REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB Case No. 1029
(CTA Case No. 8153)

x---x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

- versus –

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB Case No. 1031
(CTA Case No. 8153)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

- versus -

CTA EB Case No. 1032
(CTA Case No. 8153)

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

PHILIPPINE AIRLINES, INC.,
Respondent.

Promulgated:
DEC 16 2014
3:15 p.m.

x---x

RESOLUTION

UY, *J.*:

Submitted for resolution are:

1. Commissioner of Custom's (COC) **"Motion for Reconsideration"**[1] filed on May 30, 2014, with Philippine Airlines, Inc.'s **"Consolidated Comment [To Motions for Reconsideration of Respondents Commissioner of Internal Revenue and Commissioner of Customs]"**[2] filed on July 25, 2014;

2. Philippine Airlines, Inc.'s (PAL) **"Motion for Partial Reconsideration [of the Decision dated April 30, 2014]"**[3] filed on June 2, 2014, with **"Opposition (Re: Motion for Partial Reconsideration)"**[4] filed by the Commissioner of Internal Revenue on July 21, 2014 and **"Comment (On Philippine Airlines, Inc.'s Motion for Partial Reconsideration)"**[5] filed by the Commissioner of Customs on September 2, 2014; and

3. Commissioner of Internal Revenue's (CIR) **"Motion for Partial Reconsideration"**[6] filed on June 6, 2014, with Philippine Airlines, Inc.'s **"Consolidated Comment [To Motions for Reconsideration of Respondents Commissioner of Internal Revenue and Commissioner of Customs]"**[7] filed on July 25, 2014.

The three aforementioned motions seek reconsideration of the Decision promulgated on April 30, 2014[8], the dispositive portion of which reads:

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[1] Docket, pp. 414 to 431.
[2] Docket, pp. 550 to 568.
[3] Docket, pp. 432 to 510.
[4] Docket, pp. 544 to 549.
[5] Docket, pp. 575 to 583.
[6] Docket, pp. 513 to 536.
[7] Docket, pp. 550 to 568
[8] Docket, pp. 375 to 394.

> "**WHEREFORE**, in the light of the foregoing considerations, the above-captioned Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 17, 2013 and Resolution dated June 4, 2013 promulgated by the Court in Division in CTA Case No. 8153, are hereby **AFFIRMED *in toto***.
>
> **SO ORDERED.**"

CIR's and COC's Motions for Reconsideration.

In her Motion, the CIR assails the Decision dated April 30, 2014 on the sole ground that this Court erred in granting PAL's claim for refund in the amount of ₱2,094,985.21 allegedly representing erroneously paid excise taxes.

The CIR explains as follows: Section 131 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9334 (RA No. 9334), mandates that all importations of cigarettes, liquor and wine shall be subject to the applicable taxes; Section 6 of Republic Act No. 9334 expressly withdrew PAL's conditional tax exemption under Section 13 of Presidential Decree No. 1590 (PD No. 1590); even assuming that Section 13 of PD 1590 was not amended by RA No. 9334, PAL's claim for refund must fail because PAL failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price; and, PAL's tax exemption is not absolute and to sustain PAL's interpretation of its franchise provisions would ultimately convert the conditional tax exemption to one that is absolute.

Similarly, the COC insists that PAL's tax privilege in Section 13 of PD No. 1590 has been withdrawn by Congress with the enactment of RA No. 9334.

The COC contends as follows: the phrase "the provision of any special of general law to the contrary notwithstanding", despite its being all-encompassing, could validly withdraw a tax exemption or privilege; Section 11, Article XII of the Constitution does not require an express mention of a particular franchise before it can be modified, amended or repealed; PAL's tax privilege in Section in Section 13 of PD No. 1590 is irreconcilable with RA No. 9334; RA No. 9334 specially deals with excise tax on alcohol and tobacco importations; and, Republic Act No. 9337 did not reinstate PAL's tax privilege in Section 13 of PD No. 1590.

Furthermore, the COC maintains that PAL failed to establish that the subject articles were not locally available in reasonable quantity, quality or price. According to the COC, PAL's own witness did not deny that the subject alcohol products were locally available in reasonable quantity and quality and that the comparative table used to support its claim that said articles were not locally available in reasonable price has no probative value.

In its Consolidated Comment, PAL interposes the following counter-arguments:

1. Contrary to respondents' contention, the Honorable Court correctly held that petitioner's tax exemption from excise tax as provided under its franchise under PD No. 1590 was not revoked by the 1997 NIRC, as amended by RA No. 9334;

2. No irreconcilable repugnancy exists between PD No. 1590 and the 1997 NIRC and RA No. 9334;

3. The Honorable Court correctly held that, with respect to the refund of excise tax in the amount of ₱2,094,958.21 paid on its importations of commissary supplies, petitioner has duly satisfied the conditions for entitlement to exemption.

PAL's Motion for Partial Reconsideration.

In its motion, PAL seeks reconsideration of the assailed Decision on the sole ground that this Court erred in denying its claim for refund of erroneously paid excise tax on its importation of cigarettes in the aggregate amount of ₱4,234,750.00.

PAL contends that the testimony of its witness, Mr. Victor Santos, in totality, established the lack of local suppliers which could readily supply PAL with the quantity of imported cigarettes to address its commissary supply needs. The truthfulness of the testimony of PAL's witness is allegedly affirmed by the Letter dated February 1, 2013 issued by the National Tobacco Administration (NTA) showing that as of 2011, the brands of cigarettes that PAL imported under Import Entry Nos. 13370, 12048, 10284, 11757, 11752 and 13388 are not among the locally manufactured cigarettes and that almost all of the imported cigarettes involved in this case are in the list of brands imported by Duty Free Philippines in 2007.

PAL further argues that apart from the testimony of its witness Mr. Victor Santos, its allegation that the imported cigarettes are not available in local quantity, quality or price is supported by the CIR's admission, in at least two instances, that PAL's importations of cigarettes and liquors will always be cheaper compared to purchasing them locally.

In her opposition, the CIR counters that PAL failed to present credible and independent evidence to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality and price. According to the CIR, it is highly self-serving for PAL's very own employee to certify that the imported products are not locally available in reasonable quantity, quality and price and that his study on prices is not comprehensive in nature.

On the other hand, the COC argues that the testimony of PAL's witness, Mr. Victor Santos, is far from reliable and credible because, by the nature of his position, his bias is beyond doubt and it was never established that he was an expert in the field of commodities supply and pricing. At any rate, Mr. Santos admitted in his Judicial Affidavit that there are in fact other local suppliers or dealers of the subject cigarettes but they simply refused to provide him with a formal quotation of their prices. As regards the Letter dated February 1, 2013 of the NTA, the COC contends that there is entirely nothing in it that remotely suggests PAL's contention that the subject articles are not available in the country in reasonable quantity, quality or price.

THE COURT *EN BANC'S* RULING

The instant Motions are bereft of merit.

The grounds presented by the parties in their respective motions are mere rehash of the facts and issues which have already been exhaustively passed upon by this Court in the assailed Decision. Nevertheless, this Court will address the parties' arguments.

Republic Act No. 9334 did not revoke PAL's tax exemption under Section 13 of Presidential Decree No. 1590, as affirmed by the recent pronouncement of the Supreme Court.

In the assailed Decision and in a number of cases[9], involving

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[9] *Commissioner of the Bureau of Customs vs. Philippine Airlines, Inc.* and *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs,* CTA

the same parties and issues, this Court has consistently ruled that, under its franchise, PAL is exempt from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies for international consumption.

A careful reading of Section 13 of PD No. 1590, as amended by Section 22 of Republic Act No. 9337 (RA No. 9337), reveals that PAL is obliged to pay corporate income tax and Value Added Tax (VAT), in lieu of all other taxes imposed by all government entities, including but not limited to all taxes on commissary and catering supplies; provided that such articles or supplies are imported for the use in PAL's transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

Contrary to respondents' incessant assertion, RA No. 9334 did not revoke the tax exemption granted to PAL under Section 13 of PD No. 1590.

By way of reiteration, PD No. 1590, a special law that specifically pertains and exclusively applies to PAL's franchise, prevails over the provisions of RA No. 9334, a general law with universal application.

Moreover, RA No. 9334 cannot be considered to have expressly repealed or amended PAL's tax exemption because, while said law enumerates the statutes to which it applies, PD No. 1590 was not included among them. Indeed, had Congress intended to repeal PAL's franchise, knowing that it requires an express amendment or repeal; it could have simply included PD No. 1590 in the enumeration of those liable for such excise tax not only under RA No. 9334, but also under the later law, which is RA No. 9337. That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated

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EB Case Nos. 954 and 1046, October 14, 2014; *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.* and *Commissioner of Internal Revenue and Commissioner of Customs,* CTA EB Nos. 942 and 944, December 9, 2013; *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.* and *Commissioner of Customs vs. Philippine Airlines, Inc.,* CTA EB Case No. 928 and 929, October 21, 2013; and *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)* and *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc. (PAL),* CTA EB Nos. 920 and 922, September 9, 2013.

in said charter.[10]

This finds support in the fairly recent pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines*[11], upholding PAL's tax exemption under Section 13 of PD No. 1590. The High Court explains:

> "It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
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> Indeed as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, 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. We said as much in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.:*
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> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as private corporation, the very same rights and privileges under the terms and conditions stated in said charter. xxx
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> To be sure, the manner of effectively (sic) repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc,* borrowing from the same *Commissioner of Internal Revenue* case:
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> > While it is true that Sec. 6 of RA 9334 as previously quoted states that *"the provisions of any special or general law to the contrary notwithstanding",* <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise</u>

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[10] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.* G.R. No. 180066, July 7, 2009.

[11] G.R. No. 212536-37, August 27, 2014.

> because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. Xxx
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> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case."

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[12]

Accordingly, the recurring issue on PAL's tax exemption under its franchise is now deemed settled once and for all. PAL remains to be exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as provided in its franchise agreement.

PAL's entitlement to refund of excise taxes paid on its importations of commissary and catering supplies.

As earlier mentioned, in order to be entitled to exemption from excise tax on importations of commissary and catering supplies, PAL must be able to prove through competent evidence, as among the conditions set forth in Section 13 of PD No. 1590, that such imported

[12] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003 and *Dante Nacuray, et al., vs. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997.

articles **are not locally available in reasonable quantity, quality, or price.**

In the assailed Decision, We held that PAL was able to sufficiently establish its entitlement to a refund of excise taxes paid on its importation of alcohol products in the amount of ₱2,094,985.21. With the comparative price list corroborating the testimony of PAL's only witness, PAL was able to show that the cost of importing the subject alcohol products are reasonably cheaper than purchasing them locally. It bears to underscore that these pieces of evidence remained unrebutted considering that both respondents opted not to adduce any controverting evidence to show otherwise.

As regards excise taxes paid on its importations of cigarette products, We reiterate our finding that PAL fell short of proving the non-availability of the subject imported cigarettes at reasonable quantity, quality or price in the local market.

Attaching copies of the Letter dated February 1, 2013 issued by the NTA with the enclosed pricelist of the brands of cigarettes imported from 2005 to 2011 and locally manufactured cigarettes in 2011 and the Motions for Partial Reconsideration filed by CIR in CTA Case No. 8184 and CTA Case No. 8236, in the instant Motion has no controlling significance, because these documents have not been formally offered in evidence during trial.

To be sure, Section 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[13]

Moreover, under Section 8 of Republic Act (R.A.) No. 1125, this Court is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by PAL attached to the instant Motion,

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[13] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014 citing *Heirs of Pedro Pasag v. Spouses Parocha*, G.R. No. 155483, April 27, 2007.

as the rules on documentary evidence require that these documents must be formally offered before the this Court.[14]

Be that as it may, the Court finds the aforesaid NTA Letter wanting of probative value because the same failed to yield any direct or corroborative proof that the subject imported cigarettes were not locally available in reasonable quantity, quality or price at the time they were imported. It is worthy to note that while the said letter shows a list of importers and the brands of cigarettes they imported in 2007, the same had no corresponding pricelist through which the Court may verify whether the cost of importing the subject cigarettes is indeed reasonably lower than purchasing them locally.

As regards the alleged admission made by the CIR in the pleadings attached to the instant Motion, the same cannot be deemed as admission against interest under Section 26, Rule 130 of the Revised Rules of Court [15]

An admission against interest is any statement of fact made by a party against his interest or unfavorable to the conclusion for which he contends or is inconsistent with the facts alleged by him. To be admissible, such admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.[16]

When taken within the context of the entirety of her pleadings, it becomes apparent that the CIR's allegations are not categorical and definite statements of matters of fact, but mere arguments made in the framework of an assumption. Clearly, said statements cannot be admitted as evidence against the CIR in the instant case.

In the light of the foregoing considerations, there is no cogent reason or overwhelming justification to disturb the assailed Decision.

WHEREFORE, respondent COC's **"Motion for Reconsideration"**, respondent CIR"s **"Motion for Partial Reconsideration"**, and petitioner's **"Motion for Partial Reconsideration [of the Decision dated April 30, 2014]"** are **DENIED** for lack of merit.

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[14] Supra, citing *Dizon v. Court of Tax Appeals,* G.R. No. 140944, April 30, 2008.

[15] Sec. 26. *Admissions of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[16] *Lacbayan vs. Samoy,* G.R. No. 165427, March 21, 2011 citing Regalado, Remedial Law Compendium, Vol. II., 2004 edition, p. 715.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice