REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2656
(CTA Case No. 9990)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JUN 28 2024 10:35 am

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is petitioner Philippine Airlines, Inc.'s (**petitioner**'s/**PAL**'s) "Motion for Reconsideration (Re: Decision dated 18 January 2024)"[1] (**MR**) filed on 12 February 2024, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Opposition (Re: Motion for Reconsideration of the Decision dated 18 January 2024)"[2] (**Opposition**) filed on 01 March 2024.

[1] *Rollo*, pp. 112-135.
[2] Id., pp. 138-146.

In the MR, petitioner contests the ruling made on the *En Banc* Decision[3] of 18 January 2024 (**assailed Decision**) which denied its claim for refund:

> ...
>
> **WHEREFORE**, in light of the foregoing, the instant Petition for Review filed by petitioner Philippine Airlines, Inc. on 29 July 2022 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 21 October 2021 and 10 June 2022, respectively, of the Third Division in CTA Case No. 9990, entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, are **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

In support of its MR, petitioner mainly insists that the evidence presented already established that the imported liquors and wine products are not locally available in reasonable quantity, quality, or price.

Petitioner claims that in many several Supreme Court cases involving the same parties and the same issues, the highest court ruled with finality that the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies (**Table of Comparison**) is more than sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.

Enumerating several Supreme Court and Court of Tax Appeals (**CTA**) cases[4] *vis-à-vis* the pieces of evidence considered in the decisions which granted or upheld the refund, petitioner points out that the testimonies of witnesses, Table of Comparison, Bureau of Internal Revenue (**BIR**) price surveys, and the various price lists were deemed sufficient to prove compliance with the third (3rd) condition under Section 13(b)(2) of Presidential Decree (**PD**) No. 1590[5] *i.e.* that the imported products were not locally available in reasonable quantity, quality, or price. Thus, there is no reason to deviate or disturb the binding precedents therein.

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3 Id., pp. 91-111.

4 Table listing the enumeration is contained in the Motion for Reconsideration, Id., pp. 117-118.

5 AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

Comparing the above enumeration to this case, petitioner asserts that it was also able to comply with the 3rd condition since: (*i*) it used a pricelists from two (2) suppliers (*i.e.* Absolute Sales 2013-2014 and Future Trade 2013-2014), in addition to the price survey indicated in Revenue Memorandum Circular (**RMC**) No. 90-2012[6], in making the Table of Comparison; (*ii*) the lack of prices from Absolute Sales shows that the said supplier does not carry the imported alcohol products, thus, strengthening its claim that those are not locally available; and, (*iii*) the price lists presented and the tabulation comparing the prices directly covers the subject periods of importation of 2013 and 2014.

Moreover, petitioner alleges that in several CTA decisions (which the Supreme Court upheld), the price list and letter from Duty-Free Philippines, which is just one (1) retailer, was also regarded as a sufficient and convincing evidence to prove compliance with the 3rd condition under Section 13(b)(2) of PD No. 1590.

Petitioner also avers that the 3rd condition is an alternative and not a cumulative qualification. Hence, it is satisfied if petitioner proves that the imported products is not locally available in reasonable quantity, quality, or price. It then declares that it was able to prove the 3rd condition considering that no local suppliers submitted any comparative local prices of the imported products. It explains that when it requests for price lists, its In-Flight Materials Purchasing Division sends out a list of wines and liquors it needs as commissary and catering supplies for its international flights. The suppliers would then submit their lists containing price quotations for each item depending on the volume which petitioner requires. The absence of price quotations for certain wines and liquors can only mean that the suppliers do not have the product in their inventory. Further, the prices of the subject imported products were not included in the comprehensive listing of the BIR price surveys. Thus, these facts only establish that the subject imported products are not locally available in reasonable quantity or quality.

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6 Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes.

Petitioner further opines that the Court's ruling in herein case is contradictory to the doctrine of *stare decisis* seeing that it presented the same pieces of evidence in its previous cases (only differing in the periods covered) where its claims for refund were granted. Citing *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*[7], petitioner echoes that this Court committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence which it presented are "inadequate" to show compliance with Section 13(b)(2) of PD No. 1590.

Lastly, petitioner alleges that this Court's imposition of stringent and additional requirements makes it difficult, if not impossible, for it to claim the refund under PD No. 1590. Thus, herein ruling actually defeats the legislative purpose of granting the franchise to petitioner.

In the Opposition, respondent reiterates the Third Division's finding that one (1) supplier (absent any corroborating evidence that it adequately represents the local market prices or it is the exclusive distributor of the imported alcohol products) cannot prove that the imported alcohol products are not locally available in reasonable quantity, quality, or price. Being a tax refund which is construed strictly against the taxpayer-claimant, petitioner failed to establish that it is entitled to the refund.

We resolve.

After due consideration of the arguments raised, We are constrained to deny petitioner's MR for lack of merit. At the onset, its arguments are a mere rehash of those already addressed and discussed in the assailed Decision *e.g.* compliance with the 3rd condition and the doctrine of *stare decisis*. However, for emphasis, We highlight an observation below.

Petitioner is trying to convince Us that the Table of Comparison is deemed sufficient to determine that the subject imported products are not locally available in reasonable quantity, quality, or price. However, as previously observed, the Table of Comparison only reflects

[7] G.R. No. 231638 (Minute Resolution), 17 February 2021.

prices from one (1) supplier. We are not persuaded with petitioner's contention that a lone supplier is an adequate benchmark for the 3rd condition, and the absence of prices of the imported products from the said supplier is already tantamount to the absence of the imported products from the local market.

While it may appear that this Court had previously granted refunds based on the similar pieces of evidence presented, most of these cases involved importations from the years 2005 to 2009. During the said period, RMC No. 90-2012 was based on the BIR's 2010 price survey of alcohol products. Therefore, it is understandable that for liquors and wines imported before and during 2010, a price list from a single local supplier would suffice to meet the 3rd condition, as RMC No. 90-2012 already provides a benchmark for the prices of those available in the local market. *However*, in this case, the subject importations were made from December 2013 until August 2014. Thus, the BIR price survey is *no* longer applicable and could not be used as a benchmark for the local market prices.

We also wish to emphasize that PD No. 1590 is a franchise exclusively granted to PAL and the exemptions under Section 13(b)(2) are not automatically given to PAL as there are qualifying conditions set to be complied with. Since it solely reaps the benefit from such exemption, it is only fair and equitable that it exerts reasonable and diligent efforts in submitting sufficient evidence or compliance with the conditions therein.

As held in the assailed Decision, to be exempted from excise tax under Section 13(b)(2) of PD No. 1590, the following conditions must be fulfilled:

1. Petitioner paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies or materials are imported for petitioner's use in its transport and non-transport operations and other activities incidental thereto; and,

3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality, or price.

As the denial of the refund claim lies with the 3rd condition, it is to be stressed that petitioner should not focus on the number of price lists obtained from local suppliers. Instead, it should be on whether it was able to ascertain, within a reasonable time prior to importation, that the alcohol products sought to be imported could not be sourced from the local market in the necessary quantity, quality, or price—thereby justifying the need for importation. There should be evidence that petitioner determined the prices and availability of each imported alcohol product through a survey conducted with a representative number of local dealers, in order to reasonably conclude that such products cannot be sourced locally and must be imported.

Petitioner cannot continuously seek the approval of its present claim for refund based on previous CTA decisions covering <u>different periods</u> and which were <u>resolved under different circumstances</u>. Being in the nature of a tax exemption, tax refunds should be construed in *strictissimi juris* against the person or entity claiming the exemption. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[8]

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration (Re: Decision dated 18 January 2024)" filed on 12 February 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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8 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, 16 September 2020.

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Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice