REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED AIRLINES, INC.,
Petitioner,

C.T.A. CASE NO. 6449

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 18 2006

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DECISION

CASANOVA, C., J.:

This case seeks the refund of alleged erroneously collected income tax covering the taxable year 1999 in the total amount of FIVE MILLION TWENTY EIGHT THOUSAND EIGHT HUNDRED THIRTEEN PESOS AND 23/100 (P5,028,813.23).

The facts as culled from the records of the case are as follows:

Petitioner, a foreign corporation organized and existing under the laws of the State of Delaware, U.S.A., is engaged in the business of international air transportation.

Pursuant to Securities and Exchange Commission ("SEC") Registration No. 1094 dated June 7, 1984, petitioner was licensed to establish and operate a branch in the Philippines and to "open an office as off-line carrier".[1] However, on June 2, 1986, petitioner's SEC License was amended to allow petitioner to act as "an on-line carrier of persons, property and mail between the United States and the Philippines".[2]

In a letter dated January 23, 1998, petitioner informed the Philippine Civil Aeronautics Board ("CAB") that it was discontinuing its passenger flights to and from Manila after February 20, 1998, but would continue its thrice weekly freighter (cargo) flights to Osaka and the U.S. as previously approved by the CAB.[3]

On April 1, 1998, petitioner appointed Aerotel Ltd., Corporation as its General Sales Agent ("GSA") in the Philippines for both passenger and cargo operations. Aerotel is an independent GSA acting as such for several international airline companies. As GSA, Aerotel's functions include solicitation, promotion and sale of petitioner's air passenger and cargo transportation services. Its responsibilities likewise include filing all necessary tax returns and paying the tax thereon on behalf of petitioner. Aerotel is duly authorized by the CAB to act as a GSA on behalf of petitioner.[4]

Although it allegedly stopped its passenger and cargo flights to and from the Philippines effective February 21, 1998 and January 31, 2001, respectively, petitioner, through Aerotel, allegedly continued to pay 1.5% income tax on revenues from tickets/passage documents sold in the Philippines covering passenger/cargo flights originating outside of the Philippines.

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[1] CTA Records, page 14 [off-line carrier is an international air carrier having no flight operations to and from the Philippines, Revenue Regulations No. 15-02]

[2] CTA Records, page 15 *[On-line carrier is an international air carrier having or maintaining flight operations to and from the Philippines, Revenue Regulations No. 15-02]*

[3] Exhibit J

[4] Exhibits K and L

For taxable year 1999, petitioner through Aerotel, duly filed its Quarterly Income Tax Returns within the legally prescribed periods.[5] In its 1999 Annual Income Tax Return filed on April 17, 2000,[6] petitioner declared Gross Philippine Billings ("GPB") in the amount of P1,075,582,677.00 with the corresponding 1.5% GPB tax due of P16,133,740.00 which was offset against the creditable taxes withheld of P7,811.00. The remaining amount of P16,125,929.00 was paid by petitioner on a quarterly basis.[7]

Pursuant to Section 28(A)(3)(a) of the National Internal Revenue Code ("NIRC") of 1997 in relation to Article 4(7) of the Convention between the Government of the Republic of the Philippines and the Government of the United States of America with respect to Income Taxes (RP-US Tax Treaty), petitioner filed with the Bureau of Internal Revenue an administrative claim for refund on April 12, 2002, in the amount of P15,916,680.69 pertaining to income taxes paid on gross passenger and cargo revenues for the taxable years 1999 to 2001.[8] The said claim for refund included the amount of P5,028,813.23 allegedly representing income taxes paid by petitioner in 1999 on passenger revenue from tickets sold in the Philippines, the uplifts of which did not originate in the Philippines, detailed as follows:

Period Covered	Passenger Revenue	Income Tax Paid on Gross Passenger Revenue (at 1.5%)
1st quarter 1999	P 65,536,459.00	P 983,046.90
2nd quarter 1999	119,727,482.73	1,795,912.24
3rd quarter 1999	85,836,895.44	1,287,553.43
4th quarter 1999	64,153,377.15	962,300.66
TOTAL	**P 335,254,214.32**	**P5,028,813.23**

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5 Exhibits B, C & D
6 Exhibit A
7 Exhibits A-1, B-1, C-1 & D-1
8 Exhibit N

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Not wanting to be barred by prescription, petitioner elevated its claim to this Court through this instant Petition for Review filed on April 15, 2002.

On May 3, 2002, respondent filed his Answer raising the following Special and Affirmative Defenses:

> 6. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the respondent's Bureau;
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> 7. Petitioner failed to substantiate its claim for refund/tax credit of the alleged income tax paid for the period covering the 1st, 2nd, 3rd and 4th quarters of 1999;
>
> 8. Assuming without admitting that a foreign law is applicable in the instant case, the same must be proven as a fact;
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> 9. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been paid in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;
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> 10. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Section 204 (C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;
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> 11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211)*; and
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> 12. Petitioner alleges in paragraph 7 of its petition for review *[sic]* that 'On 31 January 2001, petitioner discontinued all cargo flights to and from the Philippines.' It is incumbent upon the petitioner to prove that the income generated during the period in issue was purely from the sale of passage documents in the Philippines covering cargo flights outside the Philippines.

With respondent and petitioners' filing of Memoranda on May 18, 2005 and May 20, 2005, respectively, this case was submitted for decision on July 18, 2005.

The principal issue posed for this Court's resolution is: Whether or not petitioner is entitled to a refund of income tax erroneously or illegally collected in the amount of

P5,028,813.23 for taxable year 1999. Corollarily, this Court is tasked to resolve the following issues:

> "(1) Whether or not petitioner has actually paid the amount of income tax subject of the claim for refund covering the 1st, 2nd, 3rd and 4th quarters of 1999;
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> (2) Whether or not petitioner has complied with the provisions of Section 204(C) and 229 of the 1997 National Internal Revenue Code.
>
> (3) Whether or not the income generated by the petitioner during the period in issue upon which petitioner paid income tax subject of the instant claim was from sale of passage documents in the Philippines covering passenger flights outside the Philippines."[9]

Being interrelated, the first and third issues shall be discussed jointly.

Based on the evidence submitted, petitioner has sufficiently proven that it has paid the income tax of P5,028,813.23 covering taxable year 1999 which is the subject of this case. As stated earlier, petitioner filed its 1999 Quarterly and Annual Income Tax Returns wherein it declared a total amount of P1,075,582,677.00 Gross Philippine Billings with the related 1.5% GPB tax due of P16,133,740.00 which was partially offset against the reported creditable taxes withheld of P7,811.00. The remaining amount of P16,125,929.00 was paid by petitioner as evidenced by the various official receipts issued by the Land Bank of the Philippines.[10] Of the total amount of income taxes paid in 1999, the amount of P5,028,813.23, subject of the claim for refund, pertained to income taxes on off-line passenger revenue in the amount of P335,254,215.00 as verified by the Court commissioned auditing firm, Punongbayan and Araullo, from the summary and duplicate original copies of tickets sold in 1999.[11] Absent any evidence to the contrary, there is no reason to question or disturb such findings. Even respondent does not dispute the fact that passenger tickets reported by petitioner in its 1999 income tax

[9] Joint Stipulation of Issues, CTA Records page 116
[10] Exhibits A-1, B-1, C-1 & D-1
[11] Exhibit T, page 6; Exhibits T-13, T-13-1 to T-13-12

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return came from sale of tickets the uplifts of which did not originate from the Philippines.[12]

Anent the second issue, Sections 204 and 229 of the National Internal Revenue Code of 1997, provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a *claim for credit or refund within two (2) years after the payment of the tax or penalty:* Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "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, 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."

In accord with the ruling in ***ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957***, petitioner has two years from the date of filing of the Final Adjustment Return within which to file a claim for refund of erroneously paid income tax both in the administrative and judicial levels. The subject claim covers erroneously paid 1.5% income tax on Gross Philippine Billings for taxable year 1999 for which petitioner

[12] Respondent's Memorandum, CTA Records page 511

filed its income tax return on April 17, 2000. Counting from this date, both the administrative claim filed on April 12, 2002 and this Petition for Review filed on April 15, 2002 were timely made.

Is petitioner then subject to income tax on Gross Philippine Billings derived from off-line Passenger Revenue?

Petitioner posits that pursuant to the amended definition of Gross Philippine Billings under Section 28(A)(3)(a) of the NIRC of 1997, for passenger revenue and cargo revenue to form part of the Gross Philippine Billings, such revenues must be derived from the carriage of persons and the carriage of cargo, as the case may be, *originating from the Philippines in a continuous and uninterrupted flight irrespective of the place of sale or issue and the place of payment of the ticket or passage document.* As a consequence, there is no liability to pay the tax if the carriage of persons and/or cargo does not originate from the Philippines in a continuous and uninterrupted flight. This is regardless of whether the ticket or passage document is sold, issued or paid in the Philippines.

Petitioner further argues that under the definition of Gross Philippine Billings both in the NIRC of 1993 and 1977, the determinative factor in the imposition of the tax is the place where the passage documents are sold, and not where the carriage of the passengers or cargoes originate. Hence, in contrast to the amended definition of the term Gross Philippine Billings under the NIRC of 1997, under the old definition, so long as the passage documents were sold in the Philippines, the gross revenue derived from the carriage of persons and cargoes regardless of where the carriage originates, is subject to income tax. Petitioner maintains that it is a foreign corporation licensed to

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operate as an off-line carrier in the Philippines, without flight operations originating from and coming to the Philippines.[13] Thus, petitioner asserts that it is not subject to income tax on its Gross Philippine Billings (passenger revenues), and the income tax it paid thereon in the amount of P5,028,813.23 should be refunded.

We partly agree with petitioner.

Section 28(A)(3)(a) of the 1997 Tax Code defines "Gross Philippine Billings" as:

> ***"Gross Philippine Billings" refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document***; Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines; Provided, further, That for a flight which originates from the Philippines, but transshipment of passengers takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billing." *(Emphasis and Italics Ours)*

The National Internal Revenue Code prior to the 1997 amendment, however, defined "Gross Philippine Billings" in this wise:

> "Gross Philippine Billings" means gross revenue realized from ***uplifts of passengers anywhere in the world and excess baggage, cargo and mail originating from the Philippines, covered by passage documents sold in the Philippines***: Provided, That documents sold outside the Philippines under a "prepaid ticket advice" scheme for passengers originating from the Philippines shall be considered as documents sold in the Philippines. Gross revenue from chartered flights originating in the Philippines shall likewise form part of the "Gross Philippine Billings" regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenue from chartered flights, the term "originating from the Philippines" shall include flights of passengers who stay in the Philippines for more than forty eight (48) hours prior to embarkation." *(Emphasis and italics supplied)*

Based on the above provisions, it is evident that the definition of "Gross Philippine Billings" under Section 28(A)(3)(a) of the 1997 NIRC covers the gross revenue derived from the carriage of persons, excess baggage, cargo and mail "originating from

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[13] Petition for Review par. 5

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the Philippines in a continuous and uninterrupted flight" irrespective of the place or sale or issue and the place of payment of the ticket or passage document.

"To originate" would mean "to cause the beginning of; to start (a person or thing) on a course or journey; to begin, start" (Webster's Third New International Dictionary). Otherwise stated, the flights carrying the passengers must have originated or started from the Philippines. Verily, petitioner, being an off-line international carrier, as authorized to operate by the Civil Aeronautics Board and having no passenger flights originating from the Philippines in a continuous and uninterrupted flight in 1999,[14] cannot be taxed under Section 28(A)(3)(a) of the NIRC of 1997 on its passenger revenue from tickets sold in the Philippines, covering flights originating outside of the Philippines.

However, it does not follow that petitioner is entitled to the refund sought for. It must be stressed that the 2.5% income tax (reduced to 1.5% pursuant to the RP-US Tax Treaty) imposed on Gross Philippine Billings under Section 28(A)(3)(a) of the NIRC of 1997, applies to gross revenues derived by an international carrier not only from the carriage of persons but also from the carriage of cargoes originating from the Philippines. Petitioner had cargo flights to and from the Philippines in 1999.[15] In fact, petitioner paid the amount of P11,104,927.00 as 1.5% GPB tax on its cargo revenues amounting to P740,328,462.00.[16] But in computing for the cargo revenue amount of P740,328,462.00, petitioner erroneously deducted the commissions and other incentives it paid to its agent. Based on the net cargo revenue amount of P711,816,490.07[17] which was verified to be duly supported by airway bills by the Court commissioned

[14] Exhibits J and K
[15] Petition for Review, par. 7
[16] Exhibit T, page 9

(JGA)

auditing firm, the commissions and other incentives deducted by petitioner amounted to P141,786,993.85 and P1,982,068,006.26, respectively, as follows:

1999	PETITIONER'S CARGO REVENUE PER CPA REPORT				
	GROSS CARGO REVENUE	COMMISSION	OTHER INCENTIVES	NET CARGO REVENUE	
January	P 37,618,708.64	P 1,880,935.62	P 16,035,579.00	P 19,702,193.63	
February	58,814,456.54	2,940,722.87	24,917,017.94	30,956,715.73	
March	71,455,577.46	3,572,779.17	30,425,132.84	37,454,519.20	
April	75,984,425.37	3,799,221.16	32,708,474.85	39,476,729.36	
May	90,783,764.68	4,539,188.23	38,008,328.67	48,215,955.09	
June	86,887,791.21	4,344,389.47	36,171,268.51	46,372,133.23	
July	119,977,308.72	5,998,865.80	46,376,556.79	67,600,716.54	
August	117,332,343.70	5,866,616.71	41,687,258.66	69,778,467.54	
September	159,029,948.28	7,951,497.22	57,882,967.88	93,195,482.80	
October	1,085,763,498.96	54,288,174.89	936,264,355.01	95,210,969.06	
November	160,092,487.66	8,004,624.65	55,208,537.09	96,879,325.93	
December	771,999,561.97	38,599,978.06	666,382,529.02	66,973,281.54	
Total	P2,835,739,873.19	P141,786,993.85	P1,982,068,006.26	P711,816,489.65	[18]

As correctly pointed out by respondent, the gross revenue referred to under Section 28(A)(3)(a) of the NIRC of 1997 is total revenue before any deduction of commissions and other incentives. In the case entitled ***EVA AIRWAYS vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6708, AUGUST 24, 2005***, this Court held thus:

> Nowhere in the above-quoted law can it be found that discounts are considered deductions from Gross Philippine Billings. On the contrary, the Gross Philippine Billings represent the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail. Therefore, Gross Philippine Billings are based on the gross revenue without consideration of any deduction. Consequently, petitioner should have included the discounts as part of its Gross Philippine Billings for purposes of computing its 2.5% final income tax liability.
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> In a most recent decision of the Supreme Court entitled ***Commissioner of Internal Revenue vs. Bank of Commerce, G.R. No. 149636, June 08, 2005***, it categorically defined the term "gross", stressing that:

[17] Exhibits T-6 & T-7
[18] should be P711,884,873.06

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> "The word 'gross' must be used in its plain and ordinary meaning. It is defined as 'whole, entire, total, without deduction'. A common definition is 'without deduction'. 'Gross' is also defined as 'taking in the whole; having no deduction or abatement; whole, total as opposed to a sum consisting of separate and specified parts'. Gross is the antithesis of net. . xxx"

It is a settled rule in statutory construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (***Asian Transmission Corporation vs. Court of Appeals, March 15, 2004; Marin vs. Nacianceno, 19 Phil. 238 [1911]***). Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them (***People vs. Mapa, 20 SCRA 1164 [1967]***).

Moreover, in ***Qantas Airways Limited vs. The Commissioner of Internal Revenue, CTA Case No. 4459, June 23, 1993***, which was affirmed by the Court of Appeals in ***CA-G.R. SP No. 32109, June 7, 1995***, this Court had the opportunity to expound on the meaning of "Gross Philippine Billings", elucidating:

> "Petitioner's contention that 'the amount actually received by the petitioner as consideration for its ticket is its revenue which should be subject to the 2-1/2% GPB tax and not the face value of the ticket' (see Petitioner's Memorandum, p. 7) is unacceptable. The law is explicit on imposing the 2-1/2% GPB tax on 'gross revenue realized from uplifts of passengers . . .'. By 'gross revenue' it means 'whole, entire, total' (Appeal of Braun, 105 Pa. 415, 41'5) 'without deductions. . . .' (First Trust Co. of St. Paul v. Commonwealth Co., C.C.A.S.D., 98 F. 2d 27, 31). It is synonymous with 'gross income'. The Tax Code defines 'gross income' thus:
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> > "Gross income' includes gains, profits, and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from profession, vocations, trades, business, commerce, sales or dealing in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities or the transactions of any business carried on for gain or profit or gains, profits, and income derived from any source whatever. . . . (Sec. 29 [3]; underscoring supplied).'
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> Petitioner in trying to buttress his weak stand made use of an analogy, thus:

'[m]ere increase in the value of shares of stocks does not make the stockholder taxable thereon as no income is received by such stockholder unless a sale of the shares is made for an amount in excess of its original cost (Umali on Taxation, 1985 ed., p. 78). Similarly, the fact that a plane ticket is valued at a particular amount does not make the issuing airline subject to GPB tax on such amount unless a sale of the ticket is made based on the amount appearing on its face. If the airline sold the ticket for less, then it is only logical that its GPB tax liability should be based only on the amount actually received. (See Petitioner's Memorandum, p. 8)

Such contention is based neither in law nor in jurisprudence. It is erroneous because <u>GPB tax is considered a tax on gross income</u> (Commissioner of Internal Revenue vs. British Overseas Airways Corporation, April 30, 1987, 149 SCRA 395) <u>meaning the income based on the price of the ticket on its face value, whole, entire, total and without deductions</u>. In the sale of shares of stocks, value by itself is verily not an income, as correctly put by the petitioner since the market sales price is beyond the control of the seller. It is erratic and unpredictable. But 'value by itself is not an income' is not absolute and was wrongfully compared with the sales of tickets since the face value of the ticket can be realized had the petitioner chosen to. But it did not. Petitioner could have sold the tickets using its own resources rather than give discounts to travel agencies. But it did not. Instead, it opted to avail of the services of travel agencies as a marketing strategy thereby giving them discounts. The respondent cannot question the generosity of the petitioner to these travel agencies. However, it was absolutely right for the respondent to protect the interest of the government in seeing to it that its share, by way of taxes on the given discounts, would not be given away but should be shouldered by the petitioner.

The petitioner, when it gave away discounts to travel agencies, was also giving away the share of the government by way of taxes on the said discounts. If ever the petitioner would like to show magnanimity of resources to its marketing arm (i.e., the travel agencies), it should not be at the expense of the government." (Underscoring ours)

Petitioner's contention that Revenue Regulations No. 15-02 supports its stand on the matter is untenable. While it is true that the respondent has the power of subordinate legislation effected by its issuances of implementing rules and regulations, such as Revenue Regulations No. 15-02, said power is not without any limitation. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement (Nestle Philippines, Inc. vs. Court of

> Appeals, et al., 203 SCRA 504 [1991]). Under Revenue Regulations No. 15-02, the term "gross revenue" was given a new meaning. For income on passengers, it was interpreted to mean as actual amount derived for transportation services . . . It is computed based on the average net fare of all the tax coupons of plane tickets issued for the month. For income on cargoes, it is the amount appearing on the airway bill after deducting the amount of discounts granted. (Emphasis Ours)
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> Therefore, when the law speaks of gross revenue, the term "gross" contemplated therein only means income based on the price of the ticket on its face value, whole, entire, total and without deductions.

Accordingly, petitioner's reported gross cargo revenues should have been P2,835,739,873.19 with the related 1.5% GPB tax of P42,536,098.09 instead of the net cargo revenue amount of P740,328,462.00 with the related 1.5% GPB tax of P11,104,927.00. In other words, petitioner's underpayment of P31,431,171.09 GPB tax on cargo revenues is a lot higher than the GPB tax of P5,028,813.23 on passenger revenues paid by petitioner per return, subject of the instant petition. Considering so, there is no excess or erroneous payment of GPB tax under Section 28(A)(3)(a) of the NIRC of 1997 that maybe proper subject of a claim for refund under Section 229 of the same Code. Well-entrenched is the legal precept that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be construed *strictissimi juris* against the taxpayer.[19]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[19] Commissioner of Internal Revenue vs. Tokyo Shipping 244 SCRA 332

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division