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In these cited cases, the accused used the legitimacy of their entities to perpetrate their unlawful and illegal acts. We see no reason not to apply this law to a banking institution, a corporation imbued with public interest, when a clear reading of the PD 1689 reveals that it is within its coverage.

WHEREFORE, the Decision of the Court of Appeals dated 27 June 2008 in CA-G.R. SP No. 97160 is hereby **AFFIRMED** with **MODIFICATION** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr. be charged for **SYNDICATED *ESTAFA*** under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188497. April 25, 2012]

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

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REMEDIES; REFUND; SECTION 229 OF THE NIRC ONLY ALLOWS THE RECOVERY OF TAXES ERRONEOUSLY OR ILLEGALLY COLLECTED AND NOT ON CLAIMS PREMISED ON TAX EXEMPTIONS. — Sec. 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property

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not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal. 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.

2. ID.; ID.; EXCISE TAXES ON CERTAIN GOODS; PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS AND EXEMPT ENTITIES OR AGENCIES; THE TAX EXEMPTION IS CONFERRED ON SPECIFIED *BUYERS* OR *CONSUMERS* OF THE EXCISABLE ARTICLES OR GOODS WHICH ARE PETROLEUM PRODUCTS.— In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer. Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and

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not a specific provision of law exempting the goods sold from the excise tax. But as already stated, the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products). Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

3. ID.; ID.; ID.; THE EXCISE TAX IMPOSED ON PETROLEUM PRODUCTS UNDER SEC. 148 IS THE DIRECT LIABILITY OF THE MANUFACTURER WHO CANNOT INVOKE THE EXCISE TAX EXEMPTION GRANTED TO ITS BUYERS WHO ARE INTERNATIONAL CARRIERS.— Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such," there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135 (a) for their purchases of locally manufactured petroleum products. Pursuant to our ruling in *Philippine Acetylene*, 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 Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

4. ID.; ID.; ID.; AN EXCISE TAX IS BASICALLY AN INDIRECT TAX OR 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.— In *Maceda v. Macaraig, Jr.*, the Court specifically mentioned excise tax as an example of an indirect tax where the tax burden can be shifted to the buyer: On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau

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of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price." An excise tax is basically an indirect tax. Indirect 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.

5. ID.; ID.; ID.; BOTH THE EARLIER AMENDMENT (P.D. 1359) IN THE 1977 TAX CODE AND THE PRESENT SECTION 135 OF THE 1977 NIRC DID NOT EXEMPT THE OIL COMPANIES FROM THE PAYMENT OF EXCISE TAX ON PETROLEUM PRODUCTS MANUFACTURED AND SOLD BY THEM TO INTERNATIONAL CARRIERS.— Contrary to respondent's assertion that the above amendment to the former provision of the 1977 Tax Code supports its position that it was not liable for excise tax on the petroleum products sold to international carriers, we find that no such inference can be drawn from the words used in the amended provision or its introductory part. Founded on the principles of international comity and reciprocity, P.D. No. 1359 granted exemption from payment of excise tax but only to foreign international carriers who are allowed to purchase petroleum products free of specific tax provided the country of said carrier also grants tax exemption *to Philippine carriers.* Both the earlier amendment in the 1977 Tax Code and the present Sec. 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers.

6. ID.; ID.; ID.; AN EXCISE TAX IS A TAX ON THE MANUFACTURER AND NOT ON THE PURCHASER.— 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

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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.

7. ID.; ID.; ID.; 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.— Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, 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. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Baniqued and Baniqued for respondent.

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D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Commissioner of Internal Revenue appeals the Decision[1] dated March 25, 2009 and Resolution[2] dated June 24, 2009 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 415. The CTA dismissed the petition for review filed by petitioner assailing the CTA First Division's Decision[3] dated April 25, 2008 and Resolution[4] dated July 10, 2008 which ordered petitioner to refund the excise taxes paid by respondent Pilipinas Shell Petroleum Corporation on petroleum products it sold to international carriers.

The facts are not disputed.

Respondent is engaged in the business of processing, treating and refining petroleum for the purpose of producing marketable products and the subsequent sale thereof.[5]

On July 18, 2002, respondent filed with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue (BIR) a formal claim for refund or tax credit in the total amount of ₱28,064,925.15, representing excise taxes it allegedly paid on sales and deliveries of gas and fuel oils to various international carriers during the period October to December 2001. Subsequently, on October 21, 2002, a similar claim for refund or tax credit was filed by respondent with the BIR covering the period January to March 2002 in the amount

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[1] *Rollo*, pp. 45-66. Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] *Id.* at 68-71.

[3] *Id.* at 117-133. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Lovell R. Bautista, concurring.

[4] *Id.* at 153-156.

[5] Joint Stipulation of Facts and Issues, records (CTA Case No. 6839), p. 206.

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of ₱41,614,827.99. Again, on July 3, 2003, respondent filed another formal claim for refund or tax credit in the amount of ₱30,652,890.55 covering deliveries from April to June 2002.[6]

Since no action was taken by the petitioner on its claims, respondent filed petitions for review before the CTA on September 19, 2003 and December 23, 2003, docketed as CTA Case Nos. 6775 and 6839, respectively.

In its decision on the consolidated cases, the CTA's First Division ruled that respondent is entitled to the refund of excise taxes in the reduced amount of ₱95,014,283.00. The CTA First Division relied on a previous ruling rendered by the CTA *En Banc* in the case of "*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*"[7] where the CTA also granted respondent's claim for refund on the basis of excise tax exemption for petroleum products sold to international carriers of foreign registry for their use or consumption outside the Philippines. Petitioner's motion for reconsideration was denied by the CTA First Division.

Petitioner elevated the case to the CTA *En Banc* which upheld the ruling of the First Division. The CTA pointed out the specific exemption mentioned under Section 135 of the National Internal Revenue Code of 1997 (NIRC) of petroleum products sold to international carriers such as respondent's clients. It said that this Court's ruling in *Maceda v. Macaraig, Jr.*[8] is inapplicable because said case only put to rest the issue of whether or not the National Power Corporation (NPC) is subject to tax considering that NPC is a tax-exempt entity mentioned in Sec. 135 (c) of the NIRC (1997), whereas the present case involves the tax exemption of the sale of petroleum under Sec. 135 (a) of the same Code. Further, the CTA said that the ruling in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[9]

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[6] *Rollo,* p. 119.

[7] CTA Case No. 6554, November 28, 2006, *rollo,* pp. 125-126.

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

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

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likewise finds no application because the party asking for the refund in said case was the seller-producer based on the exemption granted under the law to the tax-exempt buyers, NPC and Voice of America (VOA), whereas in this case it is the article or product which is exempt from tax and not the international carrier.

Petitioner filed a motion for reconsideration which the CTA likewise denied.

Hence, this petition anchored on the following grounds:

I

SECTION 148 OF THE NATIONAL INTERNAL REVENUE CODE EXPRESSLY SUBJECTS THE PETROLEUM PRODUCTS TO AN EXCISE TAX BEFORE THEY ARE REMOVED FROM THE PLACE OF PRODUCTION.

II

THE ONLY SPECIFIC PROVISION OF THE LAW WHICH GRANTS TAX CREDIT OR TAX REFUND OF THE EXCISE TAXES PAID REFERS TO THOSE CASES WHERE GOODS LOCALLY PRODUCED OR MANUFACTURED ARE ACTUALLY EXPORTED WHICH IS NOT SO IN THIS CASE.

III

THE PRINCIPLES LAID DOWN IN *MACEDA VS. MACARAIG, JR.* AND *PHILIPPINE ACETYLENE CO. VS. CIR* ARE APPLICABLE TO THIS CASE.[10]

The Solicitor General argues that the obvious intent of the law is to grant excise tax exemption to international carriers and exempt entities as buyers of petroleum products and not to the manufacturers or producers of said goods. Since the excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production, respondent paid the subject excise taxes as manufacturer or producer of the petroleum products pursuant to Sec. 148 of the NIRC. Thus, regardless of who the buyer/purchaser is, the excise tax on petroleum products attached to the said goods before

[10] *Rollo,* pp. 17-18.

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their sale or delivery to international carriers, as in fact respondent averred that it paid the excise tax on its petroleum products when it "withdrew petroleum products from its place of production for eventual sale and delivery to various international carriers as well as to other customers."[11] Sec. 135 (a) and (c) granting exemption from the payment of excise tax on petroleum products can only be interpreted to mean that the respondent cannot pass on to international carriers and exempt agencies the excise taxes it paid as a manufacturer or producer.

As to whether respondent has the right to file a claim for refund or tax credit for the excise taxes it paid for the petroleum products sold to international carriers, the Solicitor General contends that Sec. 130 (D) is explicit on the circumstances under which a taxpayer may claim for a refund of excise taxes paid on manufactured products, which express enumeration did not include those excise taxes paid on petroleum products which were eventually sold to international carriers *(expressio unius est exclusio alterius)*. Further, the Solicitor General asserts that contrary to the conclusion made by the CTA, the principles laid down by this Court in *Maceda v. Macaraig, Jr.*[12] and *Philippine Acetylene Co. v. Commissioner of Internal Revenue*[13] are applicable to this case. Respondent must shoulder the excise taxes it previously paid on petroleum products which it later sold to international carriers because it cannot pass on the tax burden to the said international carriers which have been granted exemption under Sec. 135 (a) of the NIRC. Considering that respondent failed to prove an express grant of a right to a tax refund, such claim cannot be implied; hence, it must be denied.

On the other hand, respondent maintains that since petroleum products sold to qualified international carriers are exempt from excise tax, no taxes should be imposed on the article, to which goods the tax attaches, whether in the hands of the said international carriers or the petroleum manufacturer or producer.

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[11] *Id.* at 274.

[12] *Supra* note 8.

[13] *Supra* note 9.

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As these excise taxes have been erroneously paid taxes, they can be recovered under Sec. 229 of the NIRC. Respondent contends that contrary to petitioner's assertion, Sections 204 and 229 authorizes respondent to maintain a suit or proceeding to recover such erroneously paid taxes on the petroleum products sold to tax-exempt international carriers.

As to the jurisprudence cited by the petitioner, respondent argues that they are not applicable to the case at bar. It points out that *Maceda v. Macaraig, Jr.* is an adjudication on the issue of tax exemption of NPC from direct and indirect taxes given the passage of various laws relating thereto. What was put in issue in said case was NPC's right to claim for refund of indirect taxes. Here, respondent's claim for refund is not anchored on the exemption of the buyer from direct and indirect taxes but on the tax exemption of the goods themselves under Sec. 135. Respondent further stressed that in *Maceda v. Macaraig, Jr.*, this Court recognized that if NPC purchases oil from oil companies, NPC is entitled to claim reimbursement from the BIR for that part of the purchase price that represents excise taxes paid by the oil company to the BIR. *Philippine Acetylene Co. v. CIR*, on the other hand, involved sales tax, which is a tax on the transaction, which this Court held as due from the seller even if such tax cannot be passed on to the buyers who are tax-exempt entities. In this case, the excise tax is a tax on the goods themselves. While indeed it is the manufacturer who has the duty to pay the said tax, by specific provision of law, Sec. 135, the goods are stripped of such tax under the circumstances provided therein. *Philippine Acetylene Co., Inc. v. CIR* was thus not anchored on an exempting provision of law but merely on the argument that the tax burden cannot be passed on to someone.

Respondent further contends that requiring it to shoulder the burden of excise taxes on petroleum products sold to international carriers would effectively defeat the principle of international comity upon which the grant of tax exemption on aviation fuel used in international flights was founded. If the excise taxes paid by respondent are not allowed to be refunded or credited based on the exemption provided in Sec. 135 (a), respondent

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avers that the manufacturers or oil companies would then be constrained to shift the tax burden to international carriers in the form of addition to the selling price.

Respondent cites as an analogous case *Commissioner of International Revenue v. Tours Specialists, Inc.*[14] which involved the inclusion of hotel room charges remitted by partner foreign tour agents in respondent TSI's gross receipts for purposes of computing the 3% contractor's tax. TSI opposed the deficiency assessment invoking, among others, Presidential Decree No. 31, which exempts foreign tourists from paying hotel room tax. This Court upheld the CTA in ruling that while CIR may claim that the 3% contractor's tax is imposed upon a different incidence, *i.e.*, the gross receipts of the tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless imposes a tax actually on room charges. One way or the other, said the CTA, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists.

The instant petition squarely raised the issue of whether respondent as manufacturer or producer of petroleum products is exempt from the payment of excise tax on such petroleum products it sold to international carriers.

In the previous cases[15] decided by this Court involving excise taxes on petroleum products sold to international carriers, what was only resolved is the question of who is the proper party to

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[14] G.R. No. 66416, March 21, 1990, 183 SCRA 402.

[15] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 166482, January 25, 2012; *Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 180909, January 19, 2011, 640 SCRA 203; *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 639; *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141; and *Silkair (Singapore), Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100.

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claim the refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. We have ruled in the said cases that the statutory taxpayer, the local manufacturer of the petroleum products who is directly liable for the payment of excise tax on the said goods, is the proper party to seek a tax refund. Thus, a foreign airline company who purchased locally manufactured petroleum products for use in its international flights, as well as a foreign oil company who likewise bought petroleum products from local manufacturers and later sold these to international carriers, have no legal personality to file a claim for tax refund or credit of excise taxes previously paid by the local manufacturers even if the latter passed on to the said buyers the tax burden in the form of additional amount in the price.

Excise taxes, as the term is used in the NIRC, refer to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the value-added tax (VAT).[16]

As to petroleum products, Sec. 148 provides that excise taxes attach to the following refined and manufactured mineral oils and motor fuels *as soon as they are in existence as such*:

(a) Lubricating oils and greases;

(b) Processed gas;

(c) Waxes and petrolatum;

(d) Denatured alcohol to be used for motive power;

(e) Naphtha, regular gasoline and other similar products of distillation;

(f) Leaded premium gasoline;

(g) Aviation turbo jet fuel;

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[16] Sec. 129, NIRC (1997).

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(h) Kerosene;

(i) Diesel fuel oil, and similar fuel oils having more or less the same generating power;

(j) Liquefied petroleum gas;

(k) Asphalts; and

(l) Bunker fuel oil and similar fuel oils having more or less the same generating capacity.

Beginning January 1, 1999, excise taxes levied on locally manufactured petroleum products and indigenous petroleum are required to be paid *before* their removal from the place of production.[17] However, Sec. 135 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;

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

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

Respondent claims it is entitled to a tax refund because those petroleum products it sold to international carriers are not subject to excise tax, hence the excise taxes it paid upon withdrawal of those products were erroneously or illegally collected and should

[17] Sec. 130, par. (2).

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not have been paid in the first place. Since the excise tax exemption attached to the petroleum products themselves, the manufacturer or producer is under no duty to pay the excise tax thereon.

We disagree.

Under Chapter II "Exemption or Conditional Tax-Free Removal of Certain Goods" of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer. Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135 (a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.

On July 26, 1996, petitioner Commissioner issued Revenue Regulations 8-96[18] ("Excise Taxation of Petroleum Products") which provides:

SEC. 4. **Time and Manner of Payment of Excise Tax on Petroleum Products, Non-Metallic Minerals and Indigenous Petroleum —**

I. Petroleum Products

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a) *On locally manufactured petroleum products*

The specific tax on petroleum products locally manufactured or produced in the Philippines shall be paid by the manufacturer, producer, owner or person having possession of the same, and

[18] REVENUE REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 8184, AN ACT RESTRUCTURING THE EXCISE TAX ON PETROLEUM PRODUCTS, AMENDING FOR THIS PURPOSE PERTINENT SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

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> such tax shall be paid within fifteen (15) days from date of removal from the place of production. (Underscoring supplied.)

Thus, if an airline company purchased jet fuel from an unregistered supplier who could not present proof of payment of specific tax, the company is liable to pay the specific tax on the date of purchase.[19] Since the excise tax must be paid upon withdrawal from the place of production, respondent cannot anchor its claim for refund on the theory that the excise taxes due thereon should not have been collected or paid in the first place.

Sec. 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[20]

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.[21]

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[19] Sec. 5, *id.*

[20] *BLACK'S LAW DICTIONARY*, Fifth Edition, p. 486.

[21] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 165, citing *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160, 183 and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

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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.

On January 22, 2008, or five years after the sale by respondent of the subject petroleum products, then Secretary of Finance Margarito B. Teves issued Revenue Regulations No. 3-2008 "Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment." Said issuance recognized the "tax relief to which the taxpayers are entitled" by availing of the following remedies: (a) a claim for excise tax exemption pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment.

SEC. 2. IMPOSITION OF EXCISE TAX ON REMOVAL OF EXCISABLE ARTICLES FOR EXPORT OR SALE/DELIVERY TO INTERNATIONAL CARRIERS AND OTHER TAX-EXEMPT ENTITIES/AGENCIES. — **Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment**, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable.

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(Emphasis supplied.)

In this case, however, the Solicitor General has adopted a position contrary to existing BIR regulations and rulings recognizing the right of oil companies to seek a refund of excise taxes paid on petroleum products they sold to international carriers. It is argued that there is nothing in Sec. 135 (a) which explicitly grants exemption from the payment of excise tax in favor of oil companies selling their petroleum products to international carriers and that the only claim for refund of excise taxes authorized by the NIRC is the payment of excise tax on exported goods, as explicitly provided in Sec. 130 (D), Chapter I under the same Title VI:

(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.

According to the Solicitor General, Sec. 135 (a) in relation to the other provisions on excise tax and from the nature of indirect taxation, may only be construed as prohibiting the manufacturers-sellers of petroleum products from passing on the tax to international carriers by incorporating previously paid excise taxes into the selling price. In other words, respondent cannot shift the tax burden to international carriers who are allowed to purchase its petroleum products without having to pay the added cost of the excise tax.

We agree with the Solicitor General.

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[22] this Court held that petitioner manufacturer who sold

[22] *Supra* note 9.

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its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and not a specific provision of law exempting the goods sold from the excise tax. But as already stated, the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products). Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such,"[23] there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135 (a) for their purchases of locally manufactured petroleum products. Pursuant to our ruling in *Philippine Acetylene*, 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 Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

[23] Sec. 148, par. 1.

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In *Maceda v. Macaraig, Jr.*,[24] the Court specifically mentioned excise tax as an example of an indirect tax where the tax burden can be shifted to the buyer:

> On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price."

An excise tax is basically an indirect tax. Indirect 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.[25]

Further, in *Maceda v. Macaraig, Jr.*, the Court ruled that because of the tax exemptions privileges being enjoyed by NPC under existing laws, the tax burden may not be shifted to it by the oil companies who shall pay for fuel oil taxes on oil they supplied to NPC. Thus:

> In view of all the foregoing, the 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

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[24] G.R. No. 88291, May 31, 1991, 197 SCRA 771, 791, cited in *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, *supra* note 15, at 155-156.

[25] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72, citing *Commissioner of Internal Revenue v. Tours Specialists Inc.*, *supra* note 14, at 413.

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 that 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 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.[26] (Emphasis supplied.)

In the case of international air carriers, the tax exemption granted under Sec. 135 (a) is based on "a long-standing international consensus that fuel used for international air services should be tax-exempt." The provisions of the 1944 Convention of International Civil Aviation or the "Chicago Convention," which form binding international law, requires the contracting parties not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state. Between individual countries, the exemption of airlines from national taxes and customs duties on a range of aviation-related goods, including parts, stores and fuel is a standard element of the network of bilateral "Air Service Agreements."[27] Later, a Resolution issued by the International Civil Aviation Organization (ICAO) expanded the provision as

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[26] *Supra* note 8, at 256.

[27] Antony Seely, *"Taxing Aviation Fuel" House of Commons Library*, accessed at *www.parliament.uk/briefing -papers/SN00523.pdf*, citing "Indirect Taxes on International Aviation," by Michael Keen & John Strand, *Fiscal Studies*, Vol. 28 No. 1 2007 (pp. 6-7) and HM Treasury/Dept for Transport, *Aviation and the Environment: Using Economic Instruments*, March 2003 (p. 10).

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to similarly exempt from taxes all kinds of 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.[28] Though initially aimed at establishing uniformity of taxation among parties to the treaty to prevent double taxation, the tax exemption now generally applies to fuel used in international travel by both domestic and foreign carriers.

On April 21, 1978, then President Ferdinand E. Marcos issued Presidential Decree (P.D.) No. 1359:

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*;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

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

> "Sec. 134. Articles subject to specific tax. Specific internal revenue taxes apply to things manufactured or produced in the Philippines for domestic sale or consumption and to things imported, but not to anything produced or manufactured here which shall be removed for exportation and is actually exported without returning to the Philippines, whether so exported in its original state or as an ingredient or part of any manufactured article or product.

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[28] "Prohibition Against Taxes On International Airlines", prepared by The International Air Transport Association (IATA), *globalwarming.house.gov/files/LTTR/ACES/IntlAirTransport...*

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"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."

Section 2. This Decree shall take effect immediately.

Contrary to respondent's assertion that the above amendment to the former provision of the 1977 Tax Code supports its position that it was not liable for excise tax on the petroleum products sold to international carriers, we find that no such inference can be drawn from the words used in the amended provision or its introductory part. Founded on the principles of international comity and reciprocity, P.D. No. 1359 granted exemption from payment of excise tax but only to foreign international carriers who are allowed to purchase petroleum products free of specific tax provided the country of said carrier also grants tax exemption *to Philippine carriers*. Both the earlier amendment in the 1977 Tax Code and the present Sec. 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers.

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.

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Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted,[29] it is never presumed[30] nor be allowed solely on the ground of equity.[31] These exemptions, therefore, 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. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[32]

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.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

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[29] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006, 489 SCRA 147, 155, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, supra* note 25, at 74 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation,* G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 224.

[30] *Province of Abra v. Hernando,* No. L-49336, August 31, 1981, 107 SCRA 104, 109, citing early cases.

[31] *Commissioner of Internal Revenue v. Court of Appeals,* G.R. Nos. 122161 & 120991, February 1, 1999, 302 SCRA 442, 453, citing *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue,* G.R. No. 117359, July 23, 1998, 293 SCRA 76, 91.

[32] *Silkair(Singapore) PTE. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 184398, February 25, 2010, *supra* note 15, at 659, citing *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.