REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7252,7362, 7383, 7445, 7494, 7517, 7521 & 7566**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS**, ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: OCT 0 2 2015 4:25 p.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

STATEMENT OF THE CASE

The present case is a consolidation of eight (8) Petitions for Review filed by Air Philippines Corporation, praying for the refund of the total amount of Two Hundred Thirty-Five Million Six Hundred Thirteen Thousand One Hundred Thirty-Four Pesos and 47/100 (P235,613,134.47)[1], allegedly representing specific taxes paid on its

[1] Memorandum for the Petitioner, docket, p. 1720.

importation of aviation turbo jet fuel or Jet A-1 fuel from May 2003 to December 2004, broken down below:

CTA Case No.	Date of Importation	Specific Tax
7252	May 15, 2003	P 58,353,000.00
7362	October 29, 2003	P 11,670,600.00
7383	December 5, 2003	P 42,988,799.88
7445	April 5, 2004	P 29,581,811.13
7494	June 13, 2004	P 29,654,517.50
7517	August 16, 2004	P 29,600,359.31
7521	August 28, 2004	P 17,031,376.34
7566	December 17, 2004	P 16,732,689.72
Total		P235,613,134.47

STATEMENT OF FACTS

Petitioner Air Philippines Corporation is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of P3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful charges from imported articles, including the excise tax of P3.67 per liter on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC of 1997. He holds principal office at the Port Area, Manila.

By virtue of Republic Act (RA) No. 8339, petitioner was granted a franchise to establish, operate and maintain air transport services

[2] Par. 1, Facts, Joint Consolidated Stipulation of Facts and Issues (JCSFI), docket, p. 457.

for the carriage of passengers, mail, goods and property, domestic and international.[3] Under its franchise, petitioner enjoys certain tax privileges, one of which is provided for under Section 15 of RA No. 8339, to wit:

> "SECTION 15. *Interpretation of Franchise.* – This franchise shall not be interpreted to mean as an exclusive grant of the privileges herein provided for. However, **in the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place herein grantee at any disadvantage, then such terms and/or provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee.**"*(Emphasis supplied)*

One of petitioner's competitor corporations, in relation to Section 15 of RA No. 8339, is Philippine Airlines, Inc. (PAL). Pertinent parts of Section 13 of Presidential Decree (PD) No. 1590 – PAL's franchise, provide 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 nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and

[3] Section 1, RA No. 8339.

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:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;" *(Emphasis supplied)*

On October 23, 2000, the BIR issued BIR Ruling No. 048-2000 (2000 BIR Ruling), addressed to the attention of then EVP-Chief Operating Officer, Capt. Rogelio M. Narciso. It reads: gu "xxx on June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's[4] request for a reconsideration, the dispositive portion of which states:

'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked, BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.

'In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.'

On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations or purchases from abroad of petroleum products which are exempt from value-added tax for use in its domestic operations.

In reply, please be informed that **pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL)** and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, **APC shall be exempt from all taxes imposed by the Tax Code on its importations and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations.**" *(Emphasis supplied)*

On January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-03 (2003 BIR Ruling), superseding the 2000 BIR Ruling, addressed to PAL, Cebu Air, Inc., Pacific Airways Corporation, and

[4] Cebu Air, Inc.

petitioner. The significant parts of the said BIR Ruling state as follows:

> "In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an **absence of the second condition** required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations **as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483)** and **which condition applies *ipso facto* to the other airlines. Accordingly your importations may not be given the same tax treatment as before for as long as there is such available domestic supply of petroleum products.**
>
> This Ruling, therefore, supersedes the above-stated rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter." *(Emphasis supplied)*

Petitioner made importations of Jet-A1 Aviation Fuel on various dates from May 2003 to December 2004. Likewise, petitioner paid under protest to the Collector of Customs the corresponding specific taxes due thereon. Without the Collector of Customs acting on petitioner's payments under protest, it filed several administrative claims for refund with the BIR. Considering that the two-year prescriptive period to file its administrative and judicial claims for refund under Sections 204 and 229 of the NIRC of 1997, as amended, would soon expire, petitioner filed the present Petitions for Review.

Respondents CIR and COC raised numerous arguments and defenses in their Answers. .

<u>CTA Case No. 7252</u> gr

Respondent CIR alleged the following special and affirmative defenses:[5]

> "5. There is no cogent reason to disturb the certification and findings of the Department of Energy that *'aviation gas, fuel and oil for use in domestic operation of domestic airline companies are* ***locally available in reasonable quantity, quality and price'***, the same possessing the presumption of regularity.
>
> 6. Moreover, it must be stressed that no alteration or amendment was made in the franchise of petitioner by the issuance of the subject Ruling. It merely and simply determined whether the two conditions set forth in Section 13 (2) of PD 1950 exempting petitioner from taxes on its importation of JET A-1 fuel have been met, namely: (1) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto, and; (2) in the case of importations that they are not locally available in reasonable quantity, quality or price.
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> 7. On the basis of the said certification issued by the Department of Energy, the aforementioned second condition for petitioner's exemption from taxes on its importation of JET A-1 fuel is wanting.
>
> xxx xxx xxx
>
> 9. Taxes paid and collected are presumed to have been paid in accordance with law; hence not refundable.
>
> 10. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund."

[5] Docket, pp. 97-98.

On the other hand, respondent COC interposed the following special and affirmative defenses:[6]

"xxx xxx xxx

8. Section 13(2) of PD 1590 otherwise known as the PAL Franchise, invoked by petitioner to be similarly applicable to it, provides that domestic airlines are exempt from taxes on its importations of Jet A-1 fuel when the following two (2) conditions are met; (1) the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and (2) in the case of importations that they are not locally available in reasonable quantity, quality or price.

9. On December 20, 2002, the Department of Energy (DOE) issued a Certification that aviation gas, fuel and oil for use in domestic operation for domestic airline agencies are locally available in reasonable quantity, quality and price.

10. The Department of Energy being the government agency responsible in the administration of the energy sector is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function(s).

11. On the basis of said DOE Certification, the aforementioned second condition for petitioner's exemption from taxes on its importation of Jet A-1 fuel is wanting.

xxx xxx xxx

21. This Honorable Court is not the proper venue or forum for petitioner to contest and question the

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[6] Docket, pp. 136-140.

administrative finding of the Department of Energy that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.

xxx xxx xxx

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

26. The instant petition is without merit."

CTA Case No. 7362

Except for the amount and period involved, respondent COC essentially raised the same special and affirmative defenses[7] he alleged in CTA Case No. 7252.

Respondent CIR, on the other hand, interposed the following special and affirmative defenses:[8]

"5. The verification and certification of non-forum shopping in the petition for review is defective for failure to attached *(sic)* therein the board resolution of the directors of the petitioner authorizing Jonathan Andrew D. Lim, the corporate counsel, to sue for and in behalf of the corporation. The case must be dismissed under Section 5, Rule 45 of the 1997 Rules of Court.

The Supreme Court in the case of Premiere Marble Resources, Inc. vs. CA (264 SCRA 11), held, thus:

'In the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.'

[7] CTA Case No. 7362, docket, pp. 94-98.
[8] CTA Case No. 7362, docket, pp. 105-106.

> 'We agree with the findings of public respondent Court of Appeals, that 'in the absence of any board resolution from it board of directors to act for and in behalf of the corporation, the present action must necessarily fail. The power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers.'

In Shipside Incorporated vs. CA (352 SCRA 334), the High Court held that:

'Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.'

6. The petition for review is defective for failure to state the cause of action warranting the dismissal of the case under Rule 16, thus:

xxx xxx xxx

10. Claim for refund is construed strictly against the claimant and cannot be allowed unless proven explicitly and categorically.

11. The allegations regarding tax refundability do not ipso facto merit the refund claimed."

CTA Case No. 7383 *ya*

Respondent CIR alleged the following special and affirmative defenses:[9]

> "6. The Petition for Review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.
>
> > 6.1 Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before Petitioner questioned its legality before this Honorable Court. Petitioner's precipitate act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure which provides as follows:
> >
> > xxx xxx xxx
> >
> > 6.2 Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides as follows:
> >
> > xxx xxx xxx
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> 7. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the NIRC of 1997.
>
> 8. In effect, petitioner is asking this Honorable Court to override the factual determination made by the

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[9] CTA Case No. 7383, docket, pp. 117-119.

Secretary of Department of Energy, in order for petitioner to claim for refund. xxx"

CTA Case Nos. 7445, 7494, 7517, 7521, and 7566

In this regard, respondents basically raised the same arguments and defenses they raised in CTA Case Nos. 7252 and 7383 except for the amount and transaction period involved in each case.

The foregoing cases were consolidated via Resolutions dated October 27, 2006[10], October 30, 2006[11], and November 30, 2006[12].

The parties filed their Joint Consolidated Stipulation of Facts and Issues[13] on September 23, 2008, which was approved by the Court in the Resolution[14] dated September 29, 2008.

In support of its claim, petitioner presented the following witnesses: Mr. Jonathan Chiong[15] – Manager of the Fuel Department of petitioner; Ms. Marides C. Canillo[16] – Financial Planning and Analysis Manager of petitioner; Mr. Edwin J. Segundo[17] – Supervisor of the Fuel Department of petitioner; Atty. Jonathan Andrew D. Lim[18] – Senior Legal Counsel of the Legal Department of petitioner; Ms. Myra Celeste O. Dabalos[19] – Court-commissioned Independent Certified Public Accountant; Mr. Charleston A. Lopezgo[20] – Manager of the Fuel Purchasing & Risk Management Division of PAL; Ms. Mary Ann Capuchino[21] – Partner of the Tax Reporting and Operations Group of the Tax Division of Sycip Gorres Velayo & Co.; Ms.

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[10] Docket, pp. 229-230.
[11] Docket, pp. 232-234.
[12] Docket, pp. 268-269.
[13] Docket, pp. 457-470
[14] Docket, p. 472.
[15] Exhibit "Q[7]", docket, pp. 385-404; Minutes of the October 13, 2008 Hearing, docket, p. 473.
[16] Exhibit "L[7]", docket, pp. 509-520, Minutes of the Hearing dated June 3, 2009, docket, p. 543.
[17] Exhibit "J[5]", docket, pp. 576-637, Minutes of the November 9, 2009 Hearing, docket, p. 736.
[18] Exhibit "M[7]", docket, pp. 812-872; Exhibit "N7"; Minutes of the December 9, 2009 and July 14, 2010 Hearings, docket, pp. 879 and p. 975, respectively.
[19] Exhibit "Q[5]", docket, pp. 901-906; Exhibit "J[7]", docket, pp. 931-936; Minutes of the April 5, 2010 and April 28, 2010 Hearings, docket, pp. 924 and 945, respectively.
[20] Exhibit "O[7]"; Minutes of the Hearing dated November 15, 2010, docket, p. 1004.
[21] Exhibit "U[5]"; Minutes of the Hearing dated February 14, 2011, docket, p. 1077.

Glendalyn Dela Cruz[22] – Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the Department of Energy; Atty. Eleazar C. Cesista[23] – Revenue Operation Group of the Department of Finance; Secretary Mario V. Tiaoqui[24] – former Secretary of the Department of Energy; and Atty. John Voltaire Almeda[25] – Legal Counsel of petitioner.

Petitioner filed its Formal Offer of Evidence[26] and Supplemental Formal Offer of Evidence[27] on January 31, 2013 and August 23, 2013, respectively. On April 5, 2013, the Court issued a Resolution[28] admitting petitioner's evidence, except for Exhibits "G", "G-1" and "G-2", "H" and "H-1", "M", "N", "F^4", "X^5", "X^5-1" to "X^5-5", "EEE-1", "KKK-1", "A^6-1", "B^6-1", "H^7", "I^7", "FFF" and "FFF-1", "GGG" and "GGG-1", "M^4", "S^5", "T^5", "J^6", "P^7", "OO", "RR", "G^4", and "N^5-7".

As a result, petitioner filed an Omnibus Motion[29] for partial reconsideration and for commissioner's hearing on May 2, 2013. The Court granted the said motion in the Resolutions dated August 5, 2013[30] and October 11, 2013[31]; thus, admitting Exhibits "N", "P^7", "OO", "G^4", "RR", "N^5-7", "M", "X^5", "X^5-1", "X^5-2", "X^5-3", """X^5-4", and "X^5-5".

During the hearing[32] on January 20, 2014, respondent COC's counsel failed to appear, while respondent CIR's counsel manifested that respondent CIR will not present any evidence. The Court then ordered the parties to submit their respective memoranda.

On April 4, 2014, petitioner filed a Manifestation and Request for Admission[33] of the Decision of the Regional Trial Court, Branch 114 of Pasay City, in the case entitled *Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the*

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[22] Exhibits "W^5" and "D^7"; Minutes of the Hearing dated March 7, 2011, docket, p. 1092; Minutes of the Hearing dated July 25, 2011, docket, p. 1193.
[23] Exhibit "Y^5", Minutes of the Hearing dated May 16, 2011, docket, p. 1142.
[24] Minutes of the Hearing dated May 23, 2012, docket, p. 1432.
[25] Exhibit "A^7"; TSN dated June 22, 2011.
[26] Docket, pp. 1511-1544.
[27] Docket, pp. 1631-1634.
[28] Docket, pp. 1553-1556.
[29] Docket, pp. 1561-1571.
[30] Docket, pp. 1624-1626.
[31] Docket, pp. 1644-1645.
[32] Resolution dated January 20, 2014, docket, p. 1650.
[33] Docket, pp. 1695-1717.

Department of Energy, docketed as Civil Case No. R-PSY-10-03889-CV.

Petitioner filed its Memorandum[34] on April 7, 2014; while respondents CIR[35] and COC[36] filed their Memoranda on June 20, 2014 and July 3, 2014, respectively.

On October 31, 2014, petitioner filed a Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum. In the Resolution dated January 21, 2015, the Court denied petitioner's motion to reopen trial but granted its motion to file supplemental memorandum; which petitioner filed on January 28, 2015. In the Resolution dated February 3, 2015, the instant case was deemed submitted for decision.

STATEMENT OF ISSUES

The issues submitted by the parties for resolution can be summarized as follows:

"Whether or not petitioner is entitled to a refund of the amount of P235,613,134.47, allegedly representing specific taxes paid on its importation of aviation turbo jet fuel or Jet A-1 fuel from May 2003 to December 2004."

DISCUSSION/RULING

Whether or not the Court has jurisdiction to entertain petitioner's claim for refund

Petitioner filed its administrative and judicial claims for refund on the following dates: *gr*

[34] Docket, pp. 1718-1787.
[35] Docket, pp. 1827-1841.
[36] Docket, pp. 1843-1856.

CTA Case No.	Date of Payment Of Specific Tax	Date of Filing Administrative Claim	Date of Filing Judicial Claim
7252	May 30, 2003[37]	April 28, 2005[38]	May 16, 2005[39]
	June 12, 2003[40]		
	June 27, 2003[41]		
7362	November 7, 2003[42]	October 28, 2005[43]	November 7, 2005[44]
7383	December 12, 2003[45]	November 21, 2005[46]	December 9, 2005[47]
	December 19, 2003[48]		
7445	April 16, 2004[49]	March 28, 2006[50]	April 17, 2006[51]
	April 30, 2004[52]		
7494	June 24, 2004[53]	June 23, 2006	June 23, 2006[54]
	June 29, 2004[55]		
7517	August 31, 2004[56]	March 28, 2006[57]	August 31, 2006
	September 14, 2004[58]		
7521	September 23, 2004[59]	March 28, 2006	September 21, 2006[60]
7566	January 12, 2005[61]	December 29, 2006[62]	January 12, 2007[63]

