009 with the Bureau of Internal Revenue (BIR) Large Taxpayers Services – National Office, an administrative claim for tax refund or credit in the amount of ₱6,542,400.00,[9] allegedly representing the excise taxes it paid on the importation of the petroleum products it sold to CDC for taxable year 2007.[10]

Respondent Commissioner of Internal Revenue (CIR) did not act on petitioner's claim for tax refund hence, it elevated its claim to the Court of Tax Appeals (CTA) via a Petition for Review.[11] The case was docketed as CTA Case No. 7939 and raffled to the CTA First (1st) Division.

Respondent opposed the claim for tax refund or credit on the ground that there is no provision in the NIRC that expressly exempts the owners or importers of petroleum products from paying excise taxes on the imported products.[12] Respondent

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[6] SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:

x x x x x x x x x

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

[7] SEC. 131. Payment of Excise Taxes on Imported Articles. -
(A) Persons Liable. - Excise taxes on imported articles 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, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. x x x

[8] *Rollo*, p. 100.

[9] Total Volume of Gold Products: 570,000 + Total Volume of Silver products: 934,000 = 1,504,000 x ₱4.35 (excise tax rate under Section 148 (f) of the NIRC = ₱6,542,400.00; (*Id*. at 125.)

[10] *Id*. at 100.

[11] *Id*. at 119-152.

[12] *Id*. at 100.

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opined that Section 135 of the NIRC is a tax exemption in favor of international carriers and tax-exempt entities as buyers of petroleum products, and not in favor of owners or importers of petroleum products, who are the statutory taxpayers of excise taxes under Section 131 of the same Code.[13]

Ruling of the CTA Division

On July 31, 2012, the CTA 1st Division rendered a Decision[14] denying petitioner's claim for refund or credit of excise taxes. Citing *Philippine Acetylene Company v. Commissioner of Internal Revenue,*[15] the CTA 1st Division underscored that the tax exemption enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer, seller, or importer of the goods for any tax due to it as the manufacturer, seller, or importer.[16] Corollarily, it ruled that petitioner, as seller of imported petroleum products to tax-exempt entities, cannot claim the exemption granted to its buyers.[17] Besides, the only claim for refund of excise taxes authorized by the NIRC is found in Section 130(D)[18] of the same Code, which petitioner cannot

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[13] *Id*. at 100-101.

[14] *Id*. at 98-118; penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.

[15] 127 Phil. 461 (1967).

[16] *Rollo*, p. 112.

[17] *Id*.

[18] SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. — x x x x

(D) Credit for Excise tax on Goods Actually Exported. — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

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invoke as the petroleum products in this case were not locally produced or manufactured, but were imported.[19] Moreover, in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[20] the Supreme Court already declared that Section 135(a) of the NIRC "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."[21] In other words, petitioner, as a seller of imported petroleum products to tax-exempt entities, is not exempt from the payment of excise taxes thereon nor is it entitled to a refund or credit on the excise taxes it paid on the petroleum products.[22]

Aggrieved, petitioner filed a Motion for Reconsideration,[23] which the CTA 1st Division denied in its Resolution dated November 20, 2012.[24]

This prompted petitioner to elevate the case to the CTA *En Banc* via a Petition for Review,[25] which was docketed as CTA EB No. 964.

Ruling of the CTA En Banc

In a Decision[26] dated September 30, 2013, the CTA *En Banc* affirmed the ruling of the CTA 1st Division that there is nothing

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[19] *Rollo,* pp. 113-116.

[20] G.R. No. 188497, April 25, 2012, 671 SCRA 241.

[21] *Rollo,* p. 113, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, supra*.

[22] *Id*. at 109-117.

[23] *Id*. at 394-418.

[24] *Id*. at 90-96.

[25] *Id*. at 419-453.

[26] *Id*. at 76-88; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Presiding Justice Roman G. Del Rosario

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in Section 135(c) of the NIRC that explicitly exempts petitioner, as seller of imported petroleum products, from payment of excise taxes thereon.[27] And since petitioner does not fall in any of the categories exempted from paying excise tax, it is not entitled to a tax refund or credit.[28]

Petitioner sought reconsideration[29] but the CTA *En Banc* denied the same in a Resolution[30] dated January 7, 2014.

Unfazed, petitioner filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which we denied in a Resolution dated March 19, 2014 for failure to show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction.

