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. 8644

Members:

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

Promulgated:

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RESOLUTION

CASANOVA, *J.*:

For resolution is petitioner's **Motion for Reconsideration**, filed on June 11, 2015, with respondent Commissioner of Internal Revenue's (CIR) **Opposition (Re: Motion for Reconsideration)**, filed on July 2, 2015, and respondent Commissioner of Customs' (COC) **Comment (To Petitioner's Motion for Reconsideration)**, filed on July 27, 2015. The Motion for Reconsideration was submitted for resolution on August 18, 2015.[1]

In the assailed Decision[2] dated May 25, 2015, the Court denied petitioner's claim for refund or issuance of certificate of tax credit in the aggregate amount of Nine Million Seven Hundred Sixty Six Thousand Seven Hundred Thirty One and 05/100 Pesos (₱9,766,731.05), representing the excise taxes paid in connection

[1] Resolution, Docket, (Vol. IV), pp. 1748-1749.
[2] Docket, (Vol. III), pp. 1668-1704.

with its importations of liquor, wine and cigarettes for its catering and commissary supplies for international consumption for the period April 20, 2011 to August 5, 2011. The dispositive portion of the assailed Decision reads:

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

Petitioner seeks reconsideration of the Court's Decision and prays that judgment be rendered entitling petitioner to a refund and ordering respondents CIR and/or COC to immediately refund the total amount of ₱9,766,731.05, as specific taxes paid. Petitioner argues that the evidence on record shows its compliance with all the requisites for excise tax exemption on its commissary supplies, such as liquor, wine and cigarettes, for international flight consumption.

Petitioner further contends that the Court's reasoning for denying the claim for refund is defied by its own pronouncement involving the same parties in CTA Case No. 8415. According to petitioner, the Court stated that the submission of comparative local price is not the only determining factor to justify the exemption of the imported product, more so when such comparative local price could not be provided in view of the absence of local suppliers capable of supplying the required amount of imported articles.

On the other hand, both respondents CIR and COC contend that no independent and credible evidence was presented to prove that the commissary supplies are not locally available in reasonable quantity, quality or price. Respondent COC maintains that the price lists submitted by petitioner do not represent the average prices of the subject liquors throughout the Philippines since there are other distributors which may even sell said products at lesser prices. According to COC, petitioner failed to verify with the Department of Trade and Industry or National Liquor Authority any data regarding the average prices of liquors or the list of distributors of liquors in the Philippines. As regards the Letter-response of the National Tobacco Administration (NTA), the said letter is merely a disclaimer that the NTA does not have any data regarding the respective prices of the subject imported tobacco products.

The Court finds no compelling or cogent reason to set aside the assailed Decision.

We revisit petitioner's cited Resolution and Decision in CTA Case No. 8415 which allegedly were in contrast with the present ruling. In the Court's Resolution[3] affirming the Decision in CTA Case No. 8415, it was held:

> "Anent the requirement that petitioner must prove that the imported articles are not locally available in reasonable quantity, quality or price, We agree that the submission of the comparative local price is not the only determining factor to justify the excise tax exemption of the imported product. However, as found in the assailed Decision, petitioner failed to present any other evidence that would convince this Court that indeed the imported articles are not locally available in reasonable quantity, quality or price."

Meanwhile, the pertinent portions of the Court's Decision[4] in CTA Case No. 8415 state:

> "After scrutiny of the sales invoices, the Philippine Wine Merchants' (PWM) Price Lists for the years 2006, 2007 and 2009, Future Trade International's (FTI) Price List dated April 8, 2009, and the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies prepared by petitioner, the Court noted the following:
>
> xxx xxx xxx
>
> From the above observations, the Court concludes that **no valid comparison can be made between the prices of the imported articles indicated in the sales invoices and the prices reflected in the PWM Price Lists for 2006, 2007 and 2009 and FTI Price List presented by petitioner as summarized in petitioner's comparative table. Furthermore, other**

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[3] *Philippine Airlines, Inc. vs. CIR and COC*, November 14, 2014.
[4] *Ibid*, August 7, 2014.

> **than the said Price Lists and the testimonies of petitioner's witnesses, petitioner failed to present any other evidence to show that the foregoing articles imported are not locally available in reasonable quantity, quality or price.**
>
> It must be pointed out that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.
>
> Considering that petitioner failed to offer evidence to show that the articles imported, from which petitioner paid the excise tax of P2,774,912.56, are not locally available in reasonable quantity, quality or price, petitioner's claim for refund must be denied." (Emphasis supplied and citations omitted)

From the foregoing, it can be seen that the Court made no pronouncement that would bolster petitioner's argument that the Court committed a reversible error. When the Court said that the submission of comparative local price is not the only determining factor to justify the exemption of the imported product, it only meant that petitioner should have other sufficient evidence to prove compliance with the last requisite, that is, the imported articles, supplies or materials are not locally available in reasonable quantity, quality, or price.

Moreover, with price list from only two (2) liquor distributors for wines and liquors, while no comparative price list for tobacco products, petitioner failed to convince the Court that the imported liquor, wine, and cigarettes are not locally available in reasonable quantity, quality or price. The Court further finds that the other arguments raised by petitioner are the same arguments raised in its Memorandum[5] filed on December 9, 2014 which have been substantially considered and addressed by the Court in the assailed Decision.

[5] Docket, (Vol. III), pp. 1556-1589.

To reiterate, "tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit"[6]. "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[7]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[6] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[7] *Winebrenner and Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.