REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB No. 1299** (CTA Case No. 8130)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	***Promulgated:*** APR 27 2017 3:35p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Of the Honorable Court's Decision dated 3 October 2016)"** filed on November 2, 2016, with respondent Commissioner of Internal Revenue's **"OPPOSITION (Re: Motion for Reconsideration)"** filed on December 20, 2016, and respondent Commissioner of Customs' **"COMMENT (On Petitioner's Motion for Reconsideration)"** filed on January 9, 2017.

In its *Motion*, petitioner prays that this Court's Decision dated October 3, 2016 be set aside. The dispositive portion thereof reads:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated December 1, 2014 and the

assailed Resolution dated March 20, 2015 are hereby **AFFIRMED.**

SO ORDERED."

Additionally, petitioner raises the following arguments in support of its *Motion*, to wit:

1. In the case of *Republic of the Philippines vs. Philippine Airlines,*[1] the Supreme Court affirmed the findings that PAL has complied with the conditions set forth by Presidential Decree (PD) No. 1590. Similar to that case, petitioner offered evidence which should have been deemed sufficient to show that the imported articles were not locally available in reasonable quantity, quality, or price.

2. Based on the definitions cited by respondent Commissioner of Internal Revenue (CIR), it appears that a reasonable price is decided by a buyer and a seller and not by any third party. It therefore follows that a reasonable price is jointly decided by PAL as the buyer, and its supplier as the seller, and not by the respondent CIR, respondent Commissioner of Customs (COC) or this Court.

3. Since the respondent CIR's definition of what constitutes a reasonable price involves business decisions, the principle of business judgment is applicable. According to the business judgment rule, the courts are barred from intruding into the business judgments of the corporation, when the same are made in good faith. Moreover, the cited definition for what is a reasonable price involve profits and margins, which are not applicable in this case as it is established that petitioner uses the imported articles for its transport operations and other activities incidental thereto.

4. The issue in *Rivera vs. Solidbank*[2] involves a prohibition or a restraint of trade, while *Republic vs. Manila Electric Company*[3] involves the regulation of rates charged by public utilities.

5. There was an admission by respondent CIR that the cost of importing the commissary supplies is cheaper than purchasing them locally in its Memorandum dated April 25,

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[1] G.R. Nos. 209353-54, July 6, 2015.
[2] G.R. No. 163269, April 19, 2006.
[3] G.R. No. 141314, November 15, 2002.

2015.

On the other hand, respondent CIR counters in his *Opposition*, that:

1. Petitioner failed to prove that these alleged commissary supplies are not locally available in reasonable quantity, quality and price. No independent and credible evidence was presented to prove this matter. It is highly self-serving for petitioner's very own employee, Ms. Cheryl Capinpin to certify that the imported products are not locally available in reasonable quantity, quality and price. Moreover, the study on the prices was not comprehensive in nature.

2. It is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is fatal to its claim for tax refund. It is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

For his part, respondent COC contends in his *Comment*, that:

1. Petitioner failed to satisfactorily establish that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and hence, there is non-compliance with the third requisite for tax exemption under its franchise.

2. Each case must be decided on its own merits and on the probative value of the evidence presented, which in this case, is totally deficient. Thus, the evidence presented by petitioner in CTA Case Nos. 7665 and 7113 cannot be accorded with similar import and hence, probative value, in this case.

3. A reading of the rulings in CTA EB Case Nos. 920 and 922, shows that it did not contain a discussion on the third requisite for petitioner's tax exemption under its franchise. On the other hand, the core issue resolved therein was whether Sections 6 and 10 of Republic Act No. 9334 repealed Section 13 of petitioner's franchise.

4. The case of *Republic vs. PAL* did not fully discuss the existence of the third requisite for exemption, but rather

merely resolved this issue based on the principle that petitioner's non-compliance with the conditions set by Section 13 of PD No. 1590 for the imported articles to be exempt from excise tax involved "actual determinations that are best left to the CTA."

5. The testimony of Ms. Cheryl Capinpin and petitioner's documentary evidence, coupled with petitioner's admission that it did not obtain prices from other local suppliers of liquors and wines and none at all on cigarettes, as well as the failure to substantiate its claim that it exerted efforts to secure said price lists from local suppliers, were inadequate to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and insufficient to establish petitioner's claim for a tax refund.

6. Anent the issue of reasonableness, suffice it to state that PD No. 1590 merely requires that the imported articles must not be locally available at a "reasonable" price. Thus, had it been the intention of the legislature to grant tax exemption to petitioner whenever there is no locally available liquors, wines and cigarettes at a lower price, just as petitioner concluded, albeit wrongly, it could have so easily and specifically provided in PD No. 1590. However, as explained above, PD No. 1590 merely provides for "reasonable" and not lower price. It is thus error for petitioner to equate "lower" price with "reasonable" price.

7. Petitioner failed to adduce sufficient evidence to support its claim that liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, which is a condition precedent before it can be entitled to any tax privilege on its importations of commissary and catering supplies.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion* lacks merit.

After a careful examination and consideration of petitioner's *Motion for Reconsideration*, it is noted that the argument concerning the supposed admission by respondent CIR that the cost of importing the commissary supplies is cheaper than purchasing them locally has already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor to repeat the disquisitions made therein in resolving the instant motion. Suffice it to state that contrary to petitioner's contention, there was no judicial admission in this case.

As for the other arguments, We shall address them accordingly.

Petitioner erroneously relies on the ruling in *Republic of the Philippines vs. Philippine Airlines*[4] in arguing that it had already presented sufficient evidence to prove that the subject articles were not locally available in reasonable quantity, quality, or price.

A perusal of the said case reveals that it does not provide a standard for determining the sufficiency of evidence to prove compliance with the conditions set by Section 13 of PD No. 1590. On the contrary, the Supreme Court simply noted that these are factual determinations that are best left to this Court.

Thus, contrary to petitioner's assertions, there exists no categorical ruling that petitioner is automatically entitled to a refund under Section 13 of PD No. 1590, as each case must be decided on the basis of its own merits and on the probative value of the evidence presented.

After all, it is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, this Court, as a court of record, is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.[5]

Unfortunately for the petitioner, the inadequacy of the evidence it presented in this case fails to advance its cause. As previously discussed, aside from one price list from a single supplier; non-specific and undocumented allegations that it made efforts to secure price lists from other suppliers; and a sweeping conclusion that no local supplier can cope with its demand or provide a reasonable price therefore, petitioner failed to present any other evidence to support its cause.

Finally, petitioner argues that reasonable price should be jointly decided by the PAL, as the buyer, and its supplier, as seller, and not

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[4] G.R. Nos. 209353-54, July 6, 2015.

[5] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179356, December 14, 2009.

by the respondent CIR or respondent COC, nor by this Court. In arriving at this conclusion, petitioner cites a portion of the respondent CIR's Memorandum dated April 25, 2014, to wit:

> "xxx. Black's law Dictionary defines 'reasonable price' as the 'decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit. **A reasonable price is not necessarily the lowest price (**emphasis and underscoring supplied). The Business Dictionary defines the same as 'high enough to cover a seller's cost and a reasonable margin, but not high enough for the seller to realize monopolistic profit.'"

Petitioner's argument is misplaced.

The issue here is not who should determine what a reasonable price is between a seller and a buyer.

It must be remembered that, in the assailed Decision, the Court *En Banc* ruled, in effect, that petitioner failed to prove that the imported liquors, wines, and cigarettes **were not locally available in reasonable quantity, quality or price.**

Clearly therefore, the emphasis in the resolution of the foregoing issue does not center on the "reasonableness of the price" of the imported liquors, wines, and cigarettes in question, but more on the "availability or non-availability" thereof in the local market in reasonable quantity, quality or price. A determination of the "reasonable price" of the imported liquors, wines and cigarettes will not answer or refute the aforementioned findings of the Court *En Banc.*

Thus, the Court finds no justifiable ground to set aside the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With due respect, I maintain my Dissenting Opinion dated 03 October 2016)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I agree with the Dissenting Opinion of Presiding Justice Del Rosario)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice