EN BANC

[G.R. No. 211303, June 15, 2021]

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

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 9, 2013 and the Resolution[3] dated February 3, 2014 of the Court of Tax Appeals (CTA)-*En Banc* (CTA-*En Banc*) in CTA EB No. 960, which affirmed the Decision[4] dated September 7, 2012 and the Resolution[5] dated November 12, 2012 of the CTA-Third Division in CTA Case No. 7731, denying petitioner *Pilipinas Shell* Petroleum Corporation (PSPC)'s claim for refund for alleged erroneously paid excise taxes on imported and locally purchased Jet A-1 fuel which it subsequently sold to international air carriers.

The Facts

PSPC is a corporation engaged in the manufacture, processing, treatment, refinement, and sale of petroleum products, including Jet A-1 fuel.[6] Between the period of February and March 2006, **PSPC imported 28,578,673 liters of Jet A-1 fuel** through its refinery in Tabangao, Batangas, and accordingly, paid the Bureau of Customs in Batangas (BOC) excise taxes at the rate of P3.67 per liter totaling P104,883,730.27.[7] Within the same period, **PSPC purchased locally 3,192,012 liters of Jet A-1 fuel from *Chevron* Philippines, Inc.** (*Chevron*), and the latter **passed-on the cost** of the excise taxes it previously paid upon importation thereof to PSPC as part of the total bill.[8] From February 27 to April 9, 2006, PSPC sold a total of 24,974,294 liters of Jet A-1 fuel to various international carriers for their consumption outside of the Philippines.[9] On February 15, 2007, PSPC filed a claim for **refund or tax credit** with the Bureau of Internal Revenue Large Taxpayers Audit and Investigation Division II (BIR-LTAID II), alleging that the excise taxes it paid on the Jet A-1 fuel which was sold to international carriers was in the nature of erroneously or illegally collected taxes; hence, it was entitled to **a refund in the total amount of P91,655,658.98**.[10] Due to the BIR-LTAID II's inaction, PSPC filed a **Petition for Review**[11] with the CTA on February 15, 2008, docketed as CTA Case No. 7731.[12]

In a Decision[13] dated September 7, 2012, the CTA-Third Division **denied** PSPC's claim for refund for lack of merit.[14] In arriving at its conclusion, the CTA-Third Division relied on the Court's pronouncement in ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*** (2012 *Pilipinas Shell* Decision),[15] which declared that Section 135 (a) of the National Internal Revenue Code (Tax Code)[16] did not confer an excise tax exemption to local manufacturers of petroleum products; rather, said provision merely prohibits the shifting of the burden thereof to the international carriers who buy the same from them.[17] In the same vein, the CTA-Third Division held that the excise taxes PSPC paid on the Jet A-1 fuel sold to international air carriers from February to April 2006 amounting to P91,655,658.98 could not be considered as erroneously or illegally paid.[18]

PSPC moved for reconsideration[19] but was denied in a Resolution[20] dated November 12, 2012; thus, it elevated[21] the case to the CTA-*En Banc*, docketed as CTA *EB* No. 960.

In a Decision[22] dated September 9, 2013, the CTA-*En Banc* **denied** PSPC's petition for lack of merit.[23] It held that the 2012 *Pilipinas Shell* Decision was squarely applicable to the instant case due to the identity of the parties, the facts, the issues, and the laws applicable. It also held that the 2012 *Pilipinas Shell* Decision did not overturn established precedents since the issue involved therein dealt specifically with the issue of whether there was an express tax exemption grant under the Tax Code to local manufacturers of petroleum products who sell the same to international carriers, whereas previous cases dealt with determining who was the proper party to file a claim for refund for excise taxes.[24]

Unperturbed, PSPC moved for reconsideration,[25] which was, however, denied in a Resolution[26] dated February 3, 2014.

In the meantime, **the 2012 *Pilipinas Shell* Decision was reconsidered by the Court through a Resolution[27] dated February 19, 2014 (2014 *Pilipinas Shell* Resolution)**.

Consequently, on April 3, 2014, PSPC filed the present petition before the Court.[28] In its petition, PSPC argues that the CTA-*En Banc* rulings should be reversed and set aside in light of the Court's pronouncements in the 2014 *Pilipinas Shell* Resolution.[29] Based on the said Resolution, PSPC asserts that Section 135 (a) of the Tax Code should be interpreted as granting the exemption to the petroleum product itself since excise taxes are applicable to certain specific goods or articles. While manufacturers or producers of petroleum are liable to pay excise taxes, this liability is reversed when the same is sold to international carriers due to the exemption of the same product under Section 135 (a). Thus, the excise taxes that PSPC had previously paid became erroneously paid taxes which

can be recovered pursuant to Sections 204 and 229 of the Tax Code.[30]

In a Manifestation[31] filed on September 12, 2014, PSPC expressed that the Court has denied with finality all motions for reconsideration filed by the Office of the Solicitor General (OSG) in the 2014 *Pilipinas Shell* Resolution. Given the identity of the parties, factual settings, and issues raised with the instant case, PSPC prays that the Court resolves the present petition in the same manner pursuant to the doctrine of *stare decisis*.[32]

On September 18, 2014, the OSG, representing respondent Commissioner of Internal Revenue, filed its Comment[33] to PSPC's petition. It countered that the 2014 *Pilipinas Shell* Resolution was inapplicable to the present case since the said Resolution specifically involved the application of bilateral Air Transport Agreements with other countries.[34] As such, it claimed that PSPC was liable to pay taxes due on the imported Jet A-1 fuel pursuant to Sections 131 (a) to 148 of the Tax Code, pointing out that PSPC was not a manufacturer or producer of the petroleum products but merely an importer thereof.[35]

On March 2, 2017, PSPC filed its Reply.[36] It reiterated the applicability of the 2014 *Pilipinas Shell* Resolution to the instant case. It also added that the doctrine in the said case was already affirmed by the Court *En Banc* in ***Chevron Philippines, Inc. v. Commissioner of Internal Revenue*** (2015 *Chevron*)[37] and by the Court's Third Division in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[38] docketed as G.R. No. 180402 which involved a similar claim for refund for excise taxes paid on gas and fuel oils that were sold to various international carriers. Thus, PSPC echoes its earlier prayer to grant its claim for refund by virtue of the principle of *stare decisis*.[39]

Notably, this case was raffled to a member of the Third Division of the Court on March 10, 2014. On December 7, 2020, the case was elevated to the Court *En Banc*, which was then accepted by the latter on January 5, 2021, owing to the possibility of reversing a doctrine or principle of law previously laid down by the Court, *i.e.*, the Court's pronouncements in the 2014 *Pilipinas Shell* Resolution and the 2015 *Chevron*.[40] After due deliberations on the varying positions in this case, the members of the *Banc* voted to assign the case to the present *ponente* for final decision only last June 15, 2021.[41]

The Issue Before the Court

The principal issue to be resolved is whether or not PSPC is entitled to its claim for refund for the excise taxes it paid on the Jet A-1 fuel sold to international carriers from February 27 to April 9, 2006.

The Court's Ruling

The petition is partly meritorious.

I.

At the outset, it bears stressing that the doctrine of *stare decisis et non quieta movere*, or "to adhere to precedents and not to unsettle things which are established,"[42] is applicable to the present case.

To recount, "[t]he doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."[43] The purpose thereof is to secure certainty and stability of judicial decisions.[44] Although the doctrine of *stare decisis* is not an absolute rule,[45] absent **strong and compelling reasons,** cases based on **substantially similar facts and questions of law** ought to follow precedent in order to preserve the virtue of predictability expected from this Court.[46]

In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[47] the Court applied the principle of *stare decisis* to uphold PSPC's claim for tax refund of excise taxes paid in light of its importation of fuel sold to international carriers, on the basis of the 2014 *Pilipinas Shell* Resolution "since the facts, issues, and even the parties involved [were] exactly identical."[48]

Similarly, the present case involves PSPC's right to claim refund for the excise taxes it paid on petroleum products later sold to various international carriers. More significantly, the very same question of law is to be resolved by the Court in the present case, and that there is no remarkable distinction in factual circumstances. Thus, as there appears to be no compelling reason to deviate from settled precedent, by virtue of the doctrine of *stare decisis*, PSPC's petition should be granted, and the CTA-*En Banc*'s rulings should be set aside in this case.

This notwithstanding, for the guidance of the bench, bar, and the public, the Court takes this opportunity to elucidate on certain conceptual distinctions in the 2014 *Pilipinas Shell* Resolution vis-à-vis the Court's subsequent pronouncements in the 2015 *Chevron*. Furthermore, the *ponencia* deems it apt to lay down the foundational principles and concepts relative to excise taxes to sufficiently address the counterarguments offered by the other members of the *Banc* who have dissented against the majority ruling.

II.

By its nature, an excise tax under the Philippine taxation system pertains to the tax levied on certain goods, whether at a specific rate or *ad valorem*.[49] As case law characterizes,[50] **an excise tax is not a tax on the exercise of a privilege, but rather a levy on certain**

articles which are manufactured or imported for domestic consumption. It is equally settled that that the accrual or liability to pay the same arises immediately upon importation or as soon as the goods come into existence when manufactured.[51]

Furthermore, excise taxes are **indirect taxes**,[52] **as opposed to direct taxes**. Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of **tax incidence** (or the actual liability to pay the tax) and **tax burden** (the economic burden of the tax incident).

On the one hand, **direct taxes** are "those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,"[53] which means, the tax incidence and tax burden fall upon the same person.

On the other, **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**."[54] As jurisprudence explains, "this **shifting process**, otherwise known as '**passing on**,' is largely a **contractual affair** between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the **manufacturer [or] producer** (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) [is] **still regarded as the statutory [taxpayer] under the law**. To this end, **the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**." [55]

Thus, when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. **Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the statutory taxpayer, who must correspondingly benefit from any tax exemption**. In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not *per se* the excise tax liability imposed under Section 129[56] of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that **"[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers**. The fact that [statutory taxpayer/importer], 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. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer."[57] **This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the "exemption" granted under Section 135 governing excise taxes.**

III.

At its core, the purpose of a grant of tax exemption is "some public benefit or interest, which the law-making body considers sufficient to offset the monetary loss entailed in the grant of the exemption."[58] However, the **object of the grant of tax exemption** is not necessarily a natural person similar to how "the objects of taxation are either persons, property[,] and property rights within the jurisdiction of the taxing authority."[59] As such, generally speaking, the object of tax exemptions may either be **personal or impersonal**. Personal exemptions conceptually pertain to those "granted directly in favor of such persons as are within the contemplation of the law granting the exemption."[60] On the other hand, an impersonal exemption may be said to exist when a tax exemption is "granted directly in favor of a certain class of property."[61] If the tax exemption is impersonal in nature, then, regardless of who transacts with the property, the exemption should still apply. This framework of personal and impersonal tax exemptions underpins the exemption granted under Section 135 on excisable articles.

Notably, the Court, in the 2014 *Pilipinas Shell* Resolution, stated that the "exemption from payment of excise tax" under Section 135 is "conferred on international carriers who purchased the petroleum products of respondent";[62] thus, in said case, the tax exemption under Section 135 covering said products was characterized as a grant of a personal tax exemption.

However, in the subsequent case of 2015 *Chevron*,[63] the Court effectively abandoned the foregoing characterization, and instead, correctly categorized that the tax exemption under Section 135 is **"in favor of the petroleum products on which the excise tax was levied in the first place."**[64] As such, the Court, in 2015 *Chevron*, validated the nature of Section 135 as a provision conferring an impersonal tax exemption, which, in fact, cogently squares with the nature of excise taxes being a tax on property, rather than a tax on persons.

Being an impersonal tax exemption, Section 135 cannot be therefore interpreted as an exemption primarily conferred to the buyers because "they are not under any legal duty to pay the excise tax."[65] To reiterate, upon the buyers' purchase of the articles, the "excise tax" they pay, if any, is, in reality, a mere passed-on cost that forms part of the purchase price. Hence, while purchasers bear the economic burden, they do not, by the mere fact of assuming the passed-on costs, become legally regarded as statutory taxpayers. In this

regard, Associate Justice Henri Jean Paul B. Inting aptly observed that "a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for the tax and wishes to be immune from therefrom."[66]

The impersonal nature of the tax exemption is also expressed in the wording itself of Section 135:

> Section 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, (emphasis supplied)

As worded, the object of Section 135 itself is not the enumerated persons but rather, the **"petroleum products sold."** Palpably, **based on Section 135's phraseology, the enumerated persons are merely descriptive of the petroleum products, *i.e.*, the persons to which the products are sold to. As such, the wording of Section 135 hews more closely with the character of impersonal tax exemptions, which is, in turn, consistent with the nature of excise taxes as taxes not on persons but on the goods/articles**. As equally observed by Associate Justice Alfredo Benjamin S. Caguioa, " [t]he succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. **Paragraphs (a), (b)[,] and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative**."[67]

IV.

At this juncture, it is likewise relevant to mention that since an excise tax is in the nature of a property tax, it is thus erroneous to consider the operation of a tax exemption thereto in the same way as a transactional tax, wherein every purchaser and seller may be considered as a statutory taxpayer for every succeeding transaction, only ending with the final consumer. **Rather, the exemption under Section 135 must be reconciled with the idea that liability for the tax attaches to the articles as soon as they come into existence or immediately upon importation.**

The Court, in the 2015 *Chevron*, had already settled that the true status of the goods, whether ultimately taxable or tax-exempt, is **actually conditional** or **subject to confirmation** upon the sale of the articles to any of the entities enumerated under Section 135. This conditional taxability can actually be seen in another related provision in the Tax Code, *i.e.*, Section 131 thereof:

> Section 131. *Payment of Excise Taxes on Imported Articles*. —
>
> (A) *Persons Liable*. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> **In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.**
>
> x x x x (Emphasis and underscoring supplied)

As may be gleaned from Section 131 as above-cited, although certain articles may be free from excise taxes upon importation, they may subsequently become subject to the same depending on the subsequent buyer. This is essentially the same principle of **subsequent confirmation** espoused by the 2015 *Chevron*, and is also a necessary consequence of excise tax being a property tax, and not a tax on persons.

Considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, any excise taxes which were previously paid thereon would then be considered as "erroneously or illegally collected," and therefore, subject to refund. In turn, the petroleum products become exempt from excise taxes once it is determined that they are to be sold to, among others, international earners. This reflects Section 135's wording, *i.e.*, that the petroleum products are

considered as tax exempt once they are "sold to [*inter alia*] x x x [i]nternational carriers."

Based on (*a*) the nature of excise taxes as a property tax and an indirect tax, and (*b*) the principle that a buyer, when shouldering the tax burden, does not become the statutory taxpayer, **it is thus clear that the purchaser of local products (such as international carriers) cannot be deemed to have been conferred a tax exemption when it has not been imposed a tax liability**. In the ordinary course of things, international carriers do not manufacture or import petroleum products and hence, are not statutory taxpayers to which the exemption under Section 135 could pertain. **If anything, international carriers merely bear the tax burden when the costs therefor are passed on to them by the actual manufacturers or importers**. However, as earlier discussed, the "passing on" of the tax burden is largely a contractual affair between the parties and should not determine the tax incidence imposed by law unless the contrary is provided. **As such, the tax exemption under Section 135 must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).**

V.

Prefaced by these foundational principles, the *ponencia* now deems it fit to address the minority's contrary position in this case that Section 135 instead confers a "tax exemption" in favor of international carriers, among others, and not the actual statutory taxpayers, *i.e.*, the importers/manufacturers of petroleum products sold to international earners.

For ready reference, the crux of the dissents may be condensed into the following contentions:

a. Tax emptions are strictly construed against the taxpayer. To claim exemption, there must be a clear conferral by law. Here, nowhere in the text of the relevant provisions of the Tax Code can it be found that a tax exemption was conferred to manufacturers/importers of petroleum products. Rather, the law clearly imposes excise taxes upon their importation of the said articles. Hence, the same cannot be deemed erroneously or illegally collected.[68]

b. The proper interpretation based on the clear text of Section 135 of the Tax Code is that the exemption is granted to the entities enumerated. **Hence, the manufacturer/importers should be deemed as simply prohibited to pass on the burden of the excise taxes to the said entities**.[69]

c. The rationale of the Court in the 2014 *Pilipinas Shell* Resolution that not granting the refund would result in a possible violation of the Philippines' treaty obligations is speculative at best and cannot form the basis of a claim for refund.[70]

As to the ***first*** contention, it has been earlier discussed that the manufacturer's/importer's right to claim a refund for petroleum products sold to international carriers is actually supported by the text of Section 135 of the Tax Code. To repeat, Section 135 states that "**[p]etroleum products sold** to the following **are exempt** from excise tax."[71] Hence, while the law does not explicitly state who should benefit from this impersonal tax exemption, it is nonetheless clear that the tax exemption must correspondingly benefit the statutory taxpayer, *i.e.*, the petroleum products' manufacturers/importers, and not any of the enumerated entities in Section 135 of the Tax Code (*e.g.*, international carriers), who, in the first place, do not bear the tax incidence of the excise taxes, but only bear the tax burden from passed-on costs. Thus, while the general rule is that tax exemptions and tax refunds should be strictly construed against the taxpayer,[72] this general rule does not apply in this case as the conferral thereof in favor of the petroleum products' manufacturers/importers is made clear by the provision's reasonable interpretation bearing in mind the nature of excise taxes.

With respect to the ***second*** contention, it has already been clarified that the entities enumerated under Section 135 only bear the tax burden of the excise taxes paid by the manufacturer/importer. This tax burden is a component cost that forms part of the purchase price of the excisable goods, which are merely passed on. To stress, the passing-on of the tax-burden is largely a contractual affair between the parties. Hence, the tax exemption under Section 135 does not – as it could not – pertain to a prohibition barring the parties from engaging in the "passing-on" of the tax burden which is but a contractual affair. Instead, Section 135 must be construed as a tax exemption which favors the statutory taxpayer of the excisable articles, *i.e.*, the manufacturer/importer of the petroleum products which are sold to international carriers, among others.

Besides, the theory that Section 135 (a) should be interpreted as merely prohibiting the passing on of the excise taxes to international carriers is anathema to the apparent intent behind the tax exemption.

To expound, as explained by the Court in the 2014 *Pilipinas Shell* Resolution, Section 135 (a) represents "our Government['s] compliance with the Chicago Convention, its subsequent resolutions/annexes, and the air transport agreements entered into by the Philippine Government with various countries."[73] **"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."**[74]

To restrict Section 135 (a) to benefit only international carriers (despite not even being statutory taxpayers) would clearly prejudice manufacturers or importers as they are now effectively prohibited from recouping the cost of excise taxes from their

sale of petroleum products to international carriers. *As such, the logical impact is for them to inflate other component costs, else they suffer losses or at least render their businesses unprofitable*. This, in turn, would result in a selective treatment by international carriers to purchase their fuel from low-tax/tax-free jurisdictions, **ultimately stifling international air travel, contrary to the policy sought to be advanced by the grant of tax exemption**. In this relation, it is apt to note that in the same 2014 *Pilipinas Shell* Resolution, the Court pointed out that:

> Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.[75]

These sentiments are also practically echoed by Associate Justice Mario V. Lopez, opining that "it is erroneous to say that Section 135 should be construed as a prohibition on the manufacturers, producers, and importers from passing on the tax burden in the form of an addition to price to the international carriers and exempt entities because the sellers may nonetheless increase the selling price in the guise of additional margin if only to cover the excise tax that could not be shifted. **It must be borne in mind that the manufacturers, producers, or importers turned sellers ultimately determine the price they will sell the products**."[76]

And finally, in response to the ***third*** contention, it must be clarified that the *ponencia* does not assert that the exemption, and the consequent right to refund, should be granted based on some hypothetical violation of treaty obligations. Rather, the *ponencia* merely recognizes that the present reading of Section 135 is more attune to the *ratio legis* of the provision as above-stated. It is well-settled that in reading the law, the Court must give life to the ratio behind the same because "[t]he intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute."[77] To interpret Section 135 as a mere prohibition against "passing-on" – as the minority does – is not only incongruent with the nature and workings of excise taxes, it would also defeat the spirit and intent behind the tax exemption – that is, "the promotion and expansion of international travel through avoidance of multiple taxation and ensuring the viability and safety of international air travel."[78]

VI.

All told, the Court concludes that upon PSPC's sale of its imported petroleum products to

various international carriers from February 27 to April 9, 2006, the tax exemption under Section 135 (a) of the Tax Code came into effect. Consequently, the excise taxes it previously paid on the said petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund under Sections 204 and 229 of the same law.

The foregoing notwithstanding, the Court cannot – as of yet – declare that PSPC is entitled to the entirety of its refund claim. On this score, the observations of Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda are well-taken that PSPC should not be entitled to a refund of the excise taxes pertaining to the Jet A-1 fuel it purchased from Chevron.[79]

To expound, it must be highlighted that the **24,974,294 liters** of Jet A-1 fuel sold by PSPC to international carriers subject of its present claim for tax refund came from two (2) sources: ***first***, from direct importation, amounting to **28,578,673 liters**; and ***second***, from the local purchase from *Chevron*, amounting to ***3,192,012 liters***.

Based on the discussions above, PSPC may claim refund for the excise taxes on the Jet A-1 fuel that it imported itself, considering that it was the statutory taxpayer in that instance.

However, the same is not true for the fuel purchased from Chevron. Again, the standing principle is that the "passing on" of the tax burden is largely a contractual affair between the parties and such affair does not determine the tax incidence imposed by law unless the contrary is provided. Here, when PSPC purchased Jet A-1 fuel from Chevron and paid the corresponding excise taxes due thereon as part of the purchase price, it did not operate to transform PSPC into the statutory taxpayer of the corresponding excise taxes. In reality, what PSPC paid was merely the tax burden, and hence, it cannot benefit from the tax exemption under Section 135 which operates to alleviate the tax incidence. Stated otherwise, in the case of the 3,192,012 liters purchased from Chevron, PSPC was merely a purchaser of the said fuel. Hence, even if it was subsequently sold to international carriers, PSPC could not invoke the exemption under Section 135 (a) because the tax incidence remained with Chevron. At the time that Chevron sold the fuel to PSPC (who is not an international carrier or any of the enumerated persons in Section 135), the excise taxes already became due and demand able, and PSPC's eventual sale thereof to an international carrier cannot anymore negate the accrual of the excise tax liability.

That being said, the Court cannot therefore make a categorical declaration as to the precise refund amount to award PSPC given that the records do not clearly show the composition of the 24,974,294 liters of Jet A-1 fuel actually sold to international carriers. Particularly, records fail to disclose the specific amounts coming from each source, whether **directly imported by PSPC** or **locally purchased by Chevron**. Thus, the Court deems it prudent to **remand** the case back to the CTA to make factual determinations (and accordingly make the corresponding dispositions) on the following:

(*a*) If the 24,974,294 liters of Jet A-1 fuel sold to international earners are entirely

comprised of the 28,578,673 liters imported by PSPC itself, then the entire excise taxes paid by PSPC therefor – provided, that the same is duly proven – may be refunded.

(*b*) If the 24,974,294 liters of Jet A-1 fuel sold to international carriers are comprised of a mix between the 28,578,673 liters imported by PSPC, and the 3,192,012 liters purchased from *Chevron*, then only the excise taxes paid by PSPC for the portion corresponding to PSPC's imported Jet A-1 fuel therefor – provided, that the same is duly proven – may be refunded; conversely, PSPC cannot claim any tax refund for the passed-on costs of excise taxes paid by *Chevron*, which forms part of the purchase price as agreed upon by them.

(*c*) Failure of PSPC to duly prove that its tax refund claim, or any portion thereof, is based on the excise taxes erroneously paid/collected for the imported Jet-A1 fuel it sold to international carriers within the period of February and March 2006 will result in the denial of the refund claim corresponding to that which is not duly proven.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 9, 2013 and the Resolution dated February 3, 2014 rendered by the Court of Tax Appeals (CTA)-*En Banc* in CTA *EB* No. 960, as well as the Decision dated September 7, 2012 and Resolution dated November 12, 2012 of the CTA-Third Division in CTA Case No. 7731 are hereby **SET ASIDE**. The case is hereby **REMANDED** to the CTA in accordance with this Decision.

SO ORDERED.

Gesmundo, C.J., Hernando, Carandang, M. Lopez, Gaerlan, and *Rosario, JJ.,* concur.
Leonen, J., I dissent. see separate opinion
Caguioa, J., please see concurring opinion.
Lazaro-Javier, J., see dissent.
Inting, J., see separate concurring opinion.
Zalameda, J., please see dissenting opinion.
Delos Santos, J., I join the dissent of J. Leonen.
J. Lopez, J., I join the dissent of J. Zalameda.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 15, 20210 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was

received by this Office on March 21, 2022 at 4:05 p.m.

Very truly yours,

(Sgd.) MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

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[1] *Rollo*, pp. 53-87.

[2] Id. at 98-119. Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban, concurring. Justice Amelia R. Cotangco-Manalastas on leave.

[3] Id. at 145-156. Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring.

[4] Id. at 158-174. Penned by Associate Justice Lovell R. Bautista with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, concurring.

[5] Id. at 765-766-A.

[6] Id. at 165-166.

[7] Id. at 166.

[8] Id. at 167.

[9] Id.

[10] Id. at 159.

[11] Dated February 4, 2008; id. at 175-185.

[12] Id. at 159.

[13] Id. at 158-174.

[14] Id. at 173.

[15] 686 Phil. 944 (2012).

[16] Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," also known as the "TAX REFORM ACT OF 1997" (January 1 1998).

[17] See 2012 *Pilipinas Shell* Decision, supra at 965.

[18] See *rollo*, pp. 168-173.

[19] See motion for reconsideration dated September 27, 2012; id. at 715-762.

[20] Id. at 765-766-A.

[21] See petition for review dated December 13, 2012; id. at 774-818.

[22] Id. at 98-119.

[23] Id. at 118.

[24] See id. at 115-118.

[25] See Omnibus Motion A. For Reconsideration of the Decision dated September 9, 2013, B. To Set Case for Oral Argument, C. To Suspend Proceedings Pending Final Resolution of the *Shell case* in the Supreme Court dated October 2,. 2013; id. at 120-143.

[26] Id. at 145-156.

[27] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 727 Phil. 506 (2014).

[28] *Rollo*, p. 53.

[29] See id. at 62-64.

[30] Id. at 65-78.

[31] Dated September 11, 2014; id. at 995-998.

[32] Id. See also Minute Resolution dated June 9, 2014 in G.R. No. 188497 *(Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation)*; id. at 999.

[33] Dated September 3, 2014; id. at 1009-1025.

[34] See id. at 1013-1014.

[35] See id. at 1014-1018.

[36] Dated March 1, 2017; id. at 1044-1068.

[37] 768 Phil. 37 (2015).

[38] 780 Phil. 623 (2016).

[39] *Rollo*, pp. 1045-1047.

[40] See Internal Minute Resolutions dated December 7, 2020 of the Court's Third Division and January 5, 2021 of the Court *En Banc*.

[41] See Internal Minute Resolution dated June 15, 2021 of the Court *En Banc*.

[42] *Lazatin v. Desierto*, 606 Phil. 271, 281 (2009).

[43] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 383 (2013), citing *De Mesa v. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685, 691 (2005).

[44] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 336 (2008).

[45] See *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 760 (2015).

[46] See *Lazatin v. Desierto*, supra at 283; and *Pepsi-Cola Products, Philippines, Inc. v. Pagdanganan*, 535 Phil. 540, 554-555 (2006).

[47] Supra.

[48] Id. at 630.

[49] TAX CODE, Section 129.

[50] See *Petron Corporation v. Tiangco*, 574 Phil. 620, 630 (2008).

[51] See 2015 *Chevron*, supra note 37 at 54.

[52] Sec *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754, 764-767 (2008).

[53] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, 514 Phil. 255, 266 (2005).

[54] Id.; emphasis supplied.

[55] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, 713 Phil. 134, 146 (2013); emphases and underscoring supplied.

[56] Section 129. *Goods Subject to Excise Taxes*. — Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as "specific tax" and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as "*ad valorem* tax."

[57] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, supra note 52 at 766-767; emphasis supplied.

[58] *Commissioner of Internal Revenue v. Botelho Shipping Corporation*, 126 Phil. 846, 851 (1967).

[59] Aralar, Reynaldo B. Basic Taxation (1982 Ed.), p. 65.

[60] Id.

[61] Id.; underscoring supplied.

[62] 2014 *Pilipinas Shell* Resolution, supra note 27 at 517.

[63] Referring to the 2015 *Chevron*, supra note 37.

[64] Id. at 53; emphasis supplied.

[65] Id.

[66] See Concurring Opinion of Associate Justice Henri Jean Paul B. Inting, p. 4.

[67] See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 4; emphasis supplied.

[68] See Dissenting Opinion of Associate Justice Rodil V. Zalameda, pp. 1-2.

[69] See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, pp. 3 and 7-8.

[70] See id. at 9. See also Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 7-8.

[71] Emphasis supplied.

[72] See *Philippine Heart Center v. The Local Government of Quezon City*, G.R. No. 225409, March 11, 2020; *Radio Communications of the Philippines, Inc. v. Provincial Assessor of South Cotabato*, 495 Phil. 681, 691-692 (2005).

[73] Supra note 27 at 518.

[74] Id. at 520; emphasis supplied.

[75] Supra note 28, at 521-522; citing Antony Seely, Taxing Aviation Fuel (Standard Note SN00523, last updated 02 October 2012), House of Commons Library < www.parliament.uk/briefing-paper/SN00523.pdf> (last visited January 30, 2021).

[76] See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 8.

[77] *Torres v. Limjap*, 56 Phil. 141, 145 (1931); citing 2 Jabez Gridley Sutherland, Statutes and Statutory Construction, 693- 695 (Frank E. Horack, Jr. ed. 1943).

[78] 2014 *Pilipinas Shell* Resolution, supra note 27 at 520.

[79] See Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 8-9 and 16; and Dissenting Opinion of Associate Justice Rodil V. Zalameda, pp. 3-4.

DISSENTING OPINION

LEONEN, *J.*:

The doctrine of *strictissimi juris* is well established in tax exemptions and as a corollary, claim for tax refunds based on an alleged tax exemption. Provisions of law which grant tax exemptions must be construed strictly against the taxpayer and liberally in favor of the State. A taxpayer must justify its claim for refund or exemption by the categorical and exact wordings of the law. This Court may not supplant what is not written in the law, and a misinterpretation of statute will not carry with it the effect of *stare decisis*. An inaccurate or erroneous ruling may not bind this Court and restrict it from upholding its duty to preserve the true intent of the law.

On February 15, 2007, *Pilipinas Shell* Petroleum Corporation (Pilipinas Shell) filed a claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the Bureau of Internal Revenue for the recovery of excise taxes paid on Jet A-1 fuel, which were sold to various international carriers for their use and consumption outside of the Philippines.[1]

On September 7, 2012,[2] the Court of Tax Appeals Third Division denied Pilipinas Shell's claim for refund, substantially applying the ruling of this Court in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[3] (2012 *Pilipinas Shell*). According to the Court of Tax Appeals Third Division, excise taxes paid on Jet A-1 fuel, and subsequently sold to international air carriers, cannot be considered erroneously or illegally paid because, being the taxpayer statutorily liable to pay the excise taxes, petitioner rightfully paid what was demandable from it.

When Pilipinas Shell filed an appeal, the Court of Tax Appeals *En Banc*,[4] affirmed the Division. Hence, Pilipinas Shell filed this Petition for Review,[5] asserting that it is entitled to refund or tax credit of excise taxes, which it erroneously paid on petroleum products sold to international carriers, pursuant to the principle of *pacta sunt servanda*.[6]

The majority concludes that Pilipinas Shell's act of selling its imported petroleum products to various international carriers triggered the tax exemption under Section 135(a) of the

Tax Code. Further, it found that the company's paid excise taxes on the petroleum products became erroneously or illegally collected taxes that are proper subject of a claim for refund under Sections 204 and 229 of the same law.[7]

In arriving at this conclusion, the majority explained that Section 135 is consistent with the nature of excise taxes, which are taxes on goods, and not taxes on persons.[8] Thus, the exemption must be understood in relation to the principle that excise taxes attach to the goods "as soon as they come into existence or immediately upon importation."[9] It further held that the object of Section 135 enumerates the persons or entities "to whom petroleum products must be sold to make the excise tax exemption operative."[10]

I disagree.

I

At issue here is the proper appreciation and application of Section 135 of the 1997 National Internal Revenue Code (NIRC), *viz*:

> SECTION 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies*. – Petroleum products sold to the following are exempt from excise tax:
>
> > (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
> >
> > (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption: 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.

The issue presented before this Court is not a novel one. As explained by the majority, this

Court has resolved two intimately similar cases: 2012 *Pilipinas Shell*[11] and *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[12] (2016 *Pilipinas Shell*).

Similar here, the 2012 and 2016 *Pilipinas Shell* rulings likewise began when Pilipinas Shell sought a tax refund of the excise taxes it paid on petroleum it sold to various international carriers. It alleged that it was exempt from the payment of excise taxes on its petroleum product since these were delivered to international carriers, which were exempt pursuant to Section 135 of the National Internal Revenue Code.

In the 2012 *Pilipinas Shell* Decision,[13] this Court denied Pilipinas Shell's prayer, stating that the tax exemption under Section 135 is conferred on specific buyers (e.g., international carriers) of petroleum products, and that it should be construed as an exemption that prohibits the shifting of the burden of the excise tax to international carriers purchasing petroleum products from local manufacturers/sellers.

This Court further held in 2012 *Pilipinas Shell* that, as a seller of imported petroleum products, *Pilipinas Shell* was neither exempt from the payment of excise taxes nor was it entitled to a refund or credit on the excise taxes it had already paid on the petroleum products. This Court declared that, while Section 135(a) of the NIRC exempted international carriers from the purchase of petroleum products with the excise tax component as an added cost in the price, it did not provide the same exception to oil companies which sold the same petroleum products to international carriers.[14]

Unfazed, Pilipinas Shell filed a Motion for Reconsideration which was granted by this Court's First Division in a February 19, 2014 Resolution (2014 *Pilipinas Shell* Resolution).[15] There, Pilipinas Shell's claim for refund was allowed primarily in fulfillment of the country's commitment to international agreements, particularly the 1944 Chicago Convention on International Civil Aviation. As stated in the pertinent portion of the Resolution:

> We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys [sic] petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the effect of denying the domestic 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.[16]

In addition, this Court considered the possible detrimental effect of disallowing the refund or the tax credit sought by oil companies, given the prohibition from shifting their burden on excise taxes to their exempt buyers. It was ruled that denying the oil companies' claims of refund may deter them from selling to tax exempt companies altogether. It was held that:

The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

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

With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tinkering" 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.[17]
(Emphasis supplied, citation omitted)

The same 2014 *Pilipinas Shell* Resolution was used as basis for this Court's 2015 decision in *Chevron Philippines Inc. v. Commissioner of Internal Revenue*,[18] which similarly involved the claim of tax refund or credit on allegedly erroneous or illegal payment of excise taxes on imported petroleum products, which were sold to tax-exempt Clark Development Corporation from the period of August 2007 to December 2007.

Aside from the doctrine laid out in the 2012 *Pilipinas Shell* Decision, in granting Chevron's petition, this Court held that since excise tax is a tax on property, the exemption provided in Section 135 of the NIRC must be made applicable to the product itself: petroleum. Therefore, any previous payment of excise taxes on petroleum that is later delivered to exempted entities must then be refunded or credited.[19]

These principles were again applied in the 2016 *Pilipinas Shell*[20] Decision, pursuant to the principle of *stare decisis*. It was held:

> Under the doctrine of *stare decisis*, the Court must adhere to the principle of law laid down in *Pilipinas Shell and apply the same in the present case, especially since the facts, issues, and even the parties involved are exactly identical. Thus, the Court hereby holds that Pilipinas Shell's claim for refund/tax credit must be granted pursuant to Pilipinas Shell*, as its petroleum products sold to international carriers for the period of November 2000 to March 2001 are exempt from excise tax, these international carriers being exempt from payment of excise tax under Section 135 (a) of the NIRC.
>
> The Court further notes that during the pendency of this case, the Court, sitting en banc, rendered a decision in *Chervon Philippines, Inc. v. Commissioner of Internal Revenue*, which likewise involved the refund of excise taxes paid on the importation of petroleum products. Applying the principle enunciated in *Pilipinas Shell*, the Court granted therein petitioner Chevron Philippines, Inc.'s motion for reconsideration and directed therein respondent CIR to refund the excise taxes paid on the petroleum products sold to Clark Development Corporation in the period from August 2007 to December 2007, or to issue a tax credit certificate. The Court stated that while the claims in *Pilipinas Shell* and *Chevron* were premised on different subsections of Section 135 of the NIRC, "the basic tax principle applicable was the same in both cases — that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed."[21] (Emphasis supplied, citations omitted)

In resolving the cases above, this Court relied on the similarities of the facts and circumstances presented by each case, and restricted itself from arriving at a different position. Constrained by the principle of *stare decisis*, this Court granted all the claims of refund on excise taxes paid on three grounds: (1) that it was done in fulfillment of the nation's commitment in an international agreement; (2) that denying the prayer of tax refund or credit could lead to the oil companies' refusal to sell petroleum to exempt entities and companies; and (3) since excise tax is tax on property, the exemption provided in Section 135 follows the product: petroleum. In effect, the petroleum becomes exempt from excise taxes once it is sold to exempt entities, and any payment on it must then be refunded or credited. These very same principles were again applied here.

I registered my dissent in *Chevron* and reiterate my points here. This Court should not perpetuate an erroneous construction of the law by adhering to precedent. Our duty to uphold the rule of law requires that we reject what appears as *stare decisis*.[22]

II

In its 2014 *Pilipinas Shell* Resolution, this Court, while maintaining that the exemption from excise tax payments under Section 135(a) of the NIRC is conferred on the international carriers, reconsidered its decision in 2012 *Pilipinas Shell*, and granted Pilipinas Shell's claim for refund to "give primary consideration to its broad implications on our [country's] commitment under international agreements."[23]

In reversing its decision in 2012 *Pilipinas Shell*, this Court provided an interpretation of Section 135 that was not within the text of the law. There is no provision in the NIRC that expressly exempts the owners or importers of petroleum products from paying excise taxes on the imported products.

Conversely, Section 129 of the NIRC of 1997, as amended, imposes excise taxes on two kinds of goods, namely: (1) goods manufactured or produced in the Philippines for domestic sales, consumption, or for any other disposition; and (2) imported goods, including petroleum. Section 148[24] of the Code expressly subjects petroleum products to an excise tax, which shall attach to the goods as soon as they are in existence. In addition, Section 131(a) provides who are liable for the subject excise taxes:

> SECTION 131. *Payment of Excise Taxes on Imported Articles*. —
>
> (A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

Applying the letter of the law in the case before us, Pilipinas Shell, being the manufacturer or importer of the petroleum goods and the statutory taxpayer, correctly paid the excise tax imposed on the petroleum. Its payments cannot be considered as illegally or erroneously collected taxes.

Pilipinas Shell should not acquire the exemption provided under Section 135(c) by selling the petroleum goods to international carriers. As stated in 2012 *Pilipinas Shell*, the manufacturer, seller, or importer cannot claim a tax exemption based on the exemption enjoyed by the buyer.[25] This is aptly illustrated in *La Suerte Cigar & Cigarette Factory v. Court of Appeals*,[26] to wit:

> Excise tax is a tax on the production, sale, Gr consumption of a specific commodity in a country. . . . ***It does not matter to what use the article[s] subject to tax is put; the excise taxes are still due***, even though the articles are removed merely for storage in some other place and are not actually sold or consumed."[27] (Emphasis supplied, citations omitted)

It bears reiterating that Section 135 is not a tax exemption in favor of manufacturers, sellers, and importers of petroleum products, but a tax exemption in favor of buyers, and in this case, international carriers. As correctly pointed out by the now retired Justice Mariano C. Del Castillo in his dissent in *Chevron*, if that was the legislature's intent, then they would have expressly provided for it, just like in Section 130(d) of the NIRC, which categorically allows the refund or credit of excise taxes paid on locally produced or manufactured goods that are subsequently exported.[28] *Accordingly, Section 135 merely prohibits the manufacturers, sellers, and importers from passing the burden of paying excise taxes to their tax-exempt buyers, and forces them to shoulder the burden of the excise tax*.

Another primary consideration for the 2014 *Pilipinas Shell* Resolution, which was replicated in *Chevron* and 2016 *Pilipinas Shell*, was the possible negative effect of disallowing the refund or tax credit sought by oil companies, given their prohibition from shifting their burden on excise taxes to their exempt buyers. There, this Court granted the claim for tax refund of Pilipinas Shell to dissuade the potential decline in aviation fuel sales of local oil companies to international carriers, stating that the "construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements."[29]

The majority likewise adapted this ruling, stating that the selective tax treatment would stifle international air travel and encourage international carriers to purchase fuel from low-

tax or tax-free jurisdictions.[30]

I likewise disagree with this approach. This interpretation is based purely on a presumption or speculation of what may occur if the petroleum companies are denied of their claims for exemption. This clearly exceeds the terms of the statute.

This Court does not have the authority to enlarge the scope of a law and admit interpretations that were not intended by the legislative branch. This is most especially true when the provision of the law in question is neither vague nor ambiguous. This Court must refrain from being excessively liberal in interpreting the law, lest it be found guilty of judicial legislation, which is a constitutionally forbidden act. This was explained by the erudite former Associate Justice George A. Malcolm in *Tañada v. Yulo*,[31] in this wise:

> In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. ***However, it is equally fundamental that that legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact. An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction.*** To depart from the meaning expressed by the words is to alter the statute, is to legislate not to interpret.
>
> ....
>
> ... By liberal construction of statutes, courts from the language used, the subject matter, and the purposes of those framing them are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.[32] (Emphasis supplied, citations omitted)

It is basic in statutory construction that strict interpretation is to be applied when construing tax exemptions.[33] As the lifeblood of the nation, any claim of exemption must be based from an unmistakable or unquestionable language of law, otherwise, there is no exemption to speak of. There being none in this case, the proper remedy would have been a legislative

amendment.[34]

By interpreting that Section 135 allows refunds for manufacturers, producers, or importers, the law is supplanted with a privilege which was not conferred by Congress. Nowhere in the questioned section does it state that the exemption provided to international carriers is extended to its supplier of aviation fuel, in this case, Pilipinas Shell. Moreover, a denial of petitioner's refund claim is not a violation of our treaty obligation under Chicago Convention on International Civil Aviation, given that the treaty only seeks to protect aircrafts that finds itself in another territory. Article 24(a) of the treaty states:

Article 24

Customs Duty

(a) Aircraft on a flight to, from, or across duty 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.

It is clear from the treaty that no exemption was provided for the manufacturers, sellers, or importers. The subject wording of Section 135(a), as it now stands, satisfies our treaty obligations, as it prohibits local manufacturers from passing on the excise tax to international carriers.[35] Thus, petitioner's claim has no legal basis. The previous rulings of this Court, while guided with good intentions, unnecessarily expanded the wording and true intention of the law.

In view of the foregoing, the rulings of 2014 and 2016 *Pilipinas Shell*, and *Chevron*, should be abandoned and overturned and the doctrines in *Philippine Acetylene Co. v. Commissioner of Internal Revenue*[36] and *Maceda v. Macaraig, Jr.*[37] should still stand. I repeat what I stated in my dissent in *Chevron*:

> In my opinion, the principles pronounced in *Philippine Acetylene Co. v. Commissioner of Internal Revenue* and *Maceda v. Macaraig, Jr.*, the same cases cited in the precedent *Pilipinas Shell* case, are still relevant with regard to the

local manufacturers' or importers' claim over excise tax exemption on petroleum products sold to international carriers and exempt entities.

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

In *Maceda*, petitioner questioned the legality of the tax refund to National Power Corporation by way of tax credit certificates and the use of the said assigned tax credits by oil companies to pay for their tax and duty liabilities to the Bureau of Internal Revenue and Bureau of Customs. This court dismissed Maceda's Petition and upheld the tax refunds granted to National Power Corporation, ruling that under the prevailing laws then, the National Power Corporation enjoyed indirect tax and duty exemption on its local purchases of petroleum products. On Motion for Reconsideration by petitioner, this court maintained its ruling that the tax exemption privilege of the National Power Corporation included both direct and indirect taxes. This court further held that the oil companies had to absorb all or part of the economic burden of the taxes previously paid on bunker fuel oils they sold to the National Power Corporation. [38] (Citations omitted)

Although P*hilippine Acetylene Co*. and *Maceda* occurred even before the enactment of the 1997 NIRC, the same principles apply. While excise taxes on petroleum products are indirect taxes by nature—that is, the taxpayer has the option to shift its burden of the tax to the end-user, the same will not stand if the buyer is an exempt entity. Section 135 prohibits oil manufacturers, sellers, or importers from passing on their responsibility to pay excise taxes to tax-exempt buyers without extending the same exemption of tax-exempt entities to the manufacturers, sellers, or importers. Thus, if oil manufacturers or other parties are granted refunds or tax credits, they will then be afforded a privilege not granted to them by law. Moreover, the government will be made to shoulder excise taxes that were rightfully paid to begin with.

Manufacturers, sellers, and importers, like petitioner here, are not entitled to a claim of refund, or tax credit of excise taxes paid on petroleum products sold to tax-exempt entities and international carriers. The doctrine of *stare decisis* cannot be relied on when the cases are based on an erroneous or inaccurate interpretation of the law. *Stare decisis* does not

bind this Court from revisiting and overruling previous rulings to preserve the true spirit of the law.

Accordingly, I vote to **DENY** Pilipinas Shell Petroleum Corporation's claim for refund or issuance of tax credit certificate for excise taxes paid on Jet A-1 fuel sold to international carriers. I likewise vote to sustain the September 7, 2012 Decision of the Court of Tax Appeals Third Division, and the September 9, 2013 Resolution of the Court of Tax Appeals En Banc.

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[1] *Rollo*, p. 159.

[2] Id. at 158-174. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas.

[3] 686 Phil. 944 (2012) [Per J. Villarama, Jr., First Division].

[4] *Rollo*, pp. 98-119. The Decision was penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban. Justice Amelia R. Cotangco-Manalastas was on leave.

[5] Id. at 53-87.

[6] Id. at 65-72.

[7] *Ponencia*, p. 15.

[8] Id.

[9] Id. at. 6.

[10] Id.

[11] 686 Phil. 944 (2012) [Per J. Villarama, Jr., First Division].

[12] 780 Phil. 623 (2016) [Per J. Reyes, Third Division].

[13] 686 Phil. 944 (2012) [Per J. Villarama, Jr., First Division].

[14] Id.

[15] *Commissioner of Internal Revenue v. Filipinos Shell Petroleum Corporation*, 727 Phil. 506 (2014) [Per J. Villarama, Jr., First Division].

[16] Id. at 521.

[17] Id. at 521-522.

[18] 768 Phil. 37 (2015) [Per J. Bersamin, En Banc].

[19] Id.

[20] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 780 Phil. 623 (2016) [Per J. Reyes, En Banc].

[21] Id. at 630.

[22] J. Leonen, Dissenting Opinion in *Chevron Phils., Inc. v. Commissioner of Internal Revenue*, 768 Phil. 37 (2015) [Per J. Bersamin, En Banc].

[23] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 727 Phil. 506, 522 (2014) [Per J. Villarama, Jr., First Division].

[24] TAX CODE, 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 turbojet fuel; (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; and (m) petroleum coke.

[25] 686 Phil. 944 (2012) [Per J. Villarama, Jr., First Division].

[26] 746 Phil. 432 (2014) [Per J. Leonen, En Banc].

[27] Id. at 475.

[28] J. Del Castillo, Dissenting Opinion in *Chevron Phils. Inc. v. Commissioner of Internal*

Revenue, 768 Phil. 37 (2015) [Per J. Bersamin, En Banc].

[29] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 727 Phil. 506, 522 (2014) [Per J. Villarama, Jr., First Division].

[30] *Ponencia*, pp. 13-14.

[31] 61 Phil. 515 (1935) [Per J. Malcolm, En Banc].

[32] Id. at 518-519.

[33] *See Commissioner of Internal Revenue v. Court of Appeals*, 358 Phil. 562 (1998) [Per J. Panganiban, First Division]; *Commissioner of Customs v. Philippine Acetylene Co.*, 148-A Phil. 58 (1971) [Per J. Makalintal, En Banc]; *E. Rodriguez, Inc. v. Collector of Internal Revenue*, 139 Phil. 354 (1969) [Per J. Barredo, En Banc], *Surigao Consolidated Mining Co., Inc. v. Collector of Internal Revenue*, 119 Phil. 33 (1963) [Per J. regala, En Banc]; and *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil 130 (1999) [Per J. Purisima, Third Division].

[34] *Rama v. Moises*, 815 Phil. 954 (2017) [Per J. Bersamin, En Banc].

[35] *See* J. Leonen, Dissenting Opinion in *Chevron Philippines Inc. v. Commissioner of Internal Revenue*, 768 Phil. 37 (2015) [Per J. Bersamin, En Banc].

[36] 127 Phil. 461 (1967) [Per J. Castro, En Banc].

[37] 259 Phil. 252 (1993) [Per J. Nocoon, En Banc].

[38] J. Leonen, Dissenting Opinion in *Chevron Philippines Inc. v. Commissioner of Internal Revenue*, 768 Phil. 37, 89-90 (2015) [Per J. Bersamin, En Banc].

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in partially granting the Petition and remanding the case to the Court of Tax Appeals (CTA) to determine whether Petitioner Pilipinas Shell Petroleum

Corporation (PSPC) has proven compliance with the requirements for refund of excise taxes paid on imported petroleum products sold to international carriers, pursuant to Section 135 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Brief Review of the Facts of the Case

PSPC is a corporation engaged, among others, in the business of processing, treating and refining petroleum products for the purpose of producing marketable products and by-products and the subsequent sale thereof. It ordinarily manufactures Jet A-1 fuel in its refinery in Batangas and occasionally imports finished Jet A-1 fuel in cases when the demand exceeds the supply of locally manufactured Jet A-1 fuel or the refinery shuts down. In some instances, PSPC purchases Jet A-1 fuel from other local manufacturers, such as Chevron Phils. Inc. (Chevron).[1]

In February and March 2006, PSPC imported 28,578,673 liters of Jet A-1 fuels and accordingly paid excise taxes at the rate of P3.67 per liter, in the total amount of P104,883,730.27.[2] Within the same period, PSPC also purchased from Chevron, 3,192,012 liters of imported Jet A-1 fuel, the excise taxes due thereon at the rate of P3.67 per liter were paid for by the latter but was subsequently passed on to PSPC.[3]

PSPC claimed that of the imported and locally purchased fuels, a total of 24,974,294 liters were sold to various international airlines for the period covering February 27 to April 9, 2006 for their use or consumption outside the Philippines; and thus, are considered exempt from excise tax pursuant to Section 135 of the 1997 NIRC, as amended. PSPC then filed a claim for refund or tax credit with the Bureau of Internal Revenue (BIR) in the amount of P91,655,658.98.[4]

Due to respondent's inaction, PSPC appealed with the CTA.[5]

The CTA Division denied PSPC's petition applying the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[6] *(2012 Pilipinas Shell Decision)*, where the Court ruled that PSPC, as the manufacturer or importer of petroleum products, cannot avail itself of the tax exemption granted to the buyers or consumers under Section 135 of the NIRC of 1997, as amended. The CTA en banc affirmed the denial of PSPC's claim reiterating the Court's *2012 Pilipinas Shell Decision*.[7]

Aggrieved, PSPC filed the present petition before the Court.[8]

During the pendency of the present petition, the Court, on February 19, 2014, promulgated a Resolution[9] *(2014 Pilipinas Shell Resolution)* reversing and setting aside the 2012 *Pilipinas Shell Decision*. The Court held that the statutory taxpayer — *i.e.*, the manufacturer, producer and importer of petroleum products — who is directly liable to pay

the excise tax due thereon, 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 Section 135(a) of the NIRC of 1997, as amended. The Court explained that this construction of Section 135(a) is in fulfillment of the country's commitment to the international agreement and practice to exempt aviation fuel from excise tax and other impositions, and prohibit the passing of the excise tax to international carriers who buy petroleum products from local manufacturers/sellers.[10]

Subsequently, on September 1, 2015, the Court *En Banc*, in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*,[11] *(Chevron case)* clarified that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NTRC must be construed in favor of the petroleum products on which the excise tax was initially imposed. In this regard, the excise taxes that the manufacturer, producer or importer paid for the production or importation of petroleum products subsequently sold to the entities or agencies named in Section 135 are considered erroneous and should be credited or refunded to the manufacturer or importer in accordance with Section 204 of the NIRC of 1997, as amended.[12]

Based on these prevailing jurisprudence, it was erroneous for the CTA to rule that PSPC may not claim for refund of the excise taxes paid on its importation of Jet A-1 fuels pursuant to Section 135(a) of the NIRC of 1997, as amended.

I agree with the *ponencia* in ruling that a manufacturer/producer or importer's right to claim for a refund of excise taxes paid on petroleum products sold to international carriers is supported by the plain text of the law.[13] The doctrine laid down in the *2014 Pilipinas Shell Resolution*, and further clarified by the Court *En Banc* in the *Chevron case*, does not amount to judicial legislation as, indeed, Section 135 provides a legal basis for a manufacturer or importer to claim for refund or tax credit of the excise taxes paid on petroleum products sold to international carriers and other entities enumerated therein. This, in fact, has long been confirmed by rulings issued by the BIR and previous cases decided by the Court.

I expound.

Section 135 exempts from excise taxes the petroleum product itself and not the entities enumerated therein

It is a cardinal rule in statutory construction that if a statute is clear, plain and free from ambiguity, it. must be given its literal meaning and applied without attempted interpretation. The *verba legis* or plain meaning rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.[14]

Section 135 of the NIRC of 1997, as amended, states:

> SEC. 135. **Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. — Petroleum products sold to the following are exempt from excise tax**:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreement for their use or consumption: *Provided, however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
>
> (c) Entities which are by law exempt from direct and indirect taxes. (Emphasis and underscoring supplied; italics in the original)

A plain reading of Section 135 of the NIRC of 1997, as amended, indubitably shows that the exemption from excise taxes is granted by law to the petroleum product itself **and not** to the buyers, manufacturers or importers of the same. The overarching statement of Section 135 provides for the excise tax exemption and it categorically states that "**[p]etroleum product** sold to the following **are exempt from excise tax**."[15] The succeeding paragraphs (a), (b), and (c) do not confer nor refer to the tax exemption. Paragraphs (a), (b) and (c) simply enumerate and describe the entities to whom petroleum products must be sold to make the excise tax exemption operative.

This interpretation of Section 135 is consistent with the nature of excise taxes as imposed under Title VI of the NIRC of 1997, as amended.

Section 129 of the NIRC of 1997, as amended, defines excise taxes as taxes applied on specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported.[16] **The tax attaches upon the good as soon as it is manufactured or produced in the Philippines or upon its importation.**[17] Thus, with respect to goods produced or manufactured domestically, excise taxes are collected from the manufacturer or producer before the

goods are removed or withdrawn from the place of production.[18] As for imported goods, the excise taxes are collected from the importer before the goods are released from the customs house.[19]

The Court, in *Petron Corporation v. Tiangco*,[20] explained that the excise tax under the NIRC is different from the traditional concept of excise taxes as a privilege or business tax, *viz*.:

> 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 lax"* 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 —
>
> "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:

"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." x x x[21] (Emphasis supplied and italics in the original)

Proceeding from the foregoing, excise taxes imposed under Title VI of the NIRC of 1997, as amended, cannot strictly be considered as tax on the production, sale[22] or consumption of goods and hence, should not be compared to nor be treated like Value-Added Taxes. Neither should they be considered as privilege tax imposed upon the performance or exercise of an activity.[23] Excise taxes under Title VI of the NIRC are really property taxes[24] because they are levied on specific goods locally produced or imported — *i.e.*, alcohol, tobacco, petroleum, automobiles and non-essential goods, and mineral products — for domestic sale or consumption or for any other disposition.[25]

Verily, since the excise tax under Title VI of the NIRC of 1997, as amended attaches to the good or article itself, the exemption provided under Section 135 could only be construed to refer to the product itself which is petroleum. Thus, as aptly pointed in the *ponencia*, the Court, in the *2014 Pilipinas Shell Resolution*, committed an oversight when it ruled that "the exemption from payment of excise tax [under Section 135] is conferred on

international carriers."[26] This, however, was corrected by the Court *En Banc* in *Chevron* when it held that Section 135 is "an exemption in favor of the petroleum products on which the excise tax was levied in the first place."[27]

Further, that the excise tax exemption under Section 135 is conferred on the petroleum product itself is bolstered by Article 24 of the *1944 Chicago Convention on International Aviation*, which is now embodied under paragraph (a) of Section 135.[28] Article 24 unequivocally states:

Article 24

> (a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. ***Fuel***, *lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on hoard on leaving the territory of that State s****hall 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. (Emphasis, underscoring and italics supplied)

Again to stress, since the excise tax imposed under Title VI of the NIRC of 1997, as amended is a tax on the property itself, and attaches to the good and accrues as soon as the article is locally manufactured or imported, it follows that excise taxes are borne and paid by the manufacturer before the goods are withdrawn from the place of production,[29] and by the importer prior to the removal of the articles from the customs house.[30] Section 135, however, creates an exemption, *i.e.*, when the manufactured or imported petroleum product is subsequently sold to the entities enumerated therein, such as international carriers, exempt agencies covered by tax treaties, and entities exempt from direct and indirect taxes, it is now deemed by law exempt from excise taxes.

Thus, as I see it, far from granting the exemption to the buyers of petroleum products, Section 135 simply provides for the proper tax treatment of manufactured or imported petroleum product after it is directly sold to the entities enumerated therein. As succinctly pointed out by Associate Justice Henri Jean Paul B. Inting (Justice Inting), Section 135 provides a condition that must be fulfilled to render the petroleum product exempt from excise taxes.[31]

Seen another way, Section 135 cannot be construed as a grant of tax exemption to buyers

of the petroleum products because, to begin with, they are not the ones statutorily liable to pay for excise taxes.

Excise taxes partake of the nature of an indirect tax, wherein the liability for the payment thereof falls on one person but the burden may be shifted or passed on to another person.[32] As discussed, under the law, the liability to pay for excise taxes on petroleum products upon their withdrawal from the place of production or importation is imposed on the manufacturer and importer. Thus, even if the buyer of the petroleum product ultimately pays for the excise tax, as when the manufacturer or importer shifts the burden thereof, this does not make the buyer the statutory taxpayer.[33] When the manufacturer or importer "passes on the tax"[34] to the buyer, the manufacturer or importer only shifts the "economic burden"[35] of the tax and not the liability to pay the same. What the buyer then pays is not the tax *per se* but an additional amount that is part of the purchase price or the cost of goods or services sold.[36] It is therefore illogical to consider Section 135 as an exemption granted to the buyers of petroleum product when they are not actually liable to pay for the excise tax due thereon. Again, Section 135 is crystal clear that the excise tax exemption is granted to the petroleum product itself.

Neither should Section 135 be construed simply as a prohibition to shift to the entities enumerated therein the burden of excise taxes. The Court has clarified in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,[37] that "this shifting process, otherwise known as 'passing on,' is largely a contractual affair between the parties."[38] Moreover, I echo former Chief Justice Lucas P. Bersamin's Separate Opinion in the *2014 Pilipinas Shell* case that "(t)he shifting of the tax burden by manufacturers-sellers is a business prerogative resulting from the collective impact of market forces," and to construe Section 135(a) as a mere prohibition against shifting the burden of excise taxes is to effectively deprive the manufacturers of their business prerogative to determine the prices at which they can sell their products,[39] which, evidently, is not the legislative intent of Section 135.

The manufacturer and importer, as statutory taxpayer, are entitled to claim for refund of excise taxes paid on petroleum products pursuant to Section 135 of the NIRC of 1997, as amended

Section 229[40] of the NIRC of 1997, as amended, allows the recovery or refund of internal revenue taxes alleged to have been erroneously, illegally or in any manner wrongfully collected. A tax is wrongfully collected when what is paid for or part of it is not legally due.[41]

Proceeding from the foregoing, while at the time of importation or production of the

petroleum products, excise taxes imposed and collected thereon are proper, they become "improper" when such products are sold to international carriers and other exempt entities because, by operation of law, these articles are deemed exempt from excise taxes. In other words, upon the sale of the manufactured or imported petroleum products to the entities enumerated under Section 135, the excise taxes previously paid thereon become wrongfully or erroneously collected, on the basis of which a claim for refund under Section 229 may be made.

The question now is, who is entitled to claim for refund of the said erroneously paid excise taxes?

Section 204 of the NIRC of 1997, as amended, authorizes the CIR to credit or refund taxes or penalties to the taxpayer who files in writing a claim for refund or credit within two (2) years from the payment of the tax. The NIRC defines a taxpayer as any person subject to tax imposed by the Tax Code. Consequently, the only person authorized by law to claim for tax refund or credit of erroneously collected taxes is the statutory taxpayer — that is, the person who has the legal obligation or duty to pay the tax.[42]

Accordingly, while Section 135 also does not explicitly grant the manufacturer or importer exemption from excise taxes — as the exemption is granted on the product itself — Section 135 in relation to Sections 204 and 229 of the NIRC of 1997, as amended, entitles the manufacturer and importer to claim for refund of excise taxes paid on petroleum products when these are sold to international carriers, exempt agencies covered by tax treaties, and entities exempt from direct and indirect taxes.

In fact, it has long been settled in jurisprudence, even prior to the *2014 Pilipinas Shell Resolution*, that the proper party to seek a refund of excise taxes paid on petroleum products pursuant to Section 135 of the NIRC of 1997, as amended, is the manufacturer/producer or importer who paid for the excise taxes imposed on the goods produced or imported.

In *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue cases*,[43] petitioner Silkair (Singapore) Pte. Ltd. (Silkair), an online international carrier, filed a claim for refund of excise taxes it claimed to have paid on its purchases of jet fuel from Petron Corporation. Due to the CIR's inaction, Silkair filed a Petition for Review before the CTA. The CTA denied Silkair's claim on the ground that as the excise tax was imposed on Petron Corporation as the manufacturer of petroleum products, any claim for refund should be filed by the latter; and where the burden of tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost of the goods purchased.

Aggrieved, Silkair elevated the matter to the Court. In the first *Silkair* case,[44] the Court affirmed the ruling of the CTA and held:

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.[45] (Emphasis supplied)

A few months thereafter, the Court promulgated its Decision in the second *Silkair* case,[46] reiterating its earlier ruling, *viz*.:

The issue presented is not novel. In a similar case involving the same parties, this Court has categorically ruled that **"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."** The Court added that "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."

x x x x

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 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**.[47] (Emphasis supplied)

In the third *Silkair* case, the Court once again emphasized that the proper party to claim for refund of excise taxes paid on petroleum products pursuant to Section 135 is the statutory taxpayer, the manufacturer or importer of goods on whom the excise tax is imposed by law and who paid the same.

> From the foregoing discussion, **it is clear that the proper party to question, or claim a refund or tax credit of an indirect tax is the statutory taxpayer, which is Petron in this case, as it is the company on which the tax is imposed by law and which paid the same even if the burden thereof was shifted or passed on to another**. It bears stressing that even if Petron shifted or passed on to petitioner the burden of the tax, the additional amount which petitioner paid is not a tax but a part of the purchase price which it had to pay to obtain the goods.[48] (Emphasis supplied)

The Court's ruling in these *Silkair* cases was again reiterated in the case of *Exxonmobil Petroleum and Chemical Holdings, Inc. Philippine Branch v. Commissioner of Internal Revenue*[49] *(Exxonmobil)* and in the fourth *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*.[50]

In *Exxonmobil*, the seller of the petroleum product claimed for refund of the excise taxes passed on to it by the manufacturer. The Court, applying Silkair, denied the claim for refund because the seller is not the party liable for the payment of excise taxes under the law.

Further, worthy of note are the several rulings and issuances of the BIR, which confirmed the manufacturer/producer's entitlement to claim for refund of the excise taxes paid on petroleum products sold pursuant to Section 135.

Foremost is Revenue Regulation (RR) No. 3-2008,[51] which provides for the requirements that a manufacturer or importer must comply with in order to avail of a tax refund or product replenishment under Section 135. Moreover, even prior to RR No. 3-2008, the BIR had issued orders and rulings which recognized the right of the manufacturer and importer, as statutory taxpayers, to claim for refund of excise taxes paid on petroleum products sold to international carriers.[52] These issuances confirm that Section 135, as ruled by the Court in *Silkair*, *2014 Pilipinas Shell* and *Chevron* cases, indeed entitles the manufacturer or importer to claim for refund of excise taxes paid on petroleum products sold pursuant to said provision.

Accordingly, based on these sound jurisprudence and administrative regulations, only the

manufacturer/producer or importer of the petroleum product, and not the buyers or subsequent sellers thereof, are granted by law the right to claim for refund or tax credit of excise taxes paid on petroleum products sold under Section 135 of the NIRC of 1997, as amended.

The legislative objectives of Section 135 are best achieved if manufacturers or importers are allowed to claim for refund under Section 229 of the NIRC of 1997, as amended

In the *2014 Pilipinas Shell Resolution*, the Court elaborated on the legislative intent of Section 135(a) of the NIRC of 1997, as amended. The Court explained that Section 135(a) was enacted in fulfillment of the country's obligation, under the Chicago convention and various bilateral agreements, not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers.[53] This international commitment to exempt aviation fuel from taxes, duties and other fees, is intended to promote and expand international travel through avoidance of multiple taxation and ensure the viability and safety of international air travel.[54] Further, the Court observed that the exemption would prevent the practice of "tankering"[55] and instead encourage international carriers to purchase domestic petroleum or establish refueling depots here in our country. It would likewise avoid the Government the risk of retaliatory actions from other countries.[56]

The foregoing objectives will be thwarted and negated if the Court were to now be restrictive in its interpretation of Section 135 as a mere prohibition to pass on the excise tax to the buyers of petroleum products, and not allow manufacturers or importers to claim for refund of the excise tax paid thereon. In such a case, the manufacturers or importers of petroleum may be constrained to increase their prices, or may even decide not to sell to international carriers at all. Consequently, instead of preventing the practice of tankering, this restrictive interpretation would only encourage its proliferation.

On the other hand, allowing the manufacturers or importers to recover excise tax expenses on petroleum products sold to international carriers, following the clear and plain language, as well as the legislative intent, of Section 135 in relation to Sections 204 and 229 of the NIRC of 1997, as amended, may effectively make the prices of domestic petroleum internationally competitive and thus, encourage international carriers to purchase fuel in our jurisdiction. Hence, apart from fulfilling the country's treaty obligation, this holistic construction of the relevant tax provisions would help achieve the legislative objectives of Section 135. Indeed, while the rule is that tax exemptions and tax refunds should be strictly construed, the application of this rule should never defeat nor frustrate the intent or spirit of the law.

It should, however, be noted that the grant of refund under Section 135 of the NIRC of 1997, as amended, is not automatic. As astutely pointed out by Justice Inting, the claimant must be able to prove compliance with the requirements provided by the law and its implementing rules.[57]

Moreover, there must be sufficient proof that the imported or manufactured petroleum products, upon which excise taxes were paid, were indeed the very products subsequently sold to international carriers or to the other entities or agencies named in Section 135. This is vital in this case because, as earlier discussed, aside from the imported Jet A-1 fuel, PSPC also purchased locally manufactured Jet A-1 fuel from Chevron. And of the imported and locally purchased Jet A-1 fuel, PSPC claimed that 24,974,294 liters were sold to various international airlines. Hence, to be entitled to refund under Section 135 in relation to Sections 204 and 229 of the NIRC of 1997, as amended, PSPC must prove that the 24,974,294 liters of Jet A-1 fuel sold to international carriers were sourced from the imported Jet A-1 fuel, upon which it directly paid excise taxes, and not from the Jet A-1 fuel locally purchased from Chevron, in other words, PSPC must prove that the amount claimed pertains to the excise taxes paid on its imported Jet A-1 fuel sold to various international carriers.

However, a perusal of the Decisions of the CTA, both in division and *en banc*, shows that the denial of PSPC's claim for refund was solely premised on the earlier *2012 Pilipinas Shell Decision*. Thus, the CTA did not evaluate the evidence presented by PSPC as to whether it had sufficiently proved entitlement to claim for refund under Section 135.

In this light, and given that this Court is not a trier of facts and cannot evaluate at first instance the evidence presented during the trial, I agree that the case needs to be remanded to the CTA Division for the latter to make a factual determination on whether PSPC has sufficiently proven compliance with the requirements of Section 135 and its implementing rules.

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[1] *Ponencia*, p. 2.

[2] Id.

[3] Id.

[4] Id.

[5] Id.

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

[7] *Ponencia*, pp. 2-3.

[8] Id. at 4.

[9] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. No. 188497, February 19, 2014, 717 SCRA 53.

[10] Id. at 72, 77-78.

[11] G.R. No. 210836, September 1, 2015, 768 SCRA 414.

[12] Id. at 429.

[13] See *ponencia*, p. 12.

[14] *Southern Cross Cement Corporation v. Philippine Cement Manufactures Corporation*, G.R. No. 158540, July 8, 2004, 434 SCRA 65, 93.

[15] Emphasis supplied.

[16] *Exxonmobil Petroleum and Chemical Holdings, Inc. Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 180909, January 19, 2011, 640 SCRA 203, 218.

[17] See *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222480, November 7, 2018, 885 SCRA 84, 94.

[18] See Sec. 130(2) of the NIRC of 1997, as amended.

[19] See id. at Sec. 131(A).

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

[21] Id. at 492-494.

[22] See *People v. Sandiganbayan*, G.R. No. 152532, August 16, 2005, 467 SCRA 137.

[23] See *Petron Corporation v. Tiangco*, supra note 20, at 492, 495-496.

[24] *People v. Sandiganbayan*, supra note 22.

[25] See *Silkair (Singapore) Pte Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141, and *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, November 11, 2014, 739 SCRA 489.

[26] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, supra note 9, at 67.

[27] *Chevron Philippines, Inc. v. Commissioner of Internal Revenue*, supra note 11, at 431.

[28] See former Chief Justice Lucas P. Bersamin's Separate Opinion in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, supra note 9, at 84.

[29] See Sec. 130(2) of the NIRC of 1997, as amended.

[30] See id. at Sec. 131(A).

[31] See Separate Concurring Opinion, p. 5.

[32] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72.

[33] See *Exxonmobil Petroleum and Chemical Holdings, Inc. Philippine Branch v. Commissioner of Internal Revenue*, supra note 16, at 219-220, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, id.

[34] Id.

[35] Id. at 222-223.

[36] Id.

[37] G.R. No. 198759, July I1, 2013, 700 SCRA 322.

[38] Id. at 331.

[39] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, supra note 9, at 92.

[40] SEC. 229. **Recovery of Tax Erroneously or Illegally Collected**. — No suit or proceeding shall be maintained in any court for (he recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[41] See *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336, 396.

[42] See *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corporation*, G.R. No. 66838, December 2, 1991, 204 SCRA 377.

[43] G.R. No. 173594, February 6, 2008, 544 SCRA 100; See also *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, supra note 25.

[44] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6 2008, id.

[45] Id. at 112.

[46] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, supra note 25.

[47] Id. at 153-158.

[48] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 638, 659.

[49] Supra note 16.

[50] G.R. No. 106482, January 25, 2012, 664 SCRA 33.

[51] 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, January 22, 2008.

[52] See WHO MAY CLAIM TAX CREDIT/REFUND OF THE EXCISE TAX ON PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS, BIR Ruling No. 190-91, September 17, 1991; GRANT OF REQUEST TO CLAIM TAX CREDIT/REFUND OF EXCISE TAXES PAID ON PETROLEUM PRODUCTS SOLD TO TAX-EXEMPT ENTITIES, BIR Ruling No. 051-99, April 19, 1999; PRESCRIBING THE GUIDELINES AND PROCEDURES FOR THE PROCESSING OF PENDING CLAIMS FOR TAX CREDIT/REFUND OF EXCISE TAX PAID ON PETROLEUM PRODUCTS, Revenue Memorandum Order No. 19-2006, August 10, 2006; SUPPLEMENT TO THE GUIDELINES AND PROCEDURES FOR THE PROCESSING OF PENDING CLAIMS FOR TAX CREDIT/REFUND OF EXCISE TAX PAID ON PETROLEUM PRODUCTS PRESCRIBED IN RMO NO. 19-2006 AND RMC NO. 59-2005, Revenue Memorandum Order No. 28-2006, December 18, 2006.

[53] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, supra note 9, at 72.

[54] Id. at 70-71.

[55] Id. at 73.

[56] Id.

[57] Separate Concurring Opinion, pp. 7-8.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

To doubt an exemption is to deny it.[1] I agree with Justice Leonen's opinion. Petitioner **cannot claim the exemption** from the payment of excise taxes for petroleum products under Section 135 of the *National Internal Revenue Code* **after it had sold** these products

to tax-exempt international carriers. Nor can petitioner **claim this exemption indirectly** by asking for the **refund of the excise taxes it already paid** for the importation and purchase of the same petroleum products from its sellers **after petitioner's sale thereof** to tax-exempt international carriers.

Relevant Rules – Explained

Statutes granting tax exemptions are **construed *strictissimi juris*** against the taxpayer and liberally in favor of the taxing authority. Thus, a **claim of tax exemption** must be **clearly shown** and **based on language** in law **too plain to be mistaken**.

It is also doctrinal that excise tax is –

> ... a **tax on the** production, **sale**, or consumption **of a specific commodity** in a country. Section 110 of the 1986 Tax Code explicitly provides that the "excise taxes on domestic products shall be **paid by the manufacturer or producer before [the] removal** [of those products] from the place of production." "It **does not matter to what use the article[s] subject to tax is put; the excise taxes are still due,** even though the articles are removed merely for storage in some other place and are not actually sold or consumed." The excise tax based on weight, volume capacity or any other physical unit of measurement is referred to as "specific tax." If based on selling price or other specified value, it is referred to as "ad valorem" tax.[2]

84 CJS Taxation Section 20 defines excise taxes in this wise:

> **Excise taxes are indirect taxes on activities, occupations, privileges, and consumption**, such as sales and use taxes or business or license taxes. The imposition of excise taxes is generally held to be within the power of the legislature unless specifically restrained by the constitution, whether laid on particular commodities, on the privilege of pursuing particular occupations, on the privilege of declaring and receiving dividends, or on the franchises of corporations. The legislature can change or increase an excise tax during the term for which it is imposed, and it has the power to impose as many excise taxes, in addition to a tax according to value, as it sees fit.
>
> Excise taxes must be reasonable but need not be proportional. Statutes may provide for tax liability based on possession without ownership, **but the right to own and hold property cannot be made the subject of an excise tax because to tax by reason of the ownership of property is to tax ownership itself. An excise tax is not a property tax,** and the constitutional requirement of uniformity therefore does not apply.

That an excise tax is **not a property tax** is the accepted doctrine in the Philippines, as well. In ***Lladoc v. Commissioner of Internal Revenue***,[3] the Court En Banc held that –

> A **gift tax is not an assessment on the properties** themselves. It did not rest upon general ownership. Rather **it is an excise upon the use** made of the properties and **upon the privilege of receiving** them. It is **not, therefore a property tax, but an excise tax imposed on the transfer of property** by way of gift inter vivos, the imposition of which a property used exclusively for religious purposes, does not constitute an impairment of the Constitution.

The **distinctive purpose** or **nature of excise taxes** from **property taxes** is **important** for resolving this case. For it is **this purpose** or **nature** that identifies the **legal incidence of taxation** and **concomitantly** the **object** of the **exemption** from taxation. As explained elsewhere[4] –

> Garza next argues that the district court improperly overruled his motion to quash because **the Tax Stamp Act levies a personal property tax based on weight rather than value**, in contravention of Neb. Const, art. VIII, § 1. We disagree.
>
> **Our initial task is to determine what type of tax is levied by the Tax Stamp Act.** Several sections of the act refer to a **tax "on" or "upon" marijuana and controlled substances**. See §§ 77-4302, 77-4303, and 77-4305. **However, this does not, of itself, make the tax a property tax. Other sections of the act indicate that what is being taxed is the dealer's use of the substances.** Section 77-4301(2) provides that "[d]ealer shall mean a person who, in violation of **456 Nebraska law, manufactures, produces, ships, transports, or imports into Nebraska, or in any manner acquires or possesses six or more ounces of marijuana" (emphasis supplied), and § 77-4302 provides that "[n]o dealer may possess marijuana or controlled *584 substances upon which a tax is imposed ... unless the tax has been paid...."
>
> Regarding statutory interpretation, we have stated, "'As a series or collection of statutes pertaining to a certain subject matter, statutory components of an act, which are in pari materia, may be conjunctively considered and construed to determine the intent of the Legislature so that different provisions of the act are consistent, harmonious, and sensible.' " Indian Hills Comm. Ch. v. County Bd. of Equal., 226 Neb. 510, 518, 412 N.W.2d 459, 465 (1987) (quoting Wounded

Shield v. Gunter, 225 Neb. 327, 405 N.W.2d 9 (1987)).

We begin our analysis by contrasting the definitions of "property" and "excise" taxes. Black's Law Dictionary (6th ed. 1990) provides the following definitions: **"Excise tax. A tax imposed on the performance of an act [or] the engaging in an occupation.... A tax on the manufacture, sale, or use of goods or on the carrying on of an occupation or activity**...." Id. at 563. **"Property tax. An ad valorem tax ... on the value of real or personal property that the taxpayer owns on a specified date.** The tax is generally expressed as a uniform rate per thousand of valuation." Id. at 1218.

We have previously held that **a tax imposed on the doing of an act, including a business or license tax, is an excise tax and not a property tax**. State v. Galyen, 221 Neb. 497, 378 N.W.2d 182 (1985). In Burke v. Bass, 123 Neb. 297, 242 N.W. 606 (1932), we addressed **a statute which required "dealers"-persons who imported or produced fuel for use or distribution** in Nebraska - **to pay a tax** of 4 cents per gallon on the fuel. See Galyen, supra. We held that the **tax was an excise tax on the sale and use of the fuel**. Burke, supra: See, also, Galyen, supra (holding that a tax of 25 cents per head of cattle sold was an excise tax); Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945) (holding tax imposed as an annual charge on the right to maintain corporate existence, although computed based on the amount of capital stock, was an excise tax).

The tax imposed by the Tax Stamp Act does not meet the express definition of a property tax. Property taxes, by their *585 very nature, target the value of an item. See Black's Law Dictionary, supra. **The tax levied by the Tax Stamp Act, however, targets individuals who put the substances to certain uses, basing its rate on the quantity involved, not the value.** See §§ 77-4301 to 77-4303. Garza's argument, viewed in light of the aforementioned definitions, is non sequitur: he asserts that because the Tax Stamp Act levies a tax based on weight, not value, it is an invalid property tax. The obvious answer to this argument is that if the tax is not based on value, it is not a property tax at all.

We find that the Tax Stamp Act levies an excise tax. The Tax Stamp Act clearly targets the use or sale of the substances; the substances themselves are relevant only as a basis for computation of the tax. First, the tax levied by the act applies only to dealers, who are defined according to their actions. See §§ 77-4301(2) and 77-4302. Second, the tax applies only to possession of substances in excess of a certain amount, e.g., 6 or more ounces of marijuana. § 77-4301(2). **The tax obviously aims at the activities of a certain group—individuals holding relatively large amounts of the substances**—who will engage in either the distribution or large-scale consumption of the substances. **If the tax was on the substances themselves, rather than on their use, the tax would apply to any individual who possessed any amount of the**

substances.

Our finding is consistent with the findings of courts reviewing similar taxing schemes. For example, in Burke, supra, we held **the gasoline tax to be an excise tax** despite the tax's being levied on each gallon of fuel. **We determined that the dispositive factor was that the tax aimed at dealers' sale and use of the fuel. The Tax **457 Stamp Act similarly applies to dealers who produce, import, or acquire the substances.** See §§ 77-4301 and 77-4302.

Even more persuasive is Patton v. Brady, Executrix, 184 U.S. 608, 22 S.Ct. 493, 46 L.Ed. 713 (1902), which held that the federal tax on tobacco products (precursor of 26 U.S.C. § 5701 et seq. (1988)) was an excise tax. The applicable statute levied a per-pound tax on "'tobacco and snuff, however prepared, manufactured and sold, for consumption or sale....' " 184 U.S. at 616, 22 S.Ct. at 496.

*586 In holding that the statute imposed an excise tax, the U.S. Supreme Court stated:

Ever since the early part of the civil war there has been a body of legislation ... by which, upon goods intended for consumption, **excises have been imposed in different forms at some time intermediate the beginning of manufacture or production and the act of consumption**. Among the articles thus subjected to those excises have been liquors and tobacco, appropriately selected therefor on the ground that they are not a part of the essential food supply of the nation, but are among its comforts and luxuries. 184 U.S. at 617, 22 S.Ct. at 496. See, also, Schenley Distillers v. United States, 153 F.Supp. 898 (W.D.Pa.1957), aff'd 255 F.2d 334, cert. denied 358 U.S. 835, 79 S.Ct. 57, 3 L.Ed.2d 72 (1958) (holding the federal tax on distilled spirits to be an excise tax).

To stress, an excise tax is **an excise tax** and **not** a **property tax** because **the tax** is ***on the exercise of a privilege;***[5] **on transactions involving the transfer** of property, **not on the property** itself.[6]

We refer to the following provisions of the *National Internal Revenue Code (NIRC)* to identify the **legal incidence** of the excise tax and the legislative intent on the **economic incidence,** if any, of this same tax:

• Subsection 130 (A) (1) of the *NIRC*:

Filing of Return and Payment of Excise Tax on Domestic Products. —

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

"(1) Persons Liable to File a Return. — Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: **Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer,** while **the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator** of the mining claim.

"Should domestic products be removed from the place of production **without the payment of the tax, the owner or person having possession thereof shall be liable for the tax** due thereon.

"(2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and **the excise tax paid by the manufacturer or producer** before removal of domestic products from place of production:

• **First two paragraphs** of **subsection 131 (A)** of the *NIRC*:

(A) Persons Liable. – **Excise taxes on imported articles shall be paid by the owner or importer** to the Custom Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which arc exempt from excise taxes other than those legally entitled to exemption.

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

Relevant Rules – Applied

Plain Meaning and Purpose

Based on the **nature of excise taxes**, Justice Leonen's reading of Section 135 is **not only**

reasonable but correct.

There is **no dispute** about the **text** of Section 135:

> SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. — Petroleum products **sold to the following** are **exempt from excise tax**:
>
> (a) **International carriers** of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreement for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
>
> (c) Entities which are by law exempt from direct and indirect taxes.

The **dispute** hinges on where the Court ought to **focus** in determining the *exemption from excise tax*: should it be on the **first clause** of Section 135 – on ***petroleum products*** as our highly regarded colleagues led by Senior Justice Perlas-Bernabe propound, or should it be on the words ***SOLD TO the following tax-exempt ENTITIES*** as Justice Leonen and his supporters including myself argue?

If we **are to stick** to the **doctrine** that tax exemptions are to be granted only if ***clearly shown*** *and* ***based on language*** *in law* ***too plain to be mistaken***, and the **other doctrine** that ***excise taxes*** *are* ***different*** *from property taxes in that the former are imposed on the* ***performance of an act*** *.... A* ***tax on the manufacture, sale, or use of goods***, then, as **clear** as the *pristine waters of Boracay*, the excise tax **exemption** –

- **first, kicks in only if** *the petroleum products are* ***sold to*** *a* ***tax-exempt entity*** *such as an international carrier* (**14** words),
- and, **second,** is **not triggered** by the ***subsequent sale to*** *a* ***tax-exempt*** *entity such as an international carrier* ***retroactive*** *to the sale earlier made to the* ***non-exempt*** *entity selling to the international carrier* (**28** words).

It is **very easy** to discern how the **second** one, which the dissents to Justice Leonen's opinion propound, have **stretched** the language of Section 135 **to accommodate** the words and meaning that are **absent** from the **clear** text of Section 135. The **stretch** is obvious - the ***first*** conclusion immediately above has only **14 words** while the ***second*** one already has **28 words.**

By **no** ***stretch*** of imagination **can we thus say** that the opinions **contrary** to Justice Leonen's, which grant tax exemption and refund to petitioner, are ***clearly shown*** *and* ***based on language*** *in law* ***too plain to be mistaken***. To emphasize, the **tax exemption** in Section 135 is **based on** the **transaction** *to* a **tax-exempt entity**, i.e., an international carrier, **not** on the **mere** fact that *petroleum products* were sold and bought.

My conclusion, as Justice Leonen's, is **supported by Section 131**[7] of the *NIRC*. Section 131 **unmistakably settles** the **tax liability** upon the owner or importer, in this case, petitioner. It also **expressly disallows** a claim for **tax exemption,** and by extension, a claim for **tax refund** from a **turn-around transaction**, e.g., sale, transfer or exchange from a **tax-exempt** entity to a **non-exempt** entity. *By parity of reasoning*, there should also be **no tax exemption** and **no tax refund** where a **non-exempt** entity like petitioner sells, transfers, or exchanges the petroleum products to a **tax-exempt** entity like international carriers.

By express provision of **Section 131**, which should also govern the interpretation of **Section 135**, the **exemption** from excise taxes is **pegged NOT** on the *product* that was the *object of the transaction*, **but** on the **transaction itself with the tax-exempt entity**. This is **but consistent with** the **purpose** or **nature of excise taxes** and the ***strictissimi juris*** reading of tax exemptions.

To repeat, petitioner is not entitled to an exemption and a refund – **only** the **tax-exempt ultimate purchasers** have been given the **exemption** under Section 135. The **plain meaning** of this tax exemption is simply to **bestow** this **privilege** on this **statutorily identified tax exempt purchaser** who itself in the stream of commerce is **intended to use** and **to whom was sold** the petroleum products - **as opposed to petitioner** which, as the **middle person,** merely **intended to resell** the petroleum products. Again, this is **but consistent with** the **purpose** or **nature of excise taxes** and the ***strictissimi juris*** reading of tax exemptions.

Article 24 – Refuted

It has also been said that petitioner should be granted tax exemption and refund because of **Article 24** of the ***1944 Chicago Convention on International Aviation*** –

> 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.

With due respect, this provision is **not relevant** to petitioner's cause. Obviously, petitioner is **not an aircraft**, much less, one **on a flight to, from, or across the territory** of another. Petitioner's **fuel** is **not on board an aircraft**; petitioner's **fuel** is **not on arrival** in the territory of another contracting State and is **not retained on board** on leaving the territory; petitioner's **fuel** is **not to be *not* unloaded**. Applying even by analogy Article 24 to petitioner's situation **can hardly be** the ***strictissimi juris*** envisioned in construing tax exemptions.

No Factual Basis to Claim Refund

At any rate, petitioner has **really no factual basis** to claim the **entirety** of the refund it seeks.

To recall, the petroleum products which petitioner flipped to the international carriers, for which it now seeks a refund, came from two **(2) sources**. A **large portion** was **imported**. The **legal incidence** of the excise tax therefore correctly fell upon it as the **owner** or **importer** of this petroleum product. The **other portion**, though significantly smaller than the imported one, was bought from a local **supplier** that had earlier paid for the excise tax **but passed the cost of this paid tax on to petitioner which subsequently paid for it to the supplier**.

I **disagree** that petitioner has the **standing** to **claim a refund** for the excise tax it **reimbursed to its supplier** which had earlier on settled this tax.

To maintain an action for refund of taxes under the *NIRC*, the plaintiff must be **a taxpayer which has overpaid** its own taxes. The term *taxpayer* means an entity which pays, overpays, or is **subject to pay its own taxes**. Concomitantly, a **non-taxpayer cannot overpay taxes,** let alone, **claim for refund** of taxes it never paid or overpaid in the first place.

Petitioner's supplier for the **other portion included the excise tax as an item in the cost**

of the petroleum purchased by petitioner. Obviously, its supplier **refused to sell the petroleum** without including the excise tax. That tax, however, is a tax imposed on the producer, manufacturer, owner, or importer. The **legal incidence of the excise tax** falls upon either of these persons but not upon petitioner as its purchaser.

The **legislative purpose** in the relevant provisions of the *NIRC* to lay the tax on them and **only upon them** could not have been more **plainly** revealed. The statutory provisions quoted above clearly impose the excise tax on these persons and not on their purchasers like petitioner. The result is that if the producer, manufacturer, owner, or importer **does not pay** the excise tax, the **government cannot collect it from their vendees**. The *NIRC* has **no provision** making the vendee liable for the payment of the excise tax.

The mere fact that petitioner may have **borne the economic burden** of the tax does not mean that it literally paid the tax. The hard reality is that **petitioner agreed to pay a price** that its supplier set to cover many costs, including, but not limited to, the excise tax it was **not legally bound** to pay for. As things stand, thus, petitioner was entitled by statute to purchase the petroleum tax-free, **but since it did not do so,** and since it *could not have passed on* the excise tax to its tax-exempt purchaser, i.e., the international carriers, there was **no available remedy** to it. The **reason** is that the **legal incidence of the tax** fell upon petitioner's supplier, not upon petitioner, and the *NIRC* **did not require** the supplier to **pass on** the excise tax to petitioner.

To repeat, petitioner has a **statutory right to purchase the petroleum tax-free** from its supplier. It was **only its supplier that insisted upon passing on** its own tax burden to petitioner through the petroleum purchase price. Since the **tax burden here is that of petitioner's supplier and not upon petitioner**, petitioner is **without a remedy** as to the **other portion**. It just **cannot claim a refund** of the excise taxes it paid to its supplier because it is not by law the taxpayer. The mere filing of the claim for refund **did not transform** petitioner as a non-taxpayer into a taxpayer entitled to a refund.

Since petitioner is **not the taxpayer**, it **does not have a legally protected interest** under the *NIRC* to pursue a claim for refund for this **other portion**. More, **without a legally protected interest**, there can be **no injury in fact**. Failure to establish an injury in fact **alone defeats standing**. If at all, petitioner's injury is an **indirect** one that **was caused by petitioner's supplier** when it included the tax cost as part of the price. The **government** from which the refund is claimed **was not the cause** of this **indirect** injury. Rather, it is the independent action of a third party not present in this suit - petitioner's supplier. As there is no injury in fact, nor causation by the government, **redress cannot be had**.

Policy Arguments – Refuted

The opposing opinions **bewail the awful consequences** of Justice Leonen's opinion. They say that **preventing petitioner from collecting a refund** would result in either of **four (4) things**: **(i)** petitioner **would pass the cost** of the excise on to the international carriers, an economic burden that would be contrary to the legislative intent of exempting international

carriers from excise taxes; or **(ii)** petitioner **would bear the burden** of the excise taxes **but sell its products elsewhere**, not to tax-exempt entities like international carriers which would **thus deprive** the latter of needed supply; or **(iii)** international carriers would pay for the excise tax as part of the cost of the petroleum products upon purchase and **pass this cost on to the travelling public** as part of the carriage price; or **(iv)** international carriers would pay for the excise tax as part of the cost of the petroleum products upon purchase and this Court would then **create** the right of this tax-exempt entities to claim a refund for the tax paid.

Congress, not the Court, determines tax policies

I respectfully **recognize** the opposing opinions' policy arguments. **But** these concerns are **exclusively for Congress to weigh and determine**. And for a long time, Section 135, **as presently worded,** remains to be the rule. I am sure that Congress has been well and very much aware of these consequences **but it has stuck** to the wording of Section 135. It is **not for us to usurp** the function of Congress. Not only is this **constitutionally improper**. It is also **practically** a **bad determination** as the Court has **none of the facts** and **the means to decipher the facts** necessary to resolve a **policy** conundrum. What is clear from the law is that only international carriers are **exempt** from excise tax. Whether suppliers of petroleum products would boycott international carriers is a matter that the political branches of government would have to deal with. This concern is **not even part** of the submissions of the parties, so even if we were to become an **activist court,** I do not know if this should be an issue worth considering in our resolution of the present controversy.

Legislative history refutes buck passing

Further, the **prohibition against** petitioner from **transferring the economic burden** of the excise tax to international carriers **and** against international carriers from doing the same thing as to the riders of international carriers is explained by the **history of Section 135**. International carriers have been **meant to purchase** petroleum products **locally tax-free**.

Looking back, Section 142 of Commonwealth Act 466,[8] the *NIRC* (1939), already imposed specific taxes on fuels as well as an exemption therefrom if used in aviation, be it domestic or international, thus:

> SECTION 142. *Specific Tax on Manufactured Oils and Other Fuels*. — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
>
> (a) Kerosene or **petroleum**, per liter of volume capacity, one and one-half centavos;
>
> (b) Lubricating oils, per liter of volume capacity, four centavos;

(c) Naphtha, gasoline, and all other similar products of distillation, per liter of volume capacity, live centavos; and

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one-half centavo: *Provided*, That if the denatured alcohol is mixed with gasoline the specific tax on which has already been paid, only the alcohol content shall be subject to the lax herein prescribed. For the purposes of this sub-section, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety *per centum* absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary.

Whenever the above-mentioned oils are used in aviation, the specific tax thereon shall be refunded by the Collector of Internal Revenue upon the submission of a sworn certificate satisfactory to him proving that the said oils were actually used in aviation. (emphases added)

Notably though, this exemption was absent under Presidential Decree (PD) 1158-A,[9] the *NIRC* (1977), which ordained:

SECTION 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.

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

....

SECTION 153. *Specific tax on manufactured oils and other fuels*. — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:

x x x x

(j) Aviation turbo jet fuel, per liter of volume capacity, thirty centavos.

A year later, however, PD 1539[10] amended Section 134 of the *NIRC* (1977) to reinstate the exemption, albeit limited to international carriers, *viz*.:

> 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.
>
> **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.

Revenue Memorandum Circular 032-78[11] dated April 25, 1978 bears the rationale for this exemption:

> ***Features of the Amendment***
>
> Under the old provisions of Section 134 of the Tax Code of 1977, nothing is mentioned concerning the non-taxability of petroleum products sold to international carriers for their use or consumption outside of the Philippines. However, on the basis of BIR ruling issued by then Commissioner Benjamin N. Tabios in 1965 and reiterated by then Commissioner Misael P. Vera in 1975, no specific tax was collected on removals of aviation gasoline from local oil refineries for sale to international carriers for the reason that the sale was not intended for domestic consumption.
>
> With the promulgation of PD 1119, effective on May 15, 1977, the practice of allowing refineries to remove under bond petroleum products without the prepayment of the tax due for storage in their bonded terminals has been discontinued, except in the case of Petrophil, owned and operated by PNOC, a government-owned corporation. Hence, all petroleum products removed from the refineries are considered taxpaid upon removal therefrom although the law allows payment of tax due within 15 days from date of removal. Because of that

change, petroleum products sold or delivered to international carriers were already deemed taxpaid and the oil refineries are claiming tax credit for specific taxes paid on said products sold to international carriers invoking the Tabios and Vera rulings.

While it is believed that the said ruling is erroneous because the sale by local oil companies of petroleum products to international carriers in the Philippines **constitutes domestic sale** and **therefore, taxable,** a reversal of the said ruling is not legally feasible due to the provision in the Tax Code against the retroactivity of reversals of rulings if the effect thereof would be prejudicial to the taxpayer. **Furthermore, the reversal of said ruling is anticipated to result in the minimal purchase of domestic petroleum products by international carriers which could refuel fully in some nearby countries. It could also encourage international carriers to establish depots in the country and import oil products for their foreign flights using foreign exchange in the process. Countries of international carriers adversely affected by a reversal of the ruling might retaliate by imposing taxe[s] on oil products purchased by the Philippine Airlines and other domestic carriers in those countries.**

In the light of the foregoing, and to foster better relationship with other countries, it has become imperative to clearly spell out in the Tax Code that petroleum products sold to international carriers for their use or consumption outside of the Philippines shall be exempt from specific taxes, provided the country of the said carries exempts from tax petroleum products sold to Philippine carriers. Hence, Presidential Decree No. 1359 has been promulgated.

In effect, starting April 21, 1978, the date Presidential Decree No. 1359 was promulgated, **local oil companies may sell tax-free petroleum products to any international carrier for its use or consumption** outside of the country subject, however, to the principle of reciprocity, that is, the country of such carrier shall likewise allow the sale of tax-free petroleum products to Philippine carriers.

The **exemption** was **meant to allow international carriers to buy domestic or imported petroleum at a cheaper rate** because the **purchase** is **tax-free**. Its purpose was to encourage international carriers to refuel here than in other neighboring countries which they could have easily done. It was also an incentive for international carriers **not to establish re-fuelling depots here**, so as to allow our country **to save on foreign currencies** from these carriers' **avoidance of foreign currency transactions** involving their importation of petroleum. Finally, the benefit was extended to international carriers registered in countries which grant a similar benefit to carriers ot Philippine registry to ensure that this benefit enjoyed by Philippine carriers elsewhere would be preserved.

Subsequently, Section 134 of PD 1158-A, as amended was split into two (2) provisions under PD 1994[12] dated November 5, 1985, thus:

> Sec. 109. *Article subject to excise taxes*. —Excise taxes apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported, but not to anything locally produced or manufactured 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 articles or products. In case of importations, excise taxes shall be in addition to the customs duties, if any.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specific value of the article be referred to as 'ad valorem tax.'
>
> ....
>
> **Sec. 115. *Petroleum products sold to foreign international carriers*. — Petroleum products sold to an international carrier for its use or consumption outside of the Philippines, shall not be subjcct to excise taxes; *Provided*, That the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers.**

Section 115 was later renumbered to Sections 132 before it got incorporated in the *NIRC* (1997) as Sections 135(a) and (b).

Cognizant of the rationale behind the exemption, I cannot help but agree with Justice Leonen that **Section 135 is a shield for international carriers rather than a benefit for importers, purchasers,** and **manufacturers**. If we were to give real meaning to the exemption as rightfully suggested by our esteemed colleagues, then, **Section 135** should be interpreted as **preventing sellers from shifting the burden of paying excise taxes on petroleum products directly or indirectly to international carriers**. Otherwise, the purpose of the law would be defeated.

This legislative purpose is **reflected** in the **plain meaning** of the language of Section 135. It states that petroleum products **sold to** an international carrier, among others, are exempt from excise tax. This **language,** *plainly understood*, **exempts international carriers** from both the **legal** and **economic incidences** of the burden of payment of the excise tax. The **language of the exemption** is comprehensive and exhaustive – otherwise Section 135

would have included words **excluding from the exemption** the **pass-over** of the cost of the excise tax to exempt entities themselves.

Section 135 did **not** change the **legal** incidence of excise tax – it **remains payable** by the producer, manufacturer, owner, or importer of the petroleum product. An international carrier is **neither of these**. It is simply a purchaser or end-user of the petroleum product. Government **cannot collect** excise tax from international carriers because they are **not** the **statutory taxpayers**. Further, Section 135 says they are **tax-exempt**. Hence, even assuming that the **legal incidence** of excise tax has been transferred to them, Section 135 exempts them nonetheless from paying this tax.

Section 135 **prohibits,** as well, the shifting of the **economic incidence** of excise taxes. Ordinarily, the burden of payment of excise taxes **could** be shifted to the subsequent purchaser. Passing the buck is allowed. **But** this shifting **cannot be done** with petroleum products **sold to** international carriers. This is **because** the **activity** or **event** that **triggers** the **economic** burden of the excise tax – the sale of the petroleum product – is **precisely exempt** from excise tax. The **plain meaning** of the operative words – "[p]etroleum products **sold to**... are **exempt** from excise tax...." – **cannot pass** the **cost** of the **excise tax** as an additional item in the selling price.

The principle behind the payment scheme for excise taxes, I believe, is **similar to the Value Added Tax (VAT) treatment on imported fuel used for international shipping or air transport operations,** thus:

> **SEC. 109.** ***Exempt Transactions.*** **–**
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be **exempt from the value-added tax.**
>
> **(U) Importation of fuel,** goods and supplies **by persons engaged in international** shipping or **air transport operations**: Provided, That the **fuel**, goods, and supplies **shall be used for international** shipping or **air transport** operations.

As an indirect tax, just like excise taxes, VAT may be shifted to consumers.[13] **But not so when the transaction is VAT exempt. Since there is no VAT imposed, there is simply nothing to shift.** More, when goods are exempt from VAT, their producers are not entitled to input VAT credit for the VAT they paid to produce the goods. Otherwise stated, **the seller would be precluded from claiming refund for the VAT it previously paid**. Its **proper recourse is to declare the input VAT paid as a deductible expense** to lower its income tax.[14]

It has nevertheless been argued, *as above-noted*, that excise taxes are the direct liability of the manufacturer or importer **which may add the cost of these taxes on the price which the buyer has to pay** to obtain the taxable product. It **cannot therefore be said** that the **burden of paying** the **excise tax was shifted,** that is, the **legal incidence** of the tax. What takes place is that the **buyer** simply **agreed to purchase** the product at a **higher** cost **inclusive of the tax already paid** – this is **shifting** the **economic burden** of the tax.

To repeat, however, this **shifting** is **not allowed** as regards entities **exempt** from excise tax **arising from the sale to them** of the product. To stress, the **legislative history** and **purpose** of Section 135, as reflected in the **plain meaning** of its **language** entices international carriers to buy their petroleum needs from local sources and not use foreign exchange in the process. The **mode** of enticement is the **lower purchase price** because the transaction is **exempt** from or **exclusive** of the cost of excise tax. What the international carriers have been **exempt from directly cannot be taken from them indirectly** through pass-on costs inclusive of the paid-for excise tax.

I understand that the argument is hinged on ***Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue***[15] decided by the Court En Banc on August 17, 1967. But I respectfully submit that to this general rule, Section 135 is the exception.

For one, ***Philippine Acetylene*** was decided before the exemption was granted to international carriers in 1978 via PD 1539. The lofty ideas behind **the grant would be negated if** the Court were to allow manufacturers or importers of petroleum products to **incorporate the excise taxes they paid in pricing** the same articles to be sold to international carriers.

For another, allowing **manufacturers** and **importers** of petroleum products to charge excise tax payments to cost of sales and subsequently claim for **tax refund** thereon would be tantamount to allowing them to benefit doubly from the exemption which, as earlier explained, **was not even meant for them**.

To illustrate, ABC imported 100,000 liters of petroleum for P100,000,000.00 and paid P10,000,000.00 in excise taxes. Under the prevailing rule, ABC can incorporate the excise taxes paid to the selling price and sell the petroleum for P150,000,000.00. But aside from its P50,000,000.00 profit, ABC can still claim for a refund of its earlier excise tax payment of P10,000,000.00. Resultantly, ABC is able to recoup twice the excise taxes it paid only once.

Notably here, petitioner is claiming tax refund of excise taxes paid on 24,974,294 liters of Jet A-1 fuel imported and sold to international carriers. These fuels were sourced not just from the 28,578,673 liters which petitioner itself imported, but also on the 3,192,012 liters it purchased from Chevron, which petitioner has **no right to do so,** as explained above, since Chevron legally paid the excise tax on its 3,192,012-liter importation. Yet, **even without any right as explained above,** this did not deter petitioner from collecting a refund thereon on the ground that the taxes **on this purchase** were allegedly billed or

passed on to it by Chevron.[16]

Petitioner's own argument shows an actual **transfer of the burden of payment** of the excise taxes from buyer to buyer – the **economic** incidence of the tax. **But** when the **transferee** of the **taxable good** is an **exempt** entity, the latter **should not bear** the **burden of reimbursing the tax** because it is *precisely* **exempt** from paying excise tax.

But if the **exempt** entity, in this case, the international carrier, **pays** the price **inclusive of the tax** voluntarily and with full knowledge of its rights under the law, which should be presumed given the legal advice readily available to it, the international carrier thereby **waives the exemption**.

The **legal incidence** of the excise tax is borne by petitioner, an entity provided with **no tax exempt status** under the *NIRC*. **However**, if an international carrier **contractually agrees to be responsible for the excise tax**, that **contractual commitment to pay** the tax **did not create a *requirement* to pay taxes** from which the international carrier **would have been exempt**. An international carrier, **by agreeing to pay** the excise tax and then claiming tax exempt status, **would in effect, attempt to convey its tax exempt status** to petitioner. The **same effect** would take place **if petitioner** would be granted its claim for tax refund – this act would confer upon it a **tax exempt status** that **only Congress** can grant.

Thus, to preserve its tax exempt status, an international carrier should **pay under protest** and thereafter **seek reimbursement of** the **illegal collection of the tax** made by the seller from the latter, in this case, herein petitioner. Since the **exempt** entity is **not** the **taxpayer contemplated by law**, it has **no recourse against the government but only against its seller**.[17]

Persuasive court opinions from elsewhere support my opinion

I am **not an avid fan** of foreign jurisprudence. Nonetheless, I often cite, refer, or even quote them when they offer clarity. That is the situation here. US court opinions are helpful persuasive authorities to explain the intricacies of the present tax case.

US courts have enunciated a test as to when a **tax-exempt entity** may **invoke** its tax-exempt status and obtain exemption or refund for taxes it may have had paid. The test is **whether the legal incidence** is upon the tax exempt instrumentality. If so, it **need not bear the burden** of payment. **But**, if it is **affected only through increased costs** of services or materials, the **exemption does not lie**.[18] In other words, the test is whether the tax-exempt entity was **required to pay** the tax it was exempt from. Or whether it **paid voluntarily** the tax in order for it to complete and benefit from the otherwise tax-exempt transaction.

Thus, as stated in the immediately preceding discussion, if an international carrier **pays the price** of petitioner for its petroleum products, inclusive of the excise tax **without protest**,

then, the international carrier **has no reason to complain and cannot seek a refund** for the cost of the excise tax.

Another relevant citation dealing with the entire gamut of issues raised here is quoted below:

> Based on the plain language, the legislative history of the statutes, and the precedent explained above, **we hold that MEDCO is not exempt from paying the recordation tax in this case**, and affirm the decision of the tax court. Preliminarily, **we note that tax exemption statutes arc to be strictly construed in favor of the taxing authority and "[t]o doubt an exemption is to deny it."** Md.-Nat'l Capital Park & Planning Comm'n, 110 Md. App. at 689 (citation omitted).
>
> As the Court of Appeals stated in Pittman v. Housing Authority of Baltimore City, 180 Md. at 460, 462, **no tax exemption will be held to result from any language of a statute which does not show an unmistakable intention** of the General Assembly "to make the stipulated payment a substitute for the particular taxes for which the exemption is claimed." ***HN29*** The **plain language and legislative history** of Econ. Dev. § 10-129 and Tax-Prop. § 12-108(a) **fail to demonstrate any intention** of the General Assembly **to exempt** MEDCO **from paying a recordation tax** where MEDCO records a deed [*317] of trust for the benefit of a private lender, such as PNC Bank. In fact, Tax-Prop. § 12-116 specifically permits the individual counties to enact their own [***53] law regarding recordation tax exemptions for transfers from a State agency, and no such law has been enacted by Montgomery County. This **certainly demonstrates that there is no "unmistakable intention" to create a tax exemption** for transfers of property from, or grants of security interests from, a State agency, such as the transfer involved in this case.
>
> The language and legislative intent of Econ. Dev. § 10-129 demonstrates an intent to exempt MEDCO from paying taxes on its property or activities. Although borrowing money is clearly an activity of MEDCO, **the recording of the deed for the benefit of a private entity, *i.e.* PNC Bank, is not. Nothing in the plain language or legislative history** of Econ. Dev. § 10-129 **would permit us to extend MEDCO's tax** [**1087] **exemption status** to MEDCO's agreement to pay the recordation tax, in lieu of PNC Bank agreeing to pay the tax.
>
> .... Atlantic Golf is an opinion regarding MEDCO's ability to issue $17 million in tax-exempt revenue bonds and use the proceeds to construct and operate a golf course for the County, and the comment regarding MEDCO's tax exempt status under to Article 41, § 567 is dicta. The Court of Appeals's decision in Atlantic Golf is not dispositive as to the meaning or legislative intent of Econ.

Dev. § 10-129(a).

In short, **nothing** in the Court of Appeals's decision in Atlantic Golf **supports the proposition that MEDCO is exempt from paying a recordation tax, for the benefit of a private entity, when MEDCO agrees to pay the tax, but the tax is not required to be paid** by MEDCO. Econ. Dev. § 10-129(a) leads to precisely the opposite conclusion—*i.e.* **when MEDCO is not required to pay the tax but agrees to do so, it may not then claim an exemption**.

Similarly, we are not persuaded by MEDCO's contention that it is exempt from paying all taxes or assessments on its properties or activities, or any revenue from its properties or activities except as provided in Econ. Dev. § 10-129(b) which states that: "Property that the Corporation sells or leases to a private entity is subject to State and local real property taxes from the time of the sale or lease." According to MEDCO, subsection (a) of Econ. Dev. § 10-129 exempts it from paying any tax except that described in subsection (b)-tax on property sold or leased to a private entity. ***HN30*** **Econ. Dev. § 10-129(a), by its plain language, however, states, that MEDCO is exempt "*from any requirement* to pay taxes or assessments on its** properties [***65] or **activities**, or any revenue from its properties or activities."

Thus, MEDCO must be specifically [*323] required to pay the tax, prior to claiming a tax exempt status. The interaction of Econ. Dev. § 10-129(a) and (b) is, therefore, not relevant in this case. ***HN31*** In light of its plain meaning, the language of subsection (a) does not result in MEDCO being exempt from the payment of tax except that described in subsection (b), where MEDCO was not required to pay the tax but nonetheless agreed to pay.

[*324] [**1091] **In this case, MEDCO, by agreement, accepted responsibility to pay: "(a) all filing, registration and recording costs and [*325] fees** and all federal, state, county and municipal **stamp taxes and other taxes,** duties, imposts, assessment and charges **in connection with the recordation or filing of any Loan Document**s or related instruments, and any documents in connection with any foreclosure[.]" MEDCO subsequently recorded a deed of trust for the benefit of PNC Bank, and claimed that it was exempt from payment of the recordation tax, pursuant to Econ. Dev § 10-129. [**1092] Econ. Dev § 10-129 provides tax exemption status to MEDCO for any taxes MEDCO is **required** to pay on its properties or activities. **MEDCO agreed to pay the recordation tax, even though it was not required to do so. The recordation tax is an excise tax, imposed upon the privilege of recording the deed of trust in favor of PNC Bank, and is not a tax on MEDCO's properties or activities** or the revenues therefrom. As stated above, a general rule pertaining to exemptions from taxation is that the exemptions apply primarily to annual property taxes and ordinarily [***71] do not apply to excises or taxes which are imposed not in lieu of property taxes, but upon the

enjoyment of a privilege.

HN32 Maryland appellate courts have also previously held that **a tax exemption docs not apply when the legal incidence of the tax fails to fall on the party who has the tax exempt status**. In this case, **the legal incidence of the recordation [*326] tax does not fall on MEDCO**. Rather, **the purpose of recording the deed of trust was for the benefit of PNC bank**, the entity identified as the beneficiary in the Leasehold Deed of Trust, Assignment and Security Agreement. As this Court explained in Vournas, 53 Md. App. at 251, **" [t]he United States Constitution immunizes the United States and its property from taxation** by the States, **but it does not forbid a tax whose legal incidcnce is upon a person doing business with the United States, even though the economic burden of the tax, by contract or otherwise, is ultimately borne by the United States."**

We see no reason to depart from this rationale – **the legal incidence of the recordation tax was borne by PNC bank, an entity provided no tax exempt status** under Maryland law. **MEDCO contractually agreed to [***72] be responsible for the recordation tax, and that contractual commitment to pay the tax did not create a "requirement"** under Econ. Dev. § 10-129 **to pay taxes from which MEDCO is exempt. MEDCO, by agreeing to pay the recordation tax and then claiming tax exempt status, in effect, attempted to convey its tax exempt status to PNC Bank**.[19]

Conclusion

The doctrine of *strictissimi juris* of tax exemptions and the **nature** of excise taxes, together with a **holistic reading** of the provisions on excise taxes, compel me to join Justice Leonen's opinion. Petitioner has **no right** to **claim the exemption** from the payment of excise taxes for petroleum products under Section 135 of the *NIRC* **after it had sold** these products to tax-exempt international carriers. Petitioner **cannot also stake** a claim to this exemption **indirectly** by asking for the **refund of the excise taxes it already paid** for the importation and purchase of the same petroleum products from its sellers **after petitioner had sold them** to the tax-exempt international carriers.

I therefore vote to settle once and for all the artificial conundrum brought about by the divergent holdings of the Court by sticking to the clear provision of Section 135, *NIRC*, abandoning all rulings contrary to the present opinion of Justice Leonen, and denying the petition for lack of merit

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[1] *Md.-Nat'l Capital Park & Planning Comm'n*, 110 Md App at 689.

[2] *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, 746 Phil. 433, 475 (2014).

[3] 121 Phil. 1074, 1077 (1965).

[4] *State v. Garza*, [1993] 242 Neb 573, 496 NW2d 448.

[5] *In re Appugliese*, 210 BR 890 (Bankr D Mass 1997).

[6] *Floyd Cty, Ga v. Fed Hous Fin Agency*, 2013 WL 4670668 (ND Ga 2013), aff'd sub nom *Montgomery Cty Comm'n v Fed. Hous Fin Agency*, 776 F.3d 1247 (11th Cir. 2015).

[7] (A) Persons Liable. - **Excise taxes** on imported articles shall be **paid by the owner** or **importer** to the Custom Officers... or by the person who is **found in possession of articles** which are exempt from excise taxes **other than those legally entitled to exemption**. In the case of **tax-free articles brought** or **imported** into the Philippines **by persons**, entities, or agencies **exempt from tax** which are **subsequently sold, transferred or exchanged** in the Philippines to non-exempt persons or entities, the **purchasers** or **recipients** shall be **considered the importers** thereof, and shall be **liable for** the duty and **internal revenue tax due** on such importation.

[8] National Internal Revenue Code of 1939, Commonwealth Act No. 466, [June 15, 1939].

[9] National Internal Revenue Code of 1977, Presidential Decree No. 1158, [June 3, 1977].

[10] Amending Section 134 of the NIRC of 1977, Presidential Decree No. 1359, [April 21, 1978].

[11] Publishing Presidential Decree No. 1359, Dated April 21, 1978, Amending Section 134 of the National Internal Revenue Code of 1977, Revenue Memorandum Circular No. 032-78, [April 25, 1978].

[12] Further Amending Certain Provisions of the National Internal Revenue Code, Presidential Decree No. 1994, [November 5, 1985].

[13] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, 514 Phil. 255, 266 (2005): 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.

[14] See BIR Ruling No. DA591-2004 dated November 23, 2004; See also *Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines), Ltd.*, CTA EB Case No. 1786, June 13, 2019

[15] 127 Phil 470 (1967).

[16] Draft *ponencia*, p. 2.

[17] *Ammex Inc. v. United States*, 52 Fed Cl 303, 309-310, 2002 US Claims LEXIS 80, *14-21, 2002-1 US Tax Cas (CCH) P70,180, 89 AFTR2d (RIA) 2002-1961 (Fed Cl April 10, 2002).

[18] M*arcum v. Louisville Municipal Housing Com.*, 374 SW2d 865, 1963 Ky LEXIS 182, *4 (Ky. March 8, 1963).

[19] *Montgomery County v. Md. Econ. Dev. Corp.*, 204 Md App 282, 40 A3d 1066, 1086-1092, 2012 Md App LEXIS 37, *52-72 (Md Ct Spec App March 30, 2012).

SEPARATE CONCURRING OPINION

INTING, *J.*:

It is well within the Court's power of judicial review to revisit and reevaluate doctrines and principles previously established in jurisprudence. On occasion, We modify or reverse past rulings to reflect a more accurate interpretation of laws, more reasonable and just appreciation of the antecedent facts, or, ultimately, case law that better transcends the test of time.

While there have been many instances prior where the Court aptly chose to abandon long settled jurisprudence, there is no reason for Us to do so in the present case.

In the case at bar, the *ponencia* sets aside the denial of the Court of Tax Appeals (CTA) on Shell's application for refund or issuance of tax credit certificate (TCT) for excise taxes paid o" Jet A-1 fuel sold to international carriers amounting to P91,655 658.98. Relying on *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp*. (2012 Pilipinas Shell Case),[1] the tax court held that Pilipinas Shell Petroleum Corporation (Shell), a manufacturer or importer of petroleum products, is not entitled to the exemption tinder

Section 135(a) of the Tax Reform Act of 1997 (Tax Code).[2]

I join in the *ponencia* in partially granting the present petition. Our ruling is in consonance with the Court's earlier pronouncements in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.* (2014 Pilipinas Shell Resolution),[3] and *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp*. (2016 Pilipinas Shell Case).[4]

It is settled that "the essence of a tax exemption is the immunity or freedom from a change or burden to which others are subjected. It is a waiver of the government's right to collect the amounts that would have been collectible under our tax laws."[5] Thus, when the law speaks of a tax exemption, it must be understood as a grant in favor of the *person liable to pay the tax*.

Excise tax liability attaches to the petroleum product itself "as soon as they are in existence."[6] The relevant Tax Code provisions that determine the person liable therefor are as follows.

TITLE VI

Excise Taxes on Certain Goods

CHAPTER I

General Provisions

SECTION 129. *Goods and Services Subject to Excise Taxes*. — Excise taxes apply **to goods *manufactured* or *produced*** in the Philippines for domestic sale or consumption or for any other disposition **and to things *imported***. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as "specific tax" and an excise tax herein imposed md based on selling price or other specified value of the good shall be referred to as *"ad valorem tax."*

SECTION 130. *Filing of Return and Payment of Excise Tax on Domestic Products*. —

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

(1) x x x

(2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and the excise tax paid **by the manufacturer or producer** before removal of domestic produces from place of production x x x

SECTION 131. Payment of Excise Taxes on Imported Articles.—

(A) Persons Liable. — Excise taxes on imported articles shall be paid **by the owner or importer** to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.[7] (Emphasis supplied.)

Based on these provisions, the incidence of tax on petroleum products is the excisable article's *coming into existence*,[8] that is, when fuel is *manufactured* or *imported*. As the party who brought the article into existence, the *manufacturer/importer* shall be liable for the excise tax arising therefrom.

Aside from the duty of filing the tax return and payment of the correct amount of tax, the law and applicable tax regulations also require the *manufacturer/importer* to keep/preserve records and documents,[9] provide metering devices,[10] properly label and package the articles,[11] maintain bonded warehouses,[12] and post a bond in relation to the fuel's production/importation and subsequent disposition.[13] Stated differently, the *manufacturer/importer* not only pays the excise tax but also assumes the risk of assessment and penalty associated with compliance with strict administrative requirements.[14]

As the party statutorily liable to pay the tax and required to comply with administrative tax regulations on fuel production/importation, the *manufacturer/importer* is entitled to avail himself of the exemption under Section 135 of the Tax Code, *viz*.:

SECTION 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. (Emphasis supplied.)

While Section 135 speaks of the subsequent *sale* of manufactured/imported fuel to international carriers and tax-exempt entities/agencies, the *sale* cannot be construed as a transfer of the benefit of exemption.

That the manufacturer/importer charges a higher price in selling fuel does not alter his status as the *statutory taxpayer*. Verily, at the point of sale, the burden of taxation shifts to the end-consumer. However, the shift—a fundamental characteristic of *indirect taxes*—does not remove the incidence of taxation from the point of *product ion/importation*.

To be sure, the law does not impose excise taxes on the 1 of imported fuel. Unlike value added tax (VAT) on the sale of goods/properties,[15] excise tax is levied not on the subsequent sale, transfer, disposition, or transfer of the petroleum product. Rather, it is an exaction directly resulting from the production and importation of fuel, attaching to the article itself. Section 135(a) refers to the subsequent sale to an international carrier, not as a separate taxable transaction, but rather a *resolutory condition*, which, once fulfilled, extinguishes the liability to pay the excise tax. In turn, it entitles the manufacturer/importer to exemption from excise tax due on the fuel manufactured/imported.

Consequently, the amount passed on to the end-consumer is the *selling price* of fuel, not the excise tax itself.[16] He shall record the purchase price, which includes the excise tax, wholly as an expense. Again, this is different from the VAT system, wherein the VAT-registered purchaser generally records the VAT passed on oy the seller as input VAT, an asset.

Besides, the act of setting a price to include mark-up is a common and sound business strategy[17] to allow the manufacturer/importer-seller: (1) to defray costs of inventory, including excise taxes paid; and, obviously, (2) to earn a profit.

Certainly, a tax immunity would lose its meaning if we insist that it is available only to a person who, in the first place, has no obligation to pay the tax due on the subject article/transaction. It can only be enjoyed in its truest sense by the person who is liable for

the tax and wishes to be immune from therefrom.[18]

Notably, Revenue Regulations No. (RR) 3-2008[19] explains the manner by which the exemption under Section 135 may be availed of, to wit:

> As a general rule, all withdrawals of excisable articles from their place of production must be subject to excise tax. The grant of an outright tax exemption is discouraged because it deprives the Bureau of Internal Revenue (BIR) the opportunity to evaluate thoroughly the factual and legal bases of the tax relief sought. **It is for these reasons that remedies after payment of the tax is more favored by the government because this option will give more protection to revenue collections without diminishing the impact of the tax relief to which the taxpayers are entitled.** These remedies may either come in the form of: (1) a claim for excise tax credit/refund pursuant to Sec ions 204 and 229 of the NIRC; or (2) a product replenishment, the mechanics of which is provided in these regulations.

This "refund mechanism" allows the subsequent filing of a claim/refund under the presumption that the correct excise tax had been previously paid. A subsequent refund/credit is clearly for the benefit of the party who previously paid the excise tax on fuel—the *manufacturer/importer*. It could not have been granted in favor of an end-consumer because, not having paid any tax, nothing can be refunded to him.

Finally, RR 3-2008 provides:

> SEC. 8. TRANSITORY PROVISIONS. — x x x x
>
> For purposes of facilitating the processing of subsequent claims for product replenishments, tax credit or refund where the above inventory of under-bond articles was removed for direct exportation or sale/delivery to international carriers or to tax-exempt entity/agency, **the payment of the excise tax due on the said inventory of under-bond articles shall be made using BIR Form No. 0605 with the phrase "NOTE: THIS EXCISE TAX PAYMENT IS SUBJECT TO SUBSEQUENT PRODUCT REPLENISHMENT, TAX CREDIT OR REFUND" clearly printed on the face of the said form.** (Emphasis supplied.)

In other words, once the excise tax is paid, the manufacturer/importer's return is marked to indicate that the payment therein is subject to refund/credit. This is an express recognition

of the *manufacturer/importer's* entitlement to a refund under Section 135(a) for excise taxes paid on fuel sold to international carriers.

That the *manufacturer/importer*, not the *international carrier-purchaser*, is the proper party to claim the refund under Section 135(a) was precisely the ruling in the *Silkair (Singapore) PTE. Ltd. v. Commissioner of Internal Revenue (Silkair)*.[20] The Court relied on *Silkair* in the subsequent *Pilipinas Shell* and *Chevron* cases. The Court's consistency in these rulings cannot be solely attributed to *stare decisis*. **I humbly submit that choosing to uphold and recognize this long line of jurisprudence as good case law is not "blindly adhering to precedent" inasmuch as these cases are founded on a sound and holistic interpretation of applicable statutes, rules, and regulations.** Thus, We need not disturb them.

In sum, as the *statutory taxpayer of excise taxes due on imported fuel/petroleum products*, the importer may avail himself of the exemption under Section 135(a), provided the following requisites concur: *first*, the claimant *produced/imported* fuel.[21] *Second*, he stored the fuel in internal-revenue bonded storage storage tank.[22] *Third*, he paid the corresponding excise tax[23] due on the fuel.[24] *Fourth*, he sold the fuel to "[i]nternational carriers of Philippine or foreign registry on their use or consumption outside the Philippines."[25] *Fifth*, he labeled or packaged the fuel sold in accordance with regulatory requirements.[26] *Sixth*, if his sales to international carriers consist of both *manufactured* and *imported* fuel, he shall file separate claims for each type of excisable article.[27]

Parenthetically, I observe that the assailed CTA rulings were promulgated at a time when the 2012 *Pilipinas Shell Case* was still prevailing. Significantly, the Court reconsidered this ruling in the *2014 Pilipinas Shell Resolution*. Since then, the tax court abandoned its former view and consistently applied the *2014 Pilipinas Shell Resolution* in its decisions thereafter, as may be observed from its rulings subject of the *2016 Pilipinas Shell Case* and *Chevron Case*. Remanding the present case to the CTA is only proper to ensure that the natters are dealt upon according to prevailing jurisprudence.

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[1] 686 Phil. 944 (2012).

[2] Republic Act No. (RA) 8424 (Tax Code), approved on December 11, 1997.

[3] 727 Phil. 506 (2014).

[4] 780 Phil. 623 (2016).

[5] *Secretary of Finance Purisima, et al. v. Rep. Lazatin, et al.*, 801 Phil. 395, 424 (2016).

Italics and citations omitted.

[6] See Section 148 of the Tax Code, as amended by the *Value Added Tax (VAT) Reform Act*, RA 9337, approved on May 24, 2005.

[7] As amended by RA 9337.

[8] See Section 148 of the Tax Code.

[9] Section 153 of the Tax Code provides:
SECTION 153. *Records to be Kept by Manufacturers; Assessment Based Thereon*. — Manufacturers of articles subject to excise shall keep such records as required by rules and regulations recommended by the Commissioner and approved by the Secretary of Finance, and such records, whether of raw materials received into the factory or of articles produced therein, shall be deemed public and official documents for all purposes.
The records of raw materials kept by such manufacturers may be used as evidence by which to determine the amount of excise taxes due from them, and whenever the amounts of raw materials received into any factory exceeds the amount of manufactured or partially manufactured products on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Commissioner may assess and collect the tax due on the products which should have been produced from the excess.
The excise tax due on the products as determined and assessed in accordance with this Section shall be payable upon demand or within the period specified therein.

[10] Section 155 of the Tax Code provides:
SECTION 155. *Manufacturers to Provide Themselves with Counting or Metering Devices to Determine Production*. — Manufacturers of cigarettes, alcoholic products, oil products and other articles subject to excise lax that can be similarly measured shall provide themselves with such necessary number of suitable counting or metering devices to determine as accurately as possible the volume, quantity or number of the articles produced by them under rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
This requirement shall be complied with before commencement of operations.

[11] Section 156 of the Tax Code provides:
SECTION 156. *Labels and Form of Packages*. — All articles of domestic manufacture subject to excise tax and all leaf tobacco shall be put up and prepared by the manufacturer or producer, when removed for sale or consumption, in such packages only and bearing such marks or brands as shall be prescribed in the rules and regulations promulgated by the Secretary of Finance; and goods of similar character imported into the Philippines shall likewise be packed and marked in such a manner as may be required.

[12] Section 158, of the Tax Code provides:
SECTION 158. *Storage of Goods in Internal-revenue Bonded Warehouses*. — An internal-revenue bonded warehouse may be maintained in any port of entry for the storing of imported or manufactured goods which are subject to excise tax. The taxes on such goods shall be payable only upon removal from such warehouse and a reasonable charge shall be made for their storage therein. The Commissioner may, in his discretion, exact a bond to secure the payment of the tax on any goods so stored.

[13] Section 160 of the Tax Code provides:
SECTION 160. *Manufacturers' and Importers' Bond*. — Manufacturers and importers of articles subject to excise tax shall post a bond subject to the following conditions:
(A) *Initial Bond*. — In case of initial bond, the amount shall be equal to One hundred thousand pesos (P100,000): *Provided*, That if after six (6) months of operation, the amount of initial bond is less than the amount of the total excise tax paid during the period, the amount of the bond shall be adjusted to twice the tax actually paid for the period.
(B) *Bond for the Succeeding Years of Operation*. — The bonds for the succeeding years of operation shall be based on the actual total excise tax paid during the year immediately preceding the year of operation.
Such bond shall be conditioned upon faithful compliance, during the time such business is followed, with laws and rules and regulations relating to such business and for the satisfaction of all fines and penalties imposed by this Code.

[14] Also see Section 245 of the Tax Code.

[15] See Section 106 of the Tax Code, as amended by RA 9337.

[16] See *Silkair (Singapore) PTE. Ltd. v. Commissioner of Internal Revenue*, 568 Phil. 92 (2008).

[17] See Separate Opinion of then Associate Justice Lucas P. Bersamin (now a retired Chief Justice of the Court) in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, supra note 3.

[18] In *Secretary of Finance Purisima, et al. v. Rep. Lazatin, et al.*, *supra* note 5 at 424-425, citing *CIR v. CA*, 338 Phil. 322 (1997), the Court ruled, "[i]n the same vein, we cannot agree with the view that FEZ enterprises have the duty to prove their entitlement to tax exemption first before fully enjoying the same; we find it illogical to determine whether a person is exempted from tax without first determining if he is subject to the tax being imposed. We have reminded the tax authorities to determine first if a person is liable for a particular tax, applying the rule of strict interpretation of tax laws, before asking hi n to prove his exemption therefrom."

[19] 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, approved on January 22, 2008.

[20] *Silkair (Singapore) PTE Ltd. v. Commissioner of Internal Revenue*, *supra* note 16; 591 Phil. 754 (2008); 627 Phil. 453 (2010).

[21] See Sections 129 and 131 of the Tax Code.

[22] Section 135(a) in relation to Section 158 of the Tax Code:
SECTION 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 or 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

SECTION 158. *Storage of Goods in Internal-revenue Bonded Warehouses*. —
An internal-revenue bonded warehouse may be maintained in any port of entry for the storing of imported or manufactured goods which are subject to excise tax. The taxes on such goods shall be payable only upon removal from such warehouse and a reasonable charge shall be made for their storage therein. The Commissioner may, in his discretion, exact a bond to secure the payment of the tax on any goods so stored.

[23] Section 131 of the Tax Code provides:
SECTION 131. *Payment of Excise Taxes on Imported Articles*. —
(A) *Persons Liable* — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon: *Provided, however*, That this shall not apply to cigars and cigarettes, distiller spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under

Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: *Provided, further*, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': *Provided, still further*, That if such articles brought into the duly chartered or legislated freeports under Republic Act Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or reselling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism a no the General Manager of the Philippine Tourism Authority.

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

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

[24] See Section 2, Revenue Regulation No. (RR) 3-2008.

[25] Section 135(a), Tax Code.

[26] Section 4 of RR 3-2008 in relation to Section 156 of the Tax Code.

[27] Section 7, RR 3-2008:

SEC. 7. DISALLOWANCES ON CLAIMS FOR TAX CREDIT/ REFUND OR PRODUCT REPLENISHMENT. - For purposes of filing a claim with the BIR for tax credit/refund or product replenishment on excise taxes that have been paid on excisable articles that were actually exported or sold/delivered to taxexempt entities/agencies or international carriers by the manufacturers thereof where the excisable article is composed

of locally manufactured excisable article and imported article, the claim for the excise tax on the imported article shall not be allowed. The same shall be separately filed, for purposes only of claiming tax refund/credit, with the appropriate office in the BIR for the conduct of verification and preparation of the recommendation report to the Bureau of Customs (BOC). On the basis of the transmitted recommendation report of the BIR, the BOC shall subsequently process the claim in accordance with its existing or governing rules and policies on the matter. In no case that imported articles shall be subject to product replenishment under any circumstances.

DISSENTING OPINION

ZALAMEDA, *J.*:

After a careful perusal of the pertinent laws and jurisprudence, I respectfully dissent from the *ponencia* and maintain that manufacturers, sellers, and importers, like petitioner in this case, are not entitled to a claim of refund or tax credit of excise taxes paid on petroleum products which are eventually sold to tax-exempt entities and international carriers.

At the outset, the principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.[1] Blind adherence to precedents, simply as precedent, no longer rules.[2] In line with the purpose of our judicial system to discover the truth and see that justice is done,[3] We must not condone the perpetuation of an erroneous or inaccurate interpretation of the law merely on the basis of a mechanical application of the doctrine of *stare decisis*. As such, this Court must not be shackled by precedents, more so when overturning the same promotes judicious dispensation of justice.

Section 135 of the Tax Code does not confer excise tax exemption upon manufacturers, sellers, and importers of petroleum products

It is well settled that when the law is clear and free from any doubt or ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization.[4]

In this regard, Section 135 of the Tax Code unequivocally provides exemption from excise tax payment on petroleum products to buyers, international carriers and tax-exempt entities enlisted therein who purchased the same for their use or consumption outside the Philippines. Nowhere in the provision was it stated that the exemption extends to the benefit of the manufacturers, sellers, and importers of petroleum products. In fact, nowhere in the entire Tax Code was it provided that the excise tax exemption given to buyers, international carriers and tax-exempt entities enumerated in Section 135 shall redound to the benefit of the manufacturers, sellers, and importers of petroleum products.

Verily, since Section 135 of the Tax Code is clear and unambiguous, there is no need to consider the effects of disallowing refund or tax credit to oil companies on the latter's sale to tax-exempt entities in the application of said provision.

It must be underlined that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and, thus, the law is construed in *strictissimi juris* against the taxpayer. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[5]

Excise tax is an indirect tax due upon removal of petroleum products from place of production

Excise tax is a tax on the production, sale, or consumption of a specific commodity in a country.[6] As jurisprudence dictates, it does not matter to what use the article[s] subject to tax is put; the excise taxes are still due, even though the articles are removed merely for storage in some other place and are not actually sold or consumed.[7]

Indeed, an excise tax is an indirect tax where the tax burden can be shifted to the consumer but the tax liability remains with the manufacturer, seller, or importer. The same are collected from the manufacturer, seller, or importer before removal of the domestic products from the place of production.[8] In other words, the excise tax is due from the manufacturers, sellers, or importers of the petroleum products and is paid upon removal of the products from their refineries. Even before the product is sold by or purchased from said parties, the excise tax has already accrued[9] and this is without regard to whether or not the petroleum purchaser is an exempt entity.[10]

Petitioner cannot anchor his claim for refund on Section 229 of the Tax Code

It is clear from the plain text of Section 229 of the Tax Code that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. Section 229 should "apply only to instances of erroneous

payment or illegal collection of internal revenue taxes."[11] Akin to unutilized input VAT,[12] the excise tax in this case is not erroneously or illegally collected as contemplated in Section 229, because at the time the same is collected, the amount paid is correct and proper. In fact, Section 148 of the Tax Code explicitly sanctions the collection of said excise tax as soon as the enumerated goods therein are in existence.

Excise taxes accrue upon removal of petroleum products from place of production, without regard to the purchaser. As aptly explained by Justice Bersamin in his separate opinion in *CIR v. Pilipinas Shell*,[13] the accrual of the 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 of 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. Notably, at the time excise taxes are due and remitted, manufacturers, sellers, and importers are not certain how much petroleum products they will sell, if any, to exempt entities.

Undoubtedly, excise taxes paid upon removal of petroleum products from the place of production are not erroneously, excessively, or illegally collected tax within the purview of Section 229 of the Tax Code. Thus, petitioner may not anchor its claim for refund on said provision.

It is also worthy to note that in any event, petitioner is not the proper party to file for refund of the excise tax paid on the petroleum products it bought from Chevron. As likewise raised by Justice Lazaro-Javier, the right to claim a refund, if legally allowed, belongs to the statutory taxpayer, in this case Chevron, and cannot be transferred to another without any clear provision of the law allowing the same.[14] I recognize, however, that the *ponencia* qualified the excise taxes refundable to petitioner taking into consideration this very matter.

The tax exemption enjoyed by the buyer cannot be the basis of a claim for exemption by the manufacturer, seller, or importer

To reiterate, the Tax Code only provides for tax exemption of petroleum purchasers outlined in Section 135. It does not grant manufacturers, sellers, or importers with the same tax privilege. Clearly, the excise tax exemption enjoyed by the buyer does not redound to the benefit of manufacturers, sellers, or importers of petroleum products.

In fact, upon perusing the Tax Code, it may be observed that the only instance wherein the buyer's tax privilege explicitly extends to the seller is found in Section 112 for Value-Added Tax (VAT) transactions pertaining to zero-rated or effectively zero-rated sales. Under said provision, excess input taxes may be claimed for refund or issuance of tax

credit certificate by any VAT-registered person whose sales are zero-rated or effectively zero-rated.

Section 135 grants the excise tax exemption only to the international carriers or agencies as the buyers of petroleum products. Although generally, indirect taxes such as excise taxes paid by manufacturers, sellers, and importers may be shifted or passed on to buyers, **Section 135 of the Tax Code provides for an exception as it explicitly prohibits manufacturers, sellers, and importers from shifting or passing on the excise taxes they paid on the petroleum products sold to international carriers and tax-exempt entities enumerated under said provision.**[15] This is why the manufacturer, seller, or importer is required to pay the excise tax in advance without regard to whether or not the petroleum purchaser is an exempt entity.[16]

In sum, while it is the taxpayer who can claim for refund, petitioner has no basis to apply for the same. The tax privilege enjoyed by the duly specified buyer cannot be the basis of the seller's exemption. This, especially since the excise tax is due upon removal of the petroleum products from the place of production, **regardless of who will buy it**. As Section 135 of the Tax Code pertains to tax exemption, its strict construction and application is warranted. In this regard, it is unequivocal that the provision does not extend the tax exemption to the benefit of the manufacturer, seller, or importer of petroleum products. Since said provision is clear and free from ambiguity, it must be applied according to its express terms, without any attempted interpretation or ratiocination. Further, given that the excise tax paid by petitioner was correct and proper at the time of collection, petitioner cannot anchor its claim on Section 229 of the Tax Code.

Ultimately, I agree with Justice Leonen that oil companies which sold petroleum products to tax-exempt entities are not entitled to a refund of excise taxes paid on the goods.

Verily, based on the foregoing premises, I vote to **DENY** the petition.

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[1] *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947) [Per J. Padilla].

[2] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Co.*, 514 Phil. 255 (2005) [Per J. Garcia].

[3] *See Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 & 115931, 25 August 1994 [Per J. Mendoza].

[4] *Ocampo v. Rear Admiral Enriquez*, 815 Phil. 1175 (2017) [Per J. Peralta].

[5] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No.

222428, 19 February 2018 [Per J. Peralta].

[6] *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, 11 November 2014 [Per J. Leonen].

[7] *People v. SandiganBayan*, 504 Phil. 407, 429 (2005) [Per J. Panganiban].

[8] *See Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754 (2008) [Per J. Carpio].

[9] Id.

[10] *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, 127 Phil. 461 (1967) [Per J. Castro] and *Maceda v. Macaraig Jr.*, 295 Phil. 252 (1993) [Per J. Nocon].

[11] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310 (2013) [Per J. Carpio] citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*, 586 Phil. 712 (2008) [Per J. Velasco, Jr.].

[12] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, *supra* at note 5 citing *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil 310 (2013) [Per J. Carpio].

[13] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, 727 Phil. 506 (2014) [Per J. Villarama, Jr.].

[14] *See Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, 698 Phil. 385 (2012) [Per J. Perlas-Bernabe].

[15] *See also* Dissenting Opinion of J. Del Castillo in *Chevron Phils., Inc. v. CIR*, 768 Phil. 37 (2015) [Per J. Bersamin].

[16] *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* and *Maceda v. Macaraig, Jr.*, supra at note 10.