REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1308
(CTA CASE NO. 8514)

x---x

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB NO. 1309
(CTA CASE NO. 8514)

x---x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1311
(CTA Case No. 8514)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , *and*
MANAHAN, *JJ.*

Promulgated:

DEC 11 2017 2:N0pm

X--X

RESOLUTION

RINGPIS-LIBAN, *J*.:

Before this Court are the following:

1. The Commissioner of Internal Revenue's (CIR's) **Motion for Reconsideration**[1], filed on March 20, 2017, with Philippine Airlines, Inc.'s (PAL's) **Consolidated Comment [To: Commissioner of Internal Revenue's Motion for Reconsideration dated 17 March 2017 and Commissioner of Customs' Motion for Reconsideration dated 21 March 2017]**[2], posted on June 2, 2017 which the Court received on June 9, 2017;

2. The Commissioner of Customs' (COC's) **Motion for Reconsideration**[3] filed on March 22, 2017, with PAL's **Consolidated Comment**[4] mentioned above; and

3. PAL's **Motion for Partial Reconsideration**[5], posted on April 5, 2017 which the Court received on April 20, 2017, with the CIR's **Motion to Admit Attached Opposition**[6] and his **Opposition (Re: Motion for Reconsideration)**[7] filed on August 18, 2017, and the COC's **Comment (On the Motion for Partial Reconsideration)**[8] posted on August 17, 2017 which the Court received on August 23, 2017.

The Motions for Reconsideration by the CIR and COC and the Motion for Partial Reconsideration by PAL all seek the re-evaluation of the Court's Decision[9] dated February 27, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE,** the Petition for Review of Philippine Airlines, Inc. in CTA EB No. 1309 is **PARTIALLY GRANTED** and the Petitions for Review of the Commissioner of Internal Revenue in CTA EB No. 1308 and the Commissioner of Customs

[1] *Rollo,* pp. 252-276.
[2] *Id.,* pp. 317-324.
[3] *Id.,* pp. 283-294.
[4] *Id.* at Note 2.
[5] *Id.,* pp. 307-315.
[6] *Id.,* pp. 335-339.
[7] *Id.,* pp. 340-342.
[8] *Id.,* pp. 343-347.
[9] *Id.,* pp. 217-247.

and the Commissioner of Internal Revenue in CTA EB No. 1311 are **DENIED.**

Accordingly, the assailed Decision dated January 6, 2015 and the Resolution dated April 28, 2015 of the Court's Second Division in CTA Case No. 8514 are **MODIFIED** to the extent that the petition of Philippine Airlines, Inc. is **PARTIALLY GRANTED** in the reduced amount of **₱3,983,223.10** representing excise taxes erroneously collected from it on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

SO ORDERED."

As grounds for the CIR's Motion for Reconsideration the CIR claims that: 1) Section 6 of Republic Act No. (RA) 9334 which amended Section 131 of the National Internal Revenue Code (NIRC) NIRC of 1997 expressly withdrew the conditional tax exemption granted to PAL and all its importations of cigarettes, liquor and wine that are subject to the applicable taxes; 2) the letter of the law should prevail over the rules of construction. When Congress said that "all importations of alcohol and tobacco products are now subject to excise tax ***despite any provisions of any special law"***, it was very unambiguous and clear and, therefore, needed no construction; 3) RA 9334 is the more specific law on the tax treatment of imported cigarettes, liquor and wine products; 4) that the exemption granted to PAL is not absolute; 5) that PAL failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price as a reasonable price is not necessarily the lowest price; 5) that to sustain PAL's interpretation of its franchise provisions would ultimately convert the conditional exemption to one that is absolute; and, finally, 6) that the burden of proving entitlement to the refund belongs to PAL and claims for refund are construed strictly against the claimant and PAL failed to discharge its burden.

On the other hand, the COC's Motion for Reconsideration is based on the following grounds: 1) the Comparative Table was prepared by PAL's own purchasing manager, and it is self-serving and unreliable; 2) the data in the Comparative Table do not represent the actual prices of alcohol products sold in the Philippines as it comes from only two sources -- the Philippine Wine Merchants (PWM) and Duty Free Philippines (DFP); 3) the Comparative Table is imprecise as it does not provide the specific brand, variant, or volume of the products being compared; 4) the subject articles were sold in bulk order but the PWM and DFP prices are on a per bottle order; 5) PAL did not take into account other variables which would increase the importation costs when it was computed; 6) assuming that the Comparative Table establishes that the subject articles are cheaper when purchased locally, PAL still cannot avail of the tax privilege if the articles it seeks to import are locally available at reasonable price.

In its Consolidated Comment, PAL advocates for the denial of both the CIR's and the COC's Motions for Reconsideration on the grounds that: 1) the Court *En Banc* did not err when it upheld PAL's tax exemption as previously settled by the Supreme Court; and 2) other than repeating previously raised arguments during trial, both the CIR and the COC failed to point out the specific errors that the Court *En Banc* allegedly committed in their respective motions which makes their motions *pro forma*.

On the other hand, PAL's Motion for Partial Reconsideration concerns the Court in Division's findings on its Quarterly VAT Returns for the first, second and third quarters of FY 2008 which the Court *En Banc* upheld. PAL believes that the VAT Returns for those particular quarters have been sufficiently proven by PAL and should have been considered by the Court in Division and the Court *En Banc* in their respective Decisions.

In support of this contention, PAL mentions the following: 1) the records of the case in Division show that PAL submitted the original print-outs of the VAT returns for the first, second and third quarters of the fiscal year ending March, 2008 to the Court in Division in its Motion for Reconsideration dated July 24, 2013; 2) the VAT Return print-outs for the subject quarters were likewise submitted to the Court in Division in its Motion to Admit Original Documents dated November 25, 2014; 3) despite the denial of its Motion for Reconsideration and Motion to Admit Original Documents, PAL filed a Tender Offer of Documentary Evidence dated December 22, 2014 in order to have the evidence admitted be made part of the records; 4) PAL filed a Certification dated January 21, 2015 issued by the BIR recognizing that PAL has paid VAT for the subject quarters; and, 5) the CIR has never refuted nor denied authenticity of the Certification issued by the BIR and, as such, proves that PAL paid its VAT liabilities and complied with the requisites for its tax exemption.

In the CIR's Opposition, the CIR claims that the Court properly denied admission of PAL's VAT Returns for the subject quarters for PAL's failure to present the original copies of the said documents for comparison. As such, PAL failed to prove one of the requisites in order to be entitled to the exemption which is proof of payment of VAT.

The COC's Comment, on the other hand, emphasizes the fact that PAL submitted the original print-outs of the VAT Returns for the subject quarters through a Motion for Reconsideration and other motions filed **<u>only after the case was submitted for decision.</u>** The VAT Returns cannot be considered as they were not formally offered; they were submitted too late in the day and PAL must bear the consequences of its omission or negligence.

Likewise, the Certification of the VAT Returns was not formally offered in evidence. As the Certification was not formally offered, the CIR did not have the opportunity to register any possible objection.

After considering the arguments of the parties, it is apparent to this Court that, indeed, the arguments raised by the CIR and the COC in their respective Motions for Reconsideration and the arguments raised by PAL in its Motion for Partial Reconsideration are not new. They have been previously discussed and considered prior to rendering our Decision promulgated on February 27, 2017.

Considering that no new matters have been raised, the CIR and the COC's respective Motions for Reconsideration and PAL's Motion for Partial Reconsideration are all **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S. ~

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice