EN BANC

G.R. No. 210836 – CHEVRON PHILIPPINES, INC., Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:
September 1, 2015

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DISSENTING OPINION

LEONEN, *J.*:

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

> SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. – *Petroleum products sold to the following are exempt from excise tax:*
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
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> (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
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> (c) *Entities which are by law exempt from direct and indirect taxes.* (Emphasis supplied)

Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation[1] is a case that involved a claim over refund of excise taxes paid by Pilipinas Shell on its sales and deliveries of petroleum products to various international carriers from October 2001 to June 2002.[2] In the Decision

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1 G.R. No. 188497, April 25, 2012, 671 SCRA 241 [Per J. Villarama, Jr., First Division].
2 Id. at 246.

dated April 25, 2012, this court denied Pilipinas Shell's claim over tax refund.[3] In the Resolution[4] dated February 19, 2014, this court granted Pilipinas Shell's Motion for Reconsideration.[5] In granting Pilipinas Shell's claim over tax refund, this court, through the First Division, gave primary consideration to the country's commitment under the 1944 Chicago Convention on International Civil Aviation (Chicago Convention) and international agreements.[6]

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

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

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3 Id. at 264.

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

5 Id. at 73.

6 Id. at 68–73.

> With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.[7] (Citation omitted)

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

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

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

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

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

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[7] Id. at 72–73.
[8] Id. at 72.

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

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

> PRESIDENTIAL DECREE NO. 1359
>
> AMENDING SECTION 134 OF THE NATIONAL INTERNAL REVENUE CODE OF 1977.
>
> WHEREAS, under the present law oil products sold to international carriers are subject to the specific tax;
>
> WHEREAS, some countries allow the sale of petroleum products to Philippine Carriers without payment of taxes thereon;
>
> WHEREAS, to foster goodwill and better relationship with foreign countries, there is a need to grant similar tax exemption ***in favor of foreign international carriers***;
>
> . . . .
>
> SECTION 1. Section 134 of National Internal Revenue Code of 1977 is hereby amended to read as follows:
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> SEC. 134. Articles subject to specific tax.— . . . HOWEVER, PETROLEUM PRODUCTS SOLD TO AN INTERNATIONAL CARRIER FOR ITS USE OR CONSUMPTION OUTSIDE OF THE PHILIPPINES SHALL NOT BE SUBJECT TO SPECIFIC TAX, *PROVIDED*, THAT THE COUNTRY OF SAID CARRIER EXEMPTS FROM TAX PETROLEUM PRODUCTS SOLD TO PHILIPPINE CARRIERS.
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> In case of importations the internal-revenue tax shall be in addition to the customs duties, if any. (Emphasis supplied)

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[9] TAX CODE, sec. 135(a) provides:
SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. – Petroleum products sold to the following are exempt from excise tax:
(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner[.]

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

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

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

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

In *Maceda*, petitioner questioned the legality of the tax refund to National Power Corporation by way of tax credit certificates and the use of

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

[11] Convention on International Civil Aviation (1944), art. 24 provides:
Article 24. (a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.
(b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

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

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

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

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

the said assigned tax credits by oil companies to pay for their tax and duty liabilities to the Bureau of Internal Revenue and Bureau of Customs.[16] This court dismissed Maceda's Petition and upheld the tax refunds granted to National Power Corporation, ruling that under the prevailing laws then, the National Power Corporation enjoyed indirect tax and duty exemption on its local purchases of petroleum products.[17] On Motion for Reconsideration by petitioner, this court maintained its ruling that the tax exemption privilege of the National Power Corporation included both direct and indirect taxes.[18] This court further held that the oil companies had to absorb all or part of the economic burden of the taxes previously paid on bunker fuel oils they sold to the National Power Corporation.[19]

This much was conceded in the precedent *Pilipinas Shell* case when it maintained that "Section 135 (a) . . . prohibits the passing of the excise tax to international carriers who buys [sic] petroleum products from local manufacturers/sellers[.]"[20] However, this court arrived at a different conclusion after taking into consideration the "effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention."[21]

It is premature and purely speculative to say that to deny the domestic manufacturers or sellers their refund claims would result in a cessation in the supply of fuel oils to international carriers or an increase in oil prices and in "tankering."[22] These assumed effects may or may not happen, and it was inappropriate for this court then to overturn its first ruling based on these assumptions. Indeed, such argument is a consideration that should be addressed to the legislature and not to the courts that are not authorized to view laws from the standpoint of their results. Since there is no ambiguity or vagueness in the law, its plain provisions should be applied coupled with the principle that tax refunds, as in tax exemptions, must be clearly provided by law.[23]

Under Section 129[24] of the National Internal Revenue Code of 1997, as amended, excise taxes are imposed on two (2) kinds of goods, namely: (a)

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16 *Maceda v. Macaraig, Jr., etc., et al.*, 274 Phil. 1060, 1092–1096 (1991) [Per J. Gancayco, En Banc].
17 Id. at 1113 and 1116.
18 *Maceda v. Macaraig, Jr.*, G.R. No. 88291, June 8, 1993, 223 SCRA 217, 259 [Per J. Nocon, En Banc].
19 Id. at 255.
20 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, February 19, 2014, 717 SCRA 53, 72 [Per J. Villarama, Jr., First Division].
21 Id.
22 Id. at 73.
23 *Insular Lumber Company v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981) [Per J. De Castro, En Banc].
24 TAX CODE, sec. 129 provides:

goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (b) things imported. Section 148[25] of the National Internal Revenue Code of 1997 expressly subjects the petroleum products to an excise tax, which shall attach to the goods as soon as they are in existence as such.

SEC. 129. Goods Subject to Excise Taxes. – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax'.

[25] TAX CODE, sec. 148 provides:
SEC. 148. Manufactured Oils and Other Fuels. – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
(a) Lubricating oils and greases, including but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram, respectively, of volume capacity or weight, Four pesos and fifty centavos (P4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from base stocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, refined or recycled shall likewise be subject to the tax imposed under this Section.
(b) Processed gas, per liter of volume capacity, Five centavos (P0.05);
(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (P3.50);
(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (P0.05): Provided, That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;
(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (P4.80): 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 (P0): 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 (P5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35);
(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (P3.67);
(h) Kerosene, per liter of volume capacity, Sixty centavos (P0.60): 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 (P1.63);
(j) Liquefied petroleum gas, per liter, Zero (P0): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;
(k) Asphalts, per kilogram, Fifty-six centavos (P0.56); 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 (P0.30).

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

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

The excise tax on locally manufactured petroleum products is a liability of the manufacturer or producer and accrues upon removal thereof from the place of production.[28] On the other hand, the excise tax on imported petroleum products is a liability of the importer or owner and accrues upon withdrawal of the goods from the customhouse.[29]

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

[27] Id. at 32–33.

[28] TAX CODE, sec. 130 provides:

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

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

. . . .

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: Provided, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid . . . before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further. . . .

. . . .

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

[29] TAX CODE, sec. 131 provides:

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

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

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

. . . .

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

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

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

> SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. -
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> . . . .
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> (D) Credit for Excise Tax on Goods Actually Exported. - When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

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

Majority of the members of this court may believe in the wisdom and prudence of granting the tax exemption to the manufacturers or importers of petroleum products on the basis of Sections 135 and 204 of the National Internal Revenue Code of 1997.[31] But such belief, however well-meaning and sincere, cannot bestow upon this court the power to change or amend the law. This court's power and function are limited merely to applying the law objectively. It cannot indulge in expansive construction to suit its sympathies and appreciations. Otherwise, it would be exceeding its role and invading the realm of legislation.

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

31 Ponencia, pp. 5-7

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

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

I am aware of a number of cases[36] involving claims over refund of excise tax paid on petroleum products where the tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. This court has held that it is the statutory taxpayer who is entitled to claim a tax refund based on Section 135 of the National Internal Revenue Code of 1997 and not the international carrier that merely bears its economic burden. Those cases, however, did not deal squarely with the issue on whether a manufacturer or importer is exempt from the payment of excise tax on petroleum products it sold to international carriers or exempt entities.

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

> [W]here the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes[,] the latter must be allowed to claim a tax refund

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

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

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

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

36 Namely: (a) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 568 Phil. 92 (2008) [Per J. Carpio Morales, Second Division]; (b) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 591 Phil. 754 (2008) [Per J. Carpio, First Division]; (c) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 627 Phil. 453 (2010) [Per J. Leonardo-De Castro, First Division]; and (d) *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, 680 Phil. 33 (2012) [Per J. Villarama, Jr., First Division]. *See also Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch v. Commissioner of Internal Revenue*, 655 Phil. 199 (2011) [Per J. Mendoza, Second Division] where the issue was whether the distributor and vendor of petroleum products to international carriers can claim a refund of excise taxes passed on to it by the manufacturers.

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

> even if it is not considered as the statutory taxpayer under the law.[38]

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

> Based on these rulings [referring to *Maceda* and *Silkair*], it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.[39]

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

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

MARVIC M.V.F. LEONEN
Associate Justice

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

39 Id. at 336.

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