Hence, petitioner filed the instant Motion for Reconsideration arguing that it is entitled to a tax refund or credit because the Court's April 25, 2012 Decision in *Pilipinas Shell,*[31] which was the basis for the denial of its claim for refund or credit of excise taxes, was reversed on reconsideration per the Court's February 19, 2014 Resolution.

Petitioner's Arguments

In light of the February 19, 2014 Resolution of the Court in *Pilipinas Shell,*[32] petitioner contends that its claim for tax refund or credit must be granted. It posits that the justification used by the Court in that case similarly applies to the instant case

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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. Ringis-Liban.

[27] *Id*. at 83.

[28] *Id*.

[29] *Id*. at 454-478.

[30] *Id*. at 69-74.

[31] *Supra* note 20.

[32] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53 (Resolution).

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as the denial of the tax refund or credit would likewise result to serious adverse consequences on the supply of fuel to tax-exempt entities under Section 135(c) of the NIRC.[33] Petitioner anchors its theory on the premise that major oil companies would be unwilling to sell petroleum products to tax-exempt entities as they would be unduly burdened by the excise taxes paid upon production or importation.[34]

Petitioner likewise points out that the exemption in Section 135 of the NIRC aims to promote economic growth as investors, both foreign and local, would be encouraged to invest in special economic zones, creating employment opportunities within their localities.[35] However, in order to attain this objective, manufacturers, sellers, and importers should be allowed to claim a refund or credit of the excise taxes paid on the petroleum products sold to tax-exempt entities.[36]

In addition, petitioner argues that following the ruling of the Court in *Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*,[37] petitioner is not liable to pay excise taxes on the petroleum products it sold to CDC. In that case, the Supreme Court ruled that excise taxes are imposed when two conditions concur: first, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and second, that said articles are for domestic sale or consumption, excluding those that are actually exported.[38] In this case, the second condition was not met because the petroleum products were not for domestic sale or consumption as these were sold to CDC, which is deemed a separate customs territory and is

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[33] *Rollo*, pp. 520-526.

[34] *Id*. at 526.

[35] *Id*. at 524.

[36] *Id*. at 524-526.

[37] 655 Phil. 199 (2011).

[38] *Id*. at 212.

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regarded in law as foreign soil.[39] Thus, petitioner asserts that it is not liable to pay excise taxes on the petroleum products sold to CDC.

To further bolster its claim, petitioner cites Revenue Memorandum Order (RMO) No. 19-06,[40] which prescribes the guidelines and procedures for the processing of pending claims for tax credit/refund of excise tax paid on petroleum products, and two BIR Rulings,[41] which acknowledge that sellers are entitled to a refund of excise taxes paid on petroleum products sold to tax-exempt entities. [42]

Respondent's Arguments

Respondent, on the other hand, maintains that the CTA did not err in denying the claim as there is nothing in Section 135 of the NIRC that grants petitioner exemption from the payment of excise taxes.[43] It insists that the only claim for refund of excise taxes authorized by the NIRC is the payment of excise taxes on exported goods under Section 130(D) of the same Code, which does not apply in this case.[44]

I vote to deny the Motion for Reconsideration.

On April 25, 2012, the Court in the case of *Pilipinas Shell*[45] rendered a Decision denying Pilipinas Shell's claim for refund on the ground that Section 135(a)[46] of the NIRC does not exempt

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[39] *Rollo*, pp. 526-529.

[40] Issued on August 10, 2006.

[41] BIR Ruling No. 036-99, dated March 29, 1999 and BIR Ruling No. 051-99, dated April 19, 1999.

[42] *Rollo*, p. 524.

[43] *Id*. at 536.

[44] *Id*.

[45] *Supra* note 20.

[46] 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

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oil companies selling petroleum products to international carriers from the payment of excise tax under Section 148[47] of the

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;

x x x x x x x x x

[47] SEC. 148. Manufactured Oils and Other Fuels. - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

(a) Lubricating oils and greases, including but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four pesos and fifty centavos (₱4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, rerefined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five centavos (₱0.05);

(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (₱3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (₱0.05): Provided, That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180^{o}) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (₱4.80): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis

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NIRC. However, two years after, the Court reversed its April 25, 2012 Decision. Thus, in a Resolution[48] dated February 19, 2014, the Court granted *Pilipinas Shell's* motion for reconsideration and allowed its claim for refund. In reversing its earlier Decision, the Court ratiocinated that:

> 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 [on] of the excise tax to international carriers [that buy] 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

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gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (₱5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (₱3.67);

(h) Kerosene, per liter of volume capacity, Sixty centavos (₱0.60): Provided, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and sixty-three centavos (₱1.63);

(j) Liquefied petroleum gas, per liter, Zero (₱0.00): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six centavos (₱0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Thirty centavos (₱0.30).

[48] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, Resolution, *supra* note 32.

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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:

> Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling [fuel tanks to the limit] whenever they [land] outside the EU to avoid paying tax. Clearly, this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.

With the prospect of declining sales of aviation jet fuel x x x 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 "tankering" 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.

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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.[49]

Upon close examination, I find it imperative to abandon our February 19, 2014 ruling in *Pilipinas Shell*.[50]

The NIRC does not distinguish between petroleum products sold to international carriers and those sold to tax-exempt entities.

To begin with, the ratiocination adopted therein applies only to international carriers under Section 135(a) of the NIRC, and not to tax-exempt entities under paragraphs (b)[51] and (c) of the same provision. Also, said ruling creates an unreasonable classification or distinction between petroleum products sold to international carriers, and those sold to tax-exempt entities, because manufacturers, sellers, and importers would be allowed to claim a tax refund or credit only under Section 135(a) of the NIRC but not under paragraphs (b) and (c) of the same provision. This is unfair considering that the NIRC does not make a distinction between them.

More important, the prospect of declining sales of aviation jet fuel sold to international carriers on account of the unwillingness of major domestic oil companies to shoulder the burden of excise tax, which in a way encourages "tankering," hinges on speculation. Neither is it a legal justification to grant

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[49] *Id*. at 72-73.

[50] *Id*.

[51] SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: x x x

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manufacturers a refund or credit of the excise taxes paid on petroleum products sold to international carriers.

Granting the tax refund or credit would constitute judicial legislation.

In the same vein, I cannot subscribe to petitioner's postulation that the denial of its claim would result in serious adverse consequences on the supply of fuel to tax-exempt entities under Section 135(c) of the NIRC as oil companies would be unwilling to sell petroleum products to customers operating within the special economic zone. This is not only unsubstantiated but is also not a legal ground to grant petitioner's claim for tax refund or credit. It bears stressing that tax refunds, just like tax exemptions must not rest on vague, uncertain or indefinite inference but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken, as taxes are the lifeblood of the government.[52] Thus, unless there is a clear grant of tax exemption or refund in the law, the Court cannot grant petitioner's claim for tax refund or credit as this would constitute judicial legislation, which is not allowed.

Section 135 of the NIRC is not a refund provision.

Notably, Section 135 of the NIRC is not a refund provision as it does not provide for a tax refund in favor of the buyers, *i.e.*, international carriers and tax-exempt entities, and the sellers of petroleum products. Thus, there is no legal basis to grant petitioner's claim for tax refund or credit.

Besides, if the lawmakers intended to allow manufacturers, sellers, and importers to claim a refund of excise taxes paid on petroleum products sold to international carriers and tax-exempt entities under Section 135 of the NIRC, they would have expressly provided for it, just like in Section 130(D) of the same Code, which categorically allows the refund or credit of excise taxes paid on goods which are locally produced or manufactured and

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[52] *Silkair (Singapore) PTE., LTD. v. Commissioner of Internal Revenue*, 627 Phil. 453, 472 (2010).

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subsequently exported. Obviously, the absence of a tax refund provision in the NIRC in favor of these manufacturers, sellers, and importers of petroleum products only proves that the lawmakers never intended to grant such kind of refund.

In addition, since the excise taxes on the petroleum products were paid pursuant to the NIRC, in this case, Section 131(A) of the NIRC, these cannot be considered as illegally or erroneously collected taxes. Thus, a claim for tax refund under Section 229[53] of the NIRC will also not prosper.

Section 135 of the NIRC is not a tax exemption in favor of manufacturers, sellers, and importers of petroleum products.

Neither can Section 135 of the NIRC be construed as a tax exemption in favor of manufacturers, sellers, and importers, which would allow them to claim a refund or credit of the excise taxes paid on the petroleum products sold to international carriers and tax-exempt entities. In fact, a simple reading of the provision clearly shows that it is a tax exemption in favor of the buyers, the international carriers and tax-exempt entities under Section 135 of the NIRC. And as the Court in its April 25, 2012 Decision in *Pilipinas Shell*[54] has previously said, "the tax exemption

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[53] 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

[54] *Supra* note 20.

