REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

AIR PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case Nos. 8039, 8069, 8104 & 8113

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 10 2016
11:25 a.m.

x- x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution are the following:

1. respondent Commissioner of Customs' (COC) "Motion for Reconsideration" filed on July 19, 2016, and petitioner's "Comment to the Commissioner of Customs' Motion for Reconsideration dated July 18, 2016" filed on August 22, 2016; and

2. respondent Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration (Re: Amended Decision dated 1 July 2016)" and petitioner's "Comment to the Commission of Internal Revenue's Motion for Reconsideration (Re: Amended Decision dated 1 July 2016)" filed on August 11, 2016.

In the Amended Decision sought to be reconsidered by both respondents, the Court amended its Decision dated July 13, 2015 to the extent that the Petitions for Review in the above-captioned cases were granted and respondents were ordered to refund petitioner the amount of ₱74,498,009.11 representing specific taxes paid in connection with its importations of aviation turbo jet fuel or Jet A-1 fuel, for its domestic flight operations from March 2008 to October 2008.

Respondent COC is asking the Court to reconsider its Amended Decision on the following grounds:

a) The ATRIGs[1] and testimony of petitioner's witness relative to the use of the subject importation for petitioner's domestic flight operation cannot sufficiently establish compliance with the second requisite of excise tax exemption;

b) There is locally available Jet A-1 fuel in reasonable quantity, particularly under the following contentions:

    i. The DOE's interpretation of local supply deserves more credence and weight; and

    ii. The ATO Certifications cannot establish the local unavailability in reasonable quantity, quality or price of Jet A-1 fuel;

c) Petitioner is not entitled to exemption as there is non-compliance with the condition of lack of reasonable price, on the following bases:

    i. The law merely requires local availability of Jet A-1 fuel in reasonable price, which is not and does not automatically mean lower price; and

    ii. Based on petitioner's evidence, there is locally available Jet A-1 fuel at a reasonable price for the period covering petitioner's importations; and

d) The Petitions for Review were prematurely filed as petitioner failed to exhaust administrative remedies.

On the other hand, the CIR seeks reconsideration of the Amended Decision on the following grounds:

[1] Authority to Release Imported Goods.

a) The total local available supply of Jet A-1 fuel is equivalent to the sum of local production, inventory and importations which are readily purchased in the domestic market; and

b) Reasonableness of the price should not be equated with cheaper prices.

After considering the arguments of respondents and the comments of petitioner thereto, it is apparent to this Court that, indeed, the arguments raised by respondents in their respective Motions for Reconsideration are not new. They have been previously discussed and considered in the Decision dated July 13, 2015 and in the Court's Amended Decision dated July 1, 2016 after numerous pleadings have been filed by all parties.

However, for the enlightenment of the parties, the Court shall emphasize several findings made in its Decision and Amended Decision.

Jurisdiction of the Court of Tax Appeals

The issue of the jurisdiction of this Court has already been settled in Our Decision dated July 13, 2015 after considering the arguments of respondent COC in its Memorandum that petitioner did not exhaust its administrative remedies.

BIR Ruling No. 001-2003, being a decision of the CIR in implementing the Tax Code, is indeed within the jurisdiction of the Court and this has been established by existing law and jurisprudence.

The Supreme Court held in *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[2]:

> "**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals.** The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>
> **Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No.**

[2] G.R. No. 198756, January 13, 2015.

9282, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

SEC. 7. *Jurisdiction.* The CTA shall exercise:

a. *Exclusive appellate jurisdiction to review by appeal* as herein provided:

1. *Decisions of the Commissioner of Internal Revenue* in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue*;

. . . .

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.- Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue*, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

. . . .

SEC. 18. *Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*,[3] citing *Rodriguez v. Blaquera*[4], this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not the RTC.*
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops ..." (Boldface supplied; italics in the original)*

Given the foregoing, the Court has jurisdiction over all issues raised in the Petitions for Review before it.

Second Requisite that the Subject Imported Jet A-1 Fuel Must be for Use in APC's Transport and Non-transport Operations and Other Activities Incidental Thereto has been Complied with.

First of all, the Court notes that this finding in its Decision dated July 13, 2015 has not been questioned at all by either respondent in a Motion for Reconsideration of that Decision. In fact, even in the Memorandum submitted by respondent COC[5], the issue of petitioner's use of the imported fuel for its domestic operations was not questioned. Therefore, not having been raised in a timely manner, it is considered settled.

Second, all of the said ATRIG, **which were issued by the CIR**, state that the Jet A-1 fuel imported by the APC are for its transport or flight operations. It is on this score that petitioner's comments are well taken since the ATRIG went through verification procedures and was issued by the Bureau of Internal Revenue (BIR) itself. The procedures for its issuance are embodied in BIR Revenue Memorandum Order (RMO) No. 32-2002, mandated by respondent CIR for the use of the BIR and for the Bureau of Customs (BOC) to use in its operations or collections as the BIR's agent.

Third, even if respondents' repudiation of their very own issuance were to be given merit, the fact is that Mr. Segundo's testimony remains

[3] *Id.* citing 440 Phil. 477 (2002) [Per Sandoval-Gutierrez, Third Division], cited in Asia International Auctioneers, Inc. v. Hon. Parayno, Jr., 565 Phil. 255, 268–269 (2007) [Per C.J. Puno, First Division].
[4] 109 Phil. 598 (1960) [Per J. Concepcion, En Banc].
[5] Dated June 13, 2014.

uncontroverted. It is not self-serving as respondents claim, especially in the light of the discourse of the Supreme Court as regards self-serving statements.

In *Hernandez vs. Court of Appeals*,[6] the Supreme Court said:

> "The common objection known as 'self-serving' is not correct because almost all testimonies are self-serving. The proper basis for objection is 'hearsay' (Wenke, Making and Meeting Objections, 69).
>
> Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. **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** (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).
>
> Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. **This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.**" *(Emphasis supplied)*

Considering the testimony of petitioner's witness that the shipments of Jet A-1 aviation fuel were imported for petitioner's domestic flight operations which was elaborated on in the Decision dated July 13, 2015, petitioner has been able to prove that such fuel was actually used for its transport and non-transport operations or other activities incidental thereto. Hence, the second requisite has been complied with.

As regards respondents' other grounds for reconsideration, these have to do with the third requisite for the exemption to apply, *i.e.*, that the articles, materials or supplies should not be locally available in reasonable quantity, quality or price. In the Amended Decision, the Court has extensively discussed its rationale in finding that 1) importations are excluded in determining locally available fuel; 2) the law imposes an alternative and not cumulative qualification for exemption; and 3) petitioner is entitled to exemption for satisfying the condition of lack of reasonable price.

Considering that no new matters have been raised in both respondents' motions that have not been argued nor considered by this Court before, the

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[6] G.R. No. 104874, December 14, 1993.

Motions for Reconsideration of respondents CIR and COC are **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(ON LEAVE)
ESPERANZA R. FABON-VICTORINO
Associate Justice