REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7843

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 18 2012
2:30 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J*.:

This is a Petition for Review filed on October 14, 2008 by Philippine Airlines, Inc. (petitioner) to appeal the inaction of respondent Commissioner of Internal Revenue on petitioner's administrative claim for tax refund of the amount of P160,374.60, allegedly representing excise tax paid on October 18, 2006 on account of petitioner's importation of commissary supplies consisting of 1,020 packages of wines made on October 6, 2006.

Petitioner Philippine Airlines, Inc. is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with its principal office located at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, Metro Manila.[1]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC), as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Also named as respondent is the Commissioner of Customs (COC), who is the chief of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended. Respondent COC has his office address at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

On June 11, 1978, by virtue of Presidential Decree (PD) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.

Section 13 of PD No. 1590 in part provides:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 225

> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;"

On January 1, 2005, Republic Act (RA) No. 9334 took effect, increasing the excise tax rates imposed on alcohol and tobacco products and amending several provisions of the NIRC of 1997.[2]

On October 6, 2006, petitioner's importation of 1,020 packages of wines arrived in Manila on board the vessel Hanjin Athens, covered by Informal Import Declaration and Entry No. 98992704[3], Bill of Lading No.

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[2] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended

[3] Exhibit "J"

0609/321[4], and Authority to Release Imported Goods (ATRIG) No. 00084278[5] dated October 12, 2006.

The Authority to Release Imported Goods No. 00084278 dated October 12, 2006, issued by the CIR and addressed to the COC, provided that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption" and is subject to the payment of the excise tax under Section 142(b) of the NIRC of 1997, computed as follows:[6]

	Total
450 cs x 12 = 5,400 x .75 = 4,050 x 17.47	P 70,753.50
570 cs x 12 = 6,840 x .75 = 5,130 x 17.47	P 89,621.10
TOTAL EXCISE TAX	**P 160,374.60**

Furthermore, the ATRIG provided that "the aforementioned shipment may now be released from your custody after the payment of the abovementioned taxes".[7]

On October 18, 2006, petitioner paid under protest to the Bureau of Customs the amount of P160,374.60, representing the excise taxes on the importation of 1,020 packages of wines.[8]

On January 25, 2007, petitioner filed an administrative claim with respondent Commissioner of Internal Revenue for the refund of P160,374.60, representing its excise tax paid on October 18, 2006, through the BOC, for the said importation of wines.[9] *gc*

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[4] Exhibit "K''
[5] Exhibit "L''
[6] Exhibit "L''; Par. 11, Facts, JSFI, docket, p. 229
[7] Exhibit "L''
[8] Exhibit "M'', Bureau of Customs Official Receipt No. 135611585, docket, p. 79
[9] Exhibit "N", docket, pp. 80-90

Due to respondent's inaction on the said administrative claim for refund, petitioner filed the instant Petition for Review on October 14, 2008.

On December 8, 2008, respondent CIR filed her Answer[10] interposing the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. Petitioner must prove compliance with the governing rules relative to tax recovery or refund as provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended.
>
> 8. Petitioner failed to demonstrate that the amount P160,374.60 allegedly paid as specific tax in connection with its importation of wines as part of its commissary supplies for international flight consumption was erroneously or illegally collected.
>
> 9. Petitioner failed to establish that the articles subjected to specific tax are included in the enumeration of exempted items provided in its franchise.
>
> 10. Petitioner invoked Letter of Instruction 684 ('LOI 684') issued on 4 April 1978 to strengthen its claim for exemption and refund. LOI 684 narrates the requisites in order that an importation may be exempted from taxes under PD 1590. Said LOI provides:
>
> '1. xxx subject to the presentation, within fifteen (15) days from the date of release, of a statement under oath stating:
>
> a. That such articles or supplies are not locally available in reasonable quantity, quality, and price; and

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[10] Docket, pp. 109-121

b. That they are necessary for or incidental to the operation of Philippine Airlines and its other business activities.

x x x

2. With respect to the importation by Philippine Airlines of consumable items for its catering and food services, the same shall be transferred directly and immediately to the Customs Bonded Warehouse. Philippine Airlines shall be allowed to withdraw the same from the bonded warehouse by requisition slip and such consumable items so withdrawn shall be properly accounted by presentation of proof of actual use in the airline's operations. All such withdrawals shall be subject to the approval of the Collector of Customs or his duly authorized representative.'

