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No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188497. February 19, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); EXCISE TAXES; TWO TYPES OF EXCISE TAXES, DISTINGUISHED.— Under Section 129 of the NIRC, excise taxes are those applied to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. Excise taxes as used in our Tax Code fall under two types – (1) *specific tax* which is based on weight or volume capacity and other physical unit of measurement, and (2) *ad valorem tax* which is based on selling price or other specified value of the goods. Aviation fuel is subject to specific tax under Section 148 (g) which attaches to said product "as soon as they are in existence as such."

2. ID.; ID.; ID.; THE EXCISE TAX IMPOSED ON PETROLEUM PRODUCTS IS A DIRECT LIABILITY OF THE MANUFACTURER WHO CANNOT THUS INVOKE THE EXERCISE OF EXEMPTION GRANTED TO ITS BUYERS WHO ARE INTERNATIONAL CARRIERS.— On the basis of *Philippine Acetylene*, we held that a tax

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exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Section 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers. And following our pronouncement in *Maceda v. Macarig, Jr.* we further ruled that Section 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buy petroleum products from the local manufacturers. Said international carriers are thus allowed to purchase the petroleum products without the excise tax component which otherwise would have been added to the cost or price fixed by the local manufacturers or distributors/sellers. Excise tax on aviation fuel used for international flights is practically nil as most countries are signatories to the 1944 Chicago Convention on International Aviation (Chicago Convention). Article 24 of the Convention has been interpreted to prohibit taxation of aircraft fuel consumed for international transport. Taxation of international air travel is presently at such low level that there has been an intensified debate on whether these should be increased to "finance development rather than simply to augment national tax revenue" considering the "cross-border environmental damage" caused by aircraft emissions that contribute to global warming, not to mention noise pollution and congestion at airports). Mutual exemptions given under bilateral air service agreements are seen as main legal obstacles to the imposition of indirect taxes on aviation fuel. In response to present realities, the International Civil Aviation Organization (ICAO) has adopted policies on charges and emission-related taxes and charges. Section 135(a) of the NIRC and earlier amendments to the Tax Code represent our Governments' compliance with the Chicago Convention, its subsequent resolutions/annexes, and the air transport agreements entered into by the Philippine Government with various countries.

3. ID.; ID.; ID.; THE STATUTORY TAXPAYER IS ENTITLED TO A REFUND OR CREDIT OF THE EXCISE TAX ON PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS; RATIONALE.— We therefore hold that respondent, as the statutory taxpayer who is directly liable to

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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.

BERSAMIN, *J.*, *separate opinion*:

1. TAXATION; CLASSIFICATION OF TAXES; DISTINGUISHED. — Taxes are classified, according to subject matter or object, into three groups, to wit: (1) personal, capitation or poll taxes; (2) property taxes; and (3) excise or license taxes. Personal, capitation or poll taxes are fixed amounts imposed upon residents or persons of a certain class without regard to their property or business, an example of which is the basic community tax. Property taxes are assessed on property or things of a certain class, whether real or personal, in proportion to their value or other reasonable method of apportionment, such as the real estate tax. Excise or license taxes are imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation, profession or business. Income tax, value-added tax, estate and donor's tax fall under the third group.

2. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); EXCISE TAX UNDER TITLE VI OF THE NLRC; THE ACCRUAL OF TAX LIABILITY IS CONTINGENT ON THE PRODUCTION, MANUFACTURE OR IMPORTATION OF THE TAXABLE GOODS AND THE INTENTION OF THE MANUFACTURER, PRODUCER OR IMPORTER TO HAVE THE GOODS LOCALLY SOLD OR CONSUMED OR DISPOSED IN ANY OTHER MANNER.— Excise tax, as a classification of tax according to object, must not be confused with the excise tax under Title VI of the NIRC. The term "excise tax" under Title VI of the 1997 NIRC derives its definition from the 1986 NIRC, and relates to taxes applied to goods manufactured or produced in the Philippines *for domestic sale or consumption or for any other disposition and to things imported*. In contrast, an excise tax that is imposed directly on certain specified goods – goods manufactured or produced in the Philippines, or things imported – is undoubtedly a tax on property. x x x The production,

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manufacture or importation of the goods belonging to any of the categories enumerated in Title VI of the NIRC (*i.e.*, alcohol products, tobacco products, petroleum products, automobiles and non-essential goods, mineral products) are not the sole determinants for the proper levy of the excise tax. It is further required that the goods be manufactured, produced or imported for *domestic* sale, consumption or any other disposition. The accrual of the tax liability is, therefore, contingent on the production, manufacture or importation of the taxable goods *and* the intention of the manufacturer, producer or importer to have the goods locally sold or consumed or disposed in any other manner. This is the reason why the accrual and liability for the payment of the excise tax are imposed directly on the manufacturer or producer of the taxable goods, and arise before the removal of the goods from the place of their production. x x x Simply stated, the accrual and payment of the excise tax under Title VI of the NIRC materially rest on the fact of actual production, manufacture or importation of the taxable goods *in the Philippines* and on their *presumed* or *intended* domestic sale, consumption or disposition. Considering that the excise tax attaches to the goods upon the accrual of the manufacturer's direct liability for its payment, the subsequent sale, consumption or other disposition of the goods becomes relevant only to determine whether any exemption or tax relief may be granted thereafter.

3. ID.; ID.; ID.; UPON THE SALE OF THE PETROLEUM PRODUCTS TO THE INTERNATIONAL CARRIERS, THE GOODS BECAME EXEMPT FROM THE EXCISE TAX BY THE EXPRESS PROVISION OF SECTION 135(A) OF THE NIRC.— Verily, it is the *actual* sale, consumption or disposition of the taxable goods that *confirms* the proper tax treatment of goods previously subjected to the excise tax. If any of the goods enumerated under Title VI of the NIRC are manufactured or produced in the Philippines and eventually sold, consumed, or disposed of in any other manner *domestically*, therefore, there can be no claim for any tax relief inasmuch as the excise tax was properly levied and collected from the manufacturer-seller. x x x **However, upon the sale of the petroleum products to the international carriers, the goods became exempt from the excise tax by the express provision of Section 135(a) of the NIRC. In the latter instance, the fact of sale to the international carriers of the petroleum**

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products previously subjected to the excise tax confirms the proper tax treatment of the goods as exempt from the excise tax. x x x Given the nature of the excise tax on petroleum products as a tax on property, the tax exemption espoused by Article 24(a) of the *Chicago Convention*, as now embodied in Section 135(a) of the NIRC, is clearly conferred on the aviation fuel or petroleum product on-board international carriers. Consequently, the manufacturer's or producer's sale of the petroleum products to international carriers for their use or consumption outside the Philippines operates to bring the tax exemption of the petroleum products into full force and effect.

4. ID.; ID.; ID.; ID.; 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; CLARIFIED.— The excise taxes are of the nature of indirect taxes, the liability for the payment of which may fall on a person other than whoever actually bears the burden of the tax. x x x Accordingly, the option of shifting the burden to pay the excise tax rests on the statutory taxpayer, which is the manufacturer or producer in the case of the excise taxes imposed on the petroleum products. Regardless of who shoulders the burden of tax payment, however, the Court has ruled as early as in the 1960s that the proper party to question or to 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. x x x The *Silkair* rulings involving the excise taxes on the petroleum products sold to international carriers firmly hold that the proper party to claim the refund of excise taxes paid is the manufacturer-seller. x x x Section 135(a) of the NIRC cannot be further construed as granting the excise tax exemption to the international carrier to whom the petroleum products are sold considering that the international carrier has not been subjected to excise tax at the outset. To reiterate, the excise tax is levied on the petroleum products because it is a tax on property. Levy is the act of imposition by the Legislature such as by its enactment of a law. The law enacted here is the NIRC whereby the excise tax is imposed on the petroleum products, the liability for the payment of which is further statutorily imposed on the domestic petroleum manufacturer. Accordingly, the exemption

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must be allowed to the petroleum products because it is on them that the tax is imposed. **The tax status of an international carrier to whom the petroleum products are sold is not based on exemption; rather, it is based on the absence of a law imposing the excise tax on it.** This further supports the position that the burden passed on by the domestic petroleum manufacturer is not anymore in the nature of a tax – although resulting from the previously-paid excise tax – but as an additional cost component in the selling price. Consequently, the purchaser of the petroleum products to whom the burden of the excise tax has been shifted, not being the statutory taxpayer, cannot claim a refund of the excise tax paid by the manufacturer or producer.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Simeon V. Marcelo, et al. for respondent.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

For resolution are the Motion for Reconsideration dated May 22, 2012 and Supplemental Motion for Reconsideration dated December 12, 2012 filed by Pilipinas Shell Petroleum Corporation (respondent). As directed, the Solicitor General on behalf of petitioner Commissioner of Internal Revenue filed their Comment, to which respondent filed its Reply.

In our Decision promulgated on April 25, 2012, we ruled that the Court of Tax Appeals (CTA) erred in granting respondent's claim for tax refund because the latter failed to establish a tax exemption in its favor under Section 135(a) of the National Internal Revenue Code of 1997 (NIRC).

WHEREFORE, the petition for review on *certiorari* is GRANTED. The Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415 are hereby REVERSED and SET ASIDE. The claims for tax refund or

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credit filed by respondent Pilipinas Shell Petroleum Corporation are DENIED for lack of basis.

No pronouncement as to costs.

SO ORDERED.[1]

Respondent argues that a plain reading of Section 135 of the NIRC reveals that it is the petroleum products sold to international carriers which are exempt from excise tax for which reason no excise taxes are deemed to have been due in the first place. It points out that excise tax being an indirect tax, Section 135 in relation to Section 148 should be interpreted as referring to a tax exemption from the point of production and removal from the place of production considering that it is only at that point that an excise tax is imposed. The situation is unlike the value-added tax (VAT) which is imposed at every point of turnover – from production to wholesale, to retail and to end-consumer. Respondent thus concludes that exemption could only refer to the imposition of the tax on the statutory seller, in this case the respondent. This is because when a tax paid by the statutory seller is passed on to the buyer it is no longer in the nature of a tax but an added cost to the purchase price of the product sold.

Respondent also contends that our ruling that Section 135 only prohibits local petroleum manufacturers like respondent from shifting the burden of excise tax to international carriers has adverse economic impact as it severely curtails the domestic oil industry. Requiring local petroleum manufacturers to absorb the tax burden in the sale of its products to international carriers is contrary to the State's policy of "protecting gasoline dealers and distributors from unfair and onerous trade conditions," and places them at a competitive disadvantage since foreign oil producers, particularly those whose governments with which we have entered into bilateral service agreements, are not subject to excise tax for the same transaction. Respondent fears this could lead to cessation of supply of petroleum products to international carriers, retrenchment of employees of domestic

[1] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, 671 SCRA 241, 264.

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manufacturers/producers to prevent further losses, or worse, shutting down of their production of jet A-1 fuel and aviation gas due to unprofitability of sustaining operations. Under this scenario, participation of Filipino capital, management and labor in the domestic oil industry is effectively diminished.

Lastly, respondent asserts that the imposition by the Philippine Government of excise tax on petroleum products sold to international carriers is in violation of the Chicago Convention on International Aviation ("Chicago Convention") to which it is a signatory, as well as other international agreements (the Republic of the Philippines' air transport agreements with the United States of America, Netherlands, Belgium and Japan).

In his Comment, the Solicitor General underscores the statutory basis of this Court's ruling that the exemption under Section 135 does not attach to the products. Citing *Exxonmobil Petroleum & Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue*,[2] which held that the excise tax, when passed on to the purchaser, becomes part of the purchase price, the Solicitor General claims this refutes respondent's theory that the exemption attaches to the petroleum product itself and not to the purchaser for it would have been erroneous for the seller to pay the excise tax and inequitable to pass it on to the purchaser if the excise tax exemption attaches to the product.

As to respondent's reliance in the cases of *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*[3] and *Exxonmobil Petroleum & Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue*,[4] the Solicitor General points out that there was no pronouncement in these cases that petroleum manufacturers selling petroleum products to international carriers are exempt from paying excise taxes. In fact, *Exxonmobil* even cited the case of *Philippine Acetylene Co, Inc. v. Commissioner of Internal Revenue*.[5] Further, the ruling in *Maceda v. Macaraig,*

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[2] G.R. No. 180909, January 19, 2011, 640 SCRA 203.

[3] G.R. No. 166482, January 25, 2012, 664 SCRA 33.

[4] *Supra* note 2.

[5] No. L-19707, August 17, 1967, 20 SCRA 1056.

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Jr.[6] which confirms that Section 135 does not intend to exempt manufacturers or producers of petroleum products from the payment of excise tax.

The Court will now address the principal arguments proffered by respondent: (1) Section 135 intended the tax exemption to apply to petroleum products at the point of production; (2) *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* and *Maceda v. Macaraig, Jr.* are inapplicable in the light of previous rulings of the Bureau of Internal Revenue (BIR) and the CTA that the excise tax on petroleum products sold to international carriers for use or consumption outside the Philippines attaches to the article when sold to said international carriers, as it is the article which is exempt from the tax, not the international carrier; and (3) the Decision of this Court will not only have adverse impact on the domestic oil industry but is also in violation of international agreements on aviation.

Under Section 129 of the NIRC, excise taxes are those applied to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. Excise taxes as used in our Tax Code fall under two types — (1) *specific tax* which is based on weight or volume capacity and other physical unit of measurement, and (2) *ad valorem tax* which is based on selling price or other specified value of the goods. Aviation fuel is subject to specific tax under Section 148 (g) which attaches to said product "as soon as they are in existence as such."

On this point, the clarification made by our esteemed colleague, Associate Justice Lucas P. Bersamin regarding the traditional meaning of excise tax adopted in our Decision, is well-taken.

The transformation undergone by the term "excise tax" from its traditional concept up to its current definition in our Tax Code was explained in the case of *Petron Corporation v. Tiangco*,[7] as follows:

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[6] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

[7] G.R. No. 158881, April 16, 2008, 551 SCRA 484.

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Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence*, popularly referred to as *Am Jur* and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939, as amended, or the NIRC of 1977 because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was "specific tax." Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines… and to things imported." This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods. In other words, **the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.**

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolledo as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolledo observed:

> Are specific taxes, taxes on property or excise taxes –
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> In the case of *Meralco v. Trinidad* ([G.R.] 16738, 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolledo, in his 1994 commentaries, wrote:

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> 1. *Excise taxes*, as used in the Tax Code, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either *specific* or *ad valorem*.
>
> 2. *Nature of excise taxes.* – They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (see Medina *vs.* City of Baguio, 91 Phil. 854.)
>
> A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably." At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the Code was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.[8] (Emphasis supplied.)

That excise tax as presently understood is a tax on property has no bearing at all on the issue of respondent's entitlement to refund. Nor does the nature of excise tax as an indirect tax supports respondent's postulation that the *tax exemption* provided in Sec. 135 attaches to the petroleum products themselves and consequently the domestic petroleum manufacturer is not liable

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[8] *Id.* at 492-493.

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for the payment of excise tax *at the point of production.* As already discussed in our Decision, to which Justice Bersamin concurs, "the accrual and payment of the excise tax on the goods enumerated under Title VI of the NIRC prior to their removal at the place of production are absolute and admit of no exception." This also underscores the fact that the exemption from payment of excise tax is conferred on international carriers who purchased the petroleum products of respondent.

On the basis of *Philippine Acetylene*, we held that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Section 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers. And following our pronouncement in *Maceda v. Macarig, Jr.* we further ruled that Section 135(a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buy petroleum products from the local manufacturers. Said international carriers are thus allowed to purchase the petroleum products without the excise tax component which otherwise would have been added to the cost or price fixed by the local manufacturers or distributors/sellers.

Excise tax on aviation fuel used for international flights is practically nil as most countries are signatories to the 1944 Chicago Convention on International Aviation (Chicago Convention). Article 24[9] of the Convention has been interpreted

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[9] Art. 24. Customs Duty

(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.

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to prohibit taxation of aircraft fuel consumed for international transport. Taxation of international air travel is presently at such low level that there has been an intensified debate on whether these should be increased to "finance development rather than simply to augment national tax revenue" considering the "cross-border environmental damage" caused by aircraft emissions that contribute to global warming, not to mention noise pollution and congestion at airports).[10] Mutual exemptions given under bilateral air service agreements are seen as main legal obstacles to the imposition of indirect taxes on aviation fuel. In response to present realities, the International Civil Aviation Organization (ICAO) has adopted policies on charges and emission-related taxes and charges.[11]

Section 135(a) of the NIRC and earlier amendments to the Tax Code represent our Governments' compliance with the Chicago Convention, its subsequent resolutions/annexes, and the air transport agreements entered into by the Philippine Government with various countries. The rationale for exemption of fuel from national and local taxes was expressed by ICAO as follows:

> . . . The Council in 1951 adopted a Resolution and Recommendation on the taxation of fuel, a Resolution on the taxation of income and of aircraft, and a Resolution on taxes related to the sale or use of international air transport (cf. Doc 7145) which were further amended and amplified by the policy statements in Doc 8632 published in 1966. The Resolutions and Recommendation concerned were designed **to recognize the uniqueness of civil aviation and the need to accord tax exempt status to certain aspects of the operations of international air transport and were adopted because multiple taxation on the aircraft, fuel, technical supplies and the income of international air transport, as well as taxes on its sale and**

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[10] See "*Indirect Taxes on International Aviation"* by Michael Keen and Jon Strand, IMF Working Paper published in May 2006, sourced from Internet - *http://www.imf.org/external/pubs/ft/wp/2006/wp06124.pdf*

[11] Set out in the *Statements by the Council to Contracting States for Airports and Air Navigation Services* (Doc 9082) and Council Resolution on environmental charges adopted in December 1996.

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use, were considered as major obstacles to the further development of international air transport. Non-observance of the principle of reciprocal exemption envisaged in these policies was also seen as risking retaliatory action with adverse repercussions on international air transport which plays a major role in the development and expansion of international trade and travel.[12]

In the 6th Meeting of the Worldwide Air Transport Conference (ATCONF) held on March 18-22, 2013 at Montreal, among matters agreed upon was that "the proliferation of various taxes and duties on *air transport* could have negative impact on the sustainable development of air transport and on consumers." Confirming that ICAO's policies on taxation remain valid, the Conference recommended that "ICAO promote more vigorously its policies and with industry stakeholders to develop analysis and guidance to States on the impact of taxes and other levies on air transport."[13] Even as said conference was being held, on March 7, 2013, President Benigno Aquino III has signed into law Republic Act (R.A.) No. 10378[14] granting tax incentives to foreign carriers which include exemption from the 12% value-added tax (VAT) and 2.5% gross Philippine billings tax (GPBT). GPBT is a form of income tax applied to international airlines or shipping companies. The law, based on reciprocal grant of similar tax exemptions to Philippine carriers, is expected to increase foreign tourist arrivals in the country.

Indeed, the avowed purpose of a tax exemption is always "some public benefit or interest, which the law-making body

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[12] *ICAO's Policies on Taxation in the Field of International Air Transport* (Document 8632-C/968), Introduction, Second Edition, January 1994. Sourced from Internet - *http://www.icao.int/publications/Documents/8632_2ed_en.pdf*

[13] *Outcome of the Sixth Worldwide Air Transport Conference*, Item 2.6, accessed at - *http://www.icao.int/Meetings/a38/Documents/WP/wp056_rev1_en.pdf*

[14] AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(A), 109, 118 AND 236 OF THE NATIONAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES (Approved on March 07, 2013).

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considers sufficient to offset the monetary loss entailed in the grant of the exemption."[15] The exemption from excise tax of aviation fuel purchased by international carriers for consumption outside the Philippines fulfills a treaty obligation pursuant to which our Government supports the promotion and expansion of international travel through avoidance of multiple taxation and ensuring the viability and safety of international air travel. In recent years, developing economies such as ours focused more serious attention to significant gains for business and tourism sectors as well. Even without such recent incidental benefit, States had long accepted the need for international cooperation in maintaining a capital intensive, labor intensive and fuel intensive airline industry, and recognized the major role of international air transport in the development of international trade and travel.

Under the basic international law principle of *pacta sunt servanda*, we have the duty to fulfill our treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. In this case, Sec. 135(a) of the NIRC embodies our compliance with our undertakings under the Chicago Convention and various bilateral air service agreements not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers. In our Decision in this case, we interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production, pursuant to Article 148 and pertinent BIR regulations. Ruling on respondent's claim for tax refund of such paid excise taxes on petroleum products sold to tax-exempt international carriers, we found no basis in the Tax Code and jurisprudence to grant the refund of an "erroneously or illegally paid" tax.

Justice Bersamin argues that "(T)he shifting of the tax burden by manufacturers-sellers is a business prerogative resulting from the collective impact of market forces," and that it is "erroneous

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[15] *Commissioner of Internal Revenue, et al. v. Botelho Shipping Corp., et al.,* 126 Phil. 846, 851.

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to construe Section 135(a) only as a prohibition against the shifting by the manufacturers-sellers of petroleum products of the tax burden to international carriers, for such construction will deprive the manufacturers-sellers of their business prerogative to determine the prices at which they can sell their products."

We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author[16] 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

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[16] Antony Seely, *Taxing Aviation Fuel* (Standard Note SN00523, last updated 02 October 2012), House of Commons Library, accessed at *ww,parliament.uk/briefing-paper/SN00523.pdf*

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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 to its broad implications on our commitment under international agreements.

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC.

WHEREFORE, the Court hereby resolves to:

(1) **GRANT** the original and supplemental motions for reconsideration filed by respondent Pilipinas Shell Petroleum Corporation; and

(2) **AFFIRM** the Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415; and **DIRECT** petitioner Commissioner of Internal Revenue to refund or to issue a tax credit certificate to Pilipinas Shell Petroleum Corporation in the amount of ₱95,014,283.00 representing

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the excise taxes it paid on petroleum products sold to international carriers from October 2001 to June 2002.

SO ORDERED.

Sereno, C.J. (Chairperson) and *Reyes, J.,* concur.

Leonardo-de Castro, J., I concur but joins the opinion of *J.* Bersamin that the excise tax exemption applies to the product sold to international carriers and not to the latter.

Bersamin, J., please see separate opinion.

SEPARATE OPINION

BERSAMIN, *J.*:

In essence, the Resolution written for the Court by my esteemed colleague, Justice Martin S. Villarama, Jr., maintains that the exemption from payment of the excise tax under Section 135 (a) of the National Internal Revenue Code (NIRC) is conferred on the international carriers; and that, accordingly, and in fulfillment of international agreement and practice to exempt aviation fuel from the excise tax and other impositions, Section 135 (a) of the NIRC prohibits the passing of the excise tax to international carriers purchasing petroleum products from local manufacturers/sellers. Hence, he finds merit in the Motion for Reconsideration filed by Pilipinas Shell Petroleum Corporation (Pilipinas Shell), and rules that Pilipinas Shell, as the statutory taxpayer directly liable to pay the excise tax on its petroleum products, is entitled to the refund or credit of the excise taxes it paid on the petroleum products sold to international carriers, the latter having been granted exemption from the payment of such taxes under Section 135 (a) of the NIRC.

I **CONCUR** in the result.

I write this separate opinion only to explain that I hold a different view on the proper interpretation of the excise tax exemption under Section 135 (a) of the NIRC. I hold that the excise tax exemption under Section 135 (a) of the NIRC is conferred on the petroleum products on which the excise tax is

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levied in the first place in view of its nature as a tax on property, the liability for the payment of which is statutorily imposed on the domestic petroleum manufacturer.

I submit the following disquisition in support of this separate opinion.

The issue raised here was whether the manufacturer was entitled to claim the refund of the excise taxes paid on the petroleum products sold to international carriers exempt under Section 135 (a) of the NIRC.

We ruled in the negative, and held that the exemption from the excise tax under Section 135 (a) of the NIRC was conferred on the international carriers to whom the petroleum products were sold. In the decision promulgated on April 25, 2012,[1] the Court granted the petition for review on *certiorari* filed by the Commissioner of Internal Revenue (CIR), and disposed thusly:

> WHEREFORE, the petition for review on *certiorari* is GRANTED. The Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415 are hereby REVERSED and SET ASIDE. The claims for tax refund or credit filed by respondent Pilipinas Shell Petroleum Corporation are DENIED for lack of basis.
>
> No pronouncement as to costs.
>
> SO ORDERED.[2]

We thereby agreed with the position of the Solicitor General that Section 135 (a) of the NIRC must be construed only as a prohibition for the manufacturer-seller of the petroleum products from shifting the tax burden to the international carriers by incorporating the previously-paid excise tax in the selling price. As a consequence, the manufacturer-seller could not invoke the exemption from the excise tax granted to international carriers. Concluding, we said: —

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[1] 671 SCRA 241.

[2] *Id*. at 264.

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Respondent's locally manufactured petroleum products are clearly subject to excise tax under Sec. 148. Hence, its claim for tax refund may not be predicated on Sec. 229 of the NIRC allowing a refund of erroneous or excess payment of tax. Respondent's claim is premised on what it determined as a tax exemption "attaching to the goods themselves," which must be based on a statute granting tax exemption, or "the result of legislative grace." Such a claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute.

The exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to 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.[3]

x x x x x x x x x

Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus 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.[4]

In its Motion for Reconsideration filed on May 23, 2012, Pilipinas Shell principally contends that the Court has erred in

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[3] *Id.* at 255-256.

[4] *Id*. at 263.

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its interpretation of Section 135 (a) of the 1997 NIRC; that Section 135 (a) of the NIRC categorically exempts from the excise tax the petroleum products sold to international carriers of Philippine or foreign registry for their use or consumption outside the Philippines;[5] that no excise tax should be imposed on the petroleum products, whether in the hands of the qualified international carriers or in the hands of the manufacturer-seller;[6] that although it is the manufacturer, producer or importer who is generally liable for the excise tax when the goods or articles are subject to the excise tax, no tax should accordingly be collected from the manufacturer, producer or importer in instances when the goods or articles themselves are not subject to the excise tax;[7] and that as a consequence any excise tax paid in advance on products that are exempt under the law should be considered erroneously paid and subject of refund.[8]

Pilipinas Shell further contends that the Court's decision, which effectively prohibits petroleum manufacturers from passing on the burden of the excise tax, defeats the rationale behind the grant of the exemption;[9] and that without the benefit of a refund or the ability to pass on the burden of the excise tax to the international carriers, the excise tax will constitute an additional production cost that ultimately increases the selling price of the petroleum products.[10]

The CIR counters that the decision has clearly set forth that the excise tax exemption under Section 135 (a) of the NIRC does not attach to the products; that Pilipinas Shell's reliance on the Silkair rulings is misplaced considering that the Court made no pronouncement therein that the manufacturers selling petroleum products to international carriers were exempt from

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[5] *Rollo*, p. 356.

[6] *Id*. at 360.

[7] *Id*. at 364.

[8] *Id*. at 366.

[9] *Id*. at 375.

[10] *Id*.

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paying the taxes; that the rulings that are more appropriate are those in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[11] and *Maceda v. Macaraig, Jr.*,[12] whereby the Court confirmed the obvious intent of Section 135 of the NIRC to grant the excise tax exemption to the international carriers or agencies as the buyers of petroleum products; and that this intention is further supported by the requirement that the petroleum manufacturer must pay the excise tax in advance without regard to whether or not the petroleum purchaser is qualified for exemption under Section 135 of the NIRC.

In its Supplemental Motion for Reconsideration, Pilipinas Shell reiterates that what is being exempted under Section 135 of the NIRC is the petroleum product that is sold to international carriers; that the exemption is not given to the producer or the buyer but to the product itself considering that the excise taxes, according to the NIRC, are taxes applicable to certain specific goods or articles for domestic sale or consumption or for any other disposition, whether manufactured in or imported into the Philippines; that the excise tax that is passed on to the buyer is no longer in the nature of a tax but of an added cost to the purchase price of the product sold; that what is contemplated under Section 135 of the NIRC is an exemption from the excise tax, not an exemption from the burden to shoulder the tax; and that inasmuch as the exemption can refer only to the imposition of the tax on the statutory seller, like Pilipinas Shell, a contrary interpretation renders Section 135 of the NIRC nugatory because the NIRC does not impose the excise tax on subsequent holders of the product like the international carriers.

As I earlier said, I agree to **GRANT** Pilipinas Shell's motions for reconsideration.

Excise tax is essentially a tax on goods, products or articles

Taxes are classified, according to subject matter or object, into three groups, to wit: (1) personal, capitation or poll taxes;

[11] No. L-19707, August 17, 1967, 20 SCRA 1056.

[12] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

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(2) property taxes; and (3) excise or license taxes. Personal, capitation or poll taxes are fixed amounts imposed upon residents or persons of a certain class without regard to their property or business, an example of which is the basic community tax.[13] Property taxes are assessed on property or things of a certain class, whether real or personal, in proportion to their value or other reasonable method of apportionment, such as the real estate tax.[14] Excise or license taxes are imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation, profession or business.[15] Income tax, value-added tax, estate and donor's tax fall under the third group.

Excise tax, as a classification of tax according to object, must not be confused with the excise tax under Title VI of the NIRC. The term "excise tax" under Title VI of the 1997 NIRC derives its definition from the 1986 NIRC,[16] and relates to taxes applied to goods manufactured or produced in the Philippines *for domestic sale or consumption or for any other disposition and to things imported*.[17] In contrast, an excise tax that is imposed directly on certain specified goods — goods manufactured or produced in the Philippines, or things imported — is undoubtedly a tax on property.[18]

The payment of excise taxes is the direct liability of the manufacturer or producer

The production, manufacture or importation of the goods belonging to any of the categories enumerated in Title VI of

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

[14] *Id*.

[15] *Id*.

[16] *Petron Corporation v. Tiangco*, G.R. No. 158881, April 16, 2008, 551 SCRA 484, 494; see Section 126, Presidential Decree No. 1994, establishing the National Internal Revenue Code of 1986 (NIRC).

[17] Section 129, NIRC.

[18] *Petron Corporation v. Tiangco, supra*, citing *Medina v. City of Baguio*, 91 Phil. 854 (1952).

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the NIRC (*i.e.*, alcohol products, tobacco products, petroleum products, automobiles and non-essential goods, mineral products) are not the sole determinants for the proper levy of the excise tax. It is further required that the goods be manufactured, produced or imported for *domestic* sale, consumption or any other disposition.[19] The accrual of the tax liability is, therefore, contingent on the production, manufacture or importation of the taxable goods *and* the intention of the manufacturer, producer or importer to have the goods locally sold or consumed or disposed in any other manner. This is the reason why the accrual and liability for the payment of the excise tax are imposed directly on the manufacturer or producer of the taxable goods,[20] and arise before the removal of the goods from the place of their production.[21]

The manufacturer's or producer's direct liability to pay the excise taxes similarly operates although the goods produced or manufactured within the country are intended for export and are "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." This is implied from the grant of a tax credit or refund to the manufacturer or producer by Section 130 (4) (D) of the NIRC, thereby presupposing that the excise tax corresponding to the goods exported were previously paid. Section 130 (4) (D) reads:

x x x x x 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**

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[19] Section 129, NIRC.

[20] Section 130 (A) (2), NIRC*; Silkair (Singapore) Pte., Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112.

[21] Section 130 (A) (2), NIRC.

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> **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. (Emphasis supplied.)

Simply stated, the accrual and payment of the excise tax under Title VI of the NIRC materially rest on the fact of actual production, manufacture or importation of the taxable goods *in the Philippines* and on their *presumed* or *intended* domestic sale, consumption or disposition. Considering that the excise tax attaches to the goods upon the accrual of the manufacturer's direct liability for its payment, the subsequent sale, consumption or other disposition of the goods becomes relevant only to determine whether any exemption or tax relief may be granted thereafter.

The actual sale, consumption or disposition of the taxable goods confirms the proper tax treatment of goods previously subjected to the excise tax

Conformably with the foregoing discussion, the accrual and payment of the excise tax on the goods enumerated under Title VI of the NIRC prior to their removal from the place of production are absolute and admit of no exception. As earlier mentioned, even locally manufactured goods *intended for export* cannot escape the imposition and payment of the excise tax, subject to a future claim for tax credit or refund once proof of *actual exportation* has been submitted to the Commissioner of Internal Revenue (CIR).[22] Verily, it is the *actual* sale, consumption or disposition of the taxable goods that *confirms* the proper tax treatment of goods previously subjected to the excise tax. If any of the goods enumerated under Title VI of the NIRC are manufactured or produced in the Philippines and eventually sold, consumed, or disposed of in any other manner *domestically*, therefore, there can be no claim for any tax relief inasmuch as

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[22] Section 130 (4) (D); Revenue Regulations No. 1377, Section 31 (c).

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the excise tax was properly levied and collected from the manufacturer-seller.

Here, the point of interest is the proper tax treatment of the petroleum products sold by Pilipinas Shell to various international carriers. An international carrier is engaged in international transportation or contract of carriage between places in different territorial jurisdictions.[23]

Pertinent is Section 135 (a) of the NIRC, which 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; x x x

x x x x x x x x x

As the taxpayer statutorily and directly liable for the accrual and payment of the excise tax on the petroleum products it manufactured and it intended for future *domestic* sale or consumption, Pilipinas Shell paid the corresponding excise taxes prior to the removal of the goods from the place of production. **However, upon the sale of the petroleum products to the international carriers, the goods became exempt from the excise tax by the express provision of Section 135 (a) of the NIRC. In the latter instance, the fact of sale to the international carriers of the petroleum products previously subjected to the excise tax confirms the proper tax treatment of the goods as exempt from the excise tax.**

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[23] Vilma Cruz-Silvederio, *International Common Carriers and the VAT Law*, http://www.punongbayan-araullo.com/pnawebsite/pnahome.nsf/section_docs. Visited on February 19, 2013.

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It is worthy to note that Section 135 (a) of the NIRC is a product of the *1944 Convention of International Civil Aviation*, otherwise known as the *Chicago Convention*, of which the Philippines is a Member State. Article 24 (a) of the *Chicago Convention* provides —

> Article 24
> Customs duty
>
> (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. x x x (Bold emphasis supplied.)

This provision was extended by the ICAO Council in its 1999 Resolution, which stated that "fuel . . . taken on board for consumption" by an aircraft from a contracting state in the territory of another contracting State departing for the territory of any other State must be exempt from all customs or other duties. The Resolution broadly interpreted the scope of the Article 24 prohibition to include "import, export, excise, sales, consumption and internal duties and taxes of all kinds levied upon . . . fuel."[24]

Given the nature of the excise tax on petroleum products as a tax on property, the tax exemption espoused by Article 24 (a) of the *Chicago Convention*, as now embodied in Section 135 (a) of the NIRC, is clearly conferred on the aviation fuel or

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[24] *Supra* note 1, at 261, citing *Prohibition Against Taxes on International Airlines*, prepared by The International Air Transport Association, citing *ICAO's Policies on Taxation in the Field of International Air Transport*, ICAO Doc. 8632-C/968 (3d rd. 2000), www.globalwarming.markey.house.gov/files/.Visited on October 5, 2012.

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petroleum product on-board international carriers. Consequently, the manufacturer's or producer's sale of the petroleum products to international carriers for their use or consumption outside the Philippines operates to bring the tax exemption of the petroleum products into full force and effect.

Pilipinas Shell, the statutory taxpayer, is the proper party to claim the refund of the excise taxes paid on petroleum products sold to international carriers

The excise taxes are of the nature of indirect taxes, the liability for the payment of which may fall on a person other than whoever actually bears the burden of the tax.[25]

In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[26] the Court has discussed the nature of indirect taxes in the following manner:

> [I]ndirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser, as part of the price of goods sold or services rendered.[27]

In another ruling, the Court has observed:

> Accordingly, the party liable for the tax can shift the burden to another, as part of the purchase price of the goods or services. Although the manufacturer/seller is the one who is statutorily liable for the tax, it is the buyer who actually shoulders or bears the burden of

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

[26] G.R. No. 140230, December 15, 2005, 478 SCRA 61.

[27] *Id*. at 72.

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the tax, albeit not in the nature of a tax, but part of the purchase price or the cost of the goods or services sold.[28]

Accordingly, the option of shifting the burden to pay the excise tax rests on the statutory taxpayer, which is the manufacturer or producer in the case of the excise taxes imposed on the petroleum products. Regardless of who shoulders the burden of tax payment, however, the Court has ruled as early as in the 1960s that the proper party to question or to 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.[29] The Court has explained:

> In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, the Court held that the sales tax is imposed on the manufacturer or producer and not on the purchaser, "except probably in a very remote and inconsequential sense." Discussing the "passing on" of the sales tax to the purchaser, the Court therein cited Justice Oliver Wendell Holmes' opinion in *Lash's Products v. United States* wherein he said:
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> > "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. The purchaser does not really pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all. x x x The price is the sum total paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price x x x."
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> Proceeding from this discussion, the Court went on to state:
>
> > It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. x x x The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.

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[28] *Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch v. Commissioner of Internal Revenue, supra* note 25, at 220.

[29] *Id.* at 222.

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> But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.[30]

The *Silkair* rulings involving the excise taxes on the petroleum products sold to international carriers firmly hold that the proper party to claim the refund of excise taxes paid is the manufacturer-seller.

In the February 2008 *Silkair* ruling,[31] the Court declared:

> 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 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 additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

In the November 2008 *Silkair* ruling,[32] the Court reiterated:

> Section 129 of the NIRC provides that excise taxes refer to taxes imposed on specified goods manufactured or produced in the

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[30] *Id.* at 222-223, citing *Silkair (Singapore) Pte., Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112; Vitug and Acosta, *op. cit.*, at 317, citing *Commissioner of Internal Revenue v. American Rubber Company and Court of Tax Appeals*, 124 Phil. 1471 (1966); *Cebu Portland Cement Co. v. Collector of Internal Revenue*, 134 Phil. 735 (1968).

[31] *Silkair (Singapore), Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112.

[32] *Silkair (Singapore) Pte., Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141.

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Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production. Although excise taxes can be considered as taxes on production, they are really taxes on property as they are imposed on certain specified goods.

Section 148(g) of the NIRC provides that there shall be collected on aviation jet fuel an excise tax of ₱3.67 per liter of volume capacity. Since the tax imposed is based on volume capacity, the tax is referred to as "specific tax." However, excise tax, whether classified as specific or *ad valorem* tax, is basically an indirect tax imposed on the consumption of a specified list of goods or products. The tax is directly levied on the manufacturer upon removal of the taxable goods from the place of production but in reality, the tax is passed on to the end consumer as part of the selling price of the goods sold.

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When Petron removes its petroleum products from its refinery in Limay, Bataan, it pays the excise tax due on the petroleum products thus removed. Petron, as manufacturer or producer, is the person liable for the payment of the excise tax as shown in the Excise Tax Returns filed with the BIR. Stated otherwise, Petron is the taxpayer that is primarily, directly and legally liable for the payment of the excise taxes. However, since an excise tax is an indirect tax, Petron can transfer to its customers the amount of the excise tax paid by treating it as part of the cost of the goods and tacking it on to the selling price.

As correctly observed by the CTA, this Court held in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*:

> It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes part of the price which the purchaser must pay.

Even if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that Petron, on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent.

Petitioner, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform petitioner's status into a statutory taxpayer.

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In the refund of indirect taxes, the statutory taxpayer is the proper party who can claim the refund.

Section 204(c) of the NIRC provides:

> Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. — The Commissioner may —
>
> x x x x x x x x x
>
> (b) 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 the 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. (Emphasis and underscoring supplied)

The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as "any person subject to tax." In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the "person subject to tax." In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the "person liable for tax." Petitioner is neither a "person liable for tax" nor "a person subject to tax." There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts

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and invoices issued to its customers, Petron remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron, as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.[33]

It is noteworthy that the foregoing pronouncements were applied in two more *Silkair* cases[34] involving the same parties and the same cause of action but pertaining to different periods of taxation.

The shifting of the tax burden by manufacturers-sellers is a business prerogative resulting from the collective impact of market forces. Such forces include government impositions like the excise tax. Hence, the additional amount billed to the purchaser as part of the price the purchaser pays for the goods acquired cannot be solely attributed to the effect of the tax liability imposed on the manufacture-seller. It is erroneous to construe Section 135 (a) only as a prohibition against the shifting by the manufacturers-sellers of petroleum products of the tax burden to international carriers, for such construction will deprive the manufacturers-sellers of their business prerogative to determine the prices at which they can sell their products.

Section 135 (a) of the NIRC cannot be further construed as granting the excise tax exemption to the international carrier to whom the petroleum products are sold considering that the international carrier has not been subjected to excise tax at the outset. To reiterate, the excise tax is levied on the petroleum products because it is a tax on property. Levy is the act of imposition by the Legislature such as by its enactment of a law.[35] The law enacted here is the NIRC whereby the excise tax is imposed on the petroleum products, the liability for the payment of which is further statutorily imposed on the domestic petroleum manufacturer. Accordingly, the exemption must be allowed to

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[33] *Id.* at 154-158.

[34] *Silkair (Singapore) Pte., Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 639, and *Silkair (Singapore) Pte., Ltd. v. Commissioner of Internal Revenue*, G.R. No. 166482, January 25, 2012, 664 SCRA 33.

[35] Vitug, and Acosta, *op. cit.*, at 25.

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the petroleum products because it is on them that the tax is imposed. **The tax status of an international carrier to whom the petroleum products are sold is not based on exemption; rather, it is based on the absence of a law imposing the excise tax on it.** This further supports the position that the burden passed on by the domestic petroleum manufacturer is not anymore in the nature of a tax — although resulting from the previously-paid excise tax — but as an additional cost component in the selling price. Consequently, the purchaser of the petroleum products to whom the burden of the excise tax has been shifted, not being the statutory taxpayer, cannot claim a refund of the excise tax paid by the manufacturer or producer.

Applying the foregoing, the Court concludes that: (1) the exemption under Section 135 (a) of the NIRC is conferred on the petroleum products on which the excise tax was levied in the first place; (2) Pilipinas Shell, being the manufacturer or producer of petroleum products, was the statutory taxpayer of the excise tax imposed on the petroleum products; (3) as the statutory taxpayer, Pilipinas Shell's liability to pay the excise tax accrued as soon as the petroleum products came into existence, and Pilipinas Shell accordingly paid its excise tax liability prior to its sale or disposition of the taxable goods to third parties, a fact not disputed by the CIR; and (3) Pilipinas Shell's sale of the petroleum products to international carriers for their use or consumption outside the Philippines confirmed the proper tax treatment of the subject goods as exempt from the excise tax.

Under the circumstances, therefore, Pilipinas Shell erroneously paid the excise taxes on its petroleum products sold to international carriers, and was entitled to claim the refund of the excise taxes paid in accordance with prevailing jurisprudence and Section 204 (C) of the NIRC, *viz*.:

Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may — x x x

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

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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.

IN VIEW OF THE FOREGOING, I VOTE TO GRANT the Motion for Reconsideration and Supplemental Motion for Reconsideration of Pilipinas Shell Petroleum Corporation and, accordingly:

(a) **TO AFFIRM** the decision dated March 25, 2009 and resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415; and

(b) **TO DIRECT** petitioner Commissioner of Internal Revenue to refund or to issue a tax credit certificate to Pilipinas Shell Petroleum Corporation in the amount of ₱95,014,283.00 representing the excise taxes it paid on the petroleum products sold to international carriers in the period from October 2001 to June 2002.

FIRST DIVISION

[G.R. No. 188913. February 19, 2014]

CITY GOVERNMENT OF BAGUIO, HEREIN REPRESENTED BY CITY MAYOR REINALDO A. BAUTISTA, *petitioner, vs.* **ATTY. BRAIN S. MASWENG,** *respondent.*