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being enjoyed by the buyer cannot be the basis of a claim for exemption by the manufacturer, seller, or importer."[55] Thus, petitioner cannot use this provision to claim an exemption from the payment of excise tax.

However, while Section 135 of the NIRC is construed as a tax exemption in favor of the buyers, we have consistently ruled that they are not entitled to a refund or credit of the excise taxes paid on the petroleum products because they are not the statutory taxpayers.[56] If so, how could the international carriers and the tax-exempt entities under Section 135 of the NIRC, as buyers, benefit from such exemption? The answer is simple. Section 135 of the NIRC exempts them from paying excise taxes passed on by manufacturers, sellers, and importers to buyers of petroleum products. An excise tax, as we have often said, is an indirect tax wherein the tax liability falls on one person but the burden thereof can be shifted or passed on to another person, such as the consumer.[57] Thus, pursuant to Section 135 of the NIRC, manufacturers, sellers, and importers have no choice but to shoulder the burden of the excise tax as their buyers, the international carriers and the tax-exempt entities under the said provision, are exempt from paying excise tax on petroleum products.

Section 135 of the NIRC merely prohibits the shifting or passing on of the burden of excise tax.

As I see it then, Section 135 of the NIRC should simply be construed as prohibition on the shifting or passing on of the burden of excise tax to international carriers and tax-exempt entities, which purchase petroleum products from manufacturers, sellers, and importers. As aptly explained in the Decision dated

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[55] *Id*. at 259; citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, *supra* note 15.

[56] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754, 767 (2008).

[57] *Id*. at 765-766.

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April 25, 2012 in *Pilipinas Shell,*[58] Section 135 of the NIRC merely allows international carriers or, in this case, tax-exempt entities, to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers, sellers, or importers.[59] In other words, while generally excise taxes paid by manufacturers, sellers, and importers may be shifted or passed on to their buyers, Section 135 of the NIRC provides for an exception as it prohibits manufacturers, sellers, and importers from shifting or passing on the excise taxes they paid on the petroleum products sold to international carriers and tax-exempt entities under the said provision.

The BIR Rulings and RMO cited by petitioner should not override, supplant, or modify the law.

As to the RMO and BIR Rulings cited by petitioner, the Court is not bound by these administrative interpretations or rulings. As we have consistently ruled, interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[60]

All told, I find that the CTA in this case, did not err in denying petitioner's claim for tax refund or credit. To be clear, Section 135 of the NIRC, upon which petitioner anchors its claim, is not a tax refund provision nor is it a tax exemption in favor of manufacturers, sellers, and importers of petroleum products. Rather, it is a tax exemption for excise tax on petroleum products in favor of the international carriers and the tax-exempt entities under the said provision. It is a prohibition preventing

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[58] *Supra* note 20.

[59] *Id*. at 263.

[60] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).

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manufacturers, sellers, and importers from shifting or passing on the excise taxes paid on the petroleum products they sold to their buyers, the entities enumerated in the said provision.

In view of the foregoing, I submit that the doctrine laid down in the Resolution dated February 19, 2014 in *Pilipinas Shell*[61] should be abandoned. It is my opinion that manufacturers, sellers, and importers are not entitled to claim a refund or credit of excise taxes paid on petroleum products sold to international carriers and tax-exempt entities under Section 135 of the NIRC.

ACCORDINGLY, I vote that petitioner's Motion for Reconsideration be **DENIED WITH FINALITY** for lack of merit.

DISSENTING OPINION

LEONEN, *J.*:

The core issue in this case is whether Chevron Philippines, Inc. (Chevron) is entitled to a refund or issuance of a tax credit certificate for the excise taxes it paid on the importation of petroleum products sold to Clark Development Corporation for taxable year 2007, pursuant to Section 135(c) of Republic Act No. 8424, also known as the National Internal Revenue Code of 1997, as amended, *viz*:

> 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;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption:

[61] *Supra* note 32.

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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*. (Emphasis supplied)

Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation[1] is a case that involved a claim over refund of excise taxes paid by Pilipinas Shell on its sales and deliveries of petroleum products to various international carriers from October 2001 to June 2002.[2] In the Decision dated April 25, 2012, this court denied Pilipinas Shell's claim over tax refund.[3] In the Resolution[4] dated February 19, 2014, this court granted Pilipinas Shell's Motion for Reconsideration.[5] In granting Pilipinas Shell's claim over tax refund, this court, through the First Division, gave primary consideration to the country's commitment under the 1944 Chicago Convention on International Civil Aviation (Chicago Convention) and international agreements.[6]

For purposes of elucidation, I quote the last few paragraphs of the *Pilipinas Shell* case:

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 [sic] petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the effect of denying the domestic

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[1] G.R. No. 188497, April 25, 2012, 671 SCRA 241 [Per *J*. Villarama, Jr., First Division].

[2] *Id*. at 246.

[3] *Id*. at 264.

[4] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53 [Per *J*. Villarama, Jr., First Division].

[5] *Id*. at 73.

[6] *Id*. at 68-73.

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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:

> Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.

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 "tankering" 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

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to its broad implications on our commitment under international agreements.[7] (Citation omitted)

However, the ruling in *Pilipinas Shell* is not applicable because that case involved the sale of petroleum products to international carriers. Also, the ruling in *Pilipinas Shell* should be abandoned because it provides an interpretation that is not within the text of the law.

Similar to the *Pilipinas Shell* case, this case involves a claim over refund of excise taxes paid on petroleum products sold to a tax-exempt entity, Clark Development Corporation. Section 135(c) of the National Internal Revenue Code of 1997 provides that entities exempt from paying excise taxes include entities that are exempt from paying direct and indirect taxes.

However, a close reading of *Pilipinas Shell* reveals that the binding force of its ruling depended on assumed effects—potential violations of our commitment under international air treaty agreements and potential harm to our economy—which may be relevant only to a particular buyer, i.e., an international carrier. The same assumed scenario cannot apply to an entity like Clark Development Corporation, a government-owned and controlled corporation that is exempt by law from direct and indirect taxes.

In its February 19, 2014 Resolution of the *Pilipinas Shell* case, this court, through the First Division, maintained its interpretation of Section 135(a) of the National Internal Revenue Code of 1997 as an excise tax exemption in favor of international carriers, such that international carriers are allowed to purchase petroleum products from the manufacturers or sellers net of the excise tax. Yet, this court conceded that the same provision could be used as basis for allowing the manufacturers' claim over refund of excise taxes previously paid on petroleum products sold to international carriers in view of the probable pernicious effects of denying their refund claim.[8]

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[7] *Id*. at 72-73.

[8] *Id*. at 72.

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I dissent from the majority and vote to deny Chevron's claim over tax refund. It is my opinion that the rule in *Pilipinas Shell* should be abandoned.

A denial of Pilipinas Shell's, or any other manufacturer's, claim over refund does not violate any treaty obligations we have with other countries. Section 135(a)[9] of the National Internal Revenue Code of 1997 effectively satisfies our treaty obligations in our bilateral air service agreements with other countries, as it actually prohibits the local manufacturers from passing on the excise tax to international carriers.

Further, the obligation of local manufacturers not to shift the burden of the excise tax to international carriers was recognized in Presidential Decree No. 1359, a precursor to the present tax code, which grants foreign international carriers tax exemption on fuel used in international trade and travel:

PRESIDENTIAL DECREE NO. 1359

AMENDING SECTION 134 OF THE NATIONAL INTERNAL REVENUE CODE OF 1977.

WHEREAS, under the present law oil products sold to international carriers are subject to the specific tax;

WHEREAS, some countries allow the sale of petroleum products to Philippine Carriers without payment of taxes thereon;

WHEREAS, to foster goodwill and better relationship with foreign countries, there is a need to grant similar tax exemption ***in favor of foreign international carriers***;

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[9] TAX CODE, Sec. 135(a) 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 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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. . . . . .

SECTION 1. Section 134 of National Internal Revenue Code of 1977 is hereby amended to read as follows:

SEC. 134. Articles subject to specific tax.— . . . HOWEVER, PETROLEUM PRODUCTS SOLD TO AN INTERNATIONAL CARRIER FOR ITS USE OR CONSUMPTION OUTSIDE OF THE PHILIPPINES SHALL NOT BE SUBJECT TO SPECIFIC TAX, *PROVIDED,* THAT THE COUNTRY OF SAID CARRIER EXEMPTS FROM TAX PETROLEUM PRODUCTS SOLD TO PHILIPPINE CARRIERS.

In case of importations the internal-revenue tax shall be in addition to the customs duties, if any. (Emphasis supplied)

International carriers can invoke their exemption from excise taxes on petroleum products upon purchase.[10] Hence, the international carriers cannot be said to be without remedy.

Parenthetically, the Chicago Convention refers to exemption from customs duty, inspection fees, or similar duties and charges of fuel, lubricating oils, and other articles on board an aircraft of a contracting state,[11] not from excise tax. There is no

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[10] See *Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*, 655 Phil. 199, 220 (2011) [Per *J.* Mendoza, Second Division].

[11] Convention on International Civil Aviation (1944), Art. 24 provides:

Article 24. (a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores 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. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

(b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

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international convention or treaty agreement compelling us to grant tax exemptions to local manufacturers.

In my opinion, the principles pronounced in *Philippine Acetylene Co. v. Commissioner of Internal Revenue*[12] and *Maceda v. Macaraig, Jr.*,[13] the same cases cited in the precedent *Pilipinas Shell* case,[14] are still relevant with regard to the local manufacturers' or importers' claim over excise tax exemption on petroleum products sold to international carriers and exempt entities.

Philippine Acetylene held that the sales tax must be paid by the manufacturer even though the sale is made to tax-exempt entities like the National Power Corporation, an agency of the Philippine government, and the Voice of America, an agency of the United States government.[15] Like the percentage tax on sales, the excise tax on petroleum products is a direct liability of the manufacturer or producer or importer. Applying the same principle in this case, it is my opinion that Chevron cannot claim exemption from the payment of excise taxes using Clark Development Corporation's tax-free privilege to buy petroleum products under Section 135(c) of the National Internal Revenue Code of 1997.

In *Maceda*, petitioner questioned the legality of the tax refund to National Power Corporation by way of tax credit certificates and the use of the said assigned tax credits by oil companies to pay for their tax and duty liabilities to the Bureau of Internal Revenue and Bureau of Customs.[16] This court dismissed

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[12] 127 Phil. 461 (1967) [Per *J.* Ruiz Castro, *En Banc*].

[13] G.R. No. 88291, June 8, 1993, 223 SCRA 217 [Per *J.* Nocon, *En Banc*].

[14] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53, 64, and 67-68 [Per *J.* Villarama, Jr., First Division].

[15] *Philippine Acetylene Co. v. Commissioner of Internal Revenue*, 127 Phil. 461, 470-471 (1967) [Per *J.* Ruiz Castro, *En Banc*].

[16] *Maceda v. Macaraig, Jr., etc., et al.*, 274 Phil. 1060, 1092–1096 (1991) [Per *J.* Gancayco, *En Banc*].

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Maceda's Petition and upheld the tax refunds granted to National Power Corporation, ruling that under the prevailing laws then, the National Power Corporation enjoyed indirect tax and duty exemption on its local purchases of petroleum products.[17] On Motion for Reconsideration by petitioner, this court maintained its ruling that the tax exemption privilege of the National Power Corporation included both direct and indirect taxes.[18] This court further held that the oil companies had to absorb all or part of the economic burden of the taxes previously paid on bunker fuel oils they sold to the National Power Corporation.[19]

This much was conceded in the precedent *Pilipinas Shell* case when it maintained that "Section 135 (a) . . . prohibits the passing of the excise tax to international carriers who buys [sic] petroleum products from local manufacturers/sellers[.]"[20] However, this court arrived at a different conclusion after taking into consideration 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."[21]

It is premature and purely speculative to say that to deny the domestic manufacturers or sellers their refund claims would result in a cessation in the supply of fuel oils to international carriers or an increase in oil prices and in "tankering."[22] These assumed effects may or may not happen, and it was inappropriate for this court then to overturn its first ruling based on these

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[17] *Id*. at 1113 and 1116.

[18] *Maceda v. Macaraig, Jr.*, G.R. No. 88291, June 8, 1993, 223 SCRA 217, 259 [Per *J.* Nocon, *En Banc*].

[19] *Id*. at 255.

[20] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53, 72 [Per *J.* Villarama, Jr., First Division].

[21] *Id*.

[22] *Id*. at 73.

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assumptions. Indeed, such argument is a consideration that should be addressed to the legislature and not to the courts that are not authorized to view laws from the standpoint of their results. Since there is no ambiguity or vagueness in the law, its plain provisions should be applied coupled with the principle that tax refunds, as in tax exemptions, must be clearly provided by law.[23]

Under Section 129[24] of the National Internal Revenue Code of 1997, as amended, excise taxes are imposed on two (2) 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. Section 148[25] of the

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[23] *Insular Lumber Company v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981) [Per *J.* De Castro, *En Banc*].

[24] TAX CODE, Sec. 129 provides:

SEC. 129. Goods Subject to Excise Taxes. – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. 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 shall be referred to as 'ad valorem tax'.

[25] TAX CODE, Sec. 148 provides:

SEC. 148. Manufactured Oils and Other Fuels. – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

(a) Lubricating oils and greases, including but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram, respectively, of volume capacity or weight, Four pesos and fifty centavos (₱4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from base stocks and

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National Internal Revenue Code of 1997 expressly subjects the petroleum products to an excise tax, which shall attach to the goods as soon as they are in existence as such.

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additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, refined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five centavos (₱0.05);

(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (₱3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (₱0.05): Provided, That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (₱4.80): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined-cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (₱5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (₱3.67);

(h) Kerosene, per liter of volume capacity, Sixty centavos (₱0.60): Provided, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

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In *La Suerte Cigar & Cigarette Factory v. Court of Appeals*,[26] this court discussed the nature of excise tax:

> Excise tax is a tax on the production, sale, or consumption of a specific commodity in a country. . . . "It does not matter to what use the article[s] subject to tax is put; the excise taxes are still due, even though the articles are removed merely for storage in some other place and are not actually sold or consumed." The excise tax based on weight, volume capacity or any other physical unit of measurement is referred to as "specific tax." If based on selling price or other specified value, it is referred to as "ad valorem" tax.[27] (Citation omitted)

The excise tax on locally manufactured petroleum products is a liability of the manufacturer or producer and accrues upon removal thereof from the place of production.[28] On the other

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i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and sixty-three centavos (₱1.63);

(j) Liquefied petroleum gas, per liter, Zero (P0): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six centavos (₱0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Thirty centavos (₱0.30).

[26] G.R. No. 125346, November 11, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/125346.pdf> [Per *J.* Leonen, *En Banc*].

[27] *Id.* at 32-33.

[28] TAX CODE, Sec. 130 provides:

SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –

. . . .

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: Provided, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148

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hand, the excise tax on imported petroleum products is a liability of the importer or owner and accrues upon withdrawal of the goods from the customhouse.[29]

The specific provision of law that allows tax credit or tax refund of the excise taxes paid is Section 130(D) of the National Internal Revenue Code of 1997, which provides:

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and 151(A)(4), respectively, of this Title shall be paid . . . before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further. . . .

. . . . . .

(C) Manufacturer's or Producer's Sworn Statement. - Every manufacturer or producer of goods or products subject to excise taxes shall file with the Commissioner on the date or dates designated by the latter, and as often as may be required, a sworn statement showing, among other information, the different goods or products manufactured or produced and their corresponding gross selling price or market value, together with the cost of manufacture or production plus expenses incurred or to be incurred until the goods or products are finally sold.

[29] TAX CODE, Sec. 131 provides:

SEC. 131. Payment of Excise Taxes on Imported Articles. –

(A) Persons Liable. - Excise taxes on imported articles 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, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

. . . . . .

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.

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SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. -

. . . . . .

(D) Credit for Excise Tax on Goods Actually Exported. - When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

Excise taxes on petroleum products are indirect taxes by nature because the tax-paying manufacturer or importer can shift the burden of the tax to the buyer.[30] It is in this context that the tax exemption provision in Section 135 of the National Internal Revenue Code of 1997 should be understood. In other words, Section 135(a) and (c) should be interpreted to mean that the excise tax paid by manufacturers or importers cannot be shifted to international carriers and exempt entities as buyers of petroleum products. Had the legislature intended to grant the tax exemption in favor of manufacturers or importers, it should have been expressly declared as in the case of locally manufactured products that were intended for exportation.

Majority of the members of this court may believe in the wisdom and prudence of granting the tax exemption to the manufacturers or importers of petroleum products on the basis of Sections 135 and 204 of the National Internal Revenue Code of 1997.[31] But such belief, however well-meaning and sincere,

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[30] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754, 765-766 (2008) [Per *J.* Carpio, First Division], citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, 514 Phil. 255, 266 (2005) [Per *J.* Garcia, Third Division] and *Maceda v. Macaraig, Jr., etc., et al.*, 274 Phil. 1060, 1092 (1991) [Per *J.* Gancayco, *En Banc*].

[31] *Ponencia*, pp. 5-7

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cannot bestow upon this court the power to change or amend the law. This court's power and function are limited merely to applying the law objectively. It cannot indulge in expansive construction to suit its sympathies and appreciations. Otherwise, it would be exceeding its role and invading the realm of legislation.

This court has always applied the principle that exemptions from taxation are strictly construed and are never presumed[32] or created by implication.[33] Thus, for a tax exemption to exist, it must be so categorically declared in words that admit of no doubt.[34] The reason why tax exemptions are strictly construed has been explained as follows:

> A tax exemption represents a loss of revenue to the State and must therefore not be lightly granted or inferred. When claimed, it must be strictly construed against the taxpayer, who must prove that he comes under the exemption rather than [the] rule that every one [sic] must contribute his just share in the maintenance of the government.[35]

I am aware of a number of cases[36] involving claims over refund of excise tax paid on petroleum products where the tax

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[32] *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation*, 279 Phil. 144, 155 (1991) [Per *C.J.* Fernan, Third Division]; *Commissioner of Internal Revenue v. Guerrero*, 128 Phil. 197, 208 (1967) [Per *J.* Fernando, *En Banc*].

[33] *Abad v. Court of Tax Appeals, et al.*, 124 Phil. 973, 984 (1966) [Per *J.* J. B. L. Reyes, *En Banc*].

[34] *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue*, 354 Phil. 879, 891-892 (1998) [Per *J.* Panganiban, *En Banc*]; *Floro Cement Corporation v. Gorospe*, G.R. No. 46787, August 12, 1991, 200 SCRA 480, 488 [Per *J.* Bidin, Third Division].

[35] *J.* Cruz, Dissenting Opinion in *Maceda v. Macaraig, Jr., etc., et al.*, 274 Phil. 1060, 1117 (1991) [Per *J.* Gancayco, *En Banc*].

[36] Namely: (a) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 568 Phil. 92 (2008) [Per *J.* Carpio Morales, Second Division]; (b) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754 (2008) [Per *J.* Carpio, First Division]; (c) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 627 Phil. 453 (2010) [Per *J.* Leonardo-de Castro, First Division]; and (d) *Silkair (Singapore) Pte.*

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was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. This court has held that it is the statutory taxpayer who is entitled to claim a tax refund based on Section 135 of the National Internal Revenue Code of 1997 and not the international carrier that merely bears its economic burden. Those cases, however, did not deal squarely with the issue on whether a manufacturer or importer is exempt from the payment of excise tax on petroleum products it sold to international carriers or exempt entities.

Nevertheless, in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,[37] this court pronounced that:

> [W]here the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes[,] the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law.[38]

The difference between *Maceda* and *Silkair* was also discussed in *Philippine Airlines*, and the doctrines in these cases were synthesized as follows:

> Based on these rulings [referring to *Maceda* and *Silkair*], it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an

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Ltd. v. Commissioner of Internal Revenue, 680 Phil. 33 (2012) [Per *J.* Villarama, Jr., First Division]. See also *Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*, 655 Phil. 199 (2011) [Per *J.* Mendoza, Second Division] where the issue was whether the distributor and vendor of petroleum products to international carriers can claim a refund of excise taxes passed on to it by the manufacturers.

[37] G.R. No. 198759, July 1, 2013, 700 SCRA 322 [Per *J.* Perlas-Bernabe, Second Division]. Also cited in *Commissioner of Internal Revenue v. Philippine Associated Smelting and Refining Corporation*, G.R. No. 186223, October 1, 2014, 737 SCRA 328, 337 [Per *J.* Reyes, Third Division].

[38] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 198759, July 1, 2013, 700 SCRA 322, 334 [Per *J.* Perlas-Bernabe, Second Division].

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exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.[39]

Restating the rule in *Philippine Airlines*, if Chevron, the statutory taxpayer, passed on the tax burden to Clark Development Corporation, an entity exempt from direct and indirect taxes, then it is clear that Clark Development Corporation is the proper party to claim for tax refund.

Thus, I dissent from the majority and vote that the claim over tax refund of Chevron should be denied. In this case, tax exemption is granted by law to Clark Development Corporation and not to Chevron. This court should not perpetuate an erroneous construction of the law by blindly adhering to precedent.[40] Our duty to uphold the rule of law requires that we reject what appears as *stare decisis*.

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[39] *Id*. at 336.

[40] See *Philippine Trust Company and Smith, Bell & Company, Ltd. v. Mitchell*, 59 Phil. 30, 36 (1933) [Per *J*. Malcolm, En Banc] where this court held that "[b]ut idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court." See also *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947) [Per *J*. Padilla, *En Banc*].