REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA *EB* NO. 2657
(CTA Case No. 10133)

Present:
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 26 2025
2:00 p.m.

x --- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* ("Petition"), filed on July 29, 2022.[1] The Petition assails the September 28, 2021, Decision[2] of the Court's Second Division which denied its Petition for Review which sought the refund of, or issuance of a tax credit certificate for, the amount of P2,904,585.91, representing excise taxes it paid under protest on July 27, 2017, and October 19, 2017, for importations of alcohol products, as well as the June 22, 2022, Resolution[3] denying its Motion for Reconsideration.

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1 *Rollo*, pp. 11-82.
2 Division Docket, Vol. II, pp. 794-822.
3 *Id.* at 855-864.

The Parties

Petitioner, Philippine Airlines, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue ("BIR"), vested with the authority to decide, approve, and grant tax refunds pursuant to ***Section 112 (C) of the National Internal Revenue Code of 1997, as amended*** ("**Tax Code**"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

The Facts

The case began on July 22, 2019 when petitioner submitted a letter to respondent requesting for refund of or issuance of tax credit certificate for the amount of P2,904,585.91 representing excise taxes it paid on July 27, 2017, and October 19, 2017, for its importation of alcohol products which, under *Presidential Decree* ("*PD*") *No. 1590*, are exempt from excise tax.[6]

Considering that it only had two years from the payment of taxes within which to file an action with this Court, petitioner filed its Petition for Review a mere three days after its refund letter, or on July 25, 2019.[7] Respondent filed his Answer[8] on October 2, 2019, after being granted extended periods twice.

Following trial, the Court, acting through its Second Division, issued the assailed Decision denying the case for lack of merit. Petitioner's Motion for Reconsideration, filed on November 3, 2021[9], was denied per the June 22, 2022, Resolution.

Having received said Resolution on June 29, 2022, petitioner filed the instant Petition for Review on July 29, 2022, before the Court *En Banc,* following an extension of time granted to it.

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4 Petition for Review, *id.*, p. 2.
5 *Id.*
6 See Exhibit "P-2"; Division Docket Vol. II, pp. 529-539.
7 Division Docket Vol. I, p. 10-95
8 *Id.* at 108-114.
9 *Id.* at 823-843.

The Petition was dismissed on October 12, 2022, for lack of jurisdiction[10] but upon Motion[11], the same was reversed, and respondent was ordered to file his Comment to the Petition[12].

Following the Records Verification report that respondent failed to file any Comment, the case was submitted for Decision on January 25, 2024[13].

Hence, this Decision.

The Issue

The sole issue for this Court's resolution is whether denial of the Petition for Review before the Court in Division was proper as petitioner's evidence did not sufficiently establish that the subject imported alcohol products were not locally available in reasonable quantity, quality or price at the time of importation.

Petitioner's Arguments

Petitioner insists that the evidence it presented sufficiently established that the subject imported alcohol products are not locally available in reasonable quantity, quality or price. It also holds out that the Decision's imposition of stringent requirements defeats the purpose of *PD No. 1590.*

The Ruling of the Court

Petitioner's claim for refund is anchored upon *PD No. 1590* which exempts it from the payment of excise taxes for its imported commissary and catering supplies, subject to its compliance with set requirements.

The pertinent section of *PD No. 1590* provides, as follows –

> Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

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[10] See Resolution, Rollo, pp. 84-87.
[11] *Id.*, at 98-107.
[12] See July 6, 2023 Resolution, Id., at 123-126.
[13] *Id.*, at 128. The time to promulgate the Decision was extended after the case was re-raffled to this Ponente for study and report.

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

Hence, the issue in the case is whether the imported products for which petitioner claims a tax refund *are not locally available in reasonable quantity, quality or price.*

In denying the claim for refund, the Court, acting in Division, elucidated as follows –

> However, with regard to the third condition, i.e., the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, We find that petitioner failed to prove compliance therewith.
>
> To prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, petitioner submitted the following: (1) Judicial Affidavit of Capinpin, its Manager for In-

flight Materials Purchasing Division; (2) Absolute Sales Corporation's Product Price Lists for 2013 and 2014; (3) Future Trade International's Product Price Lists for 2013 and 2014; (4) BIR's RMC No. 90-2012; (5) Minivan Enterprise's Product Price Lists for 2013 and 2014; and (6) Table of Comparison prepared by petitioner.

The Court, however, finds petitioner's proffered pieces of evidence to be insufficient.

It is noted that during the cross-examination of Capinpin, she testified that her observation that the imported wine and liquors are not available locally in reasonable quantity, quality or price, is merely based on the price lists obtained from Absolute Sales Corporation, Future Trade International and Minivan Enterprise, viz:

> JUSTICE CASTAÑEDA:
> Cross?
>
> ATTY. MANZANARES:
> Yes, your Honors.
>
> Q: Ms. Witness, in Question No. 8, you mentioned that you compared local prices in the importation cost for alcohol products, is that correct?
>
> A: Yes, Sir.
>
> Q: How did you get the local prices for comparison for the importation prices?
>
> A: I asked local prices from the local merchant of wines and liquors.
>
> Q: May I know how many local merchants did you approach to get these prices?
>
> A: We approached several at least more than five but only three (3) have responded.
>
> Q: So, your local prices is (sic) based on three (3) merchants?
>
> A: Yes.

Unfortunately, the Court cannot simply rely on the product price lists from the three (3) dealers or on the testimonies merely based thereon. It is hard to be convinced that the product price lists from the said dealers represent the market price in the local market or for the entire country.

Without corroborating evidence to prove that the price lists of Absolute Sales Corporation, Future Trade International and Minivan Enterprise represent the local market prices for the subject alcohol products in 2013 and 2014 vis-à-vis totality of local suppliers who are engaged in selling similar products in the same year, We cannot conclude that petitioner's comparison of the prices of its imported wines and liquors with that of the said dealers is deemed sufficient. In the same vein, considering that RMC No. 90-2012 was based on the

> 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's wines and liquors that were imported in 2013 and 2014 with that of the said price survey that was made in 2010. Simply put, with the evidence presented by petitioner, We cannot determine, with certainty, whether the cost of importing the said wines and liquors is lower than purchasing them locally.[14]

At this point, it would be instructive to review jurisprudence on this issue. It would appear that there are seven Supreme Court decisions touching on the issue of whether petitioner has presented evidence sufficient to entitle it to its claim for refund of excise taxes it paid under protest for importations of cigarettes, liquor and wine. Of these seven, four are Notices of unsigned Resolutions and three are full Decisions. A summary of the conclusions in these cases and those in the corresponding En Banc and Division cases appealed from is contained in the table below –

	CASE NO.	TESTIMONY	EVIDENCE	WHY REJECTED	CONCLUSION
1	G.R. No. 236343-45, 236372-74; Notice (2023-01-17) – granted; sufficient Unsigned Resolution but discussed facts and law on which it was based	Capinpin – Carlsberg, Absolut, Gordons	Tables of Comparison; Supporting price list – corroborated Capinpin's testimony		Disagreed with CTA finding that PAL has inadequately shown its compliance with Section 13 (b) (2) of PD 1590 as regards the amount of P240,283.71.
	EB No. 1308, 1309, 1311 (2017-02-27) J Liban – partially granted	Capinpin - No local suppliers; no reasonable quantity available locally – as to Volupta Blanco and Rosso Lee; Galedo	Table of Comparison;	Testimony that PAL imported because cheaper than buying locally insufficient - Local prices not available for comparison	Due to testimony on no local suppliers, as to one product, additional P550,810.26 refunded; alternative, not cumulative qualification for exemption; partial refund of P3,983,223.10
	No. 8514 (2015-01-06) J Casanova – partially granted	Capinpin; Lee; Galedo	Table of Comparison; Philippine Wine Merchants Price List; Future Trade International Price List; Duty Free Price List	Local prices of some alcohol products not available for comparison;	Costs of importing identified liquors and wines are lower than the costs of purchasing them locally – Partial refund granted
2	G.R. No. 231638 Notice (2021-02-17) – granted; sufficient Unsigned Resolution but discussed facts and law on which it was based	Capinpin - PAL imported because cheaper than buying locally	Philippine Wine Merchants Price list; Table of Comparison		CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of

[14] Decision, pp. 25-27, citations omitted; Division Docket, Vol. 11, pp. 818-820.

					authority when it ruled that the pieces of evidence PAL presented are "inadequate" to show compliance with Section 13 (b) (2)
	EB No. 1299 (2016-10-03) J Uy – dismissed; insufficient	Alcohol - PAL imported because cheaper than buying locally Cigarettes – no local suppliers		Capinpin Cross Examination – only Phil Wine Merchants submitted quotation; Duty Free – only visited to see prices; did not try to obtain price from other suppliers; none of the comparative price list contain price on cigarettes	Affirmed Division dismissing Petition; PJ Del Rosario dissented
	No. 8130 (2014-12-01) J Victorino – dismissed; insufficient	Capinpin – only 1 supplier granted request for price list; but request was only to Duty Free			The information gathered from the two sources insofar as imported wine and liquors are concerned are seriously deficient to justify conclusion that the said imported items are not available in reasonable quantity, quality or price in the local market ; Denied Petition
3	G.R. No. 240532 Notice (2019-03-27) - sufficient				Respect CTA's factual findings
	EB No. 1363 – Amended Decision (2018-02-13) – PJ Del Rosario - sufficient	Capinpin	Philippine Wine Merchants Price List		Followed 2 other CTA cases where Table of Comparison and local prices reflected in 1 price list found sufficient; remanded to Division to determine refund amount 2 other cases - CTA Case Nos. 7677, 7685, and 7746 (Decision and Amended Decision) affirmed with

					modifications in CTA EB 954 & 1046, October 14, 2014; and CTA Case No. 8153, January 17, 2013 (affirmed in CTA EB Nos. 1029, 1031 and April 30, 2014)
	Original Decision EB No. 1363 (2017-04-05) J Grulla; insufficient	Capinpin – only 1 price list because other local merchants refused to give their price list	Philippine Wine Merchant		Affirmed Division – only 1 supplier insufficient; Capinin testimony is uncorroborated
	No. 8198 (2015-06-02) J Bautista - insufficient	Capinpin - only 1 price list because other local merchants refused to give their price list	Table of Comparison; Philippine Wine Merchants Price List	PAL could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by only one supplier.	Denied Petition Presenting only 1 supplier is insufficient
4	G.R. No. 238672 Notice (2018-07-09) sufficient				Respect CTA findings of fact
	EB No. 1433 (2017-10-18) J Casanova - sufficient	Capinpin	Table of Comparison; Philippine Wine Merchants price list; Future Trade International Price List; Duty Free Retail Prices		Cited several CTA EB cases (CTA EB Case Nos. 1216, 1217 and 1221 {CTA Case No. 8184}), May 27, 2016, CTA EB Case Nos. 954 & 1046 (CTA Case Nos. 7677, 7685 and 7746), October 14, 2014; CTA EB Case Nos. 920 & 922 (CTA Case Nos. 7665 and 7713), September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032 (CTA Case No. 8153), April 30, 2014; CTA Case No. 8236, December 18, 2013.) which

					consistently ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price List *and/or* Duty Free Philippines Retail Prices, together with the testimony of petitioner's witness, were deemed sufficient Also cited SC ruling in G.R. Nos. 215705-07 where there was only one price list presented and evidence still found sufficient Noted that PAL's evidence remained unrebutted as the BIR did not present any evidence to refute PAL's claim Remand to Division to determine refund amount
	Nos. 8529 and 8590 (2015-10-27) J Victorino - insufficient	Capinpin	Table of Comparison; Philippine Wine Merchants Price List; Duty Free Retail Prices	Imported brands not mentioned in price list of Philippine Wine Merchants nor Duty Free When the subject importations were made in 2009, petitioner did not have any data, reliable or otherwise, on the price and	Denied Petition

				availability of the subject imported items; Witness also admitted in open court that petitioner had nothing to show that it conducted internal canvassing pertaining to the local availability of the subject imported products	
5	G.R. No. 215705-07 (2017-02-22) – sufficient				Respect CTA findings of fact
	EB No. 1029, 1031, 1032 (2014-04-30) J Uy - sufficient	Santos	Philippine Wine Merchants Price List; Table of Comparison; Prima facie case established, burden of evidence shifts to respondent which presented no controverting evidence		Affirmed Division in toto
	No. 8153 (2013-01-17) J Castaneda - sufficient	Santos – importing supplies cheaper than purchasing locally	Philippine Wine Merchants Price List; Table of Comparison		Partially granted as to wine products; 1 supplier sufficient
6	G.R. No. 209353-54, 211733-34 (2015-07-06) – sufficient				Respect CTA findings of fact
	EB No. 920, 922 (2013-09-09) J Grulla -sufficient				Affirmed Division; issue not discussed
	No. 7665, 7713 (2012-04-17) J Castaneda - sufficient	Li – importation cheaper than purchasing locally	Duty Free Price list; Table of Comparison		One supplier sufficient; Refund granted
7	G.R. No. 212536-37 (2014-08-27) – sufficient				Respect CTA findings of fact
	EB No. 942, 944 (2013-12-09) J Castaneda – sufficient				Affirmed Division
	No. 7868 (2012-06-22) J Casanova - sufficient	Santos – importing is cheaper than purchasing locally	Various price lists (3)		Refund granted

As it stands, then, it would appear that the presentation of just one supplier cannot be the basis for finding the evidence of petitioner insufficient. Indeed, in six of the seven cases, above, the ultimate holding is that the presentation of one supplier's price list, together with a Table of Comparison and testimonial evidence that importing the subject alcohol products is cheaper than purchasing them locally, is sufficient to prove that the subject imported products were not locally available in reasonable quantity, quality or price at the time of importation.

At first blush, then, it would appear that the Court in Division erred in finding the evidence of petitioner insufficient, given that not only did petitioner present the testimony of its usual witness, Cheryl V. Capinpin, but also a Table of Comparison and price lists from three sources.

Yet, the Court still agrees with the Division's finding.

Indeed, a closer look at the assailed Resolution of the Division would show that it upheld its dismissal of petitioner's claim for the following combined reasons –

1. The Table of Comparison submitted by petitioner reveals that there is only one merchant or supplier that supposedly established local prices for some (and in fact, none for the rest) of the imported local products listed therein.

2. The Court cannot rely on the price of only one merchant or supplier absent any corroborating evidence that such merchant or supplier adequately represents the local market prices or that said merchant or supplier is the exclusive distributor of listed alcohol products.

3. The Court cannot determine from the pieces of evidence presented whether the subject imported alcohol products are not available locally in reasonable quantity.

4. Revenue Memorandum Circular ("RMC") No. 90-2012 was based on a 2010 price survey of alcohol products, such that no valid comparison can be made with importations in 2013 and 2014.

Clearly, the denial of the claim for refund is not simply because there were only three price lists presented (as the presentation of one price list will suffice) but because the evidence presented was not reliable.

All told, in finding that petitioner's evidence was insufficient to prove that the imported products were not locally available in reasonable quantity, quality, or price at the time of importation, the questioned Decision looked into the quality of the evidence presented by petitioner and not just the quantity thereof.

Moreover, a review of the evidence presented by petitioner would additionally show the following as additional basis for the denial of the refund claim –

1. The first Pricelist prepared by Future Trade International was effective February 1, 2013,[15] and there was no indication that prices were the same in 2014.

2. The second Pricelist prepared by Future Trade International was effective December 15, 2014,[16] and there was no indication that prices were the same for January to December 14, 2014.

3. Table of Comparison – the relevant comparative prices were ostensibly only for eight of the 24 imported alcohol products – three for 2013 and five for 2014.

4. Table of Comparison – not all imported products were compared with the products' pricing offered by the local supplier; shows that petitioner miserably failed to exert diligent effort to study the availability of local products and the reasonableness of their prices from other local suppliers.

Indeed, a closer look at the Table of Comparison[17] reveals that of the 24 types of alcohol listed, there were no comparative prices for the covered period of 2013 from Absolute Sales nor from Minivan Enterprise. For that period, it would appear that there were three comparative prices obtained from Future Trade International. However, two of these entries were for the same alcohol brand – Charles Heidsieck Brut Reserve 12%. In sum, for the year 2013, only two comparative prices were presented in evidence – for Charles Heidsieck Brut Reserve 12% and for Remy Martin VSOP. This would equate to a measly 8% of the products.

For the covered period of 2014, while it would appear that there were three entries from the pricelist of Absolute Sales, these were only for one product – Asahi Super Dry Beer. Minivan Enterprises had two entries but these were similarly for the same product – Rawson Private Release Shiraz Cabernet. There were no listings from Future Trade International for 2014. In sum, for the year 2014, only two comparative prices were presented in evidence – for Asahi Super Dry Beer and for Rawson Private Release Shiraz Cabernet. Again, this would equate to a measly 8% of the products.

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15 Exh. "P-23", Docket Vol. II, p. 703-708.
16 Exh. "P-23a", *id.* at 709-713.
17 Exh. "P-28", *id.* at 753.

Neither were there entries in the Table of Comparison from RMC 90-2012, a clear concession that it had no bearing to the years 2013 and 2014.

All in all, only four of the 24, or only 16%, of the alcohol products were actually compared in prices for the two-year period involved. We thus agree with the Court in Division that petitioner "miserably failed to exert diligent effort to study the availability of local products and the reasonableness of their prices from other local suppliers".

With the meager evidence presented by petitioner, the Court cannot make the conclusion that, indeed, the imported products were not locally available in reasonable quantity, quality, or price at the time of importation.

It is well-settled that the party who alleges the affirmative of the issue has the burden of proof, and that with the plaintiff in a civil case, the burden of proof never parts. Once the plaintiff makes out a *prima facie* case in his or her favor in the course of the trial, however, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of the plaintiff.[18]

In turn, "*prima facie*" *is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of law, is sufficient to establish, a given fact, or the group of chain* of facts constituting the party's claim or defense and which if *not* rebutted or contradicted will remain sufficient.[19]

Here, as explained above, the evidence presented by petitioner can hardly qualify as good and sufficient on its face such that it does not even require controverting evidence. Indeed, it is only when "the plaintiff makes out a *prima facie* case in his or her favor in the course of trial that the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case".

Finally, the Court must emphasize that being a derogation of the State's power of taxation, tax refunds or credits, just like tax exemptions, are strictly construed against taxpayers and liberally in favor of the State. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[20]

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[18] *Singson v. Spouses Carpio*, G.R. No. 238714, August 30, 2023.
[19] *Uganiza y Quinday v. People*, G.R. No. 236379 (Notice), October 9, 2023.
[20] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647 & 243814 & 242842-43 (Notice), March 15, 2022.

Perhaps with this ruling, petitioner can see fit in the future to present evidence sufficient not just in quantity but more importantly, in quality.

FOR THESE REASONS, the Petition for Review, filed on July 29, 2022 is hereby **DENIED** for lack of merit. The Assailed Decision, dated September 28, 2021, and the Assailed Resolution, dated June 22, 2022, of the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I join the Dissenting Opinion of Justice Ferrer-Flores
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I join Justice Ferrer-Flores' Dissenting Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

With due respect, please see my Dissenting Opinion
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA EB NO. 2657
(CTA Case No. 10133)

Present:

DEL ROSARIO, ***P.J.*****,**
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, ***JJ.***

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 26 2025 2:00 p.m.

x - x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* in denying petitioner Philippine Airlines, Inc.'s (**petitioner**'s/**PAL**'s) *Petition for Review* for lack of merit. Consequently, this affirms the Second Division's Decision dated 28 September 2021 (**Assailed Decision**) and Resolution dated 22 June 2022 (**Assailed Resolution**), which denied petitioner's claim for a refund amounting to **₱2,904,585.91**. This amount represents excise taxes imposed on petitioner's importation of alcohol products (**from December 2013 to September 2014**), which were allegedly collected illegally and paid under protest on 27 July 2017 and 19 October 2017. The denial is based on petitioner's failure to present sufficient and convincing evidence demonstrating compliance with the *third* *condition* required by Presidential Decree (**PD**) No. 1590, as amended,[1] *i.e.*, that the imported alcohol products were not locally available in reasonable quantity, quality, or price at the time of importation.

I wish to emphasize that the 2014[2] and 2017 PAL Decisions[3], 2015[4] PAL Resolution and the PAL Minute Resolutions of 2018[5], 2019[6], 2021[7], and 2023[8] cannot be used as bases for deeming the pieces of evidence presented (*i.e.*, the testimony of Cheryl V. Capinpin [**Capinpin**], petitioner's Manager for In-flight Materials Purchasing Division, the Table Comparison and the Price Lists) as sufficient compliance with the *third condition*. Unfortunately, the cited Decisions, Resolution and Minute Resolutions are clearly inapplicable to the instant case. Additionally, and more particularly, the Minute Resolutions are not binding precedents.

To expound, Section 13(2) of PD 1590 reads:

> ...
>
> SEC. 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:
>
> ...
>
> 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:
>
> ...
>
> (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

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1 AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND BETWEEN THE PHILIPPINES AND OTHER COUNTRIES.

2 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, 27 August 2014.

3 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, 22 February 2017.

4 *Republic of the Philippines, rep. by the Commissioner of Customs v. Philippine Airlines, Inc. (PAL)*, G.R. Nos. 209353-54 & 211733-34 (Resolution), 06 July 2015.

5 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. No. 238672 (Notice), 09 July 2018.

6 *Commissioner of Internal Revenue (CIR), et al. v. Philippine Airlines, Inc. (PAL)*, G.R. No. 240532 (Notice), 27 March 2019.

7 *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 231638 (Notice), 17 February 2021.

8 *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, G.R. Nos. 236343-45 & 236372-74 (Notice), 17 January 2023.

articles, supplies, or materials; *provided*, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

...

The foregoing provision requires the concurrence of three (3) requisites before petitioner's importations may be considered tax-exempt, to wit:

1. Petitioner paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies, or materials are imported for petitioner's use in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.[9]

As to the 3rd condition, the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*[10], ruled that such qualification for exemption is in the alternative, and not cumulative. Simply stated, petitioner only needs to prove that the locally available article is **either** insufficient in quantity, **or** is of subpar quality, **or** is severely overpriced compared to its imported variant.

In this case, petitioner submitted the following pieces of documentary evidence to prove that the subject imported alcohol products were not locally available in reasonable quantity, quality or price: (1) the Judicial Affidavit of Capinpin[11], petitioner's Manager for In-flight Materials Purchasing Division; (2) Absolute Sales Corporation's (**ASC**'s) Product Price Lists for 2013 and 2014[12]; (3) Future Trade International's (**FTI**'s) Product Price Lists for 2013 and 2014[13]; (4) Minivan Enterprise's (**ME**'s) Product Price Lists for 2013 and 2014[14]; (5) Bureau of Internal Revenue's (**BIR**'s) Price List *per* Revenue Memorandum Circular (**RMC**) No. 90-2012[15]; and (6) Table of Comparison showing the

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9 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, 01 April 2024.
10 Id.
11 Exhibit "P-31", Division Docket, Volume I, pp. 339-458, with attached annexes.
12 Exhibit "P-22", id., Volume II, pp. 697-702.
13 Exhibit "P-23", id., pp. 703-713.
14 Exhibit "P-29", id., pp. 754-755.
15 Exhibit "P-24", id., pp. 714-736.
Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes".

complete comparison of prices for the alcohol products imported by petitioner for the period December 2013 to September 2014.[16]

I find petitioner's pieces of evidence insufficient to prove that the locally available alcohol products are either overpriced or scarce or subpar compared to their imported variants.

First, **RMC No. 90-2012[17] was based on the 2010 BIR price survey of alcohol products. Given this, no valid comparison can be made between the prices of petitioner's wines and liquors imported from December 2013 to September 2014 and those reflected in the 2010 price survey.** It is common knowledge that the quantity, quality, and price of locally available alcohol and tobacco products fluctuate over time. Consequently, the contents of RMC No. 90-2012, which relied on a price survey conducted in 2010—several years before the subject importations—should not be accorded significant weight or relied upon as a basis for comparison.

Second, a meticulous examination of petitioner's Table of Comparison reveals that **there is only one (1) merchant or supplier (*i.e.*, either ASC, FTI or ME) that supposedly establishes local prices for some (and, in fact, none for the rest) of the imported alcohol products listed therein.** Pertinent portions of the Table of Comparison are reproduced below:

IIDE Entry	Product Imported	Price *Per* Bottle (PHP)	Absolute Sales 2013 (PHP)	Absolute Sales 2014 (PHP)	Future Trade 2013 (PHP)	RMC No. 90-2012 Price List (PHP)	Minivan Enterprise 2014 (PHP)
10176	Charles Headstick Brut Reserve 12%	998.08		*	3,595.00	*	
	Remy Martin VSOP	550.94		*	2,430.00	*	
	Russian Vodka Standard Original	209.36		*	*	*	
4519	Ballantines Scotch Whisky	2,228.68		*	*	*	
	Camus Extra Elegance	3,815.21		*	*	*	
895	Rawson Private Release Shiraz Cabernet	215.50		*	*	*	451.50
	Penfolds Private Release Chardonnay	215.50		*	*	*	
1408	Charles Heidsick Brut Reserve 12%	1,016.65		*	3,595.00	*	
2179	Penfolds Private Release Chardonnay	215.00		*	*	*	
	Rawson Private Release Shiraz Cabernet	215.00		*	*	*	451.50
59	Johnnie Walker Black Label (Genex)	614.00		*	*	*	
	J & B Rare Scotch Whisky	198.43		*	*	*	
836	Asahi Super Dry Beer	26.93		50.00	*	*	
10450	Ballantines Scotch Whisky	2,124.06		*	*	*	

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16 Exhibit "P-28", id., p. 753.
17 Exhibit "P-24", supra at note 15.

IIDE Entry	Product Imported	Price *Per* Bottle (PHP)	Absolute Sales 2013 (PHP)	Absolute Sales 2014 (PHP)	Future Trade 2013 (PHP)	RMC No. 90-2012 Price List (PHP)	Minivan Enterprise 2014 (PHP)
	Chivas Royal Salute 21 Years Old Scotch Whisky	2,161.99		*	*	*	
	Stolichnaya Gold 70 cl	410.17		*	*	*	
	Patron Silver Tequila	1,043.07		*	*	*	
5833	J & B Rare Scotch Whisky	344.07		*	*	*	
894	Patron Silver Tequila	1,409.25		*	*	*	
	Chivas Royal Whisky	1,061.77		*	*	*	
5832	Asahi Super Dry Beer	28.26		50.00	*	*	
3532	Queen Adelaide Chardonnay	108.62		*	*	*	
2194	Asahi Super Dry Beer	26.84		50.00	*	*	
2532	Rawson Private Release Chardonnay	215.00		*	*	*	

Clearly from the foregoing, although petitioner submitted price lists from three (3) merchants (ASC, FTI and ME) not all of these merchants or suppliers provided their respective retail prices for each alcohol product. As such, petitioner's alcohol products are supported either by pricing data derived solely from a single supplier, or exclusively from RMC No. 90-2012 or from a combination of both sources.

Third, **petitioner submitted no corroborating evidence to prove that the price lists from ASC, FTI and ME represent the local market prices (or that these merchants or suppliers serve as the exclusive distributors) of the above-listed alcohol products from December 2013 to September 2014 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same period. Consequently, with petitioner's singular piece of evidence, the Court is left unable to ascertain whether the subject imported alcohol products are unavailable locally at a reasonable price.**

Fourth, it cannot be determined from the pieces of evidence presented whether the subject imported alcohol products are not available locally in reasonable quantity and/or quality. **There is no indication from Capinpin's testimony, nor from evidence on record, that the subject imported alcohol products are unavailable locally at a reasonable quantity and/or quality.**

Lastly, it is worth noting that, **as regards petitioner's importation of alcohol products from December 2013 to September 2014, reliance cannot be made on the aforesaid 2014 and 2017 PAL Decisions, 2015 PAL Resolution and the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 in terms of appreciating the price lists from two (2) local suppliers to establish compliance with the *third condition* since the subject matter of these cases pertain to importations made prior to the issuance of the**

BIR's RMC No. 90-2012.[18] Particularly, the 2014 and 2017 PAL Decisions and 2015 PAL Resolution involved importations of various liquors and wines **from February to March 2007, from October to December 2007** and **from March 2005 to January 2006**, respectively, whereas the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 involved those imported on **various dates in 2007, 2009 and 2010, from January to April 2008, from March to November 2007** and **from June 2007 to October 2008 and July 2009 to October 2009**, respectively.[19]

Notably, RMC No. 90-2012 was based on the BIR's 2010 price survey of alcohol products. Therefore, it is understandable that for liquors and wines imported before and during 2010, a price list from a single local supplier would suffice to meet the *third condition*, as RMC No. 90-2012 already provides a benchmark for the prices of those available in the local market.

Since the instant case involves petitioner's imported alcohol products for the period from December 2013 to September 2014, which is *beyond* the scope of the BIR's 2010 price survey of alcohol products as *per* RMC No. 90-2012, it is reasonable to conclude that this issuance can no longer serve as a benchmark for the prices of those available in the local market. Without such a benchmark, the 2013 and 2014 price lists obtained from three (3) local merchants or suppliers in this case cannot be deemed sufficient, as it can hardly be said that the prices indicated therein are representative of the local prices corresponding to petitioner's imported alcohol products.

I also wish to emphasize that, in determining compliance with the *third condition*, the focus should not be on the number of price lists obtained from local suppliers. Instead, it should be on whether petitioner was able to ascertain, within a reasonable time prior to importation, that the alcohol products sought to be imported could not be sourced from the local market in the necessary quantity, quality,

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18 Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes".

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Supreme Court Issuance	Case No.	Period of Importation
2014 PAL Decision	G.R. Nos. 212536-37	From February to March 2007
2017 PAL Decision	G.R. Nos. 215705-07	From October to December 2007
2015 PAL Resolution	G.R. Nos. 209353-54 & 211733-34	From March 2005 to January 2006
2018 PAL Minute Resolution	G.R. No. 238672	Various dates in 2007, 2009 and 2010
2019 PAL Minute Resolution	G.R. No. 240532	From January to April 2008
2021 PAL Minute Resolution	G.R. No. 231638	From March to November 2007
2023 PAL Minute Resolution	G.R. Nos. 236343-45	From June 2007 to October 2008 and July 2009 to October 2009

or price—thereby justifying the need for importation. There should be evidence that petitioner determined the prices and availability of each imported alcohol product through a survey conducted with a representative number of local dealers, in order to reasonably conclude that such products cannot be sourced locally and must be imported.

Certainly, since a statute granting tax exemption is strictly construed against the person or entity claiming the exemption[20], it is incumbent upon petitioner to demonstrate that the *third condition* for excise tax exemption on the importation of alcohol products under PD 1590 was met not after, but within a reasonable time before or at the very least by the date of importation.

It must be remembered that every case is evaluated and decided based on the evidence presented. A divergence in the rulings of the priorly-promulgated cases is not violative of the doctrine of *stare decisis*.

Additionally, **the rulings in the PAL Minute Resolutions of 2018[21], 2019[22], 2021[23], and 2023[24] are not applicable since a minute resolution is not considered a binding precedent**. Citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*[25], in *San Miguel Corporation v. Commissioner of Internal Revenue*[26] (**San Miguel**), the Supreme Court clarified that a previous case ruled with a different subject matter albeit with the same parties and same issues will not be considered *res judicata* to the other cases as well as stressed that there is a substantial distinction between a minute resolution and a decision, *viz*:

> ...
>
> It must be noted that *APC* was decided through a Minute Resolution, and the petition's denial therein was due to a failure to abide by procedural requirements. Nevertheless, the Court held that even if the petitioner therein complied with the procedural requirements, the petition would still be denied for failure to show that a reversible error was committed by the appellate court.
>
> In the case of *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Court clarified that a Minute Resolution is not binding precedent:

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20 *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, 07 July 2010.
21 Supra at note 5
22 Supra at note 6.
23 Supra at note 7.
24 Supra at note 8.
25 G.R. No. 167330 (Resolution), 18 September 2009.
26 G.R. No. 257697 and 259446, 12 April 2023.

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court through a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case "(h)ad no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.[27]

...

Here, **the subject alcohol products were imported from December 2013 to September 2014. In contrast, as aforementioned, the PAL Minute Resolutions dealt with importations from 2007 to 2010. Thus, any declarations made in the said minute resolutions will not affect the instant case.**

With the foregoing disquisitions, I submit that petitioner failed to present sufficient and convincing evidence to prove that the subject alcohol products it imported were not locally available in sufficient quantity, quality, or price at the time of their importation.

[27] Citation omitted, emphasis and italics in the original text, and underscoring supplied.

All told, I vote to **DENY** the present *Petition for Review* for lack of merit and thereby, **AFFIRM** the Second Division's Decision dated 28 September 2021 and Resolution dated 22 June 2022.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2657
(CTA Case No. 10133)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 26 2025
2:50 p.m.

x - x

DISSENTING OPINION

***FERRER-FLORES, J.*:**

With due respect to our esteemed colleague, Honorable Associate Justice Maria Rowena Modesto-San Pedro, I am constrained to withhold my assent on the *ponencia*.

In the Decision penned by Honorable Associate Justice San Pedro, the Court *En Banc* denied the *Petition for Review* filed by **Philippine Airlines, Inc. (PAL/petitioner)** against the **Commissioner of Internal Revenue (CIR/respondent)** appealing the *Decision* dated September 28, 2021 (assailed Decision)[1] and *Resolution* dated June 22, 2022 (assailed Resolution)[2] rendered by the then Second Division of this Court (Court in Division).

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[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena with the concurrence of Associate Justice Juanito C. Castañeda; *Rollo*, pp. 43 to 71.

[2] Penned by Associate Justice Jean Marie A. Bacorro-Villena with the concurrence of Associate Justice Juanito C. Castañeda and Associate Justice Lanee S. Cui-David; *Rollo*, pp. 73 to 87.

In denying the *Petition*, the *ponencia* ratiocinated that PAL's evidence was insufficient to prove that the imported alcohol products were not locally available in reasonable quantity, quality, or price.

I respectfully disagree.

Petitioner's alleged erroneous payment of excise tax was based on PAL's tax exemption under Presidential Decree (P.D.) No. 1590.[3] In order to be exempt from payment of excise tax on its importation of alcohol products, petitioner must fulfill the following conditions, pursuant to *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[4] and Section 13(b)(2) of P.D. No. 1590, *viz.*:

(1) payment of the corporate income tax;

(2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities;[5] and,

(3) they are not locally available in reasonable quantity, quality or price.[6]

There is no dispute that PAL was able to comply with the *first* and *second* conditions.

The issue lies with the *third* condition.

In several cases involving the same parties,[7] to prove the *third* condition, PAL has consistently offered before this Court the following pieces of evidence:

1. Testimonies of PAL's Assistant Vice-President in charge of Catering and In-flight Sub-Department and/or Manager for

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[3] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.

[4] G.R. Nos. 206079-80, January 17, 2018.

[5] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017; *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, August 27, 2014.

[6] *Id.*

[7] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case No. 8153, January 17, 2013; *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case No. 8198, June 2, 2015; *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case No. 8130, December 1, 2014; *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case No. 8514, January 6, 2015.

In-Flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department;

2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; and,

3. Price List/s for specific period/s.

In those cases, there were some instances that the Court in Division deemed the above pieces of evidence, among others, sufficient to establish that the imported alcohol products were not locally available in reasonable quantity, quality, or price. On the other hand, in those cases where the Court in Division deemed the evidence insufficient, the same was reversed by the CTA *En Banc* or even by the Supreme Court. Notably, the Supreme Court ultimately found that the pieces of evidence presented by PAL were sufficient to prove the *third* condition. We summarize these cases as follows:

Ruling of the CTA	Ruling of the Supreme Court	Relevant Periods (Importations vis-à-vis Price Lists)
1. **CTA Case No. 8153**, January 17, 2013. The CTA Division <u>partially granted</u> PAL's refund finding that PAL has sufficiently proven its exemption from the payment of excise taxes pertaining only to its importation of liquors. **CTA EB Nos. 1029, 1031 & 1032**, April 30, 2014. The CTA *En Banc* affirmed the above ruling.	**G.R. No. 215705-07**, February 22, 2017. ***(2017 PAL case)*** The Supreme Court affirmed the ruling of the CTA granting PAL's claim for refund and held that: *"...the matter as to PAL's supposed noncompliance with the conditions set by Section 13 of P.D. 1590 for its imported supplies to be exempt from excise tax, are factual determinations that are best left to the CTA, which found that PAL had, in fact, complied with the above conditions. xxx Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court."*	***Period of Importation:*** October to December **2007** ***Price Lists:*** Philippine Wine Merchants Price List dated **January 11, 2007**
2. **CTA Case No. 8198**, June 2, 2015. The CTA Division <u>denied</u> PAL's refund holding that PAL failed to prove the third condition. **CTA EB No. 1363** (Amended Decision), dated February 13, 2018. The CTA *En Banc* reversed the CTA Division's decision denying the refund. The case was then remanded for determination of the refundable amount.	**G.R. No. 240532**, March 27, 2019. ***(2019 PAL case)*** The Supreme Court affirmed the ruling of the CTA granting PAL's claim for refund and held that: *"...factual determinations that are best left to the CTA and cannot be reviewed by this Court under Rule 45. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. Thus, without any showing that the findings of the*	***Period of Importation:*** January to July **2008** ***Price Lists:*** Philippine Wine Merchants Price List (for **2008**)

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Ruling of the CTA	Ruling of the Supreme Court	Relevant Periods (Importations vis-à-vis Price Lists)
The CTA *En Banc* found that the evidence presented by PAL is sufficient for the CTA Division to evaluate that the costs of importing liquors are lower than purchasing them locally. **CTA Case No. 8198,** August 14, 2024. In view of the order of the CTA *En Banc* to remand the case to the CTA Division, as affirmed by the Supreme Court, the CTA Division determined the final amount refundable to PAL.	*CTA are completely unsupported by substantial evidence, as in this case, its findings are binding on this Court".*	
3. **CTA Case No. 8130**, December 1, 2014. The CTA Division <u>denied</u> the refund finding that the information gathered from the two price lists are seriously deficient to justify conclusion that the said imported items are not available in reasonable quantity, quality or price in the local market. **CTA EB No. 1299**, October 3, 2016. The CTA *En Banc* affirmed the CTA Division's ruling denying the claim for refund. The CTA *En Banc* held that the evidence presented by PAL was inadequate to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and is insufficient to establish its claim for a tax refund.	**G.R. No. 231638**, February 17, 2021. ***(2021 PAL case)*** The Supreme Court partially granted PAL's petition and ordered the remand of the case for determination of PAL's entitlement to a refund. The Supreme Court found the evidence presented adequate to prove compliance with the conditions for exemption, to wit: *"Following prevailing jurisprudence, we are convinced that PAL sufficiently proved compliance with the second condition for excise tax exemption under Section 13 (b) (2). The CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence PAL presented are 'inadequate' to show compliance with Section 13 (b) (2). While we have generally deferred and respected the tax court's factual findings, the Court will not hesitate to reverse its factual findings when there is a showing of gross error or abuse on the part of the CTA".*	***Period of Importation:*** March to November **2007** ***Price Lists:*** Philippine Wine Merchants Price List for **2007**
4. **CTA Case No. 8514**, January 6, 2015. The CTA Division <u>partially granted</u> PAL's refund ruling that PAL was able to substantiate its compliance with the requisites finding that the witnesses sufficiently corroborated that the imported liquors, wines and cigarettes were not locally available in reasonable quantity, quality or price and that the said goods were In-flight Materials.	**G.R. Nos. 236343-45 & 236372-74**, January 17, 2023. ***(2023 PAL case)*** The Supreme Court ruled in favor of PAL and ordered the refund of erroneously paid excise taxes. With regard to the *third* condition, the Supreme Court held that: *"... We also note that the Tables of Comparison and supporting price lists submitted by PAL corroborated Capinpin's*	***Period of Importation:*** June **2007** to October **2009** ***Price Lists:*** Philippine Wine Merchants Price Lists for the years **2006, 2007, 2008, and 2009,** Future Trade International Price List dated **April 8, 2009,**

Ruling of the CTA	Ruling of the Supreme Court	Relevant Periods (Importations vis-à-vis Price Lists)
CTA EB Nos. 1308, 1309, & 1311 April 30, 2014. The Court *En Banc* affirmed the above ruling. The Court *En Banc* agreed with the CTA Division's conclusion that PAL's evidence sufficiently established that the imported liquors, wines and cigarettes were not locally available in reasonable quantity, quality or price.	*testimony that the imported items were not locally available in reasonable quantity, quality or price. Thus, in line with prevailing jurisprudence, We agree with PAL that the CTA erred in ruling that PAL has inadequately shown its compliance with Section 13 (b) (2) of PD 1590 as regards the amount of ₱240,283.71."*	Future Trade International Price List as of **February 2009**, Price List of Duty-Free Philippines

As can be gleaned from the foregoing cases, the Supreme Court gave weight to the factual findings of this Court stating that, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on the Supreme Court. Stated otherwise, the Supreme Court deemed the findings of the CTA in the above cases to be supported by substantial evidence.

It is also worth noting that, in the *2021 PAL case*,[8] the Supreme Court categorically declared that PAL sufficiently proved compliance with the condition that the imported supplies are not locally available in reasonable quantity, quality, or price, as required under Section 13(b)(2) of P.D. No. 1590.[9] In said case, PAL presented the sworn testimony of its Manager for In-Flight Materials Purchasing Division, Ms. Cheryl V. Capinpin, **price list from one local supplier** (*i.e.*, Philippine Wine Merchants Price List) and the Table of Comparison, which were found to be sufficient to establish the non-availability of imported liquors and wines in reasonable quantity, quality, or price.

[8] G.R. No. 231638, February 17, 2021

[9] SECTION 13. xxx

(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; xxx.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such **articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto** and <u>are not locally available in reasonable quantity, quality, or price</u>; *(Emphasis and underscoring supplied)*

Finally, it should be emphasized that, in the above cases, the covered periods of the price lists presented to prove the non-availability of the alcohol products coincided with the periods of the subject importations.

In the *ponencia*, it was similarly discussed therein that, in majority of the Supreme Court Decisions and Minute Resolutions involving the same parties, it was ultimately held that the presentation of one supplier's price list, together with a Table of Comparison and testimonial evidence, that importing the subject alcohol products is cheaper than purchasing them locally, is sufficient to prove that the subject imported products were not locally available in reasonable quantity, quality or price at the time of importation. The *ponencia*, however, still held that the Court in Division did not err in denying PAL's claim, pointing out that the denial was not simply because there are only three price lists but because the evidence presented was not reliable and representative of the local market prices. The *ponencia* further observes that, in the *Table of Comparison*, out of the 24 types of alcohol listed, there were no comparative prices presented in evidence for the covered period of 2013; while, for 2014, only two comparative prices (equivalent to 8% of the products) were presented. In sum, only four out of 24 products, or only 16% of the alcohol products were actually compared in terms of prices during the two-year period covered. Based on these, the *ponencia* declared that the Court cannot make a conclusion that the imported products were not locally available in reasonable quantity, quality, or price at the time of importation.

On this point, I forward a different disquisition.

In the instant case, the subject of the claim for refund were the alleged erroneously paid excise taxes on alcohol products imported on various dates from **December 2013 to September 2014**. To prove that the alcohol products imported during said period were not locally available in reasonable quantity, quality, or price, PAL presented the following pieces of evidence:

1. *Table of Comparison* prepared by petitioner;[10]

2. *Judicial Affidavit* of Ms. Capinpin;[11]

3. *Absolute Sales Corporation (ASC) Price Lists* for **2013** and **2014**;[12]

4. *Future Trade International (FTI) Price Lists* for **2013** and **2014**;[13]

[10] Exhibit "P-28", Division Docket - Vol. II, p. 753.
[11] Exhibit "P-31", Division Docket - Vol. I, pp. 339 to 458.
[12] Exhibit "P-22", Division Docket - Vol. II, pp. 697 to 702.
[13] Exhibit "P-23", Division Docket - Vol. II, pp. 703 to 713.

5. *Minivan Enterprise (MEnt) Product Price Lists* for **2013** and **2014**;[14] and,

6. BIR Revenue Memorandum Circular (RMC) No. 90-2012[15]

Consistent with the previous rulings of this Court, as affirmed by the Supreme Court, it is my position that the above pieces of evidence presented in the instant case are sufficient for the Court in Division to evaluate that the costs of importing alcohol products are lower than purchasing them locally. Particularly, it can be determined therefrom that the cost of certain imported alcohol products is lower than the prevailing purchase price from local suppliers during the period of importations.

A perusal of the *Table of Comparison* shows that, while a majority of the imported alcohol products do not have a comparative local price, there are still some products which met the criteria that the cost of importing such alcohol product is lower than purchasing it locally, to wit:

No.	Product Imported	Cartons	No. of bottles per carton	Total no. of bottles	Total no. of bottles of imported products with comparative local price	Actual Imported Cost per Bottle (in PhP)	Comparative Local Price per Price List (in PhP)	Remarks
1	Charles Heidsick Brut Reserve 12%	600	6	3,600		998.08	x	With local price per *2014 FTI Pricelist*; however, the effectivity date (December 15, 2014) does not coincide with period of importation (October 13, 2014).
2	Remy Martin VSOP	65	12	780		550.94	x	
3	Russian Vodka Standard Original	110	6	660		209.36	x	
4	Ballantines Scotch Whisky	8	12	96		2,228.68	x	
5	Camus Extra Elegance	5	6	30		3,815.21	x	
6	**Rawson Private Release Shiraz Cabernet**	**260**	**6**	**1,560**	**1,560**	**215.50**	**451.50**	**With comparative local price based on *2014 MEnt Price List* dated January 8, 2014.**
7	Penfolds Private Release Chardonnay	160	6	960		215.50	x	

[14] Exhibit "P-29", Division Docket - Vol. II, pp. 754 to 755.
[15] Exhibit "P-24", Division Docket - Vol. II, pp. 714 to 736.

No.	Product Imported	Cartons	No. of bottles per carton	Total no. of bottles	Total no. of bottles of imported products with comparative local price	Actual Imported Cost per Bottle (in PhP)	Comparative Local Price per Price List (in PhP)	Remarks
8	Charles Heidsick Brut Reserve 12%	90	6	540		1,016.65	x	With local price per *2014 FTI Price List*; however, the effectivity date (December 15, 2014) does not coincide with period of importation (October 2014).
9	Penfolds Private Release Chardonnay	48	6	288		215.00	x	
10	**Rawson Private Release Shiraz Cabernet**	**102**	**6**	**612**	**612**	**215.00**	**451.50**	**With comparative local price based on *2014 MEnt Price List* dated January 8, 2014.**
11	Johnnie Walker Black Label (Genex)	50	12	600		614.00	x	
12	J&B Rare Scotch Whisky	30	12	360		198.43	x	
13	**Asahi Super Dry Beer**	**100**	**24**	**2,400**	**2,400**	**26.93**	**50.00**	**With comparative local price based on *2014 ASC Price List* dated January 6, 2014.**
14	Ballantines Scotch Whisky	10	12	120		2,124.06	x	
15	Chivas Roval Salute 21 Years Old Scotch Whisky	18	6	108		2,161.99	x	
16	Stolichnaya Gold 70 cl	6	12	72		410.17	x	
17	Patron Silver Tequila	13	12	156		1,043.07	x	
18	J&B Rare Scotch Whisky	65	12	780		344.07	x	
19	Patron Silver Tequila	23	6	138		1,409.25	x	
20	Chivas Royal Whisky	10	12	120		1,061.77	x	
21	**Asahi Super Dry Beer**	**100**	**24**	**2,400**	**2,400**	**28.26**	**50.00**	**With comparative local price based on *2014 ASC Price List* dated January 6, 2014.**
22	Queen Adelaide Chardonnay	650	6	3,900		108.62	x	
23	**Asahi Super Dry Beer**	**100**	**24**	**2,400**	**2,400**	**28.26**	**50.00**	**With comparative local price based on *2014 ASC Price List* dated January 6, 2014.**
24	Rawson Private Release Chardonnay	300	6	1,800		215.00	x	
			Total	**24,480**	**9,372**			

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Prescinding from the above, I submit that PAL has sufficiently proven its compliance with the *third* condition insofar as the **specific alcohol products (*i.e.*, item nos. 6, 10, 13, 21 and 23 in the above table) with comparative prevailing prices from local suppliers** are concerned. It is likewise observed that, while there are only four alcohol products with comparative local prices, it still makes up of at least 38% (*i.e.*, 9,372 of 24,480) of the total number of bottles imported.

Nonetheless, I wish to stress that PAL's entitlement to the refund should not be narrowly based on whether PAL was able to prove its compliance with the conditions for exemption from excise tax for all or a majority of the imported alcohol products. Rather, each imported alcohol product should be tested against the conditions for the excise tax exemption. In this case, each imported alcohol product should be evaluated for compliance with the *third* condition, *i.e.*, that the same is not locally available in sufficient quantity, quality, or price at the time of importation. **Consequently, the related excise tax paid on the imported alcohol products whose compliance to the *third* condition was sufficiently proven should necessarily be refunded to PAL.** Such ruling would be consistent with the Supreme Court's declaration on the aforecited cases also involving the same parties and same issues.

All told, I vote to PARTIALLY GRANT the instant *Petition for Review* and REMAND the case to the Court in Division for the determination of the refundable amount of excise taxes erroneously paid on its importation of specific alcohol products which were proven to be locally unavailable in sufficient quantity, quality, or price at the time of importation.

CORAZON G. FERRER-FLORES
Associate Justice