REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., Petitioner,	CTA EB No. 1400 (CTA Case No. 8644)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: OCT 10 2018 3:57 p.m.

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RESOLUTION

Fabon-Victorino, J.:

In its *Motion for Partial Reconsideration* dated October 17, 2017, petitioner impugns the Decision of September 13, 2017,[1] the dispositive portion of which reads as follows:

> **WHEREFORE**, the Petition for Review dated January 6, 2015, filed by petitioner Philippine Airlines, Inc. is hereby **DENIED**, for lack of merit.
>
> Consequently, the Decision dated May 25, 2015 and the Resolution dated November 23, 2015, both rendered by the Court in Division, are **AFFIRMED**.

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[1] *Rollo*, pp. 465- 483.

SO ORDERED.

In its bid for reconsideration, petitioner states that the Court erred in considering the Informal Import Declaration and Entries (IIDEs) and the Authority to Release Imported Goods (ATRIGs) it presented together with the testimony of its witness Cheryl V. Capinpin, as self-serving evidence. Allegedly, the facts contained in the cited documents deserve full weight and credit in the absence of any countervailing evidence from respondent who voluntarily waived presentation of his own. Besides, the said ATRIGs are notarized documents thus, its contents are of public record, hence, *prima facie* evidence of the facts stated therein.

Petitioner further claims that the Court failed to appreciate its unrebutted and preponderant evidence proving that the articles it imported were, at the time of importation, not locally available in reasonable quantity, quality, or price. For petitioner, the following pieces of documentary exhibits are formidable proofs that the commissary supplies it imported from April 20, 2011 to August 5, 2011 were not available locally in reasonable quantity, quality, or price justifying the refund sought, to wit: 1) price lists from the Philippine Wine Merchants (PWM) dated January 8, 2010 and Future Trade International (FTI) dated July 15, 2013; 2) 2010 BIR Price Survey; 3) Letter-Response from National Tobacco Administration (NTA) dated July 12, 2013; and 4) tabulated comparison of prices between the cost of importation and local purchase of such provisions.

Petitioner also puts premium on the testimony of its witness Cheryl V. Capinpin that at the time of importation, it was not possible for local dealers to supply petitioner with cigarettes produced abroad. The said declaration, according to petitioner, was sealed by the affirmation of the ICPA Emmanuel Y. Mendoza that importing the subject commissary supplies was cheaper than purchasing them locally.

In his Opposition dated December 19, 2017, respondent Commissioner of Internal Revenue (CIR), espouses a diametrically opposed stance saying that petitioner failed to prove by sufficient evidence that the subject imported articles were exclusively used in its airline operations, and that at the time of importations, they were not locally available in the Philippines, in reasonable quantity, quality, or price. For this reason, the Court committed no reversible error in denying the subject claim for refund as petitioner failed to comply with all the requisites mandated under Section 13 of P.D. No. 1590,

On the other hand, respondent Commissioner of Customs (COC), by way of Comment, maintains that petitioner's tax exemption under Section 13 of P.D. No. 1590 was effectively withdrawn with the enactment Section 6 of R.A. No. 9334. There being no tax-exempt privilege to support petitioner's cause, the latter must be held liable to pay excise taxes on its imported wines, liquors and cigarettes.

He further posits that even granting that Section 13 of P.D. No. 1590 was not repealed, petitioner is still not entitled to refund since it failed to establish compliance with all the conditions set forth under the cited provision, specifically: 1) that the imported cigarettes, wines and liquors were utilized in its transport and non-transport operations and other activities incidental thereto; and 2) such imported articles are not available locally in reasonable quantity, quality, or price.

Respondent COC points out that the ARTIGs and IIDEs are self-serving documents since the declaration by the approving BIR officials, i.e., that the articles would be exclusively utilized in international airline business, is devoid of any probative value as it solely emanated from the documents submitted by petitioner itself. Further, petitioner utterly failed to prove actual use of the imported commodities in its worldwide flight operations.

Respondent COC as well concurs with his co-respondent CIR that petitioner failed to demonstrate that its imported cigarettes, liquors and wines were, at the time of importation, not available locally in reasonable quantity, quality, or price. As for the imported cigarettes, he explains that the Letter-Response from the NTA contain no information regarding the prices of imported tobacco products inquired to by petitioner. Also, its reliance on price lists culled from two (2) private entities, i.e., PWM and FTI, as benchmark to show the prices of wines and liquors in the Philippine market is misplaced since such data cannot truly represent the entire liquor and wine industry in the Philippines. The self-serving identification of petitioner's witness Cheryl V. Capinpin and ICPA Mendoza of the said documents is likewise of no significant weight as to tilt the scale of justice in favor of petitioner. Since petitioner failed to meet all the criteria prescribed for tax exemption of its imported articles under Section 13 of P.D. No. 1590, a denial of the subject refund claim is in order, says respondent COC.

In rejecting respondent COC's comment, petitioner, counters that ATRIGs are, by themselves, satisfactory proof that its imported wines, liquors and cigarettes were intended to be used for transport and non-transport operations and other incidental activities. Further, the fact that witness Capinpin's testimony was made in open court under oath; and that respondents were granted but waived the opportunity to cross-examine her, negates impression that its testimonial and documentary evidence are self-serving. Petitioner also reiterates that Section 6 of R.A. No. 9334 never repealed Section 13 of P.D. No. 1590[2].

THE RULING OF THE COURT

The instant Motion is denied.

After taking a second hard look of the record and meticulous evaluation of the arguments proffered by petitioner in its *Motion for Partial Reconsideration* and the comments thereto by respondents the Court *En Banc* finds no sufficient and cogent reason to disturb its disquisition in the assailed Decision of September 13, 2017. The points put forward in the instant Motion have already been substantially discussed and passed upon first, by the Court in Division and ultimately, by the Court *En Banc*. In any event, if only to dissipate any cloud of doubt hovering in

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[2] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,* G.R. Nos. 209353-54, July 6, 2015.

petitioner's mind, the core points of the assailed Decision shall perforce be discussed.

It is settled that under its franchise, particularly Section 13 of PD No. 1590 that petitioner is exempt from the payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies for international consumption. As ruled by the Supreme Court, RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, namely, PD No. 1590.

Such privilege however is subject to conditions mandated under Section 13 of P.D. No. 1590, to wit: 1) that the such articles are to be used in its transport and non-transport operations and other activities incidental thereto; and, 2) that they are not available locally in reasonable quantity, quality or price.

To establish usage of the subject imported articles in its flight and non-flight operations and other incidental activities, petitioner proffered various IIDEs,[3] designating the imported commodities as "inflight materials," and ATRIGs[4] bearing notations that such articles would be used for international inflight consumption. However, the persons who prepared and issued the said documents were not presented in Court to authenticate the said documents. Besides, such declarations were based on petitioner's submitted documents.

In the case of *Republic of the Philippines vs. Lydia Capco De Tensuan,*[5] the Supreme Court refused to accord evidentiary weight to a public document for failure of the issuing government officials to identify and authenticate the same as only the latter have a direct hand in preparing and issuing such class of documents, thus:

> The Court has also ruled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein. **Here, Torres,**

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[3] Exhibits P-29 to P-80.
[4] Exhibits P-133 to P-184.
[5] G.R. No. 171136, October 23, 2013.

> **a private individual and respondent's representative, identified the certifications but the government officials who issued the certifications did not testify on the contents of the certifications. As such, the certifications cannot be given probative value.** The contents of the certifications are hearsay because Torres was incompetent to testify on the veracity of the contents of the certifications. Torres did not prepare the certifications, he was not an officer of CENRO or FMS-DENR, and he did not conduct any verification survey whether the land falls within the area classified by the DENR Secretary as alienable and disposable. (emphasis supplied)

Equally unavailing is petitioner's contention that it was able to duly demonstrate by preponderant proof that the subject imported cigarettes, wines and liquors are not available in reasonable quantity, quality, or price at the time of their importations.

Anent the imported cigarettes, there is nothing in the record that confirms petitioner's claim the imported cigarettes were, at the time of importations, not locally available in reasonable quantity, quality, or price. The NTA Letter-Response dated July 12, 2013 does not suggest any information regarding local prices of cigarette brands in answer to petitioner's query. Certainly, no comparison would result from such Letter-Response as to justify the conclusion that the imported cigarettes were not locally available in reasonable quantity, quality or price or to import the branded cigarettes would be cheaper than to locally source them.

By the same token, the Court weighed and found wanting the 2010 PWM Price List dated January 8, 2010 and the FTI Price List for years 2006 to 2013 dated July 15, 2013, coupled with BIR Price Survey presented by petitioner to demonstrate non-availability of imported wines and liquors locally in reasonable quantity, quality, or price as the totality of information contained therein are clearly limited so as to convince the Court its hypothesis.

In closing, the Court has observed that petitioner consistently and strongly faults respondents' failure to present controverting proof to overturn its own pieces of evidence. It seemingly overlooked a hornbook principle in taxation - entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[6]

WHEREFORE, petitioner's *Motion for Partial Reconsideration* dated October 17, 2017, is **DENIED**, for lack of merit. The assailed Decision of September 13, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I maintain my CDO.)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[6] See *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands),* G.R. No. 173854, March 15, 2010.