Under Section 204 in relation to Section 229 of the NIRC of 1997, as amended, petitioner has two (2) years from the date of payment of the tax, within which to file its administrative and judicial claims for refund. Sections 204 and 229 of the NIRC of 1997, as amended, are quoted hereunder for ready reference:

37 Exhibit "I".
38 Exhibit "N".
39 Exhibit "O".
40 Exhibit "J".
41 Exhibit "K".
42 Exhibit "R".
43 Exhibit "V".
44 Exhibit "W".
45 Exhibit "X".
46 Exhibit "BB".
47 Exhibit "CC".
48 Exhibit "Y".
49 Exhibit "FF".
50 Exhibit "HH".
51 Exhibit "II".
52 Exhibit ËE".
53 Exhibit "LL".
54 Exhibit "PP".
55 Exhibit "MM".
56 Exhibit "QQ".
57 Exhibit "UU".
58 Exhibit "RR".
59 Exhibit "VV".
60 Exhibit "CCC".
61 Exhibit "ZZ".
62 Exhibit "E7".
63 Exhibit "DDD".

"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." *(Emphasis supplied)*

"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)*

Applying the foregoing legal provisions, petitioner timely filed both its administrative and judicial claims for refund. Therefore, the Court has jurisdiction to take cognizance of the instant Petitions for Review.

Whether petitioner is entitled to its claim for refund

Section 15 of petitioner's franchise, RA No. 8339, grants petitioner similar benefits enjoyed by its competitor corporations, one of which is PAL. Under Section 13 of PAL's franchise, PAL's payment of basic corporate income tax or two percent (2%) franchise tax shall be in lieu of all other taxes, including taxes on importations of aviation fuel. However, PAL must satisfy specific conditions to enjoy the benefits granted under Section 13 of its franchise, to wit: (1) such supplies are imported by PAL for use in its transport and non-transport operations and other activities incidental thereto; and (2) said supplies are not locally available in reasonable quantity, quality, or price.

Section 15 of petitioner's franchise places it on equal footing with PAL, where petitioner shall enjoy similar benefits under Section 13 of PAL's franchise provided it satisfies the same conditions or requisites for its grant or enjoyment.

The Court shall now proceed to determine whether petitioner satisfied the conditions set forth under Section 13 of PAL's franchise.

Whether petitioner sufficiently proved that its importations of Jet-A1 Aviation Fuel are used for its transport and non-transport operations

For purposes of proving that petitioner imported Jet A-1 Aviation Fuel, petitioner presented witnesses Mr. Jonathan Chiong[64] –

[64] Exhibit "Q[7]", docket, pp. 385-404.

Manager of the Fuel Department of petitioner, Ms. Marides C. Canillo[65] – Financial Planning and Analysis Manager of petitioner, and Mr. Edwin J. Segundo[66] – Supervisor of the Fuel Department of petitioner. Said witnesses similarly testified that petitioner made importations of Jet-A1 Aviation Fuel on various dates from May 2003 to December 2004.

In support of the testimonial evidence, petitioner presented the following documentary evidence to prove that petitioner made the said importations, namely: (1) Tanker Bills of Lading[67]; (2) Security Bank Corporation[68] and Equitable PCI Bank[69] Official Receipts; (3) Import Declaration Entries[70]; and (4) Authority to Release Imported Goods (ATRIGs)[71].

Considering the foregoing testimonial and documentary evidence, petitioner managed to prove the fact of importation of Jet A-1 Aviation Fuel from May 2003 to December 2004.

Said witnesses likewise commonly testified that the subject importations were to be utilized for purposes of petitioner's domestic operations. With regard thereto, petitioner presented various ATRIGs[72] to prove that the imported Jet A-1 Aviation Fuel shall be used for its transport and non-transport operations. The ATRIGs similarly provide the following information:

> "xxx **according to the documents submitted by above-mentioned importer**, the shipment to be released at the Port of xxx consisting of the above described articles, will be used exclusively for daily domestic flight operation." *(Emphasis supplied)*

A careful evaluation of the ATRIGs presented by petitioner reveals that the information pertaining to the nature of petitioner's importations, *i.e.*, that the imported Jet-A1 Aviation Fuel shall be used for petitioner's transport and non-transport operation, was

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[65] Exhibit "L^{7}".
[66] Exhibit "J^{5}", docket, pp. 576-637.
[67] Exhibits "N^{4}", "R^{4}", "T^{4}", "W^{4}", "Z^{4}", "C^{5}", "F^{5}", and "H^{5}".
[68] Exhibits "I", "J", "K", "R", "X", "Y", "EE", "FF", "LL", "MM", "QQ", and "RR".
[69] Exhibits "VV" and "ZZ".
[70] Exhibits "O^{4}", "P^{4}", "Q^{4}", "S^{4}", "U^{4}", "V^{4}", "X^{4}", "Y^{4}", "A^{5}", "B^{5}", "D^{5}", "E^{5}", "G^{5}", and "I^{5}".
[71] Exhibits "L", "S", "Z", "GG", "SS", "YY", "KKK", and "N^{5}-9".
[72] Exhibits "L", "S", "Z", "GG", "SS", "KKK", and "N^{5}-9".

supplied by petitioner. On this score, the Court finds that the representations of petitioner in the subject ATRIGs are self-serving, inasmuch as it was the one that provided the said information. Hence, without presenting other independent, material and relevant evidence to support the witnesses' testimonies that the imported Jet A-1 Aviation Fuel were actually used for its transport and non-transport operations, these testimonies cannot be given probative value by this Court.

Here, petitioner confidently, albeit mistakenly, assumed that it has already proven the first requisite. In fact, petitioner stated in its Memorandum that:

> "43. There is no question or issue that the first condition (*i.e.*, that the importation is for the use of Petitioner for its operations) is present in the instant case. **The issue concerns the presence of the second condition for availment of Petitioner's exemption.**"[73]

However, without laying proper and sufficient bases to prove that the imported Jet A-1 Aviation Fuel shall be used and actually used for petitioner's transport and non-transport operations, the Court cannot merely jump into conclusion that petitioner utilized the same for the said purposes. A conclusion cannot be made to rest on mere assumptions or bare testimonies of witnesses, without sufficient independent evidence to support the same. As such, even though petitioner was able to prove the fact of importation but failed to prove that the imported Jet A-1 Aviation Fuel shall be used and actually used for its transport and non-transport operations, petitioner failed to satisfy the first requisite.

Whether petitioner sufficiently proved that its importations of Jet-A1 Aviation Fuel are not locally available in reasonable quantity, quality, or price

[73] Par. 43, Memorandum for the Petitioner, docket, p. 1746.

The Court shall proceed to determine whether petitioner sufficiently proved that its imported Jet A-1 Aviation Fuel are not locally available in reasonable quantity, quality or price.

Petitioner presented witness Ms. Glendalyn P. Dela Cruz[74] who testified in her Judicial Affidavit as to the unavailability thereof in reasonable quantity in the local market, as follows:

"Q : Based on the report you prepared, can you read the figures pertaining to Kerosene/AV Turbo for the years 2003 and 2004 specifically under the tables with the heading "Refinery Production" and "Total Industry Petroleum Products Demand Domestic and International Demand"?

A : According to the report I prepared, for the year 2003, Refinery Production of Kerosene/AV Turbo in thousand barrels is 7,826 while for 2004, it is 6,360. The Total Industry Petroleum Products Demand (Domestic and International Demand) for kerosene/ AV Turbo for 2003, in thousand barrels, is 10,056 while for 2004, it is 10, 329.

Q : Based on what you just read, when you compare the figures for Refinery Production against Total Industry Petroleum Products Demand (Domestic and International Demand) for the years 2003 and 2004, which of the two is greater?

A : For the years 2003 and 2004, Total Industry Petroleum Products Demand (Domestic and International Demand) is greater than Refinery Production.

Q : We have noted from the report you prepared which covers the years from 1998 to First Quarter of 2010, Total Industry Petroleum Products Demand (Domestic and International

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[74] Exhibit "W[5]".

Demand) is always greater than Refinery Production. Is this observation correct?

A : Yes."

In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,[75] the Supreme Court defined the word *domestic*, in relation to Sec. 13 of PAL's franchise, as follows:

> "xxx the word 'domestic,' which means 'of or relating to one's own country" or "an article of domestic manufacture,' clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported."

From the foregoing explanation of the word *domestic* under PAL's franchise, it follows that imported petroleum products should not be included as part of the total local supply. Thus, the Court gives credence to the witness' testimony that the demand does not meet the supply for Jet A-1 Aviation Fuel and hence, petitioner proved that it is not locally available in reasonable quantity.

With respect to the availability thereof in reasonable price, it appears that petitioner merely based its comparison of the actual cost of importation against the cost of domestic purchases, by using the local price quotations issued by Petron Corporation.[76] However, the Court observes that petitioner could not have determined the availability of Jet A-1 fuel in reasonable price in the local market by basing its comparison on the quotation provided by a single enterprise. Thus, petitioner failed to prove the unavailability thereof in reasonable price in the local market.

Finally, the Court further observes that the parties did not put in issue the local availability of Jet A-1 Aviation Fuel in reasonable quality.

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[75] G.R. No. 198759, July 1, 2013, citing BLACK's LAW DICTIONARY, 9th Ed. (2009), p. 557, and http://www.merriam-webster.com/dictionary/domestic?show=0&t=1372905302 (visited January 25, 2013).
[76] Exhibit "L-5".

To conclude, it is a well-established rule that a claim for refund is strictly construed against the claimant as it partakes of an exemption, and exemptions are highly disfavored. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.[77]

Unfortunately, petitioner failed to satisfy the first requisite, *i.e.*, the imported Jet A-1 Aviation Fuel shall be used for its transport and non-transport operations, in order to avail of the benefits granted under Section 13 of PAL's franchise.

Consequently, the Court is constrained to deny the present consolidated Petitions for Review.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[77] *Eastern Telecommunications Philippines, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.

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 Section 13 of Article VIII of the Constitution, and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7252, 7362 7383, 7445, 7494, 7517, 7521 & 7566**
- versus -	**Members:** **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** OCT 02 2015 4:25 p.m.

x---x

DISSENTING OPINION

CASANOVA, *J.*:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Justice Juanito C. Castañeda, Jr., I dissent in denying the instant consolidated Petitions for Review involving Air Philippines Corporation (APC)'s claim for refund for the specific taxes paid on its importation of aviation turbo jet fuel or Jet A-1 fuel from May 2003 to December 2004.

Albeit having been found to be on equal footing with Philippine Airlines, Inc. (PAL)'s tax privileges, meaning petitioner also enjoys similar benefits as that granted to PAL,[1] particularly the payment of basic corporate income tax or two percent (2%) franchise tax shall be *in lieu* of all other taxes, including taxes on importations of aviation fuel; the penned Decision, nonetheless, concluded that petitioner failed to comply with the first requirement under Section 13 of Presidential Decree (PD) No. 1590 (PAL's franchise) for it to be entitled to the same

[1] As provided in Section 11 of RA No. 8339, as amended by RA No. 9215 (APC's franchise)

tax privilege, *viz*: *(1) such supplies are imported by PAL for use in its transport and non-transport operations and other activities incidental thereto*; and *(2) said supplies are not locally available in reasonable quantity, quality, or price.*

However, further scrutiny of the records of the consolidated cases, reveal otherwise.

It is axiomatic that objections not pleaded in the Answer are deemed waived.[2] In the consolidated cases, there was no dispute that said imported jet fuels were used by petitioner in its domestic operations. Respondents never raised as an issue in the proceedings whether the imported fuels were actually used in petitioner's transport and non-transport operations and other activities incidental thereto. In fact, in their respective Answer, respondents only required petitioner to substantiate the second requisite, that said supplies are not locally available in reasonable quantity, quality, or price. Thus:

I. Special and Affirmative Defenses of respondent CIR, in her Answer[3] for CTA Case No. 7252, filed on July 28, 2005:

> "7. On the basis of the said certification issued by the Department of Energy, the aforementioned second condition for petitioner's exemption from taxes on its importation of JET A-1 fuel is wanting.
>
> 8. Petitioner failed miserably to show that the amount of P58,353,000.00 allegedly paid as specific tax on its importations of Jet A-1 for domestic operations, were erroneously or illegally collected or that the same were properly documented.
>
> *xxx.*"

II. Special and Affirmative Defenses of respondent COC, in his Answer[4] for CTA Case No. 7252 filed on September 22, 2005; Answer[5] for CTA Case No. 7362 filed on December 7, 2005; Answer[6] for CTA Case No. 7445 filed on June 8, 2006; Answer[7]

[2] Section 1, Rule 9 of the Rules of Court
[3] Docket (Vol. I), pp. 96-100
[4] Docket (Vol. I), pp. 135-142
[5] Docket (7362), pp. 93-100
[6] Docket (7445), pp. 98-106
[7] Docket (7494), pp. 132-140

for CTA Case No. 7494 filed on September 20, 2006; Answer[8] for CTA Case No. 7517 filed on November 21, 2006; Answer[9] for CTA Case No. 7566 filed on September 26, 2007

"9. On December 20, 2002, the Department of Energy (DOE) issue a Certification that aviation as, fuel and oil for use in domestic operation for domestic airline agencies are locally available in reasonable quantity, quality, or price.

10. The Department of Energy being the government agency responsible in the administration of the energy sector is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function(s).

11. On the basis of the said DOE Certification, the aforementioned second condition for petitioner's exemption from taxes on its importation of JET A-1 fuel is wanting.

xxx."

Also, nowhere in respondent CIR's Memorandum[10] which was filed on June 20, 2014, as well as that of respondent COC's Memorandum[11], filed on July 3, 2014, did they question petitioner's use of the said imported Jet-A1 fuel.

Furthermore, the sworn testimonies of petitioner's witnesses with regard to the use of the Jet A-1 fuel in APC's domestic operations were uncontroverted, *to wit*:

The judicial affidavit[12] dated February 14, 2008 of Mr. Jhonathan Chiong, Manager of APC's Fuel Department, wherein he stated that:

"**CTA Case No. 7252**

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on May 15, 2003?

[8] Paragraphs 15-17, Docket (7517), pp. 125-135
[9] Paragraphs 11-13, Docket (7566), pp. 145-154
[10] Docket (Vol. V), pp. 1827-1842
[11] Docket (Vol. V), pp. 1843-1858
[12] Exhibit "Q7", Docket (Vol. I), pp. 385-404

A. Yes, sir. That shipment involved 15,900,000 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Ocean Rainbow Quest.

xxx xxx xxx

CTA Case No. 7362

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on October 29, 2003, are you aware of said shipment?

A. Yes, sir. That shipment involved 3,180,000 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Golkoy.

xxx xxx xxx

CTA Case No. 7383

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on December 5, 2003, are you aware of said shipment?

A. Yes, sir. That shipment involved 11,713,564 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Cielo di Singapore.

xxx xxx xxx

CTA Case No. 7445

Q. How about the shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on April 5, 2004, are you aware of said shipment?

A. Yes, sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Eland.

xxx xxx xxx

CTA Case No. 7494

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on June 13, 2004, are you aware of said shipment?

A. Yes, sir. That shipment involved 8,060,439 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Hellas Renaissance.

xxx *xxx* *xxx*

CTA Case No. 7517

Q. How about the shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on August 16, 2004, are you aware of said shipment?

A. Yes, sir. That shipment involved 8,060,439 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Sheng Chi.

xxx *xxx* *xxx*

CTA Case No. 7521

Q. How about the shipment of Jet A-1 imported by APC which arrived at Pinamukan, Batangas on August 28, 2004, are you aware of said shipment?

A. Yes, sir. That shipment involved 4,640,702 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Pranedya Tritya.

xxx *xxx* *xxx*

CTA Case No. 7566

Q. How about the shipment of Jet A-1 imported by APC which arrived at Pinamukan, Batangas on December 17, 2004, are you aware of said shipment?

A. Yes, sir. That shipment involved 4,559,316 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Pranedya Tritya.

xxx xxx xxx" (Underscoring Supplied)

Likewise, in the judicial affidavit[13] dated April 24, 2009 of Ms. Marides C. Canillo, Financial Planning and Analysis Manager of APC, she declared that:

"**CTA Case No. 7252**

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on May 15, 2003?

A. Yes, ma'am. That shipment involved 15,900,000 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Ocean Rainbow Quest.

xxx xxx xxx

CTA Case No. 7362

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on October 29, 2003, are you aware of said shipment?

A. Yes, ma'am. That shipment involved 3,180,000 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Golkoy.

xxx xxx xxx

CTA Case No. 7383

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on December 5, 2003, are you aware of said shipment?

[13] Exhibit "L7", Docket (Vol. II), pp. 509-520

A. Yes, ma'am. That shipment involved 11,713,564 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Cielo di Singapore.

xxx *xxx* *xxx*

CTA Case No. 7445

Q. How about the shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on April 5, 2004, are you aware of said shipment?

A. Yes, ma'am. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Eland.

xxx *xxx* *xxx*

CTA Case No. 7494

Q. How about the shipment of Jet A-1 imported by APC which arrived also at Subic Bay, Zambales on June 13, 2004, are you aware of said shipment?

A. Yes, ma'am. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Hellas Renaissance.

xxx *xxx* *xxx (Underscoring Supplied)*

Also, in the judicial affidavit[14] dated August 7, 2009 of Mr. Edwin J. Segundo, Supervisor of APC's Fuel Department, he testified on the following:

"15 May 2003 Importation, CTA Case No. 7252

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay, Zambales on May 15, 2003?

[14] Exhibit "J5", Docket (Vol. II), pp. 576-637

A. Yes sir. That shipment involved 15.900,000 *[sic]* liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Ocean Rainbow Quest.

xxx xxx xxx

29 October 2003 Importation, CTA Case No. 7362

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Subic Bay, Zambales on October 29, 2003. Do you remember said importation?

A. Yes sir. That shipment involved 3,180,000 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Golkoy.

xxx xxx xxx

05 December 2003 Importations, CTA Case No. 7383

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Subic Bay Freeport Zone, Zambales on December 5, 2003, are you aware of said shipment?

A. Yes sir. That shipment involved 11,713,564 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Cielo di Singapore.

xxx xxx xxx

05 April 2004 Importation, CTA Case No. 7445

Q. Another importation by APC, which is a subject of this consolidated case, is a *[sic]* Subic Bay, Zambales on April 5, 2004. Do you remember said importation?

A. Yes sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Eland.

xxx xxx xxx

13 June 2004 Importation, CTA Case No. 7494

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Subic Bay, Zambales on June 13, 2004. Do you remember said importation?

A. Yes sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Hellas Renaissance.

xxx xxx xxx

16 August 2004 Importation, CTA Case No. 7517

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Subic Bay, Zambales on August 16, 2004. Do you remember said importation?

A. Yes sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Sheng Chi.

xxx xxx xxx

28 August 2004 Importation, CTA Case 7521

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Pinamukan, Batangas on August 28, 2004. Do you remember said importation?

A. Yes sir. That shipment involved 4,640,702 liters of Jet A-1, <u>which APC imported for its domestic operation</u>, and which arrived on board the vessel M/T Pranedya Tritya.

xxx xxx xxx

17 December 2004 Importation, CTA Case 7566

Q. Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at

Pinamukan, Batangas on December 17, 2004. Do you remember said importation?

A. Yes sir. That shipment involved 4,559,316 liters of Jet A-1, which APC imported for its domestic operation, and which arrived on board the vessel M/T Pranedya Tritya.

xxx xxx xxx" (Underscoring Supplied)

In the judicial affidavit[15] dated December 4, 2009 of Mr. Jonathan Andrew D. Lim, Senior Legal Counsel of the Legal Department of APC, he testified that:

"15 May 2003 Importation (CTA Case No. 7252)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 15 May 2003?

A. Yes, sir. That shipment involved 15,900,000 liters of Jet A-1, which APC imported for its domestic operations, and which arrived on board the vessel M/T Ocean Rainbow Quest.

xxx xxx xxx

29 October 2003 Importation (CTA Case No. 7362)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 29 October 2003?

A. Yes, sir. That shipment involved 3,180,000 liters of Jet A-1, which APC imported for its domestic operations, and which arrived on board the vessel M/T Golkoy.

xxx xxx xxx

05 December 2003 Importation (CTA Case No. 7383)

[15] Exhibit "M7", Docket (Vol. III), pp. 812-872

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 05 December 2003?

A. Yes, sir. That shipment involved 11,713,564 liters of Jet A-1, <u>which APC imported for its domestic operations</u>, and which arrived on board the vessel M/T Cielo di Singapore.

xxx *xxx* *xxx*

05 April 2004 Importation (CTA Case No. 7445)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 05 April 2004?

A. Yes, sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operations</u>, and which arrived on board the vessel M/T Eland.

xxx *xxx* *xxx*

13 June 2004 Importation (CTA Case No. 7494)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 13 June 2004?

A. Yes, sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operations</u>, and which arrived on board the vessel M/T Hellas Renaissance.

xxx *xxx* *xxx*

16 August 2004 Importation (CTA Case No. 7517)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Subic Bay Freeport Zone, Zambales on 16 August 2004?

A. Yes sir. That shipment involved 8,060,439 liters of Jet A-1, <u>which APC imported for its domestic operations</u>, and which arrived on board the vessel M/T Sheng Chi.

xxx *xxx* *xxx*

28 August 2004 Importation (CTA Case 7521)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Pinamucan, Batangas on 28 August 2004?

A. Yes, sir. That shipment involved 4,640,702 liters of Jet A-1, which APC imported for its domestic operations, and which arrived on board the vessel M/T Pranedya Tritya.

xxx *xxx* *xxx*

17 December 2004 Importation (CTA Case 7566)

Q. Do you remember a shipment of Jet A-1 imported by APC which arrived at Pinamucan, Batangas on 17 December 2004?

A. Yes, sir. That shipment involved 4,559,316 liters of Jet A-1, which APC imported for its domestic operations, and which arrived on board the vessel M/T Pranedya Tritya.

xxx xxx xxx" (Underscoring Supplied)

Nonetheless, inspite of the above testimonies, even though uncontroverted by respondents, petitioner's claim for refund was dismissed due to insufficiency of evidence, particularly by failing to present other independent, material and relevant evidence to support the witnesses' testimonies that the imported Jet A-1 Aviation Fuel were actually used for its transport and non-transport operations, these testimonies cannot be given probative value by this Court.

In this regard, the case of *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated*[16], is instructive on the matter:

"'The common objection known as 'self-serving' is not correct because almost all testimonies are self-serving. The

[16] CTA EB NO. 883, February 14, 2013 (CTA Case No. 7415); *citing* Danilo Hernandez vs. Court of Appeals, et al., G.R. No. 104874, December 14, 1993

proper basis for objection is 'hearsay' (Wenke, Making and Meeting Objections, 69).

Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).

Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.'

Thus, a self-serving declaration is one that is made by a party, out of court and in his favor. **It does not include the testimony he gives as a witness in Court.**[17] Tested against these standards, the testimonies of the eleven (11) witnesses are not self-serving and are admissible in evidence."

And, finally, in numerous cases of similar nature, whether it is Jet A-1 fuel or catering and commissary supplies, the question of compliance with the requirements of PAL's tax privilege chiefly pertains to the second requirement that the said imported articles are not locally available in reasonable quantity, quality, or price.

In the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*[18], the CTA found that:

"*x x x* There is no question that in this case, petitioner has fulfilled the first condition set forth in the law. However, it must be determined is whether the petitioner was able to substantiate or support the existence of the second condition. [*sic*]"

[17] People vs. Villarama, G.R. No. 139211, February 12, 2003
[18] CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454 and 7518, dated October 22, 2014

Likewise, the CTA concluded in the case *of Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*[19], the following:

> **"Second Requisite: Imported Jet A-1 fuel must be for use in its Transport and Non-transport Operations**
>
> To prove the fact of importations of Jet A-1 fuel, petitioner submitted its Bills of Lading, Commercial Invoices, and Import Declarations. As regards the question of whether such imported Jet A-1 fuel was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner submitted ATRIGs and presented Mr. Edwin J. Segundo as witness. In his Judicial Affidavit, Mr. Segundo made the following statements:
>
> *xxx xxx xxx*
>
> With the aforequoted testimony of petitioner's witness that the shipments of Jet A-1 aviation fuel were imported for petitioner's domestic flight operations, petitioner has been able to prove that such fuel was actually used for its transport and non-transport operations or other activities incidental thereto. Hence, the second requisite has been complied with." *(Citations Omitted)*

The Supreme Court in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[20], only needed three (3) simple requirements to find PAL's entitlement to the refund of the excise taxes imposed on its purchase of petroleum products. Thus:

> "C. PAL's entitlement to refund
>
> *xxx xxx xxx*
>
> First, PAL timely filed its claim for refund.

[19] CTA Case Nos. 8039, 8069, 8104 and 8113, dated July 13, 2015
[20] G.R. No. 198759, July 1, 2013

xxx *xxx* *xxx*

Second, PAL paid the lower of the basic corporate income tax or the franchise tax as provided for in the afore-quoted Section 13 of its franchise.

In its income tax return for FY 2004-2005, PAL reported no net taxable income for the period resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period.

Third, the subject excise taxes were duly declared and remitted to the BIR.

xxx *xxx* *xxx*

Thus, finding that PAL has sufficiently proved its entitlement to a tax refund of the excise taxes subject of this case, the Court hereby grants its petition and consequently, annuls the assailed CTA resolutions."

While it is true that we generally subscribe to the rule of strict interpretation against the taxpayer in claims for refund since it partakes the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. We must also remember that the court should consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, and their means and opportunity of knowing the facts to which they are testifying; including all other corroborating evidence presented during trial.

In view of the foregoing, I vote to try the consolidated cases ON THE MERITS to determine the refundable amount.

CAESAR A. CASANOVA
Associate Justice