11. Assuming *arguendo* that petitioner is entitled to the tax exemption it claims, there is no proof that petitioner already complied with the above-mentioned requirements provided under LOI 684, to wit:

1. A statement under oath which provides:

   a. That the articles or supplies thus imported, are not locally available;
   b. That the subject importations are incidental to its operations; and

2. That the articles were immediately transferred to Customs Bonded Warehouse.

It is significant to note that the Supreme Court held in the case of *Davao Light and Power Co., Inc. vs. Commissioner of Customs and Court of Tax Appeals, G.R. No. L-28739 and L-28902*, that '(P)etitioner cannot lay claim to the enjoyment of the tax exemption benefits xxx...where petitioner has a franchise. The legal principle on the matter is firmly established and well-observed; exemption from taxation is never presumed; for tax exemption to be recognized, the grant must be clear and expressed; it cannot be made to rest on vague implications.' In an action for refund the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim. Hence, petitioner cannot legally claim refund of taxes due to its failure to comply with the requisites mentioned hereto.

11. Petitioner maintains that Section 6 of R.A. No. 9334 merely subjects previously tax-free and duty-free importations of cigarettes and wine by freeports and duty-free shops to all applicable taxes and duties. However, in synthesis, said provision envisions that *all* importations of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This provision made mention of articles destined for tax and duty–free shops only to emphasize that the imposition of applicable taxes under the law shall include such articles. This can be gleaned from the use of the word 'even if' prior to the enumeration of duty-free ports, thus we quote:

> 'The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, **even if** destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges including excise taxes due thereon.' (Emphasis supplied)

Moreover, it is worthy to note that the same provision is preceeded with the statement '(t)he provision of any special or general law to the contrary notwithstanding xxx...', which makes it clear that a legislative franchise which is created by a special law constitutes such 'any special law' referred therein.

12. Anent the issue on the absence of intention on the part of Congress to repeal or amend PD 1590, it is beyond *cavil* that the latter granted petitioner exemption from the payment of all taxes, duties, and other fees and charges of any kind or nature on all importations of commissary and catering supplies, and other articles, supplies, materials imported by petitioner for use in its transport and non-transport operations and other activities incidental thereto. For which reason, it enjoyed tax-exempt status until the effectivity of Republic Act No. 9334.

13. Significantly, the Highest Court recently upheld the clear intention of Congress to divest tax exemption privileges

enjoyed by entities under special or general laws in the case of *Republic of the Philippines represented by the Secretary of Finance, Commissioner of Internal Revenue, Commissioner of Customs, and Collector of Customs of the Port of Subic vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, Indigo Distribution Corp., G.R. No. 168584, October 15, 2007,* stating: 'By subsequently enacting R.A. No. 9334, however, Congress expressed its intention to withdraw private respondent's tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines. Juxtaposed to show this intention are the respective provisions of Section 131 of the 1997 NIRC, before and after its amendment by R.A. No. 9334:

xxxx.

Section 131 of the 1997 NIRC **before** R.A. No. 9334	Section 131 of the 1997 NIRC as **amended** by R.A. No. 9334
Sec. 131. Payment of Excise Taxes on Imported Articles.	**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.	(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.	In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. Provided, however, **That this shall *not apply* to cigars and cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922**; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties, charges, including excise tax due thereon; *Provided still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall *apply* to cigars and cigarettes, distilled spirits, fermented liquors and *wines* brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903 and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'tax and duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one Freeport to another Freeport, shall not be deemed an introduction into the Philippine customs territory.

xxxx.

tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

xxxx.

To note, the *old* Section 131 of the 1997 NIRC expressly provided that all taxes, duties, charges, including excise taxes shall *not apply* to importations of cigars, cigarettes, fermented spirits and wines.

On the other hand, the *new* Section 131 now provides that such taxes, duties and charges, including excise taxes, shall *apply* to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines xxx.'

14. Corollarily, petitioner's reliance on PD 1590 and jurisprudence decided in 2006 and earlier in order to insist its tax exemption on the subject importation is already misplaced, by virtue of the above-mentioned decision promulgated on 15 October 2007.

15. It bears stressing, that the amendment made by Section 6 of R.A. No. 9334 on Section 131 of the 1997 NIRC makes it clear that those who enjoy tax exemption in the previous provision of Section 131 are now stripped of their privilege.

16. Without necessarily passing upon the validity of Section 6 of R.A. No. 9334, the Supreme Court continued in saying that: 'Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

17. As a general rule, tax exemptions can only be given force when the grant is clear and categorical. The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of power. If the intention of the legislature is open to

doubt, then that intention must be resolved in favor of the State *(Smart Communications, Inc. vs. City of Davao, etc., G.R. No. 155491, September 16, 2008).*

18. Moreover, a tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4), Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the 1997 NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.

19. Thus, it is not difficult to recognize that public welfare and necessity underlie the enactment of R.A. No. 9334. As petitioner pointed out, the now assailed provision was passed to curb the pernicious practice of some unscrupulous business enterprises using their tax exemption privileges for smuggling purposes. Smuggling in whatever form is bad enough; it is worse when the same is allegedly perpetrated, condoned or facilitated by enterprises hiding behind the cloak of their tax exemption privileges.

20. In summation, a claim for refund must be premised on clear and convincing evidence showing that the tax paid was indeed erroneously or illegally collected, which petitioner failed to establish. In the same vein, it failed to prove that the amendment made by Section 6 of R.A. No. 9334 is not applicable on its importation of wines, thus, its claim for tax refund must likewise fail."

On December 11, 2008, respondent COC filed through registered mail his Answer[11], alleging the following Special and Affirmative Defenses:

"14. Petitioner contends that pursuant to Presidential Decree 1590, the law granting its airline franchise, it is tax and duty-exempt from payment of excise taxes on its importations of alcohol and tobacco products which are part of its commissary and catering supplies. It avers that it was erroneously collected of the excise tax in the amount of One Hundred Sixty Thousand, Three

[11] Docket, pp. 141-150

Hundred Seventy-Four Pesos and Sixty Centavos (P160,374.60) and therefore, claims for its refund.

15. In an action for refund, the burden of proof is on the taxpayer to establish its right for refund, and failure to sustain the burden is fatal to the claim for refund. Thus, it is incumbent upon petitioner to show that the alleged specific taxes in the total amount of P160,374.60 were erroneously collected by respondent Bureau of Customs.

16. Letter of Instructions No. 684 issued in April 4, 1978 by then President Ferdinand E. Marcos to the Secretary of Finance, the Governor of the Central Bank of the Philippines and the Commissioner of Bureau of Customs, mandates that the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil for its use shall be allowed informal entry free of duty and released **subject to the presentation within fifteen (15) days from the date of release of a statement under oath** stating that: (a) the articles or supplies are not locally available in reasonable quantity, quality, and price; and (b) that such articles or supplies are necessary or incidental to its operation and business activities. The same LOI 684 provides that petitioner's imported consumable item for its catering and food services shall be transferred directly and immediately to the Bureau of Custom's bonded warehouse by submitting a requisition slip and after proper accounting of the said released articles and supplies by presentation of proof of actual use in its airline operations. Likewise, such withdrawals of the articles and supplies shall be approved by respondent Commissioner of Customs.

17. However, petitioner has not shown that it had complied with the requirements of LOI 684. A perusal of the instant petition shows that petitioner did not submit, within fifteen (15) days from the date of release of its articles and supplies from the accredited customs warehouse, a statement under oath or an Affidavit as required by LOI 684.

18. For failing to show compliance with the above-mentioned requirements, petitioner cannot claim any exemptions from payment of excise taxes for the subject importation of its alcohol and cigarettes. Jr

19. Likewise, Section 6 of Republic Act No. 9334 entitled '*An Act Increasing The Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as amended*' provides:

> **Section 6**. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> '**Section 131. *Payment of Excise Taxes On Imported Articles.* -**
>
> **(A) Persons Liable –**
>
> x x x
>
> <u>The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon</u>. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903 and such other freeports as may hereafter be established or created by law: *Provided, further*, That the importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties only; *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': xxx. *Jn*

(emphasis supplied)

20. Clearly from the above-mentioned provision, it can be gleaned that excise taxes are imposed on all importations of cigar and cigarettes, distilled spirits, fermented liquors and wines, notwithstanding the contrary provisions of any special or general law, such as PD 1590 which granted the franchise of petitioner.

21. Hence, the P160,374.60 taxes were rightfully collected by respondent Commissioner of Customs from petitioner on the importation of its commissary and catering supplies like alcohol and cigarettes.

22. Consistent with the provisions of RA 9334, respondent Commissioner of Internal Revenue imposed taxes on petitioner's importation and respondent Commissioner of Customs, who merely acted as its collection agent, collected those taxes upon the former's advise.

23. The BOC, being a mere collection agency, does not have the power and jurisdiction to adjudicate any issue arising from the rulings, rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions, being of equal ranks, unless otherwise duly delegated as an incident to the collection.

24. Under the premises, petitioner should have availed of administrative remedies before lodging the present case to this Honorable Court.

25. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor (Asiatic Petroleum Co., vs. Llanes, 49 Phil. 466 [1926]; Reagan vs. Commissioner, 30 SCRA 968 [1969].

26. In other words, tax statutes must be strictly construed against the petitioner who is claiming for the exception because the law does not look with favor on tax exemptions and that he who seeks to be, must justify it by words too plain to be mistaken and too categorical to be misinterpreted (CIR vs. P.J. Kiener Company, Ltd., 65 SCRA 142 [1975]. *jr*

27. Taxes paid and collected are presumed to have been paid in accordance with law, therefore, not refundable.

28. The instant petition is without merit."

During trial, petitioner presented Mr. Andy Y. Li, petitioner's Vice President for Corporate Logistics and Services Department and Ms. Evelyn L. Taghap, petitioner's Tax Review and Planning Division Manager as witnesses. Thereafter, on October 13, 2010, petitioner filed its Formal Offer of Evidence[12], submitting Exhibits "A" to "BB-1", inclusive of sub-markings; which were admitted in the Resolution[13] dated December 17, 2010.

On the other hand, during the April 25, 2011 hearing and upon motion of petitioner's counsel, the right of respondent CIR to present her evidence was considered waived for failure of counsel for respondent CIR to appear during the scheduled hearing for the presentation of respondents' evidence.[14]

On July 27, 2011, respondent COC presented his sole witness, Atty. Mary Grace Tecson-Malabed.[15] Thereafter, on September 29, 2011, respondent COC filed his Formal Offer of Exhibits[16], submitting Exhibits "1" to "6", inclusive of sub-markings; which this Court admitted in the Resolution[17] dated November 18, 2011.

On March 5, 2012, the case was submitted for decision, taking into consideration respondent CIR's Memorandum filed on December 5, 2011, respondent COC's Memorandum filed on January 19, 2012, and petitioner's

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[12] Docket, pp. 360-369
[13] Docket, pp. 431-432
[14] Resolution dated April 25, 2011, docket, p. 445
[15] Minutes, docket, p. 501
[16] Docket, pp. 503-507
[17] Docket, pp. 583-584

Memorandum filed through registered mail on February 20, 2012 and received by this Court on February 28, 2012.[18]

The following are the parties' jointly stipulated issues[19] submitted for this Court's resolution:

> "(a) Whether or not petitioner PAL, under its franchise, Presidential Decree No. 1590, is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;
>
> (b) Whether or not PAL is entitled to a refund of the total amount of PHP160,374.60 specific taxes allegedly paid under protest to respondent Commissioner of Internal Revenue through the Commissioner of Customs.
>
> (c) Whether or not the petitioner has a cause of action against the respondents Commissioner of Internal Revenue and Bureau of Customs.
>
> (d) Whether or not the instant petition was prematurely filed.
>
> (e) Whether or not petitioner's administrative and judicial claim for refund were filed on time.
>
> (f) Whether or not the excise tax subject of petitioner's claim for refund has been actually paid."

The foregoing issues can be summarized as follows:

> "Whether or not petitioner is entitled to a refund of the amount of P160,374.60, representing excise tax paid on its importation of commissary supplies consisting of 1,020 packages of wines on October 18, 2006."

This Court will resolve first the issue pertaining to the timeliness of filing of petitioner's administrative and judicial claims for refund. *ga*

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[18] Resolution dated March 5, 2012, docket, p. 664
[19] Docket, pp. 229-230

The provisions of the National Internal Revenue Code of 1997 pertinent to tax refund claim arising from erroneous payment of taxes are Sections 204(C) and 229, which provide:

> "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."
>
> "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." *(Emphasis supplied)*

Based on the afore-quoted provisions, petitioner has two (2) years from the date of payment of tax within which to file its claim for tax refund or issuance of tax credit certificate.

In the instant case, records show that petitioner paid the excise tax of P160,374.60 to the Bureau of Customs on October 18, 2006[20]. Counting from October 18, 2006, petitioner had until October 20, 2008[21] to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim for refund filed before respondent CIR on January 25, 2007 and the judicial claim for refund filed on October 14, 2008 fell within the two-year prescriptive period.

The Court will now determine whether petitioner is entitled to a tax refund in the amount of P160,374.60, arising from the payment of excise tax on October 18, 2006, covering its importation of 1,020 packages of wines.

In its Memorandum, petitioner argues, among others, that under its franchise, Presidential Decree No. 1590, it is exempt from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption; and that under Section 13 of PD No. 1590 as amended by Republic Act No. 9337, petitioner is obliged to pay the corporate income tax and the value-added tax, *in lieu of all other taxes*, including taxes on commissary and catering supplies, provided that such articles or supplies or materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price. Petitioner claims

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[20] Exhibit "M", Bureau of Customs Official Receipt No. 135611585, docket, p. 79
[21] October 18, 2008 fell on a Saturday

that it complied with Section 13 of PD No. 1590, as amended, by showing that it paid the corporate income tax for the fiscal year ended March 31, 2007, covering the subject importations involved in this case, as well as, the value-added tax (VAT) for the same year; therefore, it is exempt from payment of excise tax on its importation of commissary and catering supplies for use in its international flights. Furthermore, the imported commissary products involved are not locally available at a reasonable price.

Finally, petitioner contends that Republic Act No. 9334, unlike Republic Act No. 7716, did not expressly provide that it modifies, amends or repeals the provision of PD No. 1590, pertaining to its tax privileges and that there is no provision under RA No. 9334 imposing any excise tax or duties on its importation of commissary supplies, much less repeal petitioner's exemption from all taxes and duties under its franchise. Petitioner concludes that its exemption from excise taxes on its importation of commissary and catering supplies for use in its international flights was not repealed by Section 6 of RA No. 9334.

On the other hand, respondent CIR counter-argues that Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005; that Section 6 of RA No. 9334 employs the clear and all-encompassing phrase "(T)he provision of any special or general law to the contrary notwithstanding", repealing any inconsistent provision whether contained in general or special statutes like PD No. 1590, petitioner's franchise; and that Section 6 of RA No. 9334 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction.

Respondent COC also counters that PD No. 1590 did not categorically state that petitioner is exempt from the payment of excise tax on its importations of liquor, wines and cigarettes; thus, in the absence of words exempting it from payment of excise tax on all its importations, petitioner should be held liable. Respondent COC also avers that the nature of excise tax is that it is not imposed upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. Consequently, petitioner cannot claim exemption from excise tax on all its importations, especially when PD No. 1590 grants exemption only in relation to its franchise subject to the terms and conditions prescribed therein. In addition, Section 8 of PD No. 1590 provides that petitioner shall be "subject to the laws of the Philippines now existing or hereafter enacted", *i.e.*, its claim of exemption from excise tax is subject to the laws which may thereafter be enacted by Congress.

The Court agrees with petitioner.

Section 13 of PD No. 1590 provides as follows:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following**:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;" *(Emphasis supplied)*

According to the afore-quoted provision, the taxation of petitioner Philippine Airlines (PAL), during the lifetime of its franchise, shall be governed by two fundamental rules, namely: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.[22] The tax paid under Section 13 of PD No. 1590 shall be in lieu of, among others, taxes, duties, charges, royalties, or fees due on all importations of "commissary and catering supplies" provided that the following are present:

1. such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

[22] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009

2. they are not locally available in reasonable quantity, quality, or price.

Congress later passed RA No. 9337 in 2005, with Section 22 thereof providing as follows:

> "SECTION 22. *Franchises of Domestic Airlines.* - **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.,** R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) **The franchise tax is abolished**;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) **The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement**." *(Emphasis supplied)*

As pointed out by petitioner, the amendment introduced by RA No. 9337 only modified or altered petitioner's options for the payment of taxes since petitioner is now obliged to pay the corporate income tax and the value-added tax *in lieu of all other taxes,* with the franchise tax being expressly abolished.

In this case, petitioner submitted in evidence its original Annual Income Tax Return[23] and amended Annual Income Tax Return[24], all for fiscal

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[23] Exhibit "Q"
[24] Exhibit "R"

year 2007. A perusal of the said returns shows that petitioner opted to pay the basic corporate income tax for the fiscal year ended March 31, 2007 in accordance with its franchise. Petitioner was also able to prove that it is a VAT-registered entity and paid its value-added tax for the fiscal year ended March 31, 2007, as evidenced by its Certificate of Registration[25] dated December 18, 2007, Certificate of Registration[26] dated August 4, 2004, Payment Form No. 0605[27], and VAT Return[28] for the year 2007.

The Authority to Release Imported Goods No. 00084278 dated October 12, 2006 issued by the CIR and addressed to the COC provided that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption."[29]

To support the claim that the subject 1,020 packages of wines were not locally available in reasonable quantity, quality or price, petitioner presented Mr. Andy Li, petitioner's Vice President for Corporate Logistics and Services Department, who testified through his Supplemental Judicial Affidavit[30] that the price per 750 ml. bottle of white/red wine quoted by its foreign supplier Decker Handels G.m.b.H. was $1.82; while the price per 750 ml. bottle of white/red wine quoted by local suppliers, such as Premier Freeport, Inc. was $2.50; Enzima International, Inc. was P160.00 or $3.48; and Duty Free Philippines ranges from $6.00 to $19.00 per 750 ml. bottle, depending on the brand and source of wine. According to said witness, importing said supplies

[25] Exhibit "T"
[26] Exhibit "T-1"
[27] Exhibit "U"
[28] Exhibit "V"
[29] Exhibit "L"; Par. 11, Facts, JSFI, docket, pp. 229
[30] Exhibit "AA-2"

was cheaper for petitioner than if it is purchased locally because the CIF Manila price includes the new duties and taxes of the government; while the price quotation of its foreign supplier does not include duties and taxes of the government.[31]

In order to corroborate the foregoing testimony, petitioner submitted in evidence the Letter of Decker Handels G.m.b.H. dated May 29, 2005[32], Premier Freeport, Inc. Price List for Philippine Airlines, Inc. as of April 18, 2005[33], Enzima International, Inc. letter dated March 28, 2006[34], and Duty Free Philippines 2005 Price List on various wines[35].

Likewise, petitioner submitted in evidence the Bureau of Customs Official Receipt No. 135611585[36] and the Authority to Release Imported Goods No. 00084278[37] dated October 12, 2006. The said BOC Official Receipt indicates that on October 18, 2006, petitioner paid to the Bureau of Customs the amount of P160,374.60, representing petitioner's excise tax payable under Section 142(b) of the NIRC on its importation of 1,020 packages of wines as stated in ATRIG No. 00084278 dated October 12, 2006.

After a careful evaluation of the evidence presented, this Court finds that petitioner was able to substantially prove that it paid its basic corporate income tax liability for the fiscal year ending March 31, 2007, as well as the value-added tax for the fiscal year ending March 31, 2007; the articles

[31] Exhibit "AA-2", pages 2 to 4
[32] Exhibits "X" and "X-1"
[33] Exhibits "Y" and "Y-1"
[34] Exhibits "Z" and "Z-1"
[35] Exhibits "AA" and "AA-1"
[36] Exhibit "M"
[37] Exhibit "L"

imported by petitioner for its commissary and catering supplies, consisting of 1,020 packages of wines, were intended to be used in its transport and non-transport operations and other activities incidental thereto; the imported articles were not locally available at reasonable prices; and it paid to the Bureau of Customs the amount of P160,374.60, representing petitioner's excise tax payable under Section 142(b) of the NIRC on its importation of 1,020 packages of wines as stated in ATRIG No. 00084278 dated October 12, 2006. And the evidence for petitioner remained unrebutted.

Anent respondents' contention that Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005 and which allegedly mandated the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction, the same is bereft of merit.

Section 6 of RA No. 9334 provides:

> "SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> '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 customshouse or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers

> thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

Based on the foregoing, other than a specific mention of RA Nos. 7227, 7922, and 7903, there is no express mention of PD No. 1590 with respect to petitioner's payment to the government of excise tax. Thus, Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise. Had Congress intended to repeal petitioner's franchise, it could have easily included PD No. 1590 among the enumeration of those liable for such excise tax, not only under RA No. 9334, but also under the later law, RA No. 9337.

That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after petitioner PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.[38]

Moreover, this Court in *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*[39] held that Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise, to wit:

> "**While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed**. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.
>
> Equally noteworthy is the fact that **Republic Act No. 1590** *(sic)* **is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails**. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of

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[38] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009
[39] CTA Case Nos. 7665 and 7713, April 17, 2012

> the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.
>
> **Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise**." *(Emphasis supplied)*

In sum, the Court finds petitioner entitled to a tax refund of the amount of P160,374.60, which represents excise tax paid on October 18, 2006 covering petitioner's importation of commissary supplies consisting of 1,020 packages of wines made on October 6, 2006.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED TO REFUND** to petitioner the amount of P160,374.60, representing petitioner's erroneously paid excise tax on October 18, 2006.

SO ORDERED.

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice