REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Petitioners,

-versus-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA *EB* No. 1537
(CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851)

x- x

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Petitioners,

-versus-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA *EB* No. 1550
(CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 21 2018 11:45 a.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* are Petitions for Review seeking to annul and set aside the Court in Division's Decision dated June 10, 2016, and Resolution dated October 4, 2016. The assailed Decision and Resolution granted Air Philippines' claim for refund/issuance of a tax credit certificate (TCC) amounting to Php94,689,001.50, which represent excise taxes paid on importations of Jet A-1 fuel used in domestic operations for the period March to November 2006.

The Facts

Petitioner Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), which is a government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of Php3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code, as amended (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[1]

Petitioner Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise tax of Php3.67 per liter on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC, delegated and authorized by petitioner CIR through an Authority to Release Imported Goods (ATRIG) duly issued by the BOC and addressed to the BIR.[2]

Respondent Air Philippines Corporation (APC) is a corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[3]

For the period March to November 2006, respondent was assessed for specific taxes on its importations of Jet A-1 fuel used for its domestic operations.[4] Said assessments were paid under protest by respondent APC, and became the subject of seven (7) claims for refund filed before the Court of Tax Appeals (CTA) in division,[5] docketed as follows:

CTA Case No.	Date of Payment Under Protest	Amount of Specific Tax Involved
7767	April 20, 2006	Php 11,810,005.00
7791	June 7, 2006	14,830,382.00
7807	July 7, 2006	14,804,299.00
7816	August 4, 2006	11,803,527.00
7837	October 6, 2006	11,835,328.00
7839	October 12, 2006	11,887,313.50
7851	December 14, 2006	17,718,147.00

[1] *Rollo,* CTA EB No. 1537, Decision dated June 10, 2016, pp. 54-55.
[2] *Rollo,* Decision dated June 10, 2016, p. 55.
[3] *Rollo,* Decision dated June 10, 2016, p. 54.
[4] *Rollo,* Decision dated June 10, 2016, p. 59.
[5] *Rollo,* Decision dated June 10, 2016, p. 60.

After trial, the Court in Division granted respondent APC's petitions and ordered the refund/issuance of tax credit certificate (TCC), as follows:

> WHEREFORE, the Petitions for Review in CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839, & 7851 are hereby GRANTED. Respondent Commissioner of Internal Revenue is hereby ORDERED to refund or issue a tax credit certificate in favor of petitioner Air Philippines Corporation in the amount of NINETY-FOUR MILLION SIX HUNDRED EIGHTY-NINE THOUSAND ONE AND 50/100 PESOS (Php94,689,001.50) representing the excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period March to November 2006.
>
> SO ORDERED.[6]

The Court in Division denied the motions for reconsideration filed by the CIR and COC in its Resolution dated October 4, 2016, as follows:

> WHEREFORE, premises considered, the COC's MR filed on July 4, 2016 and the CIR's MR filed on July 7, 2016 are hereby DENIED for lack of merit.
>
> SO ORDERED.[7]

On October 24, 2016, petitioner CIR filed his Petition for Review[8] docketed as CTA EB No. 1537, while petitioner COC filed his Petition for Review[9] docketed as CTA EB No. 1550 on November 8, 2016. Both petitions argued against the grant of refund ordered by the CTA Division.

The Court *En Banc* consolidated the cases considering that the same are appeals from the Decision dated June 10, 2016 and Resolution dated October 4, 2016 rendered in CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839, and 7851.[10]

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[6] *Rollo*, Decision dated June 10, 2016, p. 107.
[7] *Rollo*, Resolution dated October 4, 2016, p. 123.
[8] *Rollo*, pp. 1-52.
[9] *Rollo*, CTA EB No. 1550, pp. 1-51.
[10] *Rollo*, CTA EB No. 1537, Minute Resolution dated November 11, 2016, p. 132.

Respondent APC, after notice,[11] filed its Consolidated Comment (to CIR's Petition for Review dated 20 October 2016 and COC's Petition for Review dated 01 November 2016)[12] on January 18, 2017 which was within the extended period granted.[13]

Considering the submission of respondent APC's Comment, the Court *En Banc* ordered the parties to submit their respective memoranda.[14]

On March 1, 2017, petitioner CIR filed his Manifestation that he is adopting the arguments raised in the Petition for Review filed on October 24, 2016 as his Memorandum.[15] Respondent APC filed its Memorandum[16] on May 2, 2017, within the extended period granted.[17]

On April 17, 2017, the Court received petitioner COC's Motion for Extension of Time to File Memorandum[18] sent through registered mail on March 31, 2017. Respondent COC prayed for an additional twenty-five (25) days from March 31, 2017, or until April 25, 2017 to file his memorandum, which was granted.[19] On May 11, 2017, the Court received petitioner COC's Motion for Extension,[20] sent through registered mail on April 25, 2017, and a third Motion for Extension,[21] also sent through registered mail on May 2, 2017. The said motions for extension prayed for an additional five (5) days from said date, or until April 30, 2017; and a subsequent extension of another ten (10) days or until May 10, 2017 within which to file his memorandum.

On June 2, 2017, the Court denied petitioner COC's Motions for Extension filed through registered mail on April 25, 2017 and May 2, 2017.[22] On June 16, 2017, the Court declared petitioner COC's Motion to Admit Attached

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[11] *Rollo*, Resolution dated December 16, 2016, pp. 134-135.
[12] *Rollo*, pp. 142-166.
[13] *Rollo*, Motion for Extension filed on January 12, 2017, pp. 136-140; Minute Resolution dated January 12, 2017, pp. 141 to 141-A.
[14] *Rollo*, Resolution dated February 13, 2017, pp. 168-169.
[15] *Rollo*, pp. 170-172.
[16] *Rollo*, pp. 190-229.
[17] *Rollo*, Motion for Extension of Time to File Memorandum, pp. 177-182; in relation to Minute Resolution dated March 31, 2017, p. 183.
[18] *Rollo*, pp. 184-187.
[19] *Rollo*, Minute Resolution dated April 21, 2017, p. 189.
[20] *Rollo*, pp. 230-233.
[21] *Rollo*, pp. 235-239.
[22] *Rollo*, Resolution dated June 2, 2017, pp. 274-277.

Memorandum[23] filed through registered mail on May 10, 2017, as moot and academic considering the denial of the motions for extension of time.[24]

On September 11, 2017, the case was deemed submitted for decision.[25]

Issues

In CTA EB No. 1537, petitioner CIR raised the following issues:

> WHETHER OR NOT THE THIRD DIVISION ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT ITS IMPORTATIONS OF JET A-1 FUEL ARE USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS.
>
> WHETHER OR NOT THE THIRD DIVISION ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT THE IMPORTED ARTICLES WERE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE.[26]

In CTA EB No. 1550, petitioner COC raised the following issue:

> WHETHER AIR PHILIPPINES CORPORATION'S IMPORTATIONS OF JET A-1 FUEL FOR ITS DOMESTIC OPERATIONS FOR THE PERIOD OF MARCH TO NOVEMBER 2006 ARE SUBJECT TO EXCISE TAXES.[27]

CIR's Arguments[28]

The CIR argues that respondent APC failed to prove that the imported Jet A-1 fuel were actually used for its transport and non-transport operations; and, that the Authority to

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[23] *Rollo*, pp. 241-244.
[24] *Rollo*, Resolution dated June 16, 2017, pp. 279-280.
[25] *Rollo*, pp. 291-292.
[26] *Rollo*, Petition for Review (PFR), p. 32.
[27] *Rollo*, CTA EB No. 1550, PFR, p. 7.
[28] *Rollo*, CTA EB No. 1537, PFR, pp. 33-47.

Release Imported Goods (ATRIGs) presented by APC are not sufficient to prove this fact; that the Court in Division erred in relying on the Certifications of the Air Transportation Office (ATO) in ruling that Jet A-1 fuel is not locally available in reasonable quantity, quality or price; and, that it is the Department of Energy (DOE) which is in the best position to determine whether the total supply is enough for total demand. The CIR states that total local available supply of petroleum products in the country is the sum of three components, namely: refinery production, product importation, and inventory; that such includes local production and importations; and, that the supply of Jet A-1 fuel for the years 2001 to 2010 was always higher than the demand. Finally, the CIR states that a reasonable price is not necessarily the lowest price.

COC's Arguments[29]

The COC argues that respondent APC is not exempt from the payment of excise taxes on its importations of Jet A-1 fuel; that respondent APC failed to show that Philippine Airlines (PAL) or any other competitors of respondent is actually enjoying or receiving tax privileges on its importations of Jet A-1 fuel, the *ipso facto* clause provision under its own franchise cannot clearly offer and extend to respondent the alleged exemption from payment of specific taxes on its importations of Jet A-1 fuel; and, that he who claims exemption from taxation must justify his claim by words too plain to be mistaken and too categorical to be misinterpreted.

The COC further argues that respondent APC failed to adduce proof of compliance with the conditions required to avail of tax exemption; specifically, that APC failed to prove that the imported articles are not locally available in reasonable quantity, quality, or price. The COC also states that the testimonies of APC's witnesses: Mr. Edwin J. Segundo and Mr. Jhonathan Chiong, including their presentation of the various ATRIGs, were self-serving.

Finally, the COC states that respondent APC failed to exhaust administrative remedies before seeking judicial intervention; that, the failure of APC to appeal the BIR issuances and rulings to the Secretary of Finance shows that

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[29] *Rollo*, CTA EB No. 1550, PFR, pp. 8-45.

it did not exhaust administrative remedies; that APC also failed to question the Department of Energy (DOE) Certification before the Office of the President; and, that APC's entitlement to the refund is dependent on the invalidation of presumably valid administrative issuances.

Air Philippines' Counter-Arguments[30]

Respondent APC states that the issues raised by both the CIR and the COC are mere rehash of their respective arguments and which have been exhaustively passed upon and resolved by the Court in Division.

As to petitioners' arguments, APC states that it is entitled to the same tax treatment or terms as PAL, whose favorable tax treatment is recognized by the BIR and the Supreme Court; that the basic idea behind the *ipso facto* clause is the principle of fair play or to place both competing groups or entities on equal footing and not to give one an advantage over the other; that, by virtue of the *ipso facto* provision in APC's franchise, all tax privileges and benefits – including jurisprudence interpreting the same – which are granted to and currently enjoyed by PAL, must *ipso facto* apply to APC.

Respondent APC also states that it sufficiently established compliance with the requisites for tax exemption and that the ATRIGs and witnesses' testimonies under oath establish that the imported Jet A-1 fuel were used in domestic flight operations. With respect to whether the imported articles are not locally available in reasonable quantity, quality or price, respondent APC states that the ATO Certifications were properly given weight by the Court in Division; that the 2002 DOE Certification cannot be relied upon because it was declared null and void by the Pasay Regional Trial Court (RTC) and is based on data from years 2001 to 2002 only; that "local available supply" excludes imported products; and, that the local price was completely unreasonable compared to the price of imported fuel.

Finally, respondent APC argues that the primary issue sought to be resolved in the instant cases is its entitlement to a refund of the specific taxes it paid on various importations of

[30] *Rollo*, CTA EB No. 1537, Consolidated Comment (To CIR's Petition for Review dated 20 October 2016 and COC's Petition for Review dated 01 November 2016), pp. 142-163.

Jet A-1 fuel, thus, petitioners' contention of failure to exhaust administrative remedies must fail.

Ruling of the Court

The petitions lack merit.

The Court *En Banc* has jurisdiction over the present petitions.

The Court in Division issued the assailed Resolution, denying the CIR's and COC's respective Motions for Reconsideration, on October 4, 2016. The CIR received said Resolution on October 7, 2016, while the COC received a copy on October 11, 2016. Pursuant to Rule 4, Section 2(a)(1),[31] in relation to Rule 8, Section 3(b)[32] of the Revised Rules of the Court of Tax Appeals (RRCTA), the CIR and the COC had fifteen (15) days from date of receipt of the Resolution or until October 22, 2016 for the CIR, and October 26, 2016 for the COC, within which to file their respective petitions for review.

Considering that October 22, 2016 falls on a Saturday, the CIR timely filed his Petition for Review on October 24, 2016. Hence, the Court *En Banc* acquires jurisdiction.

On the other hand, the COC filed a Motion for Extention (*sic*) of Time to File Petition for Review[33] through registered mail on October 26, 2016, praying for an additional fifteen (15) *om*

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[31] Rule 4 Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, xxx

[32] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
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.

[33] *Rollo*, pp. 127-130.

days from October 26, 2016, or until November 10, 2016 within which to file his petition for review. The COC filed his Petition for Review on November 8, 2016 or within the extended time requested, while the Motion for Extension was received by the Court only on November 9, 2016. The COC's Motion for Extension was deemed granted.[34] Therefore, the Court *En Banc* has jurisdiction.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

Records reveal that, as aptly noted by respondent APC, the arguments raised by the CIR and COC are a mere rehash of their respective arguments before the Court in Division and which have been exhaustively passed upon and resolved by said Court in Division. Nevertheless, the Court *En Banc* will discuss several points raised by the petitioners and respondent.

Respondent APC, like PAL, can enjoy exemption from payment of excise tax on its importations of Jet A-1 fuel pursuant to the ipso facto provision of its franchise.

Respondent APC's franchise, Republic Act No. (RA) 8339,[35] as amended by RA 9215,[36] specifically Section 11 thereof, grants APC the same tax privileges and other favorable terms enjoyed by its competitors, *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 the gross revenues derived by the grantee from its transport operations.

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[34] *Rollo*, p. 132.
[35] An Act Granting Air Philippines Corporation (Air Philippines) A Franchise To Establish, Operate And Maintain Domestic And International Air Transport Services, August 8, 1997.
[36] An Act Amending Republic Act No. 8339, Entitled "An Act Granting Air Philippines Corporation (Air Philippines) A Franchise To Establish, Operate And Maintain Domestic And International Air Transport Services", July 26, 2003.

> 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. (*Underscoring supplied*)

The tax privileges enjoyed by PAL – a competing corporation – are provided for in its franchise, Presidential Decree No. (PD) 1590,[37] as follows:

> 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 nontransport 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: *am*

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[37] An Act Granting A New Franchise to Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.

> xxx xxx xxx
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> (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 from and other articles, supplies, or materials, provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and [non]transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

The status of PAL's tax privileges was discussed in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[38] where the Supreme Court stated:

> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, <u>the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334</u>. xxx xxx xxx
>
> xxx xxx xxx
>
> Any lingering doubt, however, as to <u>the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, *e.g.*, aviation gas</u>, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. xxx xxx xxx (*Underscoring supplied, citations omitted*) cmn

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[38] G.R. Nos. 212536-37, August 27, 2014.

Considering that PAL continues to enjoy the tax benefits under Sec. 13 of PD 1590, by virtue of the *ipso facto* clause in Section 11 of RA 8339, as amended by RA 9215, APC shall also be entitled to the exemption from all taxes due on importations of aviation fuel provided it meets the requirements therefor.

Respondent APC sufficiently proved its entitlement to a refund or issuance of TCC for excise taxes paid on importations of Jet A-1 fuel for the period March to November 2006.

In determining APC's entitlement to the claimed refund, the Court in Division looked at whether APC complied with the following requirements:

1. Payment has been made on its basic corporate income tax or franchise tax, whichever is lower;

2. The aviation fuel imported is for use in its transport and non-transport operations and other activities incidental thereto; and

3. The aviation fuel is not locally available in reasonable quantity, quality, or price.[39]

As to these requisites, petitioners merely assert that respondent failed to prove the second and third requisites.

<u>Second requisite: the imported fuel is used for transport and non-transport operations</u>

Petitioners argue that the ATRIGs and testimonies of respondent's witnesses were self-serving and are not sufficient to prove that the imported Jet A-1 fuel were used in respondent's transport and non-transport operations. *cm*

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[39] *Rollo*, Decision dated June 10, 2016, p. 96.

The Court *En Banc* upholds the Court in Division's conclusion that respondent APC sufficiently proved compliance with this requisite.

The Court in Division gave credence to the testimonies of APC's witnesses, Mr. Edwin J. Segundo and Mr. Jhonathan Chiong, together with the ATRIGs on the importations for the period March to November 2006.[40]

The probative value of ATRIGs was discussed in *Air Philippines Corporation v. Commissioner of Internal Revenue*,[41] which stated:

> More so, in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, the Court has held that ATRIGs are public documents, the authenticity and due execution of the same are already presumed and, thus, are *prima facie* evidence of the facts stated therein pursuant to Section 19(a), Rule 132 of the Rules of Court, to quote:
>
>> "An examination of the ATRIGs presented by petitioner shows that these are public documents pursuant to Section 19(a), Rule 132 of the Rules of Court, and thus, *prima facie* evidence of the facts stated therein
>>
>> xxx xxx xxx
>>
>> The ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGs are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the rules of Court.
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>> xxx xxx xxx
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>> Since ATRIGs are considered public documents, the authenticity and due execution of the same are already presumed. Further, as a public document issued in the performance of a duty by a public officer, the subject ATRIGs are *prima facie* evidence of the facts stated therein

[40] *Rollo*, Decision dated June 10, 2016, p. 98.
[41] CTA Case Nos. 7252, 7362, 7445, 7494, 7517, 7521 and 7566, May 8, 2017.

> pursuant to Section 23 (*sic*), Rule 132 of the Rules of Court, which provides that 'public documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.'
>
> Therefore, in the absence of any clear and sufficient evidence to overcome the above presumptions, the testimonies of petitioner's witnesses and the statement in the ATRIGs, which provides that the shipment (Jet A-1 aviation fuel) will be used exclusively for daily domestic flight operation, are *prima facie* evidence that indeed the subject aviation fuel will be used exclusively in petitioner's flight operations and other activities incidental thereto."

> Moreover, in a long line of PAL cases of similar nature, this Court has consistently given the ATRIGs evidentiary weight as proof that the imported articles, supplies or materials are to be used for transport and non-transport operations and other activities incidental thereto. (*Citations omitted*)

There is no question that ATRIGs provide *prima facie* proof that the imported Jet A-1 fuel are to be used for APC's transport and non-transport operations, and other activities incidental thereto. Considering that petitioners presented no controverting evidence, APC's ATRIGs and testimonies of witnesses have sufficiently proven the second requisite.

<u>Third requisite: the imported fuel is not locally available in reasonable quantity, quality, or price</u>

Petitioners contend that respondent APC failed to prove the third requisite, especially the aspect of reasonable quantity or price. Petitioners state that Court in Division erred in relying on the ATO Certifications as to the non-availability of Jet A-1 fuel locally, since the ATO [now Civil Aviation Authority of the Philippines (CAAP)]; that the 2002 DOE Certification shows there is locally available supply of Jet A-1 fuel; and, that reasonable price is not necessarily the lowest price.

The Court in Division held that the law imposes an alternative, not cumulative, qualification for the determination of whether there is locally available Jet A-1 fuel, *i.e.*, in order for APC to satisfy the third condition, APC must prove that Jet A-1 fuel is not locally available in reasonable quantity, quality, or price. Accordingly, it would suffice to prove even just one qualification.[42] The word "or" signifies that a preference can be made among the presented alternatives. While initially confusing because the phrase is couched in the negative, simply put, as long as APC is able to prove the absence of one condition (either reasonable quantity, quality, or price), the exemption applies. APC is not required to prove the absence of all three conditions.[43] This position was later affirmed by the Court *En Banc* in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[44] promulgated on February 27, 2017.

The Court *En Banc* upholds the Court in Division's findings that respondent APC was able to prove that the Jet A-1 fuel it imported for the period March to November 2006 was not locally available in reasonable price.[45] The Court in Division reasoned:

> To establish the local unavailability of Jet A-1 fuel in reasonable price, APC's witness, Mr. Segundo, testified that for the relevant period, APC made a cost comparison table based on the Mean of Platt's Singapore ("MOPS") price index, the prevailing currency exchange rates, and the Into-Plane Quotations provided by Petron Corporation. Based on the cost comparison table and the relevant supporting documents, the cost of importing Jet A-1 fuel was significantly lower than the price of locally purchased Jet A-1 fuel. Thus, Mr. Segundo concluded, as follows:
>
>> Q: Based on the cost comparable table, what is the conclusion derived?
>>
>> A: The difference in price between the locally available aviation fuel and the cost of imported fuel is SUBSTANTIAL and SIGNIFICANT enough to cause a high dent on the cost of domestic operations of all airlines.

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[42] *Rollo*, Decision dated June 10, 2016, p. 106.
[43] Air Philippines Corporation v. Commissioner of Internal Revenue, CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.
[44] CTA EB Nos. 1308, 1309, & 1311.
[45] *Rollo*, Decision dated June 10, 2016, p. 107.

> Such facts and figures clearly and unmistakably prove that the certification by the DOE that aviation fuel for use in domestic operation of domestic airline companies are locally available for a reasonable price is NOT correct.
>
> The Court-commissioned independent Certified Public Accountant (ICPA) confirmed Mr. Segundo's conclusion based on her independent study of the relevant supporting documents.
>
> After a careful review of the evidence presented by petitioner, the Court holds that APC was able to prove that it satisfied the third condition for exemption from excise taxes on its importations of Jet A-1 fuel for the period March to November 2006. Petitioner [APC] presented sufficient evidence on the non-availability locally of Jet A-1 fuel in reasonable price.[46] (*Citations omitted*)

The Court in Division, upon reconsideration, elaborated on the issue of reasonable price, as follows:

> In this regard, the Court affirms that petitioner [APC] was able to establish that the cost of importing Jet A-1 fuel was significantly lower than the price of locally purchased Jet A-1 fuel for the period March to November 2006. Based on the ICPA's Report, it would have cost petitioner [APC] an additional amount of Php153,402,798.32 had petitioner [APC] purchased the same volume of Jet A-1 fuel for the relevant period from Petron Corporation.[47]

Based on the foregoing, the Court *En Banc* affirms the Court in Division's Decision to grant the refund or issuance of a TCC in the amount of Php94,689,001.50 to APC.

The issues raised by the petitioners with respect to the probative value of the ATO Certifications, and the definition of "locally available supply," have already been addressed in various jurisprudence involving the same issues, which shall be summarized in the following discussion.

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[46] *Rollo*, Decision dated June 10, 2016, pp. 106-107.
[47] *Rollo*, Resolution dated October 4, 2016, p. 123.

The ATO Certifications have been discussed in another case involving the same parties and issues, as follows:

> Basically, in their respective Motions, the *crux* of respondents' arguments revolve around the adequacy of the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) certifications and the significance of the Authority to Release Imported Goods (ATRIGs) in sustaining petitioner's exemption from excise taxes. In disputing the Air Transportation Office (ATO) certifications, respondent COC cited Republic Act (RA) No. 776, which created, among others, the Civil Aeronautics Administration (CAA) who is tasked to administer all laws relating to civil aviation in the Philippines. In this regard, respondent COC claims that nowhere in the powers and duties granted to the CAA does it provide the power to issue certification concerning the availability or non-availability of aviation fuel, such as Jet A-1 fuel.
>
> This Court does not agree.
>
> It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497, are not by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same. As correctly pointed by petitioner, perusal of the charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel. In fact, Section 35(a) of RA No. 9497, which essentially reiterated Section 32(1) of RA No. 776, as amended, states that the CAAP is vested with "authority to take charge of the technical and operational phase of civil aviation matters" which, naturally, include aircraft fuel and oil.
>
> Also, the 1st Indorsement dated August 31, 2007, October 23, 2007, and January 3, 2008, respectively, issued by the Department of Finance, categorically states that "[t]he ATO certification is deemed sufficient for purposes of the tax exemption x x x." Furthermore, as to which office should certify the availability/non-availability of aviation jet A-1 fuel, the said indorsements state, "x x x addressed to the Department of Transportation and Communications and its attached agencies, the Civil Aeronautics Board and the Air

> Transportation Office, as it relates principally to the availment by the airline concerned of incentives for its operation pursuant to the exercise by these agencies of general supervision and regulation of air carriers." Thus, in view of the foregoing, this Court believes that the ATO/CAAP has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel.[48] (*Citations omitted*)

With respect to what is included in "local available supply" the Courts have been guided by the Supreme Court decision in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue* [49] which held that domestic petroleum products excluded imported products, *to wit*:

> First, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported. (*Citations omitted*)

Applying the foregoing, the Court in Division explained:

> ..., in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, or price.[50]

In view of the foregoing, the Court *En Banc* finds no cogent reason to reverse or modify the findings of the Court in Division that respondent APC has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of

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[48] Air Philippines Corporation v. Commissioner of Internal Revenue, CTA Case Nos. 7966, 7990 & 8020, March 15, 2017.
[49] G.R. No. 198759, July 1, 2013.
[50] *Rollo*, Decision dated June 10, 2016, p. 101.

Php94,689,001.50 representing excise taxes paid on importations for Jet A-1 fuel for the period March to November 2006.

WHEREFORE, the instant Petitions for Review filed by the Commissioner of Internal Revenue and Commissioner of Customs, docketed as CTA EB Nos. 1537 and 1550, respectively, are **DISMISSED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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