REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7632

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
MAY 03 2016
10:25 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

The case involves a Petition for Review filed by Philippine Airlines, Inc. to seek the refund of the total amount of Two Hundred Fifty-Eight Million Six Hundred Twenty-Nine Thousand Four Hundred Ninety-Six Pesos (P258,629,496.00), allegedly representing specific taxes imposed on its importations of Jet A-1 aviation fuel ("Jet A-1 fuel" for brevity) for domestic flight operations during the period of April to June 2005.

STATEMENT OF FACTS

Petitioner Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with principal office at 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.[1]

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

Respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges, including the excise tax of P3.67 per liter of volume capacity on Jet A-1 fuel imposed by Section 148 of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs, which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise tax of P3.67 per liter on imported Jet A-1 fuel imposed by Section 148 of the NIRC of 1997, as amended, as delegated and authorized by respondent CIR through an Authority to Release Imported Goods (ATRIG) duly issued by the latter and addressed to the former, in accordance with Section 12(a) of the NIRC of 1997, as amended. He holds principal office at the Bureau of Customs, Port Area, Manila.

On January 29, 2003, then BIR Commissioner issued BIR Ruling No. 001-2003 addressed to petitioner, to Cebu Air Inc., to Air Philippines Corporation, and to Pacific Airways Corporation. This Ruling revoked BIR Ruling No. 013-99 and accordingly imposed a tax burden on the airlines concerned. The pertinent portions of BIR Ruling No. 001-2003 read:

> "This refers to the rulings of this Office that have been separately issued to you, namely:
>
> 1. *BIR Ruling No.* ***013-99*** issued to **PAL** on January 29, 1999;
>
> xxx xxx xxx
>
> In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally

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

BIR Ruling No. 001-2003 essentially states that pursuant to the December 20, 2002 Certification of the Department of Energy (DOE), one of the conditions allowing the tax-free importation of aviation fuel, as specified under Section 13 of petitioner's franchise, Presidential Decree (PD) No. 1590, *i.e.*, that the petroleum product must not be "locally available in reasonable quantity, quality, or price" is no longer present.

On various dates, or from April to June 2005, petitioner made importations of Jet A-1 fuel and paid the corresponding specific taxes under protest.

On January 2, 2007,[2] petitioner filed with respondent CIR a written request for refund of the said specific taxes in the total amount of P258,629,496.00. However, respondent failed to act on petitioner's refund claim. Consequently, petitioner filed the instant Petition for Review on May 7, 2007 before this Court.

Respondent CIR filed her Answer[3] on June 20, 2007, and raised the following Special and Affirmative Defenses:

[2] Exhibit "G", docket, p. 78.
[3] Answer, docket, pp. 210 215.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

Respondent repleads the foregoing allegations and allege the following as affirmative and special defenses:

1. The Petition for Review is bereft of merit. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.

1.1 Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before Petitioner questioned its legality before this Honorable Court. Petitioner's precipitate act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure which provides as follows:

xxx xxx xxx

1.2 Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides as follows:

xxx xxx xxx

2. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the NIRC of 1997.

3. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of Department of Energy, in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay this Honorable Court from exercising jurisdiction over this petition.

xxx xxx xxx

5. The amount of P258,629,496.00 specific tax being claimed by petitioner which was allegedly paid under protest sometime in May and June, 2005 was not properly documented;

xxx xxx xxx"

On the other hand, respondent COC filed his Answer[4] on July 3, 2007, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. Petitioner failed to exhaust administrative remedies before seeking relief from the Honorable Court.

5.1. Petitioner argues that the Department of Energy (DOE) Certification dated December 20, 2002 which in essence stated that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, and which became the basis of BIR Ruling No. 001-2003 removing tax benefits from importation of aviation gas, fuel and oil, was issued without giving the affected airline companies notice and

[4] Docket, pp. 218 224.

> an opportunity to be heard. Hence, petitioner prays for the Honorable Court to declare the said Certification as 'not valid since it was issued without due process' and 'having no factual basis as far as petitioner is concerned and, therefore, not correct.'
>
> 5.2. In essence, petitioner is asking the Honorable Court to override the factual determination of the DOE, which it cannot do without violating the principle of separation of powers and respect due to the factual determination of a co-equal branch of Government.
>
> 5.3. Besides, DOE is not even impleaded as a party in this case. For this Honorable Court to reverse its findings without giving it notice and opportunity to be heard smacks of violation of the sacred right to due process.
>
> 5.4. The proper recourse is for petitioner to appeal the action of the DOE to the Office of the President (OP). Verily, this Honorable Court is not the proper forum for petitioner to contest the administrative finding of the DOE.
>
> 5.5. For failing to appeal to the OP, petitioner failed to exhaust administrative remedies that make the present petition dismissible under Section 1(j), Rule 16 of the 1997 Rules of Civil Procedure which states:
>
> xxx xxx xxx

6. Similarly, petitioner failed to appeal the issuance by the Bureau of Internal Revenue of BIR Ruling No. 001-2003 dated January 29, 2003, to

the Secretary of Finance pursuant to Section 4 of the National Internal Revenue Code of 1997, which states:

xxx xxx xxx

7. Petitioner's resort to the present petition is unavailing because it seeks to reverse respondents' actions that are only results of prior factual determinations of another government agency.

> 7.1. Thus, the DOE issued the Certification dated December 20, 2002 which essentially states that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.
>
> Pursuant thereto, the BIR issued BIR Ruling No. 001-2003 dated January 29, 2003, the pertinent portion of which reads:

xxx xxx xxx

Consistent with the DOE Certification, the BIR imposed specific taxes on petitioner's fuel importations. The Bureau of Customs presumably collected those taxes at the respective ports where the fuels were on different dates delivered.

> 7.2. Evidently, respondents' actions are rooted on the DOE certification, which, absent any ruling to the contrary, remains a valid administrative issuance of the government agency tasked with the management of the energy sector.

xxx xxx xxx

> 9. Finally, if it were true that petitioner paid specific taxes to the Bureau of Customs, the latter merely acted as a collection agency that does not have power and jurisdiction to adjudicate any issue arising from any tax impositions and other rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions. Hence, petitioner cannot maintain a cause of action against it."

During the hearing on October 4, 2007, the Court ordered the parties to submit their Joint Stipulation of Facts and Issues,[5] which they submitted on October 18, 2007. Thereafter, the case was set for presentation of evidence.

Petitioner presented the following witnesses: Mr. Elvis A. Yao[6] – Senior Assistant Vice President of the Fuel Management Department of petitioner; Ms. Evelyn L. Taghap[7] – Manager, Tax Services and Compliance Division of petitioner; Ms. Myra Celeste O. Dabalos[8] – Independent Certified Public Accountant (CPA); Ms. Glendalyn Dela Cruz[9] – Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the DOE; and Secretary Mario V. Tiaoqui[10] – former Secretary of the DOE.

Petitioner likewise formally offered its documentary evidence on September 25, 2012.[11] On January 2, 2013, the Court issued a Resolution[12] denying admission of Exhibits "A-2", "D", "D-1", "D-2", "D-3", "D-4", "G", "G-1", "G-6", "H-5", "H-8", "J-5", "J-7", "K", "K-4", "K-6", "N", "O", "P", "Q", "R", "S", "T-1", "T-2", "T-2-a", "T-2-b", "T-2-c", "T-2-d", "T-2-e", "T-2-f", "Y-1", "Z", "AA-1", "AA-1-a", "BB-1", "BB-1-a", "CC-1", "CC-1-a", "DD-1", "Dd-1-a", "EE-1", "EE-1-a", "FF-1", "FF-1-a", "RR-1", "F-1", "H-1", "I-1", "J-1", "F[7] to R[7]", "AAA", "KK", "RR", "VV", "DDD", "CCC", "EEE", and "FFF", and admitting the rest of the exhibits.

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[5] Minutes of the Hearing, docket, p. 281.
[6] Minutes of the Hearing, docket, p. 164.
[7] Minutes of the Hearing, docket, p. 183.
[8] Minutes of the Hearing, docket, p. 510.
[9] Minutes of the Hearing, docket, pp. 868 and 891.
[10] Minutes of the Hearing, docket, p. 1027.
[11] Formal Offer of Evidence, docket, pp. 1072 1107.
[12] Docket, pp. 1160 1164.

On January 21, 2013, petitioner filed its "Omnibus Motion (A) For Partial Reconsideration of the Court's Resolution dated 02 January 2013; (B) For a Commissioner's Hearing to Compare Provisionally Marked Exhibits with the Original; (C) For Recall of Witness and Re-Identification of Exhibits; and (D) For Remarking of Documents not Found in the Records of the Case".[13] On March 14, 2013, the Court issued a Resolution[14] admitting Exhibits "VV", "AAA" and "KK", but denying Exhibits "F-1", "H-1", "I-1", "J-1", "DDD" and its sub-markings, "CCC", "EEE", "FFF", and "RR". Consequently, petitioner filed its Proffer of Excluded Evidence[15] on March 11, 2013; which the Court noted in the Resolution[16] dated May 10, 2013.

On the other hand, respondents presented Director Zenaida Y. Monsada[17] – Director of the Oil Industry Management Bureau of the DOE, and Assistant Director General Saturnino Dela Cruz of the Flight Standards Inspectorate Service of the Civil Aviation Authority of the Philippines (CAAP)[18] as witnesses; whose testimonies in CTA Civil Case Nos. 7966, 7990, and 8020 were adopted by the Court.

On February 27, 2014, respondent COC formally offered his evidence consisting of Exhibits "1" to "6-a";[19] while respondent CIR failed to make a formal offer of evidence. In the Court's Resolution[20] dated April 7, 2014, Exhibits "1" to "6-a" were admitted as evidence.

On April 3, 2014, petitioner filed a Manifestation and Request for Admission[21] of the February 27, 2014 Decision[22] of the Regional Trial Court (RTC) Branch 114 of Pasay City, in the case entitled "*Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*", docketed as Civil Case No. R-PSY-10-03889-CV. The

[13] Docket, pp. 1165 1185.
[14] Docket, pp. 1224 1234.
[15] Docket, pp. 1242 1257.
[16] Docket, pp. 1261-1263.
[17] Minutes of the Hearing, docket, p. 1535.
[18] Minutes of the Hearing, docket, p. 1467.
[19] Formal Offer of Evidence, docket, pp. 1557-1564.
[20] Docket, pp. 1649-1650.
[21] Docket, pp. 1625-1628.
[22] Annex "A", petitioner's "Manifestation with Request for Admission", docket, pp. 1629 1647.

Court admitted the same in the Resolution[23] dated May 6, 2014.

On January 20, 2014, the Court required the parties to submit their Memoranda.[24] Respondent CIR filed her Memorandum[25] on May 7, 2014; while respondent COC submitted his Memorandum[26] on June 25, 2014; and petitioner submitted its Memorandum[27] on July 7, 2014. As a result, the case was declared submitted for decision on July 9, 2014.[28]

Meanwhile, on October 31, 2014, petitioner filed a Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum; which the Court granted in the Resolution[29] dated January 20, 2015. On May 7, 2015, the case was submitted for decision anew.[30]

STATEMENT OF ISSUES

The parties submitted the following issues[31] for resolution of this Court:

> 1. Whether or not the Certification of the Department of Energy dated December 20, 2002, which is the basis of BIR Ruling No. 001-2003, dated January 29, 2003, was issued without complying with the requirements of due process.
>
> 2. Whether or not the aforesaid Certification, which states that aviation fuel for use in domestic operation, is locally available in reasonable quantity, quality and price, is correct in so far as petitioner PAL is concerned.

[23] Docket, p. 1663.
[24] Minutes of the Hearing, docket, p. 1543.
[25] Docket, pp. 1668-1680.
[26] Docket, pp. 1694-1766.
[27] Docket, pp. 1768-1824.
[28] Resolution, docket, p. 1826.
[29] Docket, pp. 1859-1861.
[30] Resolution, docket, p. 1899.
[31] Issues to be Tried or Resolved, JSFI, docket, pp. 459 460.

3. Whether or not BIR Ruling No. 001-2003, dated January 29, 2003, which is based on the subject Certification of the Department of Energy, is valid and amounts to an unauthorized amendment or alteration of P.D. No. 1590, the franchise of PAL, in violation of Section 16 and 24 thereof.

4. Whether or not PAL is exempt by virtue of its franchise, Presidential Decree No. 1590, from specific tax on its importations of Jet A-1 fuel for domestic operations, and therefore entitled to the refund of the following amount of specific taxes it paid to the respondent Commissioner of Customs:

a. PHP58,951,504.00 paid under protest on May 6, 2005;
b. PHP57,766,575.00 paid under protest on May 13, 2005;
c. PHP29,591,350.00 paid under protest on June 29, 2005;
d. PHP53,274,605.00 paid under protest on June 22, 2005; and
e. PHP59,044,462.00 paid under protest on June 28, 2005;

or a total amount of PHP258,629,496.00.

5. Whether petitioner failed to exhaust all administrative remedies before filing the instant petition with this Honorable Court thereby rendering it without jurisdiction to hear the petition.

The above-enumerated issues can be summarized into two (2) main issues, to wit:

1. Whether the Court has jurisdiction over the Petition for Review; and

2. Whether petitioner is entitled to the refund of the amount of P258,629,496.00, allegedly representing the specific taxes imposed upon its importations of Jet A-1 fuel for its domestic flight operations.

RULING OF THE COURT

Petitioner timely filed its Petition for Review

The Court will determine first the timeliness of the filing of the present Petition for Review.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been

duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the above-quoted legal provisions, both the administrative and judicial claims for refund must be filed within two (2) years from the payment of the tax. In other words, the two-year prescriptive period applies not only to the filing of an administrative claim for refund before respondent CIR, but also to the filing of a Petition for Review before this Court.

Here, the dates of filing of petitioner's administrative and judicial claims for refund and the dates of expiration of the two-year prescriptive period for filing the same, are summarized as follows:

DATE OF PAYMENT OF SPECIFIC TAX	EXPIRATION OF THE 2-YEAR PERIOD	DATE OF FILING ADMINISTRATIVE CLAIM	DATE OF FILING JUDICIAL CLAIM
May 6, 2005[32]	May 6, 2007	January 2, 2007	May 7, 2007
May 13, 2005[33]	May 13, 2007	January 2, 2007	May 7, 2007
June 29, 2005[34]	June 29, 2007	January 2, 2007	May 7, 2007
June 22, 2005[35]	June 22, 2007	January 2, 2007	May 7, 2007
June 28, 2005[36]	June 28, 2007	January 2, 2007	May 7, 2007

From the foregoing, it appears that petitioner's administrative and judicial claims for refund were timely filed,

[32] Exhibit "G-1".
[33] Exhibit "G-6".
[34] Exhibit "I-1".
[35] Exhibit "J 5".
[36] Exhibit "K 4".

except for the May 6, 2005 transaction. However, since May 6, 2007 fell on a Sunday, petitioner's judicial claim was timely filed.

Jurisdiction of the Court of Tax Appeals

The Court of Tax Appeals is a court of special or limited jurisdiction, as such, it can only take cognizance of matters that are clearly within its jurisdiction.[37] The CTA's jurisdiction is found in Republic Act (RA) No. 1125, as amended by RA No. 9282, the significant parts of which are quoted as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

[37] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or

> illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;
>
> xxx xxx xxx"

Based on the afore-quoted provisions, the CTA has the power to determine whether petitioner is entitled to the refund of the alleged erroneously paid specific taxes inasmuch as a claim for tax refund is evidently within the jurisdiction of this Court.

As to the CTA's jurisdiction to rule on the validity of an administrative rule or regulation, the Supreme Court made the following pronouncements in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*[38], to wit:

> "Evidently, *City of Manila* can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes British American Tobacco to the effect that **it is now within the power of the CTA**, through its power of certiorari, **to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**" *(Emphasis supplied)*

In the case of *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[39], the High Tribunal held that:

[38] G.R. No. 210987, November 24, 2014.
[39] G.R. No. 198756, January 13, 2015.

"**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals**. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

a. *Exclusive appellate jurisdiction to review by appeal* as herein provided:

1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*

...

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue,* the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration

> of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. – No civil proceeding involving matters arising under the National Internal Revenue Code,* the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal,* citing *Rodriguez v. Blaquera,* this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari,* however, *let it be stressed that* ***the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not the RTC.***
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops ..." (Emphases supplied)*

Considering that what is being assailed is a ruling of respondent CIR embodied in BIR Ruling No. 001-2003, this Court is vested with jurisdiction to rule on the validity thereof. However, since this Court can properly dispose of the present case without passing on the validity of the BIR Ruling, the

Court will no longer rule on the question of validity of the subject BIR Ruling.[40]

Petitioner complied with the three (3) requisites to be exempt from all taxes under Section 13 of PD No. 1590.

Section 229 of the NIRC of 1997, as amended, provides that a taxpayer may recover any national internal revenue tax that has been erroneously paid or illegally collected, any penalty claimed to have been collected without authority, or any sum that has been excessively or in any manner wrongfully collected.

In order to resolve the issue of whether or not the taxes have been erroneously paid by petitioner, it must be determined first whether or not it is exempt under PD No. 1590 from specific tax on its importations of Jet A-1 fuel for domestic operations. Section 13 of PD No. 1590 provides:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail,

[40] See *Estrada vs. Desierto, et al.*, G.R. No. 156160, December 9, 2004, citing *Sotto vs. Commission on Elections*, 76 Phil. 516, 522 (1946), and *Co Chiong and Lim Chiu Guan vs. Rafael Dinglasan, et al.*, G.R. No. L-1266, August 29, 1947.

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**:

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

However, it bears to stress that, "upon the amendment of the 1997 NIRC, Section 22[41] of R.A. 9337[42] abolished the

[41] SECTION 22. Franchises of Domestic Airlines. - The provisions of P.O. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

(A) The franchise tax is abolished;

franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter"[43]

Hence, pursuant to Section 13 of PD No. 1590, in order for petitioner to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax 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.

With regard to the first requisite, petitioner filed its Annual Income Tax Return (ITR) for fiscal year ended March

(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.

[42] An Act Amending Sections 27,28,34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of The National Internal Revenue Code of 1997, as amended, and For Other Purposes.
[43] Consolidated cases of Republic of the Philippines vs. Philippine Airlines (PAL), G.R. Nos. 209353-54, and Commissioner of Internal Revenue vs. PAL, G.R. Nos. 211733-34, July 6, 2015.

31, 2006, and paid the BIR the amount of P43,864,236.64 on July 17, 2006.[44] Hence, the first requisite was satisfied.

Meanwhile, as regards the second requisite, petitioner presented witnesses Mr. Elvis A. Yao[45], Ms. Evelyn L. Taghap[46], and Ms. Myra Celeste O. Dabalos[47] (the Court-commissioned Independent Certified Public Accountant), for purposes of proving that petitioner imported the subject Jet A-1 fuel. Said witnesses similarly testified that petitioner made importations of Jet A-1 fuel on various dates from April to June 2005.

In support of the testimonial evidence, petitioner presented the following documentary evidence to prove that petitioner made the subject importations: (1) Bills of Lading[48]; (2) Philippine National Bank[49], Security Bank Corporation[50] and Equitable PCI Bank[51] Official Receipts; (3) Import Declaration Entries[52]; and (4) Authority to Release Imported Goods (ATRIGs)[53].

Considering the foregoing testimonial and documentary evidence, petitioner managed to prove the fact of importation of Jet A-1 fuel from April to June 2005.

The same witnesses testified that the subject importations were to be utilized for purposes of petitioner's domestic flight operations. With regard thereto, petitioner presented various ATRIGs to show that the imported Jet A-1 fuel shall be used for its transport and non-transport operations. The ATRIGs states, "that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of xxx consisting of the above described articles, will be used exclusively for" daily domestic flight operation.

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44 Exhibits "HH" and "HH 1".
45 Minutes of the Hearing, docket, p. 464.
46 Minutes of the Hearing, docket, p. 483.
47 Minutes of the Hearing, docket, p. 510.
48 Exhibits "OO-1" to "OO-5".
49 Exhibit "LL-2".
50 Exhibit "LL-3".
51 Exhibits "LL-1", "LL-4", and "LL-5".
52 Exhibits "QQ 1" to "QQ 5".
53 Exhibits "PP 1" to "PP 5".

An examination of the ATRIGs presented by petitioner shows that these are public documents pursuant to Section 19 (a), Rule 132 of the Rules of Court, and thus, *prima facie* evidence of the facts stated therein.

Section 19 (a), Rule 132 of the Rules of Court reads:

> Sec. 19. Classes of Documents – For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

The ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGs are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court.

In the consolidated cases of Heirs of Jose Marcial K. Ochoa, et al. vs. G & S Transport Corporation, et al.,[54] the Supreme Court has held that public documents under Section 19 (a) of Rule 132 refers to those recording made by a public officer, to wit:

> **Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents**. As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States. xxx xx xxx From these, there can be no doubt that **the**

[54] G.R. Nos. 170071 & 170125, July 16, 2012.

> **USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions,** he having charge of all employee files and information as such officer. **In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is prima facie evidence of the facts stated therein.** And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs." (Emphasis supplied)

Since ATRIGs are considered public documents, the authenticity and due execution of same are already presumed. Further, as a public document issued in the performance of a duty by a public officer, the subject ASTRIGs are *prima facie* evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Rules of Court, which provides that "public documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated."

Therefore, in the absence of any clear and sufficient evidence to overcome the above presumptions, the testimonies of petitioner's witnesses and the statement in the ATRIGs, which provides that the shipment (Jet A-1 aviation fuel) will be used exclusively for daily domestic flight operation, are prima facie evidence that indeed the subject aviation fuel will be used exclusively in petitioner's flight operations and other activities incidental thereto.

Anent the third requisite that the aviation fuel is not locally available in reasonable quantity, quality or price, petitioner emphasizes the testimony of Ms. Glendaly Dela Cruz ("Ms. Dela Cruz"),[55] Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the DOE, that for the period covering 2005, domestic and international demand is greater than local refinery production and that the 2002 DOE Certification could not possibly cover the years subsequent to the time of its issuance, since the data pertaining to the years subsequent to the issuance of the 2002 DOE Certification were not yet available at the time.

Petitioner also presented the Certifications issued by the Air Transportation Office ("ATO"), now known as the CAAP, subsequent to the 2002 DOE Certification, which shows that at the time of the subject importations, there was no locally available Jet A-1 aviation fuel in reasonable quantity, quality and price.[56]

In addition, petitioner points out the Report of the court-commissioned Independent Certified Public Accountant (ICPA) showing the comparison of the cost of importation of aviation turbo jet fuel or Jet A-1 and the cost of domestic purchases of aviation turbo jet fuel using the price quotations issued by local oil companies for the period from April 2005 to June 2005 (relating to petitioner's payments of specific taxes for the period from May 2005 to June 2005). The ICPA found that:

> "the cost per liter of importation of aviation turbo jet fuel or Jet A-1 per liter for the period from April 2005 to June 2005 (relating to petitioner's payments of Specific Taxes for the period from May 2005 to June 2005) is consistently lower than the cost of aviation turbo jet fuel or Jet A-1 if purchased locally from Petron Corporation and/or Pilipinas Shell Petroleum Corporation. Based on the said comparison, it appears that the aviation turbo jet fuel or Jet A-1 for the period from April 2005 to June 2005 (relating to petitioner's payments of Specific Taxes for the period from May 2005 to June 2005) was <u>not</u> locally available at reasonable price based on the price quotations submitted by Petron Corporation and Pilipinas Shell Petroleum Corporation."

[55] Exhibit "T7".
[56] Exhibits "MMM" to "D5".

According to the ICPA, it would have cost the petitioner additional P329,955,751 (Exhibit WW) and P564,148,535 (Exhbit XX) had it purchased from Petron Corporation and Pilipinas Shell Petroleum Corporation, respectively, the same volume of aviation turbo jet fuel or Jet A-1.

Concerning the requirement that the aviation fuel is not locally available in reasonable quantity, petitioner made a comparison between the total refinery production and the total industry petroleum products demand using the Table of Data[57] which was prepared and provided by the DOE, and concluded that in all years from 1998 to 2010, the figures for all types of petroleum products, including jet fuel or kerosene, show that the demand far outstripped the local refinery production. It continues that in each of the years included in the Table of Data (including the year 2005), the total refinery production was never enough to meet the total demand.

In light of the foregoing, the Court is convinced that at the time of the importations subject of this case, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price.

That having been settled, the Court will now verify the amount of specific taxes paid by petitioner and determine the amount that may be refunded to petitioner.

Petitioner is entitled to a refund/tax credit in the total amount of P88,542,854 for the specific taxes imposed on its importations of Jet A-1 aviation fuel.

Petitioner seeks the refund or the issuance of tax credit certificate in the total amount of P258,629,496.00, allegedly representing specific taxes imposed on its importations of Jet A-1 aviation fuel for domestic flight operations during the period of April to June 2005.

Now, to prove that the said specific taxes have been duly paid and remitted, petitioner presented official receipts (OR) issued by the Bureau of Customs (BOC) or the Authorized

[57] Exhibit "S7".

Agent Banks (ABB) of the BOC. The specific taxes as shown in the ORs amount to P258,628,496.00, *viz*:

Offical Receipts (ORs)	**Date of Importation**	**Date of Payment**	**Specific Taxes per ORs issued by the AABs of the BOC**
Exhibit "F-5"	April 15, 2005	May 06, 2005	P58,951,504.00
Exhibit "H-5"	April 22, 2005	May 13, 2005	57,766,575.00
Exhibit "I-4"	June 07, 2005	June 29, 2005	29,591,350.00
Exhibit "J-5"	June 14, 2005	June 22, 2005	53,274,605.00
Exhibit "K-4"	June 22, 2005	June 28, 2005	59,044,462.00
			P258,628,496.00

However, in the Resolution[58] dated January 2, 2013, this Court denied the admission of the ORs marked as Exhibits "H-5", "J-5" and "K-4" for petitioner's failure to submit the original documents for comparison. Thus, the amount of 170,085,642.00 shall be deducted from petitioner's claim for refund/tax credit, to wit:

Specific Taxes being claimed for refund/ tax credit as shown in the ORs		258,628,496.00
LESS: Specific Taxes supported by ORs which were denied admission:		
Exhibit "H-5"	57,766,575.00	
Exhibit "J-5"	53,274,605.00	
Exhibit "K-4"	59,044,462.00	170,085,642.00
		88,542,854.00

Hence, considering the evidence presented by petitioner, it has only proven and substantiated its entitlement to a tax refund or issuance of tax credit certificate in the amount of P88,542,854.00.

[58] Docket, pp. 1160-1164.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**.

Accordingly, the respondents are **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner Philippine Airlines, Inc. in the amount of P88,542,854.00, representing the specific taxes paid for the importation of Jet A-1 aviation fuel for its domestic flight operations for the period of April to June 2005.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Second Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice