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. 8310

Members:

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

Promulgated:

MAR 1 1 2015 4:17 pm

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RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is petitioner's **Motion for Partial Reconsideration** filed on December 2, 2014, with respondent Commissioner of Internal Revenue's (CIR) **Comment/Opposition (Re: Motion for Partial Reconsideration)** filed on December 22, 2014, and respondent Commissioner of Custom's (COC) **Comment (On the Motion for Partial Reconsideration dated December 2, 2014)** filed through registered mail on January 27, 2015.

Petitioner assails the Decision dated November 14, 2014 denying its Petition for Review for lack of merit. The dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED."

In the aforesaid motion, petitioner argues that it sufficiently established that the imported liquors, wines and cigarettes were commissary and catering supplies used in its transport and non-transport operations which were not locally available in reasonable quantity, quality or price.

In her comment, respondent CIR argues that petitioner failed to adduce independent and credible evidence that the commissary supplies were not locally available in reasonable quantity, quality and price. She argues that the testimony of petitioner's witness, Ms. Cheryl Capinpin was highly self-serving and her study of the prices of the said goods was not comprehensive. Moreover, respondent CIR reiterates that petitioner failed to establish that the imported liquors, wines and cigarettes were commissary and catering supplies used by petitioner in its transport and non-transport operations.

On the other hand, respondent COC maintains that petitioner miserably failed to establish its entitlement to refund. It essentially questions the testimony of petitioner's witness Mr. Jonathan Castillo Lee for lack of personal knowledge on the nature of the goods as reflected in the Informal Entries. Respondent COC adds that said witness did not have any participation in the preparation of relevant documents covering the subject importations as his duty comprised mainly of ensuring the timely release of importations and filing of proper documentations.

Likewise, respondent COC argues that petitioner did not exert diligent effort to source out from the other wine suppliers as it solely relied on the price list of Philippine Wine Merchants based on the testimony of petitioner's witness, Ms. Cheryl V. Capinpin.

We deny petitioner's motion.

Petitioner failed to sufficiently establish that the imported liquor, wines and cigarettes were for commissary and catering supplies

Petitioner avers that its witness, Mr. Jonathan Castillo Lee, testified that the imported goods constituted commissary and catering supplies and by virtue of his position as Manager – Company Materials Handling Division, he has personal knowledge of the nature of the said imported goods. Likewise, its witness, Ms. Cheryl V. Capinpin – Manager, In-Flight Materials Purchasing Division of petitioner, confirmed that the imported goods were commissary and catering supplies. Meanwhile, both respondent CIR and COC believe otherwise.

It is a hornbook doctrine that a claim for refund is strictly construed against the claimant as it partakes of an exemption, and exemptions are highly disfavored. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.[1]

The Court cannot conclude that petitioner's witnesses have personal knowledge that the imported goods were for commissary and catering supplies, without committing the fallacy of hasty generalization. An analysis of their respective testimony readily showed that they merely stated that the imported goods were commissary and catering supplies, without really knowing whether these goods were actually for commissary and catering supplies. The Informal Import Declaration and Entry Forms (IIDE) and Authority to Release Imported Goods (ATRIGs) relied upon by and mentioned in the testimony of Mr. Jonathan Castillo Lee were not personally prepared by him. Aside from these witnesses, there were no other proofs presented to convince the Court that these goods were for commissary and catering supplies.

The Court reiterates that "bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court"[2]. In the case of *Lina Calilap-Asmeron vs. Development Bank of the Philippines, et al.*,[3] the Supreme Court found that:

> "The petitioner apparently relied solely on her bare testimony to establish her allegation of having been misled, and did not present other evidence for the purpose. She seemingly forgot that, *firstly*, her bare allegation of having been misled was not tantamount to

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[1] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.

[2] *Bautista vs. Jalandoni*, G.R. Nos. 171464 and 199341, November 27, 2013.

[3] G.R. No. 157330, November 23, 2011, citing *Quizon v. Juan*, G.R. No. 171442, June 17, 2008, 554 SCRA 601, 611; *Heirs of Cipriano Reyes v. Calumpang*, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 72; and *Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010, 636 SCRA 401, 412; *Aleligay v. Laserna*, G.R. No. 165943, November 20, 2007, 537 SCRA 699, 706.

> proof, and that, *secondly*, she, as the party alleging a disputed fact, carried the burden of proving her allegation. In other words, her main duty was to establish her allegation by preponderance of evidence, because her failure to do so would result in her defeat. *Alas*, she did not discharge her burden."

Petitioner merely presented the said witnesses, without any independent proof aside from their bare allegations that as managers of their respective division, they know the nature of the imported goods subject of the present case. Verily, the Court finds the same as insufficient proof.

Meanwhile, petitioner argues that its IIDEs and ATRIGs were public records and its contents were *prima facie* evidence of the facts stated therein.

The Court notes that while the subject IIDEs and ATRIGs may serve as *prima facie* evidence of the fact of importations, the Court cannot automatically consider the goods stated therein as commissary and catering supplies or In-Flight materials. More so, the ATRIGs[4] reveal that the information set forth therein were in fact, supplied by petitioner. It states:

> "Please be informed that **according to the documents submitted by abovementioned importer**, the shipment to be released at the port of Manila consisting of the above described articles, will be used exclusively for International Inflight consumption."*(Emphasis supplied)*

Thus, while petitioner states in its ATRIGs that the imported goods were In-Flight materials, the Court finds petitioner's representations as highly self-serving in the absence of any other proof to support its allegations. Even assuming the Court considers the said documents, petitioner's claim would still fail for non-compliance with the other remaining conditions set by law.

Petitioner failed to sufficiently establish that its imported wines, liquors and cigarettes

[4] Exhibits "S" to "Z" and "NN" to "UU".

were for its transport and non-transport operations

According to petitioner, the fact that imported goods were utilized for international flight consumption remains uncontroverted because no evidence was presented by respondent to overturn this fact. Petitioner continues that even if the imported goods were not exclusively used for international flight consumption or do not constitute "in-flight" materials, the refund of its excise taxes paid is warranted, provided that the imported goods were not locally available in reasonable quantity, quality or price.

The Court is not convinced.

To reiterate, the requisites provided under Section 13 of Presidential Decree (PD) 1590, in order for petitioner's payment of basic corporate income tax or franchise tax to be considered as "in lieu of all other taxes", *viz:*

1. The imported liquors, wines and cigarettes must be commissary and catering supplies;

2. The imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

3. The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

Simply stated, before petitioner may avail of the benefits granted under Section 13 of PD 1590, it must show full compliance with all conditions set by law. Otherwise, it shall be liable to the applicable type of tax which, in this case, is excise tax.

Hence, there is no merit to petitioner's argument that even if the imported goods are not exclusively used for international flight consumption or do not constitute "in-flight" materials, the refund of its excise taxes paid is warranted, provided that the imported goods are not locally available in reasonable quantity, quality or price. Again, claims for refund are strictly construed against the claimant as they partake of an exemption, and exemptions are highly disfavored.

As such, failure of the petitioner to comply with any one of the said requisites leads to the failure of its claim.

Considering the foregoing, petitioner failed to discharge its burden to prove that the imported goods are for its transport and non-transport operations.

Petitioner failed to sufficiently establish that its imported wines, liquors and cigarettes were not locally available in reasonable quantity, quality or price

Petitioner failed to compare the imported wines and liquors' prices with other local suppliers' prices sufficient enough to equal or at least approximate the local market price. The price list provided for by Philippine Wine Merchant cannot be considered as the local market price because it is only the price list of a single supplier who belongs to a market comprised of various suppliers of the same goods within the Philippines.

With respect to petitioner's importation of cigarettes, petitioner states that its witness established the lack of local suppliers or if there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of petitioner.

Absent any evidence to support petitioner's contention, the Court is not in a position to make its conclusion based on mere assumptions of the petitioner, as it is logically and legally flawed to draw conclusions from mere assumptions. The language of PD 1590 is clear: it must not be *locally* available in reasonable quantity, quality or price. It is therefore incumbent upon petitioner to exert greater effort to gather evidence to prove that its imported cigarettes were not locally available in reasonable quantity, quality or price.

In sum, the Court finds no compelling or cogent reason to set aside the assailed Decision, as the petitioner failed to prove that its imported liquors, wines and cigarettes were for commissary and catering supplies used in its transport and non-transport operations which were not locally available in reasonable quantity, quality or price.

WHEREFORE, in view thereof, petitioner's Motion for Partial Reconsideration is **DENIED** for being bereft of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice