REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

AIR PHILIPPINES CORPORATION (APC),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NOS. 7872, 7883, 7922, 7929 & 7952

Members:

FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 08 2018 3:26 p.m.

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AMENDED DECISION

Fabon-Victorino, J.:

In its Decision[1] promulgated on April 1, 2016, the Court denied the instant Petitions for Review for insufficiency of evidence. The Court found petitioner's evidence inadequate for it to be entitled to a refund or tax credit in the amount of ₱73,769,349.40, allegedly representing specific taxes paid under protest on its importation of Jet A-1 aviation fuel for the period covering January to July 2007.

In particular, the Court held that petitioner failed to prove that: (1) the imported Jet A-1 fuel was for its transport and non-transport operations considering that the only evidence it presented to prove this requirement were the Authority to Release Imported Goods (ATRIGs), which standing alone were self-serving and without any weight or probative value as the information contained therein came from the documents submitted by petitioner itself; and that

[1] Docket, pp. 1675-1708.

(2) at the time of importations, Jet A-1 fuel was not locally available in reasonable quantity.

Relentless in its cause, petitioner filed a *Motion for Reconsideration of the Decision and Motion to Reopen the Case for Presentation of Evidence*[2] on May 3, 2016. Petitioner prays to (1) reconsider and set aside the Decision of April 1, 2016 and in its lieu, order the refund or issuance of tax credit certificate for in the amount ₱73,769,349.40; or in the alternative, (2) allow the reopening of the proceedings for it to present further evidence on the consumption of the subject imported fuel.

On November 24, 2016, the Court allowed the reopening of the proceedings for petitioner's presentation of additional evidence and held in abeyance the resolution of its motion for reconsideration.[3]

During the reception of additional evidence, petitioner presented its former Supervisor of the Fuel Management Department, Edwin J. Segundo and the Court-commissioned Independent Certified Public Accountant (ICPA) Majelia A. Ubaldo.[4]

In his Amended Judicial Affidavit[5], witness **Edwin J. Segundo** testified that he was petitioner's Supervisor of the Fuel Management Department until July 18, 2016. As such, he was charged to: (1) oversee the process of receiving petitioner's importations of Jet A-1 fuel and its transfer from the depots to petitioner's aircrafts for domestic flight operations; (2) gather data, review and validate the reports and documents on Jet A-1 fuel prepared by petitioner's personnel, including the supply, service, consumption, recommend payment of billings; and (3) monitor and ensure proper documentation of Jet A-1 fuel deliveries and uplifts to the aircrafts. In addition, he was also the custodian of documents and records covering the procurement Jet A-1 fuel through importations.

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[2] Docket, pp. 1709-1734.
[3] Resolution, docket, pp. 1825-1830.
[4] Minutes of the Hearing, docket, p. 2650.
[5] Exhibit S^4, docket, pp. 2452-2467.

The witness also declared that the five (5) shipments of Jet A-1 fuel from January to July 2007, subject of the instant consolidated cases, were uplifted to petitioner's aircrafts for its domestic flight operations. The movement and transfer of the subject imported Jet A-1 fuel from the primary depot to the refueller truck (RF-Truck) until the Jet A-1 fuel were loaded unto petitioner's aircrafts were recorded in petitioner's Official Register Books or the "ORBs".[6]

ICPA **Majelia A. Ubaldo** corroborated the testimony of witness Segundo who declared that she examined and verified petitioner's ORBs containing relevant information about the movement of the subject imported Jet A-1 fuel and found that they were fully consumed by petitioner for its domestic operations. [7]

In the Resolution[8] dated December 27, 2017, the Court admitted the additional evidence formally offered by petitioner.

On the other hand, respondent did not present further evidence. Consequently, the parties were granted thirty (30) days to submit their respective Memoranda.

In its *Motion for Reconsideration of the Decision*[9] filed on May 3, 2016, petitioner raises the following arguments:

a) **USED FOR TRANSPORT OPERATIONS**: PETITIONER HAS PRESENTED UNCONTROVERTED EVIDENCE THAT THE IMPORTATIONS OF JET A-1 FUEL WAS USED FOR ITS TRANSPORT OPERATIONS.

b) **REASONABLE PRICE**: PETITIONER IS ENTITLED TO THE REFUND SINCE THE COURT HAS ALREADY RULED THAT THERE WAS AN ABSENCE OF A LOCALLY AVAILABLE SUPPLY OF FUEL IN REASONABLE PRICE.

c) **REASONABLE QUANTITY**: THE PRESENT ESTABLISHED FACTS CLEARLY SHOW THAT THERE IS NO, NOR WAS THERE EVER, A SUFFICIENT LOCALLY AVAILABLE SUPPLY OF FUEL IN REASONABLE

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[6] Exhibit S^4.
[7] Exhibit W^4, docket, pp. 2474-2484.
[8] Docket, pp. 2667-2668.
[9] Docket, pp.1645-1664.

QUANTITY. THE DEMAND FOR FUEL REGULARLY OUTSTRIPPED THE LOCAL PRODUCTION OF FUEL, AND THE FUEL NEEDS OF THE COUNTRY HAVE ALWAYS BEEN MET ONLY BY IMPORTATION.

d) **BIR RULING 001-2003**: BIR RULING 001-2003 IS VOID FOR BEING ISSUED WITHOUT DUE PROCESS, FOR BEING AN UNLAWFUL AMENDMENT OF THE LAW, AND BECAUSE IT LACKED LEGAL AND FACTUAL BASIS.

In his Comment, respondent Commissioner of Customs (COC) agrees with the finding that the testimonial as well as the documentary evidence presented by petitioner to prove that its importations of Jet A-1 fuel were used for its transport and non-transport operations were self-serving. Allegedly, petitioner's witnesses had no personal knowledge whether the subject imported fuel were actually used for its domestic operations as their testimonies were limited to the existence of the ATRIGs which indicated only that the subject importations would be used for petitioner's domestic flight operations. Nothing therein showed the needed information that the said imported fuel were actually used for petitioner's domestic operations. At the very least, their testimonies were hearsay.

Further, the presentation of the Certifications issued by the Air Transportation Office (ATO), Civil Aviation Authority of the Philippines (CAAP) and Department of Finance (DOF) failed to save the day for petitioner since they merely confirmed petitioner's undertaking under its franchise that its importations would be exclusively used for its domestic operations.

Lastly, the Court committed no error in holding that BIR Ruling No. 001-2003 did not impose a tax burden on petitioner but merely interpreted the tax privileges and exemption granted to petitioner under Presidential Decree (PD) No. 1590.

In opposing petitioner's *Motion for Reconsideration,* respondent Commissioner of Internal Revenue (CIR) claims that:

a. The Court has no jurisdiction to determine the validity of DOE Certification dated December 20, 2002 and BIR Ruling 001-2003;

b. Petitioner failed to prove that aviation fuel is not locally available in reasonable quantity, quality and price;

c. Petitioner failed to prove that its right to tax refund indubitably exists; and

d. Petitioner's presentation of additional evidence should not be considered by the Court in the resolution of the instant case considering that a decision has already been promulgated.

THE COURT'S RULING

It bears stressing that the factual milieu of the case does not warrant a ruling on the validity of BIR Ruling No. 001-2003 as it will not affect the determination of petitioner's entitlement to the refund sought given that the said BIR Ruling does not cover the specific tax on importations paid from January to July 2007, which are the subject of the instant *Petitions for Review*.

Note that the basis of the pronouncement in the assailed BIR Ruling is the Certification issued by the Department of Energy (DOE) on December 20, 2002 covering historical data. In the instant cases, the importations of the subject Jet A-1 occurred in January to July of 2007, obviously beyond the coverage of **DOE Certification** issued in **2002**.

On petitioner's claimed entitlement to the refund/tax credit sought in the total amount of ₱73,769,349.40, allegedly representing specific taxes paid under protest on its importation of Jet A-1 aviation fuel for the period covering January to July 2007, it must prove the following in order to avail of the exemption under its franchise and be held entitled to the prayed for refund/tax credit:

1. The basic corporate income tax or franchise tax, whichever is lower, must

be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

There is no question that petitioner has complied with the first requisite.

To establish that it was able to satisfy the second requisite, petitioner, during the reopening of the proceedings, presented its former Supervisor of the Fuel Management Department, Edwin J. Segundo and ICPA Majelia A. Ubaldo.

Witness Segundo, then the Supervisor of the Fuel Management Department of petitioner, detailed the movement of the five (5) shipments of imported Jet A-1 fuel subject of the instant cases from the primary depot where they were stored after their release from the Bureau of Customs until they were loaded unto the aircraft. The movement and transfer of the subject shipments were entered in petitioner's Official Register Books or the "ORBs", which the witness identified via his Judicial Affidavit, the pertinent portion of which is hereby quoted for ready reference, thus:

> [8] Q: Do you recall how many shipments of Jet A-1 fuel were imported by APC during the period of January to July 2007?
>
> A: Yes. There were five (5) shipments of Jet A-1 imported by APC from January to July 2007, which are the subject of these consolidated cases.
>
> [9] Q: What happened to these 5 shipments?

A: All 5 shipments of Jet A-1 imported by APC from January to July 2007 were loaded into APC's aircrafts and used for APC's domestic flight operations.

xxx xxx xxx

[33] Q: What document, if any, proves that all 5 shipments of Jet A-1 imported by APC during the period of January to July 2007 were accounted for and used for APC's domestic flight operations?

A: The Official Register Book or what we call "ORB" of imported Jet A-1 Fuel of APC in 2007 shows the details relating to the movement of the imported fuel from the primary depot to the RF-Truck which goes to the APC aircrafts. The ORB is a daily record of the volume of imported fuel per batch that is withdrawn and transferred from the primary depot to the secondary depot and from the secondary depot and eventually to the APC aircrafts.

[34] Q: What information is included in the Official Register Book or ORB?

A: The ORB also contains the (1) daily opening volume balance and receipts of Jet A-1 to the secondary depot tanks, (2) the daily issued volume of Jet A-1 from the secondary depot to the RF-Trucks which loads the fuel to APC aircrafts, and (3) the daily closing volume balance of Jet A-1.

[35] Q: Who prepares the Official Register Book"

A: The Official Register Book is prepared by an employee of the APC Fuel Management Department.

[36] Q: Where is the Official Register Book submitted?

A: The BIR mandates the monthly submission of the Official Register Book to its office. Thus, every month, the Official Register Book is filed and submitted with the Large Taxpayers

> Programs Division. It is signed and attested to by a BIR Revenue Officer.
>
> [37] Q: How did the Official Register Book relate to your duties as Supervisor of the Fuel Management Department in 2007?
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> A: As Supervisor of APC's Fuel Management Department then, in 2007, I was among the two (2) employees of the Division who was tasked with preparing the Official Register Book.
>
> [38] Q: What is the basis of the data appearing on the Official Register Book?
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> A: The data reflected in the Official Register Book are gathered from the Withdrawal Certificates, Hydrant Issue Slips, Jet A-1 Stock Movement Reports, and Jet A-1 Fuel Movement Reports of the fuel loaded to the APC aircrafts for its domestic flights, and were prepared and issued by APC fuel technicians and the refueling crew.

Significantly, the foregoing declaration were corroborated by ICPA Ubaldo who testified that during her audit of petitioner's records and documents pertaining to the present cases, she examined and verified the originals of these ORBs and confirmed that the subject shipments were fully utilized by petitioner in its domestic flight operation, thus:

> [10] Q: Ms. Witness, you mentioned a while ago that the special audit procedures you conducted were to determine whether APC consumed the Jet A-1 Fuel it imported during the period January to July 2007 for its domestic operations. What procedures did you perform to accomplish this purpose?
>
> A: To determine whether the Jet A-1 Fuel imported by petitioner APC were fully consumed for its domestic operations, I performed the following:

a. I reviewed and verified the Jet A-1 Fuel importations made by the Petitioner APC for the period January 25, 2007 to July 20, 2007 to ascertain that there were indeed importations of the said fuel and payments of specific taxes thereon.

b. Then, I verified and validated the imported Jet A-1 Fuel inventory beginning balance (January 1, 2007) from the petitioner's December 31, 2006 Inventory Report, which was prepared by petitioner APC's Fuel Representative and noted by the Assistant Vice-President – Logistics & Purchasing Department.

c. Then, I verified and validated that the beginning balances at the source depot and Nichols depot as well as the importations subject for the verifications and the eventual loading to the aircrafts were issued and reported on the basis of first-in, first-out basis of accounting.

d. Subsequently, I verified the Official Registry Books (ORBs) to ascertain that the imported Jet A-1 fuel stocks' transfers and issuances from petitioner's depot at APC aircrafts were duly attested by the BIR Revenue Officer and the representative of APC.

e. I also verified that the petitioner made two occasions of purchases of Jet A-1 Fuel from Petron Corporation between May 1, 2007 and July 31, 2007.

From these, I then prepared the working papers, including the summary of the details in the documents I obtained from APC, and the ICPA Report dated 10 April 2017 which I submitted to the Honorable Court for this case.

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[14] Q: Ms. Witness, you previously mentioned about "ORBs", what are these "ORBs" that you are referring to?

A: The ORB is a document which shows the daily receipts of Jet A-1 Fuel from source depots (Pinamucan, Batangas and Subic, Zambales) to Nichols depot and the eventual removal and issuance to petitioner APC aircrafts for its domestic flight operations through the refueller trucks. The ORBs and all entries therein are duly attested to by the BIR Revenue Officer and the representative of APC.

[15] Q: Can you also explain how you verified the quantity of Jet A-1 Fuel that you mentioned previously and in your Report dated 10 April 2017 were imported by APC, transferred to the Nichols depot, then to the APC aircrafts through the refueller trucks?

A: As can be seen in my report, I first examined the beginning balance from the source depots: Pinamucan, Batangas and Subic, Zambales stated in the Inventory Report, which is Four Million Five Hundred Thirty One Thousand One Hundred Ninety (4,531,190) liters.

Then, I summarized and tallied the daily Jet A-1 fuel importation of petitioner APC for the period of January 1, 2007 to July 31, 2007 as stated in the ORBs, wherein I was able to derive the total amount of Twenty Million One Hundred Thousand Six Hundred Forty (20,100,640) liters of Jet A-1 fuel. Thereafter, I summarized and added the local purchases in the total amount of Three Million Five Hundred Sixty Thousand (3,560,000) liters. Next, I deducted the total amount of transferred Jet A-1 fuel as stated in the ORBs from the total Jet A-1 fuel amounting to 28,261,671

> liters that were delivered to the Nichols depot.
>
> Subsequently, I tallied the total Jet A-1 Fuel received from the source depot and issued to the APC aircrafts through the refueller trucks with the total Jet A-1 Fuel received from the source depots. My findings showed a negative balance of 29,079 liters.
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> xxx xxx xxx
>
> [21] Q: You mentioned of your finding which showed a negative balance of 29,079 liters, please tell us your conclusion in your Report dated 10 April 2017 based on this finding, if any?
>
> A: The negative balance of 29,079 liters means, as I've mentioned on page 6 of my Report, that as of 23 September 2007, all Jet A-1 fuel imported by APC on January to July 2007, which includes the subject importations in this case, were fully accounted for, used and consumed by APC for its domestic flight operations.

The following documents presented by petitioner also indicate that the subject shipments would be utilized by petitioner for its domestic flight operations, *viz.*: (1) the ATRIGs[10]; (2) Air Transportation Office (ATO) Certifications[11]; and (3) First Endorsements[12] issued by the Department of Finance. The ATRIGs specifically state that *"the shipments to be released at the Port x x x consisting of the above described articles, will be used for daily/ domestic flight operations".* The Certifications issued by ATO (now the Civil Aviation Authority of the Philippines or CAAP) provide that *"Jet A-1 (aviation fuel) under B/L No. x x x are necessary /incidental for the operation of Air Philippines Corporation",* while the First Indorsements certified that the subject importations of Jet A-1 fuel are *"necessary for the operations of petitioner".*

[10] Exhibit "J", docket vol. 2, pp. 864-867.
[11] Exhibit "O", docket vol. 2, pp. 1094 to 1098.
[12] Exhibit "P", docket vol. 2, pp. 1099 to 1103.

In *Commissioner of Customs vs. Air Philippines Corporation,*[13] this Court's *En Banc* held that as long as the ATRIG is corroborated by other documentary and testimonial evidence, as in the present cases, then they may be considered as proof that the imported aviation fuel was, indeed, used in petitioner's transport and non-transport operations and other activities incidental thereto.

In fine, petitioner was able to sufficiently establish that the importations of the subject aviation fuel were for petitioner's transport operations and other activities incidental thereto, thereby satisfying the second requisite.

As regards the third requisite, to wit; that "the imported articles, supplies or materials are not locally available in reasonable quantity, quality, **or** price", the Court in a number of cases has already ruled that by using the conjunctive *"or",* the law imposes an alternative, not cumulative, qualification for the determination of whether there is locally available Jet A-1 fuel. Therefore, it is sufficient that the taxpayer, such as petitioner, is able to prove the absence of only one condition to qualify for the exemption.

Significantly, in a case[14] involving the same parties, the Court *En Banc* held that as long as petitioner is able to prove the absence of one condition (either reasonable quantity, quality or price), the exemption applies. In other words, petitioner is not required to prove the concurrence of the three conditions to benefit from the exemption provided by law.

As held in the assailed Decision, petitioner, through the bills of lading covering the subject importations and the supporting ATO Certifications issued by the Air Transportation Office through its Officer-in-Charge Manuel V. Villegas and its Assistant Secretary, Nilo C. Jatico, was able to establish that the imported Jet A-1 fuel was not locally available in reasonable quantity at the time of importation. These ATO Certifications reads:

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[13] CTA EB Nos. 1456 and 1458, October 18, 2017.
[14] *Commissioner of Internal Revenue and Commissioner of Customs vs. Air Philippines Corporation,* CTA EB Nos. 1537 and 1550, May 21, 2018.

> This is to certify that this office interposes no objection for the importation of Jet A-1 (aviation fuel) under B/L No. 52178 which are **not locally available (in reasonable quantity, quality and price) and are necessary /incidental for the operation of Air Philippines.**[15] (*Emphasis supplied*)

The said ATO Certifications were given weight pursuant to Section 44, Rule 130 of the Rules of Court which provides:

> **SEC. 44** *Entries in official records.* - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

Notably, the DOF Indorsements issued by Undersecretary Gaudencio A. Mendoza Jr. of the Legal/Revenue Operations Group of the Department of Finance states that *the Certification issued by the ATO was deemed sufficient for purposes of the tax exemption*.

The foregoing finding was further affirmed by the Court *En Banc* in the case of *Commissioner of Customs vs. Air Philippines Corporation*[16], holding that the CAAP is not precluded from issuing the subject certifications relating to the availability of supply of aviation fuel.

Further, petitioner also presented the comparison made by the previous ICPA, Celeste O. Dabalos, of the cost of importation of aviation turbo jet fuel/Jet A-1 fuel used in petitioner's domestic airline operations being claimed for refund/tax credit and the cost of domestic purchases of aviation turbo jet fuel/Jet A-1 fuel using the price quotations issued by local oil companies such as Petron Corporation

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[15] Exhibit "O", docket vol. 2, p. 1094.
[16] CTA EB Nos. 1456 and 1458, October 18, 2017.

(Petron) and Pilipinas Shell Petroleum Corporation (Shell) to show that aviation fuel was at the time of importation was not locally available in reasonable price.

The use of the price quotations from *Petron* and *Shell* was further validated by witness Mario V. Tiaoqui, the Secretary of the Department of Energy (DOE) from 1998 to 2001. He declared that Petron and Shell were the only two (2) local refiners in the Philippines, as Caltex had closed down its refinery.[17]

For cost of domestic purchases, ICPA Dabalos presented the cost per liter in peso of aviation turbo jet fuel/Jet A-1 had petitioner purchased the same locally from *Petron* for the months of January to July 2007 as follows:[18]

Month of Price Quotation	Price per Liter (net of VAT)	Price per Liter (with VAT)	Exhibit Reference
January-07	₱ 29.8821	₱ 33.4680	"U & U-1"
February-07	₱ 27.2271	₱ 30.4944	"V & V-1"
March-07	₱ 28.0454	₱ 31.4108	"HHH"
April-07	₱ 28.6147	₱ 32.0485	"X & X-1"
July-07	₱ 30.0796	₱ 33.6892	"Y & Y-1"

If purchased locally from *Shell*, the cost per liter in peso of aviation turbo jet fuel/Jet A-1 for the months of January to July 2007 are as follows:[19]

Month of Price Quotation	Price per Liter (with VAT)	Exhibit Reference
January-07	₱ 37.1264	"LLL-1"
February-07	34.0234	"LLL-2"
March-07	34.4334	"LLL-3"
April-07	35.6596	"LLL-4"
July-07	₱ 37.0696	"LLL-5"

On the other hand, based on the original invoices[20] from oil traders which support petitioner's importations of aviation turbo jet fuel/Jet A-1 for the months of January to July 2007, the cost per liter in peso of importation of

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[17] Transcript of Stenographic Notes (TSN) dated June 11, 2012, pp. 108 to 111.
[18] Exhibit "DDD", docket, p. 1345.
[19] Exhibit "TTT", docket, p. 1313.
[20] Exhibit "N", docket, pp. 1085 to 1093.

aviation turbo jet fuel for the said periods are presented by the ICPA as follows:[21]

Case No.	BL Date	Oil Trader	Invoice Number	Oil Value/ Product Cost per Liter (in PHP)	
				(net of VAT)	(with VAT)
7872	01/18/2007[22]	Vitol Asia PTE Ltd.	S0700341	₱ 21.8174	₱ 24.8566
7883	02/12/2007[23]	Vitol Asia PTE Ltd.	S0700780	22.1461	25.2723
7922	03/14/2007[24]	Vitol Asia PTE Ltd.	S0701216	23.2267	26.4335
7929	04/10/2007[25]	Vitol Asia PTE Ltd.	S0701795	24.5124	27.8601
7952	07/14/2007[26]	SK Networks Co. Ltd.	RM707S017A	₱ 25.1365	₱ 28.5814

From the foregoing, ICPA Dabalos arrived at the following findings:

a. Comparison between cost per liter of importation and cost per liter of domestic purchase from Petron (with VAT)[27]

Case No.	Cost per Liter of Importation (with VAT) (A)	Cost per Liter of Domestic Purchase *(from Petron)* (B)	Difference-Cost per Liter of Domestic Purchase is Higher (C) = (A)-(B)	Percentage of Difference (C) / (A)
7872	24.8566	33.4680	(8.6114)	34.64%
7883	25.2723	30.4944	(5.2221)	20.66%
7992	26.4335	31.4108	(4.9773)	18.83%
7929	27.8601	32.0485	(4.1884)	15.03%
7952	28.5814	33.6892	(5.1078)	17.87%

b. Comparison between cost per liter of importation (with VAT) and cost per liter of domestic purchase from Shell (with VAT)[28]

[21] Exhibit "DDD", docket vol. 3, p. 1344.
[22] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[23] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[24] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[25] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[26] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.
[27] Exhibit "DDD", docket vol. 3, p. 1346.
[28] Exhibit "TTT", docket vol. 3, p. 1313.

Case No.	Cost per Liter of Importation (with VAT) (A)	Cost per Liter of Domestic Purchase *(from Shell)* (B)	Difference-Cost per Liter of Domestic Purchase is Higher (C) = (A)-(B)	Percentage of Difference (C) / (A)
7872	24.8566	37.1264	(12.2698)	49.36%
7883	25.2723	34.0234	(8.7511)	34.63%
7992	26.4335	34.4334	(7.9999)	30.26%
7929	27.8601	35.6596	(7.7995)	28.00%
7952	28.5814	37.0696	(8.4882)	29.70%

Based on the above schedules, the cost per liter of importation of aviation turbo jet fuel/Jet A-1 for the months of January to July 2007 was **lower than the cost of aviation turbo jet fuel if purchased locally either from *Petron* or *Shell*.** Hence, petitioner presented sufficient evidence on the **non-availability locally of Jet A-1 fuel in reasonable price**.

As to the requirement that aviation fuel is not locally available in reasonable quantity during the time of importation of the subject aviation turbo jet fuel/Jet A-1, petitioner made a comparison between total refinery production and the total industry petroleum products demand, specifically of jet fuel or kerosene, and concluded that the demand far outstripped the local refinery production, on the basis of the table on Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011 from the DOE[29]. This was also supported by the direct testimony of then Secretary Mario V. Tiaoqui on June 11, 2012[30].

Furthermore, the letter of the DOE dated June 6, 2011[31] reflected the following table showing the total jet fuel imported by airline companies from 2001 to 2010, to wit:

Airline Companies Imports of Jet Fuel in Thousand Barrels, MB	
Year	**Volume**
2001	1,861
2002	1,295

[29] Exhibit "LLL", docket vol. 3, p. 1272.
[30] TSN dated June 11, 2012.
[31] Exhibit "NNN", docket vol. 3, p. 1276.

2003	1,550
2004	1,678
2005	1,300
2006	1,341
2007	1,777
2008	1,842
2009	1,715
2010	1,868

Using the data from the table on the Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011 and from the above letter, petitioner compared the total importations of aviation turbo jet fuel/Jet A-1 made by oil companies and the total importations of jet fuel made by airline companies (including 2007 when the subject importations were made) and concluded that importations by airline companies accounted for a great majority of total aviation turbo jet fuel/Jet A-1 importations, *viz:*

	Jet Fuel									
Details	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Importation	1,895	1,336	1,783	2,867	2,039	2,292	2,978	3,278	3,959	3,519
By Airline Companies	1,861	1,295	1,550	1,678	1,300	1,341	1,777	1,842	1,715	1,868
By Oil Companies	34	41	233	1,189	739	951	1,201	1,436	2,244	1,651

Petitioner further explains that even if importations in 2007, excluding those of airline companies, were added to the total local production and beginning inventory, the total local available supply would still be insufficient to meet the total industry demand by 971,000 barrels, as illustrated below[32]

	Jet Fuel									
Details	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	***2007***	**2008**	**2009**	**2010**
Inventory (Beginning)	302	291	315	309	817	856	***693***	484	269	577
Production Local	4,825	5,050	5,024	4,584	5,576	5,867	***5,990***	5,566	5,248	6,103
Importation by Oil Companies	34	41	233	1,189	739	951	***1,201***	1,436	2,244	1,651
Total Available Supply	5,161	5,382	5,572	6,082	7,132	7,674	***7,884***	7,486	7,761	8,331
Demand	6,750	6,438	6,699	7,349	7,879	8,237	***8,855***	8,850	9,456	9,617
Local Available Supply vs Demand	(1,589)	(1,056)	(1,127)	(1,267)	(747)	(563)	**(971)**	(1,364)	(1,695)	(1,286)

[32] Pars. 70, 71, 75 of Petitioner's Supplemental Memorandum, docket vol. 6, pp. 2728 to 2729.

Considering the foregoing, the Court is convinced that at the time of the subject importations, aviation turbo jet fuel/Jet A-1 was not available in reasonable quantity, quality or price.

All said, the Court finds that petitioner has satisfactorily established its entitlement to refund of the erroneously collected and paid under protest excise taxes in the aggregate amount of ₱73,769,349.40.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration of the Decision** is **GRANTED**. Accordingly, the Decision dated April 1, 2016 is amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the Petitions for Review are **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **₱73,769,349.40**, representing specific taxes paid under protest corresponding to its importation of Jet A-1 aviation fuel for its domestic flight operations covering the period of January to July 2007."
>
> **SO ORDERED**."

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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