REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2064** *(CTA Case Nos. 7872, 7883, 7922, 7929, and 7952)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
AIR PHILIPPINES CORPORATION (APC), *Respondent.*	Promulgated: **JUL 29 2020** 10:48a.m.

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DECISION

MANAHAN, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b)***[2]***, Rule 8 of the Revised Rules of the Court of Tax Appeals***[3] ***(RRCTA),***

[1] See Petition for Review; *Rollo,* pp. 6-50, with annexes.
[2] "SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

[3] *A.M. No. 05-11-07-CTA*, November 22, 2005.

seeking the reconsideration and setting aside of the Amended Decision[4] dated November 8, 2018 and the Resolution[5] dated April 29, 2019 promulgated by the Court of Tax Appeals (CTA) Special Third Division (Court in Division); and praying for the Court *En Banc* to render a decision denying respondent's entire claim for refund.[6]

The Parties

Petitioner Commissioner of Internal Revenue (CIR) is vested with the authority to assess and collect all national internal revenue taxes, fees, and charges, including excise taxes on Jet A-1 aviation fuel imposed under ***Section 148(g) of the 1997 National Internal Revenue Code***, as amended (hereinafter referred to as "***1997 NIRC***").[7] He[8] holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[9]

Respondent Air Philippines Corporation (hereinafter referred to as "APC") is a domestic corporation with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[10] It is engaged in the business of air transportation of passengers and cargo to and from points within and outside the Philippines, pursuant to ***Republic Act (RA) No. 8339***, as amended by ***RA No. 9215***.[11]

The Facts

In accordance with its franchise (***RA No. 8339***[12], as amended), specifically, ***Section 11*** thereof, respondent is entitled to the same tax-exemption privileges granted to Philippine Airlines (PAL) under ***Presidential Decree (PD) No. 1590***, *to wit:*

> SEC. 11. *Tax Provisions.* - The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of

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[4] See Amended Decision; *Rollo*, pp. 27-45.
[5] See Resolution; *Rollo*, pp. 46-50.
[6] See Prayer in the Petition for Review; *Rollo*, pp. 18-19.
[7] See Decision; Records, Vol. 4, p. 1676.
[8] Changed from "she."
[9] See Decision; Records, Vol. 4, p. 1676.
[10] See Decision; Records, Vol. 4, p. 1676.
[11] See Decision; Records, Vol. 4, p. 1676.
[12] An Act Granting Air Philippines Corporation (Air Philippines) a Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services.

the gross revenues derived by the grantee from its transport operations.

In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed ipso facto part hereof and shall operate equally in favor of the grantee.

The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation.[13]

Under ***Section 13***[14] ***of PD No. 1590***, PAL has the option to pay the lower amount between the *(1)* basic corporate income tax of thirty percent (30%) based on its net taxable

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[13] See Decision; Records, Vol. 4, pp. 1676-1677; emphases retained.

[14] "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 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:

(1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;

(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 imposed for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price;

xxx xxx xxx"

income, or *(2)* franchise tax of two percent (2%) based on its gross revenues, in lieu of all other taxes, duties and fees.[15]

On November 1, 1985, ***Letter of Instruction (LOI) No. 1483***[16] withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations.[17]

On January 29, 1999, ***BIR Ruling No. 013-99***[18] was issued confirming PAL's stance that petroleum products purchased or imported by it from abroad for use in its domestic operations are not subject to tax.[19] This Ruling was confirmed[20] by then Secretary of Finance Edgardo B. Espiritu in his Letter Decision dated September 8, 1999.[21]

On October 23, 2000, ***BIR Ruling No. 048-2000***[22] was issued affirming respondent's position that it is exempt from

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[15] See Decision; Records, Vol. 4, pp. 1677-1678.

[16] " xxx xxx xxx
NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn."

[17] See Decision; Records, Vol. 4, pp. 1678-1679.

[18] "In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations."

[19] See Decision; Records, Vol. 4, p. 1679.

[20] "I confirm BIR Ruling No. 013-99, dated January 29, 1999, which confirms PAL's exemption from specific and ad valorem taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights."

[21] See Decision; Records, Vol. 4, p. 1679.

[22]"xxx (O)n June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a consideration, the dispositive portion of which states:

> 'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.
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> In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.'

On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations and purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.

In reply, please be informed that pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL) and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations."

all taxes imposed by the ***NIRC*** on its importation of petroleum products.[23]

However, on January 29, 2003, petitioner issued ***BIR Ruling No. 001-2003***[24] addressed to respondent, PAL, Cebu Air, Inc., and Pacific Airways Corporation, stating that their importations and purchases of petroleum products from abroad would no longer be exempt from all taxes imposed by the ***NIRC***, it appearing that aviation gas, fuel, and oil used in domestic operation were locally available in reasonable quantity, quality, and price, as certified to by the Department of Energy (DOE) on December 20, 2002.[25]

On account of the foregoing, petitioner, acting through the Commissioner of Customs (COC), started to assess respondent for specific taxes on its importations of Jet A-1 fuel used for its domestic operations.[26]

From January to July 2007, respondent imported Jet A-1 fuel for its domestic operations and paid specific taxes under protest assessed by the Collector of Customs of the Port of Batangas, Batangas City, the details of which are as follows:

DATE OF IMPORTATION	DATE OF PAYMENT UNDER PROTEST	AMOUNT PAID	OFFICIAL RECEIPT NUMBER
January 18, 2007	February 16, 2007	₱11,763,161.00	Equitable PCIB OR No. 181911C
February 12, 2007	March 16, 2007	₱11,812,721.00	Equitable PCIB OR No. 182294C
March 14, 2007	April 18, 2007	₱11,799,700.00	Equitable PCIB OR No. 240153C
April 10, 2007	May 16, 2007	₱17,683,884.00	Equitable PCIB OR No. 240439C
July 14, 2007	July 31, 2007	₱20,709,883.40	Equitable PCIB OR No. 241423C[27]

Subsequently, respondent filed, with the District Collector of Customs of the Port of Batangas, formal written

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[23] See Decision; Records, Vol. 4, pp. 1679-1680.

[24] "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 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 rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

[25] See Decision; Records, Vol. 4, pp. 1680-1681.

[26] See Decision; Records, Vol. 4, p. 1681.

[27] See Decision; Records, Vol. 4, pp. 1681-1682.

protests for the refund of the specific taxes paid under protest on the following dates:

CTA CASE NO.	DATE OF IMPORTATION	DATE OF PAYMENT UNDER PROTEST	DATE OF FILING OF PROTEST WITH COC
7872	January 18, 2007	February 16, 2007	February 21, 2007
7883	February 12, 2007	March 16, 2007	March 30, 2007
7922	March 14, 2007	April 18, 2007	April 27, 2007
7929	April 10, 2007	May 16, 2007	May 30, 2007
7952	July 14, 2007	July 31, 2007	August 31, 2007[28]

Due to COC's failure to act on the above protests and in order to toll the running of the two (2)-year prescriptive period within which to file a claim for refund under ***Section 204(C) of the 1997 NIRC***, respondent filed written claims for refund with petitioner for the specific taxes paid, on the following dates:

CTA CASE NO.	DATE OF IMPORTATION	DATE OF FILING OF WRITTEN CLAIM FOR REFUND WITH THE CIR	AMOUNT CLAIMED
7872	January 18, 2007	February 02, 2009	₱ 11,763,161.00
7883	February 12, 2007	March 04, 2009	₱ 11,812,721.00
7922	March 14, 2007	April 02, 2009	₱ 11,799,700.00
7929	April 10, 2007	April 27, 2009	₱ 17,683,884.00
7952	July 14, 2007	July 03, 2009	₱20,709,883.40[29]

For the same reasons, respondent filed five (5) separate Petitions for Review with the CTA on the following dates:

CTA CASE NO.	AMOUNT OF CLAIM INVOLVED	DATE OF PAYMENT UNDER PROTEST	DATE OF EXPIRATION OF TWO-YEAR PRESCRIPTIVE PERIOD	DATE OF FILING OF PETITION
7872	₱ 11,763,161.00	February 16, 2007	February 16, 2009	February 13, 2009
7883	₱ 11,812,721.00	March 16, 2007	March 16, 2009	March 16, 2009
7922	₱ 11,799,700.00	April 18, 2007	April 18, 2009	April 17, 2009
7929	₱ 17,683,884.00	May 16, 2007	May 16, 2009	May 15, 2009
7952	₱ 20,709,883.40	July 31, 2007	July 31, 2009	July 24, 2009[30]

In the Decision[31] promulgated on April 1, 2016, respondent's Petitions for Review were denied for insufficiency of evidence.[32]

As a result, respondent filed its Motion for Reconsideration of the Decision and Motion to Reopen the

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[28] See Decision; Records, Vol. 4, p. 1682.
[29] See Decision; Records, Vol. 4, pp. 1682-1683.
[30] See Decision; Records, Vol. 4, p. 1683.
[31] See Decision; Records, Vol. 4, pp. 1675-1708.
[32] See Dispositive Portion of the Decision; Records, Vol. 4, p. 1707.

Case for Presentation of Evidence[33] on May 3, 2016. In response, petitioner filed its Opposition (To Motion for Reconsideration of the Decision and Motion to Reopen the Case for Presentation of Evidence)[34] on July 11, 2016; while the COC filed, by registered mail on July 11, 2016, his Comment (To Petitioner's Motion for Reconsideration, etc. dated 02 May 2016)[35].

On November 24, 2016, the Court in Division resolved to grant respondent's prayer to reopen the case for reception of additional evidence, and held the resolution of respondent's Motion for Reconsideration in abeyance.[36] Thereafter, respondent was able to provide additional documentary evidence and witnesses.

The assailed Amended Decision[37] was promulgated on November 8, 2018, granting respondent's Motion for Reconsideration of the Decision.[38] Accordingly, the Decision dated April 1, 2016 was amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the Petitions for Review are **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of P[hp]73,769,349.40, representing specific taxes paid under protest corresponding to its importation of Jet A-1 aviation fuel for its domestic flight operations covering the period of January to July 2007.
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> **SO ORDERED**."[39]

Aggrieved, petitioner filed his Motion for Reconsideration (Re: Amended Decision Promulgated on 08 November 2018)[40] on December 3, 2018, and the COC filed, by registered mail on December 3, 2018, his Motion for Reconsideration (of the Amended Decision dated November 8, 2018)[41]. In response

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[33] Records, Vol. 4, pp. 1709-1734.
[34] Records, Vol. 4, pp. 1787-1797.
[35] Records, Vol. 4, pp. 1798-1802.
[36] See November 24, 2016 Resolution of the Court in Division; Records, Vol. 4, pp. 1826-1830.
[37] Records, Vol. 6, pp. 2781-2799.
[38] See Dispositive Portion of the Amended Decision; Records, Vol. 6, p. 2798.
[39] See Dispositive Portion of the Amended Decision; Records, Vol. 6, p. 2798; emphases retained.
[40] Records, Vol. 6, pp. 2800-2815.
[41] Records, Vol. 6, pp. 2816-2837.

and after being granted[42] by the Court in Division an extension, respondent filed its Comment/Opposition (To CIR's Motion for Reconsideration dated 03 December 2018)[43] and Comment/Opposition (To COC's Motion for Reconsideration dated 03 December 2018)[44] on January 17, 2019 and February 4, 2019, respectively.

On April 29, 2019, the Court in Division promulgated the assailed Resolution[45] whereby it denied petitioner's and COC's Motions for Reconsideration. The dispositive portion thereof reads as follows:

> "**WHEREFORE**, the *Motions for Reconsideration* filed by respondents Commissioner of Internal Revenue and Commissioner of Customs are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."[46]

On May 17, 2019, petitioner filed a Motion for Extension of Time to File Petition for Review[47], which was granted on May 21, 2019 by the Court *En Banc* through a Minute Resolution[48].

Petitioner filed the instant Petition for Review[49] on May 28, 2019, and respondent was directed[50] to file its Comment thereto within ten (10) days from notice. Accordingly, on June 24, 2019, respondent submitted its Comment/Opposition (To CIR's Petition for Review dated 24 May 2019)[51].

On July 17, 2019, the Court *En Banc* promulgated a Resolution[52] submitting the case for decision. Respondent filed its Manifestation[53] on August 20, 2019, which was noted[54] by the Court on September 12, 2019.

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[42] See January 14, 2019 and February 19, 2019 Resolutions; Records, Vol. 6, pp. 2847 and 2886.
[43] Records, Vol. 6, pp. 2848-2865.
[44] Records, Vol. 6, pp. 2870-2884.
[45] Records, Vol. 6, pp. 2888-2892.
[46] See Dispositive Portion of the April 29, 2019 Resolution; Records, Vol. 6, p. 2892; emphases retained.
[47] *Rollo*, pp. 1-4.
[48] *Rollo*, p. 5.
[49] *Rollo*, pp. 6-50, with annexes.
[50] See June 10, 2019 Resolution; *Rollo*, pp. 52-53.
[51] *Rollo*, pp. 54-72.
[52] *Rollo*, pp. 74-75.
[53] *Rollo*, unnumbered pages.
[54] *Rollo*, unnumbered page.

The Assigned Errors[55]

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT ITS IMPORTATIONS OF JET A-1 AVIATION FUEL WERE USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS;

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT THE IMPORTED ARTICLES WERE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY, OR PRICE, BASED SOLELY ON THE AIR TRANSPORTATION OFFICE (ATO) CERTIFICATIONS ISSUED TO RESPONDENT; AND

WHETHER THE COURT IN DIVISION ERRED IN CONSIDERING THE ADDITIONAL EVIDENCE PRESENTED BY RESPONDENT, DESPITE THE DECISION THAT HAS ALREADY BEEN PROMULGATED.

Arguments of the Parties

Petitioner's Arguments[56]

Petitioner avers that a tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer, and that the latter must present convincing evidence to substantiate its claim.

Petitioner asserts that respondent's additional evidence should not have been considered by the Court in Division since it should not be allowed to present piecemeal evidence; that the Motion to Reopen was filed after judgment; and that although the Rules allow the filing of a Motion for New Trial, it was not based on fraud, accident, mistake or excusable negligence, or newly discovered evidence.

He posits that the Authority to Release Imported Goods (ATRIG)s alone are insufficient to prove that the imported Jet A-1 aviation fuel was used by respondent for its transport and

[55] See Grounds for the Petition in the Petition for Review; *Rollo*, pp. 7-8.
[56] See petitioner's Arguments/Discussions in the Petition for Review; *Rollo*, pp. 8-18.

non-transport operations; that respondent should have presented other independent and relevant evidence to support the testimony of its witnesses; and that the testimony of respondent's witness Mr. Segundo was self-serving.

Petitioner claims that respondent's witnesses had no personal knowledge on whether the subject imported fuel were actually used for respondent's domestic operations as their testimonies were limited to the existence of the ATRIGs, which only indicated that the subject importations would be used for petitioner's domestic flight operations; that nothing therein showed that the said imported fuel were actually used for respondent's domestic operations; and at the very least, respondent's witnesses' testimonies are hearsay.

The CIR cited the CTA case of ***Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs***[57], wherein the Court ruled that presentation of ATRIGs and ATO Certifications is insufficient to verify that the Jet A-1 aviation fuel were actually used by APC in its transport and non-transport operations. He likewise avers that contrary to the findings of the Court in Division, the ATRIGs were not corroborated by either documentary or testimonial evidence; that the evidence presented by respondent only proved the fact of importation, not the fact that the Jet A-1 fuel was actually used in its transport and non-transport operations; and that the additional evidence presented by respondent were self-serving.

Petitioner insists that the Court in Division failed to present, clearly and distinctly, the facts and laws on which the Amended Decision was based.[58]

It is further claimed by petitioner that monitoring the supply and demand of fuel is the function of the DOE, not the ATO [now Civil Aviation Authority of the Philippines (CAAP)]; that the DOE is the exclusive department responsible for preparing, integrating, coordinating, supervising, and controlling all plans, programs, projects, and activities of the government relative to energy exploration, development, utilization, distribution, and conservation; that, on the other hand, CAAP is responsible for implementing policies on civil aviation to assure safe, economic, and efficient air travel, and

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[57] CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, and 7556, October 2, 2015.
[58] Section 14, Article 8 of the 1987 Philippine Constitution.

investigate aviation accidents; and that it is clear that the DOE is in the best position to determine whether the total supply is enough to meet the total demand.

As such, petitioner insists that the Court in Division erred in ruling that respondent need only prove the existence of one condition (either reasonable quantity, quality, or price).

Lastly, petitioner maintains his position that respondent's additional evidence should not have been considered by the Court in Division.

Respondent's Arguments[59]

Respondent counters that its presentation of additional evidence was rightfully granted by the Court in Division due to the paramount interest of justice; that petitioner did not raise any issue or matter with respect to the Court in Division's allowance of the presentation of additional evidence; that petitioner's arguments are mere rehash of his previous arguments, which were exhaustively passed upon and resolved by the Court in Division in its November 24, 2016 Resolution; that petitioner was given an opportunity to oppose or comment to respondent's Motion to Reopen; and that the November 24, 2016 Resolution was not contested or appealed by petitioner after it was promulgated. APC went on to explain that presentation of additional evidence is allowed even after promulgation, but before finality, of judgment; and paramount interests of justice, which rests entirely on the sound discretion of the Court, allows presentation of evidence upon the original case.

Respondent insists that it has clearly established, by sufficient testimonial and documentary evidence, that the imported Jet A-1 fuel were actually used for its transport operations. It avers that *(1)* it presented the testimonies of three (3) witnesses who all testified that the shipments of Jet A-1 fuel were imported for its domestic operations, with no contest from petitioner's counsel during the cross-examinations; *(2)* it presented several corroborating documentary evidence to support the testimony of witnesses – certifications from the ATO, indorsements by the Department of Finance (DOF), all certifying that the imported Jet A-1 fuel

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[59] See respondent's arguments in its Comment/Opposition (To CIR's Petition for Review dated 24 May 2019); *Rollo*, pp. 55-69.

is necessary or incidental for the operations of APC, and the ATRIGs, which state that it will be used exclusively for daily domestic flight operations.

Respondent added that in several cases involving the issue of exemption from taxes under ***PD No. 1590***, the CTA found the ATRIGs sufficient to establish that the importations were used by the taxpayer for its transport and non-transport operations.

Moreover, it counters that the testimonies and proofs are not self-serving, as it is evident that the ATRIGs were prepared and issued by petitioner himself; it explains that self-serving statements are those made by a party out of court advocating his own interest, they do not include a party's testimony as a witness in court. As to the case cited by petitioner - ***Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs***, this was already amended on May 8, 2017 with the Court in Division giving substance and value to the ATRIGs, ATO Certifications, and First Endorsements. Moreover, considering that respondent's witnesses were all presented under oath and petitioner had the full opportunity to cross-examine, there is no basis to disregard their testimonies.

APC asserts that petitioner's contention regarding the ATO Certifications is misplaced for the following reasons: *(1)* the validity and sufficiency of the ATO Certifications were all upheld by the DOF and were deemed to be sufficient for purposes of tax exemption. Moreover, as testified to by Atty. John Voltaire A. Almeda, the DOF ruled that the Department of Transportation and Communications (DOTC) and its attached agencies, the CAB and the ATO, are the offices that should certify as to the availability or non-availability of Jet A-1 fuel in the local market; and *(2)* the functions of CAAP in its website does not state that it is precluded from issuing the subject certifications. In fact, based on its Charter, "navigational facilities" which include aviation fuel are within its authority as the specific agency in-charge of "technical and operational phase of civil aviation matters." Accordingly, aviation fuel and oil are aviation fuel matters.

Respondent likewise posits that nowhere in ***RA No. 7638*** does it state that any or all the powers and duties are exclusive to DOE or pertain specifically to navigational matters, such as aviation fuel and oil.

Lastly, APC avers that its presentation of additional evidence was rightfully granted by the Court in Division due to the paramount interest of justice.

The Ruling of the Court En Banc

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated April 29, 2019. The latter was allegedly received by petitioner CIR on May 3, 2019. In accordance with the abovementioned provisions of the RRCTA, petitioner had until May 18, 2019 within which to file its petition.

However, on May 17, 2019, petitioner CIR filed a Motion for Extension of Time to file Petition for Review which was granted by this Court on May 21, 2019, which gave petitioner additional fifteen (15) days or until June 2, 2019 to file the instant petition. Thus, the filing of the instant Petition for Review on May 28, 2019 was on time.

Petitioner is estopped from questioning the Court in Division's Resolution dated November 24, 2016

Petitioner faulted the Court in Division when it granted respondent's Motion to Reopen under Resolution dated November 24, 2016 where the latter was allowed to adduce additional evidence of its claim for refund.

Petitioner should be aware that he is already barred from questioning said Resolution of the Court in Division because of his own actuation.

The records of the case reveal that petitioner did not assail the aforesaid resolution and more so, he actively participated during respondent's presentation of additional evidence and did not file any comment or objection to the formal offer of said additional evidence. Thus, he is already estopped from questioning said resolution.

In *ABS-CBN Supervisors Employee Union Members v. ABS-CBN Broadcasting Corp., et al.*[60], citing the case of *Alfredo Marquez, doing business under the name and style of Little Folks Snack Mobile v. Secretary of Labor, et al.*[61], the Supreme Court explains when a party is estopped from questioning a court's action, to wit:

> "... In *Alfredo Marquez vs. Secretary of Labor*, the Court said:
>
> > "xxx The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction."
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> What is more, it was only when the public respondents issued the Order adverse to them that the petitioners raised the question for the first time before this Court. Obviously, it is a patent afterthought which must be abhorred.

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[60] G.R. No. 106518, March 11, 1999.
[61] G.R. No. 80685, March 16, 1989.

In the instant case, petitioner only assailed the action of the Court in Division as to the reopening of the case and admission of the additional evidence when the assailed Amended Decision was promulgated and favored the respondent's claim. Hence, it is really an afterthought which the highest court cited that must be abhorred.

Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter.[62]

Respondent had proven its claim for refund by the required quantum of evidence

The records of the case shall bear that respondent had proven that the imported Jet A-1 aviation fuel was used for its domestic flight operations.

The ATRIGs, together with the following pieces of evidence offered by respondent and subsequently admitted by the Court in Division, support the findings that the imported Jet A-1 aviation fuel was used by respondent in its domestic operations, to wit:

Exhibit	**Description**	**Purpose**
DDD	Final Report of the Independent Certified Public Accountant, Ms. Myra Dabalos	To prove, among others, the relation of the amount of specific taxes paid by petitioner from February 16, 2007 to July 31, 2007 to its importation of Jet A-1 **used in its domestic airline operations**.
EEE	Summary of Excise Tax Payments	
FFF	Comparison of Quantities Based on Supporting Surveyor's Certificates of Quantity, Bill of Lading, Authority Release Imported Goods or Import Entry Declaration Against Quantity Used in the Computation of Specific Tax Paid	

[62] *Ventura O. Ducat v. The Court of Appeals, et al.*, G.R. No. 119652, January 20, 2000 and *Ventura O. Ducat v. Sheriff Rolando D. Carpio*, A.M. NO. P-00-1358. January 20, 2000.

The Final Report of ICPA, Myra Dabalos, categorically states that:

> **"Procedures and Findings:**
>
> To establish the propriety of the Petitioner's (Respondent) Claim for refund/TCC pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, we performed the following procedures:
>
> **A. Verification of the Propriety of the Amount of Specific Taxes Representing Payments Made by the Petitioner** (Respondent) **on its Importation of Aviation Turbo Jet Fuel or Jet A-1 <u>Used in its Domestic Airline Operations Being Claimed for Refund/Tax Credit and Supporting Documents</u>**
>
> xxx
>
> **B. Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 <u>Used in its Domestic Airline Operations Being Claimed for Refund/Tax Credit</u> and the Cost of Domestic Purchases of Aviation Turbo Jet Fuel Using the Price Quotations issued by Local Oil Companies (i.e., Petron Corporation).**"[63] (*Underscoring supplied*)

In *Commissioner of Internal Revenue v. Philippines Airlines Inc. and Commissioner of Customs v. Philippine Airlines, Inc.*[64], where the sufficiency of ATRIGs was the same issue for purposes of proving that the imported Jet A-1 fuel was used for domestic flight operation, this Court ruled:

> A claim for tax refund necessitates only the preponderance of evidence threshold. Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.
>
> It must be emphasized that once the requirements laid down by law have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party. It is then the turn of the CIR and the COC to disprove PAL's claim by presenting contrary evidence.

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[63] Exhibit DDD.
[64] CTA EB Nos. 1752 & 1756 (CTA Case No. 8143), May 10, 2019.

> The pieces of evidence, i.e., **ATRIGs, testimony and final report of the Independent Certified Public Accountant (ICPA), presented by PAL sufficiently show that it actually used the imported Jet A-1 fuel in its domestic operations. The burden of evidence to dispute such fact has thereby been shifted to the CIR and the COC albeit, sorely, such burden - - they failed to discharge.**
>
> Further, perusal of the records show that in PAL's Petition for Review filed with the Court in Division, it alleged in paragraph 17 that "Section 13 of PO 1590, as amended by LOI 1483, provides for the tax exemption of PAL on its importation of aviation fuel for use in its domestic operations". PAL, thus, prayed that the Court declare that under its franchise, it is exempt from specific tax on its importations on various dates of Jet A-1 fuel for use in its domestic operations, and therefore entitled to refund of or issuance of a tax credit certificate in the total amount of P302,012,195.86.
>
> The parties and the Court in Division were confined to the issues joined from the averments of the Petition for Review and the Answer. In their Answers filed with the Court in Division, the CIR and the COC denied paragraph 17 for the reasons stated in the respective Special and Affirmative Defenses. **Nowhere in their Answers, specifically in their Specific and Affirmative Defenses, did the CIR or the COC raised as a defense that PAL is not entitled to refund because it did not actually use the imported Jet A-1 fuel in its operations**. Considering that neither the CIR nor the COC raised the issue on actual use of the imported Jet A-1 fuel in their Answers, specifically in their Special and Affirmative Defenses, there was no joinder of issue on this matter. Thus, such issue may not ever be considered as disputed. (*Additional boldfacing supplied*)

In the present case, a close scrutiny of petitioner's Answer reveals that there is nothing therein which shows that the defense that respondent is not entitled to refund as it did not actually use imported Jet A-1 aviation fuel for domestic operations was raised. As in the aforecited *Philippine Airlines, Inc. consolidated cases*, in view of petitioner's failure to raise the defense on the actual use of the imported Jet A-1 aviation fuel in his Answer, specifically in the Special and Affirmative Defenses, there was also no joinder of issue on this matter. Hence, such issue cannot be considered as disputed.

Further, the issue on the actual use of the imported Jet A-1 aviation fuel was raised for the first time by petitioner in his Motion for Reconsideration of the Court's in Division's Amended Decision dated November 8, 2018. Settled is the rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at the late stage. Basic considerations of fairness and due process impel this rule. Any issues raised for the first time on appeal is not allowed as pronounced in the case of *Chinatrust (Phils.) Commercial Bank v. Philip Turner*[65], to wit:

> Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.
>
> In Philippine Ports Authority v. City of Iloilo:
>
>> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process. (Citations omitted)
>
> There is more reason for a reviewing court to refrain from resolving motu proprio an issue that was not even raised by a party. This Court has previously declared that:
>
>> "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. (Citations omitted)

Also, in *Development Bank of the Philippines v. West Negros College, Inc.*[66], the Supreme Court ruled that courts are

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[65] G.R. No. 191458, July 03, 2017.
[66] G.R. No. 152359, May 21, 2004.

precluded to tackle issues taken up only for the first time in the motion for reconsideration, *viz*:

> "These questions are largely factual in nature and beyond the province of this Court to determine, not being a trier of facts. Moreover, **it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration** or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors. (*Emphasis supplied*)

Thus, this Court is precluded from entertaining the issue on the actual use of the imported Jet A-1 aviation fuel which was only raised for the first time by petitioner in his Motion for Reconsideration of the Court's in Division's Amended Decision dated November 8, 2018.

As to the sufficiency of ATO Certificates in proving that the imported Jet A-1 aviation fuel was not locally available in reasonable quantity, quality or price, the case of *Commissioner of Customs v. Air Philippines Corporation*[67], which involves same facts and issues but with different taxable year, is controlling:

> "Significantly, respondent's subject importations of Jet A-1 fuel were supported by Certifications issued by the Air Transportation Office (ATO) to the effect that the imported Jet A-1 aviation fuel were not locally available in reasonable quantity, quality and price and it was necessary/incidental for the business operation of respondent. These ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court, which provides:
>
> > SEC. 44. *Entries in official records*. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.
>
> The ATO Certifications were issued by the Air Transportation Office or ATO, which was replaced by the Civil Aviation Authority of the Philippines (CAAP) under Republic Act (RA) No. 9497. It had the competence to issue

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[67] CTA EB Nos. 1704 & 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566), May 2, 2019.

certifications pertaining to the availability of supply of aviation fuel. ATO's authority to issue certifications was in line with its general powers under Section 32 of its charter, RA No. 776, which reads as follows:

> SECTION 32. *Powers and duties of the Administrator.* - Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:
>
> (1) To carry out the purposes and policies established in this Act; to enforce the provisions of, the rules and regulations issued in pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
>
> xxx xxx xxx
>
> (21) **To cooperate, assist and coordinate with any research and technical studies on** design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances and **air navigation facilities including aircraft fuel and oil**; Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. (Boldfacing supplied)

The foregoing mandate negates the CIR's contention that only the DOE could best determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 aviation fuel."

Considering the mandated functions of the ATO, it certainly had the means of knowing the facts stated in the subject ATO Certifications. Such being the case, the ATO Certifications must be given weight under the Section 44, Rule 130 of the Rules of Court.

With the said ATO Certifications, respondent has shown compliance with the third requisite in granting tax exemption, i.e., that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

Thus, in view of respondent's compliance with all the requirements to be entitled to refund of excise taxes on imported Jet A-1 aviation fuel, the Court in Division in the assailed Amended Decision had correctly ordered petitioner to refund to respondent the aggregate amount of Php73,769,349.40, representing specific taxes paid under protest corresponding to its importation of Jet A-1 aviation fuel for its domestic flight operations covering the period of January to July 2007.

WHEREFORE, the instant Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED**. Accordingly, the Amended Decision dated November 8, 2018 and the Resolution dated April 29, 2019 promulgated by the CTA Special Third Division is **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(with dissenting opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA *EB* NO. 2064
(CTA Case Nos. 7872, 7883, 7922, 7929, and 7952)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 29 2020 10:48 a.m.

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent from the Decision penned by my honorable colleague, Associate Justice Catherine T. Manahan, denying the present Petition for Review as it is the undersigned's opinion that the Court in Division erred in granting respondent's Motion to Reopen Trial.

In the Decision[1] promulgated on 1 April 2016, respondent's Petitions for Review were denied for insufficiency of evidence.[2]

As a result, respondent filed its Motion for Reconsideration of the Decision and Motion to Reopen the Case for Presentation of Evidence[3] on 3 May 2016. In response, petitioner filed its Opposition (To Motion for Reconsideration of the Decision and Motion to Reopen the Case for

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[1] See Decision; Records, Vol. 4, pp. 1675-1708.
[2] See Dispositive Portion of the Decision; Records, Vol. 4, p. 1707.
[3] Records, Vol. 4, pp. 1709-1734.

Presentation of Evidence)[4] on 11 July 2016; while the Commissioner of Customs filed, by registered mail on 11 July 2016, his Comment (To Petitioner's Motion for Reconsideration, etc. dated 02 May 2016).[5]

On 24 November 2016, the Court in Division resolved to grant respondent's prayer to reopen the case for reception of additional evidence and held respondent's Motion for Reconsideration in abeyance.[6] Thereafter, respondent was able to provide additional documentary evidence and witnesses.

The assailed Amended Decision[7] was promulgated on 8 November 2018, granting respondent's Motion for Reconsideration of the Decision.[8] Accordingly, the Decision dated 1 April 2016 was amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the Petitions for Review are **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of P[hp]73,769,349.40, representing specific taxes paid under protest corresponding to its importation of Jet A-1 aviation fuel for its domestic flight operations covering the period of January to July 2007.
>
> **SO ORDERED.**"[9]

Aggrieved, petitioner filed his Motion for Reconsideration (Re: Amended Decision Promulgated on 08 November 2018)[10] on 3 December 2018, and the COC filed, by registered mail on 3 December 2018, his Motion for Reconsideration (of the Amended Decision dated November 8, 2018).[11] In response and after being granted an extension by the Court in Division,[12] respondent filed its Comment/Opposition (To CIR's Motion for Reconsideration dated 03 December 2018)[13] and Comment/Opposition (To COC's Motion for Reconsideration dated 03 December 2018)[14] on 17 January 2019 and 4 February 2019, respectively.

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[4] Records, Vol. 4, pp. 1787-1797.
[5] Records, Vol. 4, pp. 1798-1802.
[6] See November 24, 2016 Resolution of the Court in Division; Records, Vol. 4, pp. 1826-1830.
[7] Records, Vol. 6, pp. 2781-2799.
[8] See Dispositive Portion of the Amended Decision; Records, Vol. 6, p. 2798.
[9] See Dispositive Portion of the Amended Decision; Records, Vol. 6, p. 2798; emphases retained.
[10] Records, Vol. 6, pp. 2800-2815.
[11] Records, Vol. 6, pp. 2816-2837.
[12] See 14 January 2019 and 19 February 2019 Resolutions; Records, Vol. 6, pp. 2847 and 2886.
[13] Records, Vol. 6, pp. 2848-2865.
[14] Records, Vol. 6, pp. 2870-2884.

On 29 April 2019, the Court in Division promulgated the assailed Resolution[15] whereby it denied petitioner's and COC's Motions for Reconsideration.

The relevant rule on New Trial and Reconsideration is ***Section 1, Rule 37 of the Revised Rules of Court***, *viz.*:

> "RULE 37
> New Trial or Reconsideration
>
> SECTION 1. Grounds of and period for filing motion for new trial or reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (1a)"

On the other hand, reopening of trial can be found in ***Section 24, Rule 119 of the Revised Rules of Criminal Procedure***, which reads as follows:

> "SECTION 24. Reopening. — At any time before finality of the judgment of conviction, the judge may, motu proprio or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. (n)"

In ***Agulto v. Court of Appeals, et. al.***,[16] the Supreme Court differentiated a Motion for New Trial from a Motion to Reopen Trial, as follows:

> "A distinction should be made between a Motion for New Trial and a Motion to Reopen Trial.

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[15] Records, Vol. 6, pp. 2888-2892.
[16] G.R. No. L-52728, 17 January 1990.

> A Motion for New Trial may be filed after judgment but within the period for perfecting an appeal (Sec. 1, Rule 37, Rules of Court).
>
> A Motion to Reopen Trial may be presented only after either or both parties have formally offered and closed their evidence, but before judgment. There is no specific provision in the Rules of Court for motions to reopen trial. It is albeit a recognized procedural recourse or devise, deriving validity and acceptance from long established usage. The reopening of a case for the reception of further evidence before judgment is not the granting of a new trial (Alegre vs. Reyes, 161 SCRA 226).
>
> A motion for new trial in civil or criminal actions may be applied for and granted only upon specific, well-defined grounds set forth respectively in Rules 37 (Section 1) and 121 (Section 2). On the other hand, the reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown."

After judgment is rendered, the aggrieved party may only file a Motion for Reconsideration or a Motion for New Trial, and the latter may only be grounded on fraud, accident, mistake or excusable negligence, or newly discovered evidence. A Motion to Reopen Trial is not an available remedy under the ***Revised Rules of Civil Procedure*** as it can only be found in the ***Revised Rules of Criminal Procedure***, which is inapplicable to the case at bar. While it can be argued that Motions to Reopen Trial are granted in practice, despite the fact that no specific provision exists in the Rules, it should be filed before judgment is rendered.

In granting the Motion to Reopen Trial, the Court in Division's basis was the interest of justice and the ***Revised Rules of Criminal Procedure***, as follows:

> "In the interest of justice and if only to give petitioner the final opportunity to prove its claim that it is entitled to the refund/tax credit sought.
>
> This alternative remedy availed of by petitioner was explained by the High Court in the case of *Rene Cabarles vs. Hon. Judge Bonifacio Sanz Maceda, et. al.*, in this wise:
>
> > A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and

> acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
>
> xxx xxx xxx
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice. This remedy of reopening a case was meant to prevent a miscarriage of justice."

As stated above, however, the Rules on Criminal Procedure are inapplicable to the instant case.

It must be noted that respondent filed its Motion for Reconsideration of the Decision and Motion to Reopen the Case for Presentation of Evidence on 3 May 2016, after the original Decision was promulgated on 1 April 2016. Therefore, the Motion to Reopen should have been denied outright by the Court in Division for being filed after judgment was rendered.

Moreover, while the Motion was entitled Motion to Reopen, it should be considered as a Motion for New Trial since respondent was seeking to present additional evidence after judgment. However, respondent stated no basis for its Motion. It only provided in its Prayer that:

> "In the alternative, Petitioner prays that this Honorable Court reopen the proceedings for presentation of further evidence on the matter of the consumption of the subject fuel importations, and such other matters as directed by this Honorable Court, and that this Honorable Court render judgment based on such evidence as well."

Again, there having been no basis for the Motion for New Trial, it should have been denied outright by the Court in Division.

Assuming for the sake of argument that the ***Revised Rules of Criminal Procedure*** applies, reopening is only allowed under the following circumstances and limitations: *(1)* the reopening must be before the finality of a judgment of conviction; *(2)* the order is issued by the judge on his own initiative or upon motion; *(3)* the order is issued only after a hearing is conducted; *(4)* the order intends to prevent a miscarriage of justice; and *(5)* the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.[17]

On top of the fact that the Motion was filed after judgment, it must be stressed that no hearing was conducted before the 24 November 2016 Resolution was promulgated granting the Motion to Reopen, and the presentation of additional evidence was not terminated within thirty (30) days from 24 November 2016. In fact, it went on until 11 September 2017 when petitioner presented Majella A. Ubaldo and Edwin J. Segundo as its witnesses.[18] It was only on 2 October 2017 that petitioner filed its Formal Offer of Evidence.[19] Clearly, the presentation of evidence went well beyond the thirty (30)-day limit.

Respondent was thus allowed to present piecemeal evidence, which is prejudicial to petitioner. In ***Sindophil, Inc. v. Republic of the Philippines***,[20] the Supreme Court, discussed the order of trial before diving into the discussion on piecemeal evidence, to wit:

> "SECTION 5. Order of trial. — Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> (a) The plaintiff shall adduce evidence in support of his complaint;
>
> (b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;
>
> (c) The third-party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;
>
> (d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;

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[17] *Rene Cabarles v. Hon. Judge Bonifacio Sanz Maceda, et. al.*, G.R. NO. 161330, 20 February 2007.
[18] See Minutes of Hearing; Records, Vol. 6, p. 2650.
[19] Records, Vol. 6, pp. 2653-2662.
[20] G.R. No. 204594, 7 November 2018.

(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (1a, R30)"

Citing ***Republic v. Sandiganbayan***,[21] the Highest Tribunal explained ***Rule 30, Section 5*** in the following manner:

> "Under this rule, <u>a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.</u>
>
> <u>A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence</u>; but where the evidence is rebuttal in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of newly discovered evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party may avail of the remedy of certiorari."

Premises considered, I vote for the GRANTING of the Petition to reverse and set aside the Amended Decision dated 8 November 2018 and the Resolution dated 29 April 2019 promulgated by the Court in Division and the Affirmance of the Court in Division's Decision promulgated on 1 April 2016.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[21] G.R. No. 152375, 16 December 2011