G.R. No. 210836 – *Chevron Philippines, Inc., petitioner, v. Commissioner of Internal Revenue, respondent.*

Promulgated: September 1, 2015

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DISSENTING OPINION

DEL CASTILLO, *J.*:

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

Factual Antecedents

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

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

However, since Section 135(c)[6] of the 1997 National Internal Revenue Code (NIRC) exempts CDC from paying excise taxes on petroleum products, petitioner did not pass on to CDC the excise taxes it paid under Section 131(A)[7] of

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

2 Id.

3 *Rollo*, p. 28.

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

5 Id. at 99.

6 SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:
x x x x
(c) Entities which are by law exempt from direct and indirect taxes.

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

the NIRC.[8] Instead, it filed on June 26, 2009 with the Bureau of Internal Revenue (BIR) Large Taxpayers Services – National Office, an administrative claim for tax refund or credit in the amount of □6,542,400.00,[9] allegedly representing the excise taxes it paid on the importation of the petroleum products it sold to CDC for taxable year 2007.[10]

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

Respondent opposed the claim for tax refund or credit on the ground that there is no provision in the NIRC that expressly exempts the owners or importers of petroleum products from paying excise taxes on the imported products.[12] Respondent opined that Section 135 of the NIRC is a tax exemption in favor of international carriers and tax-exempt entities as buyers of petroleum products, and not in favor of owners or importers of petroleum products, who are the statutory taxpayers of excise taxes under Section 131 of the same Code.[13]

Ruling of the CTA Division

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

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8 *Rollo*, p. 100.

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

10 Id. at 100.

11 Id. at 119-152.

12 Id. at 100.

13 Id. at 100-101.

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

15 127 Phil. 461 (1967).

16 *Rollo*, p. 112.

17 Id.

18 SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —
x x x x
(D) Credit for Excise tax on Goods Actually Exported. — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original

Code, which petitioner cannot invoke as the petroleum products in this case were not locally produced or manufactured, but were imported.[19] Moreover, in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[20] the Supreme Court already declared that Section 135(a) of the NIRC "merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods."[21] In other words, petitioner, as a seller of imported petroleum products to tax-exempt entities, is not exempt from the payment of excise taxes thereon nor is it entitled to a refund or credit on the excise taxes it paid on the petroleum products.[22]

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

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

Ruling of the CTA En Banc

In a Decision[26] dated September 30, 2013, the CTA *En Banc* affirmed the ruling of the CTA 1st Division that there is nothing in Section 135(c) of the NIRC that explicitly exempts petitioner, as seller of imported petroleum products, from payment of excise taxes thereon.[27] And since petitioner does not fall in any of the categories exempted from paying excise tax, it is not entitled to a tax refund or credit.[28]

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state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

19 *Rollo,* pp. 113-116.
20 G.R. No. 188497, April 25, 2012, 671 SCRA 241.
21 *Rollo,* p. 113, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* supra.
22 Id. at 109-117.
23 Id. at 394-418.
24 Id. at 90-96.
25 Id. at 419-453.
26 Id. at 76-88; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringis-Liban.
27 Id. at 83.
28 Id.

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

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

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

Petitioner's Arguments

In light of the February 19, 2014 Resolution of the Court in *Pilipinas Shell,*[32] petitioner contends that its claim for tax refund or credit must be granted. It posits that the justification used by the Court in that case similarly applies to the instant case as the denial of the tax refund or credit would likewise result to serious adverse consequences on the supply of fuel to tax-exempt entities under Section 135(c) of the NIRC.[33] Petitioner anchors its theory on the premise that major oil companies would be unwilling to sell petroleum products to tax-exempt entities as they would be unduly burdened by the excise taxes paid upon production or importation.[34]

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

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29 Id. at 454-478.
30 Id. at 69-74.
31 Supra note 20.
32 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53 (Resolution).
33 *Rollo*, pp. 520-526.
34 Id. at 526.
35 Id. at 524.
36 Id. at 524-526.

In addition, petitioner argues that following the ruling of the Court in *Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*,[37] petitioner is not liable to pay excise taxes on the petroleum products it sold to CDC. In that case, the Supreme Court ruled that excise taxes are imposed when two conditions concur: first, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and second, that said articles are for domestic sale or consumption, excluding those that are actually exported.[38] In this case, the second condition was not met because the petroleum products were not for domestic sale or consumption as these were sold to CDC, which is deemed a separate customs territory and is regarded in law as foreign soil.[39] Thus, petitioner asserts that it is not liable to pay excise taxes on the petroleum products sold to CDC.

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

Respondent's Arguments

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

I vote to deny the Motion for Reconsideration.

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

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37 655 Phil. 199 (2011).
38 Id. at 212.
39 *Rollo*, pp. 526-529.
40 Issued on August 10, 2006.
41 BIR Ruling No. 036-99, dated March 29, 1999 and BIR Ruling No. 051-99, dated April 19, 1999.
42 *Rollo*, p. 524.
43 Id. at 536.
44 Id.
45 Supra note 20.
46 SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:

international carriers from the payment of excise tax under Section 148[47] of the NIRC. However, two years after, the Court reversed its April 25, 2012 Decision. Thus, in a Resolution[48] dated February 19, 2014, the Court granted *Pilipinas Shell's* motion for reconsideration and allowed its claim for refund. In reversing its earlier Decision, the Court ratiocinated that:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
x x x x

47 SEC. 148. Manufactured Oils and Other Fuels. - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
(a) Lubricating oils and greases, including but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four pesos and fifty centavos (□4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, rerefined or recycled shall likewise be subject to the tax imposed under this Section.
(b) Processed gas, per liter of volume capacity, Five centavos (□0.05);
(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (□3.50);
(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (□0.05): Provided, That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180º) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;
(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (□4.80): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (□0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;
(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (□5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (□4.35);
(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (□3.67);
(h) Kerosene, per liter of volume capacity, Sixty centavos (□0.60): Provided, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;
(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and sixty-three centavos (□1.63);
(j) Liquefied petroleum gas, per liter, Zero (□0.00): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;
(k) Asphalts, per kilogram, Fifty-six centavos (□0.56); and
(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Thirty centavos (□0.30).

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

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

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

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

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

With the prospect of declining sales of aviation jet fuel x x x to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to

> international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135(a) of the NIRC.[49]

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

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

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

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

Granting the tax refund or credit would constitute judicial legislation.

In the same vein, I cannot subscribe to petitioner's postulation that the denial of its claim would result in serious adverse consequences on the supply of fuel to tax-exempt entities under Section 135(c) of the NIRC as oil companies would be unwilling to sell petroleum products to customers operating within the special economic zone. This is not only unsubstantiated but is also not a legal ground to grant petitioner's claim for tax refund or credit. It bears stressing that

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49 Id. at 72-73.

50 Id.

51 SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:
(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: x x x

tax refunds, just like tax exemptions must not rest on vague, uncertain or indefinite inference but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken, as taxes are the lifeblood of the government.[52] Thus, unless there is a clear grant of tax exemption or refund in the law, the Court cannot grant petitioner's claim for tax refund or credit as this would constitute judicial legislation, which is not allowed.

Section 135 of the NIRC is not a refund provision.

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

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

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

Section 135 of the NIRC is not a tax exemption in favor of manufacturers,

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

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

sellers, and importers of petroleum products.

Neither can Section 135 of the NIRC be construed as a tax exemption in favor of manufacturers, sellers, and importers, which would allow them to claim a refund or credit of the excise taxes paid on the petroleum products sold to international carriers and tax-exempt entities. In fact, a simple reading of the provision clearly shows that it is a tax exemption in favor of the buyers, the international carriers and tax-exempt entities under Section 135 of the NIRC. And as the Court in its April 25, 2012 Decision in *Pilipinas Shell*[54] has previously said, "the tax exemption being enjoyed by the buyer cannot be the basis of a claim for exemption by the manufacturer, seller, or importer."[55] Thus, petitioner cannot use this provision to claim an exemption from the payment of excise tax.

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

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

As I see it then, Section 135 of the NIRC should simply be construed as prohibition on the shifting or passing on of the burden of excise tax to international carriers and tax-exempt entities, which purchase petroleum products from manufacturers, sellers, and importers. As aptly explained in the Decision dated April 25, 2012 in *Pilipinas Shell,*[58] Section 135 of the NIRC merely allows

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54 Supra note 20.
55 Id. at 259; citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, supra note 15.
56 *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754, 767 (2008).
57 Id. at 765-766.
58 Supra note 20.

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

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

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

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

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

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59 Id. at 263.
60 *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).
61 Supra note 32.

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

MARIANO C. DEL CASTILLO
Associate Justice