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:

JUL 13 2015
2:50 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

The present case is a consolidation of four (4) Petitions for Review filed by Air Philippines Corporation, praying for the refund of the aggregate amount of Seventy-Four Million Four Hundred Ninety-Eight Thousand Nine Pesos and 11/100 (₱74,498,009.11), allegedly representing specific taxes paid for its importation of aviation turbo jet fuel or Jet A-1 fuel, for its domestic flight operations from March 2008 to October 2008, broken down as follows:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
8039	March 1, 2008	₱14,762,792.00
8069	March 13, 2008	₱ 5,872,385.00
8104	April 29, 2008	₱23,649,135.00
8113	June 4, 2008	₱17,754,847.11
	August 23, 2008	₱ 2,966,116.00
	September 23, 2008	₱ 3,557,423.00
	October 22, 2008	₱ 5,935,311.00

THE PARTIES

Petitioner Air Philippines Corporation (APC) is a domestic 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. It is engaged in the business of air transportation of passengers and cargo to and from points within and outside the Philippines, pursuant to its legislative franchise, Republic Act (RA) No. 8339, as amended by RA No. 9215.

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of ₱3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful charges from imported articles, including the excise tax of P3.67 per liter on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC of 1997. He holds principal office at the Port Area, Manila.

Petitioner was granted by RA No. 8339, as amended by RA No. 9215,[1] in relation to Section 13 of Presidential Decree (PD) No. 1590, tax exemptions, particularly, exemption from excise tax on its importations of aviation turbo jet fuel for use in its domestic flight operations.

THE FACTS

Section 13 of PAL's franchise, PD No. 1590, which took effect on June 11, 1978, provides for the conditions which airlines are required to comply with

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[1] 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.

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.

in order to continue enjoying tax exemptions on their importation of petroleum products, to wit:

> "SECTION 13.
>
> xxx xxx xxx
>
> 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 but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importation 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 form and other articles, supplies or materials; provided, that such articles or supplies or materials are imposed for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price; x x x"

On November 1, 1985, Letter of Instructions (LOI) No. 1483 withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations. LOI No. 1483 provides in part:

> "WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn.

> This Letter of Instructions shall take effect on November 1, 1985."

On January 29, 1999, respondent CIR issued BIR Ruling No. 013-99, which reads:

> "It is represented that Sec. 13(b) Par. 1 and 2 of PD No. 1590, provides among others, that purchases by PAL of aviation gas, fuel and oil to be used in its transport and non-transport operations are exempt from the payment of all taxes, duties, charges, royalties or fees; that since then, PAL had been enjoying this tax-exemption privileges until the same was withdrawn partially when LOI No. 1483 was issued by the President of the Philippines, the main text of which is quoted as follows:
>
> > '...the tax exemption privilege granted to PAL on its *purchase of domestic petroleum products for use in its domestic operations* is hereby withdrawn' (emphasis supplied)
>
> that the wordings of LOI No. 1483 is very clear that the tax exemption privilege being withdrawn refers specifically to the purchase of domestic petroleum products by PAL for use in its domestic operations, that it does not include purchases from abroad or foreign countries, and that it is for this reason that the Bureau of Customs does not impose any tax or customs duties on arrivals of petroleum products imported or purchased by PAL from abroad.
>
> In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations."

The Secretary of Finance issued a letter on September 8, 1999 to confirm BIR Ruling No. 013-99, which provides:

> "I confirm BIR Ruling, dated January 29, 1999, which confirms PAL's exemption from specific and *ad valorem* taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights."

Section 15 of petitioner's franchise, RA No. 8339,[2] provides for the applicability of PAL's tax exemption to petitioner, to wit:

> "SECTION 15. *Interpretation of Franchise.* – This franchise shall not be interpreted to mean as an exclusive grant of the privilege herein provided for. However, in the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place herein grantee at any disadvantage, then such terms and/or provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee."

On October 23, 2000, the BIR issued BIR Ruling No. 048-2000. This was in response to a letter dated August 7, 2000 sent by petitioner's then Executive Vice President - Chief Operating Officer, Capt. Rogelio M. Narciso. BIR Ruling No. 048-2000 affirmed petitioner's contention that it would be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products. Pertinent portions of BIR Ruling No. 048-2000 read as follows:

> "xxx (O)n June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a consideration, the dispositive portion of which states:
>
>> 'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.
>>
>> *In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.*'
>
> On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations and purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.

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[2] Dated August 8, 1997.

In reply, please be informed that pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL) and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations."

However, on January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-2003, addressed to petitioner, to Philippine Airlines (PAL), to Cebu Air, Inc. (CAI), and to Pacific Airways Corporation, the significant parts of which read as follows:

"In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.

This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

On the basis of BIR Ruling No. 001-2003, respondent CIR, acting through respondent COC, assessed petitioner for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

From March 2008 to October 2008, petitioner made the following importations and corresponding payments under protest of the specific tax assessed by the Collector of Customs of the Port of Batangas, Batangas City. The payment made by petitioner is evidenced by the respective Equitable PCI Bank official receipts (ORs), as follows:

Date of Importation	Date of Payment	Amount Paid in Php (₱)	OR No.
March 1, 2008[3]	March 19, 2008	14,762,792.00	139470c[4]
March 13, 2008[5]	April 10, 2008	5,872,385.00	139662c[6]
April 29, 2008[7]	May 7, 2008	23,649,135.00	139346c[8]
June 4, 2008[9]	June 27, 2008	17,754,847.11	239281c[10]
August 23, 2008[11]	September 18, 2008	2,966,116.00	253151c[12]
September 23, 2008[13]	October 10, 2008	3,557,423.00	253121c[14]
October 22, 2008[15]	October 31, 2008	5,935,311.00	253138c[16]

Accordingly, petitioner filed with the District Collector of Customs, Port of Batangas, Batangas City, formal written protests for the refund of the respective specific taxes on the following dates:

CTA Case No.	Date of Importation	Date of Payment Under Protest	Date of Filing of Protest	Amount Involved in Php (₱)
8039	March 1, 2008	March 19, 2008	April 1, 2008[17]	14,762,792.00
8069	March 13, 2008	April 10, 2008	April 23, 2008[18]	5,872,385.00
8104	April 29, 2008	May 7, 2008	May 22, 2009[19]	23,649,135.00
8113	June 4, 2008	June 27, 2008	July 8, 2008[20]	17,754,847.11
	August 23, 2008	September 18, 2008	October 3, 2008[21]	2,966,116.00
	September 24, 2008	October 10, 2008	October 24, 2008[22]	3,557,423.00

[3] Exhibit "F", BOC Records, p. 23.
[4] Exhibit "B", *Docket*, p. 1353.
[5] Exhibit "R", BOC Records, p. 75.
[6] Exhibit "N", *Docket*, p. 1432.
[7] Exhibit "BB", BOC Records, p. 99.
[8] Exhibit "X", *Docket*, p. 1455.
[9] Exhibit "YY", BOC Records, p. 132.
[10] Exhibit "II", *Docket*, p. 1477.
[11] Exhibit "ZZ", BOC Records, p. 163.
[12] Exhibit "JJ", *Docket*, p. 1478.
[13] Exhibit "AAA", BOC Records, p. 246.
[14] Exhibit "KK", *Docket*, p. 1479.
[15] Exhibit "BBB", BOC Records, p. 283.
[16] Exhibit "LL", *Docket*, p. 1480.
[17] Exhibit "K", *Docket*, p. 1361.
[18] Exhibit "U", BOC Records, p. 64.
[19] Exhibit "FF", BOC Records, p. 88.
[20] Exhibit "OOO", *Docket*, p. 1501.
[21] Exhibit "PPP", *Docket*, p. 1534.
[22] Exhibit "QQQ", *Docket*, p. 1563.

	October 22, 2008	October 31, 2008	November 13, 2008[23]	5,935,311.00

Petitioner alleges that the protests were not acted upon by respondent COC,[24] so to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC of 1997[25], it was constrained to file written claims for refund for the respective specific taxes paid on different dates, as follows:

Date of Filing Written Claim for Refund with the CIR	**Amount Involved in Php (₱)**
March 12, 2010[26]	14,762,792.00
March 24, 2010[27]	5,872,385.00
May 5, 2010[28]	23,649,135.00
June 17, 2010[29]	17,754,847.11
June 17, 2010[30]	2,966,116.00
June 17, 2010[31]	3,557,423.00
June 17, 2010[32]	5,935,311.00

Petitioner contends that respondent CIR also failed to act on its written claim for refund.[33] It claims that it was compelled to file the Petitions for Review before this Court because the two-year prescriptive period within which to recover the excise taxes erroneously paid by petitioner is set to expire on the following dates:

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[23] Exhibit "RRR", *Docket,* p. 1585.

[24] Par. 6, Proposed Stipulation of Facts, Petitioner's Consolidated Pre-Trial Brief, docket, p. 277

[25] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – xxx
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[26] Exhibit "L", *Docket,* p. 1380.

[27] Exhibit "V", BOC Records, p. 77.

[28] Exhibit "GG", BOC Records, p. 101.

[29] Exhibit "SSS", *Docket,* p. 1617.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] Par. 7, Proposed Stipulation of Facts, Petitioner's Consolidated Pre-Trial Brief, *Docket,* pp. 277 to 278.

Amount Involved in Php (₱)	Date of Payment Under Protest	Date of Expiration of 2-Year Prescriptive Period	Date of Filing Written Claim for Refund with the CIR	Date of Filing of Petition for Review
14,762,792.00	March 19, 2008	March 19, 2010	March 12, 2010	March 19, 2010
5,872,385.00	April 10, 2008	April 10, 2010	March 24, 2010	April 12, 2010
23,649,135.00	May 7, 2008	May 7, 2010	May 5, 2010	May 7, 2010
17,754,847.11	June 27, 2008	June 27, 2010	June 17, 2010	June 25, 2010
2,966,116.00	September 18, 2008	September 18, 2010	June 17, 2010	June 25, 2010
3,557,423.00	October 10, 2008	October 10, 2010	June 17, 2010	June 25, 2010
5,935,311.00	October 31, 2008	October 31, 2010	June 17, 2010	June 25, 2010

On April 8, 2010, respondent CIR filed her Answer[34] in CTA Case No. 8039, alleging the following Special and Affirmative Defenses:

> "1. The Petition for Review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.
>
> 1.1 Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before petitioner questioned its legality before this Honorable Court. Petitioner's precipitate act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure which provides as follows:
>
> 'MOTION TO DISMISS
>
> SECTION 1. *Grounds*. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

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[34] *Docket*, pp. 110 to 116.

xxx xxx xxx

> (j) That a condition precedent for filing the claim has not been complied with.'

1.2 Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 prior to questioning its legality before this Honorable Court in violation of Section 4 of the National Internal Revenue Code 1997 (NIRC of 1997) which provides as follows:

> 'SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner; subject to review by the Secretary of Finance.

xxx xxx xxx.'

2. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the NIRC of 1997.

3. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the Department of Energy, in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay this Honorable Court from exercising jurisdiction over this petition.

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of ₱14,762,792.00 specific tax being claimed by petitioner which were allegedly paid under protest on 19 March 2008 was not properly documented.

> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

In her Answer in CTA Case Nos. 8069[35], 8104[36], and 8113[37] she also claims that the Petition for Review should not be given due course for failure of petitioner to exhaust all administrative remedies before elevating the case to this Court. Moreover, she contends that BIR Ruling No. 001-2003 is valid and that the claims for refund should fail as the amount of specific tax being claimed was not properly documented. She maintains that in an action for refund, the burden of proof is on the taxpayer and failure to sustain the burden is fatal to the claim.

Respondent COC filed his Answer[38] on April 12, 2010, interposing the following Special and Affirmative Defenses

> "13. Petitioner failed to exhaust administrative remedies before seeking relief from the Honorable Court.
>
>> 13.1 Petitioner argues that the Department of Energy (DOE) Certification dated December 20, 2002 which in essence stated that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, and which became the basis of BIR Ruling No. 001-2003 which removed tax benefits from importation of aviation gas, fuel and oil, was issued without giving the affected airline companies notice and an opportunity to be heard. Hence, petitioner prays for the Honorable Court to declare the said Certification as 'not valid since it was

[35] CTA Case No. 8069, *Docket,* pp. 151 to 156.
[36] CTA Case No. 8104, *Docket,*pp. 73 to 78.
[37] CTA Case No. 8113, *Docket,* pp. 104 to 111.
[38] CTA Case No. 8039, *Docket,* pp. 118 to 126

issued without due process' and 'for having no factual basis.'

13.2 In essence, petitioner is asking the Honorable Court to override the factual determination of the DOE, which it cannot do without violating the principle of separation of powers and respect due to the factual determination of a co-equal branch of Government.

13.3. Besides, DOE is not even impleaded as a party in this case. For this Honorable Court to reverse said department's findings without giving it notice and opportunity to be heard smacks of violation of the sacred right to due process.

13.4 The proper recourse is for petitioner to appeal the action of the DOE to the Office of the President (OP). Verily, the Honorable Court is not the proper forum for petitioner to contest the administrative finding of the DOE.

13.5 For failing to appeal to the OP, petitioner failed to exhaust administrative remedies that make the present petition dismissible under Section 1(j), Rule 16 of the 1997 Rules of Civil Procedure which states:

> **SECTION 1.** *Grounds.* – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx xxx xxx
>
> (j) That a condition precedent for filing the claim has not been complied with.

14. Similarly, petitioner failed to appeal the issuance by the Bureau of Internal Revenue of BIR Ruling No. 001-2003 dated January 29, 2003, to the Secretary of Finance pursuant to Section 4 of the National Internal Revenue Code of 1997, which states:

> **Sec. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret

> the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to the review by the Secretary of Finance. xxx

15. Petitioner's resort to the present petition is unavailing because it seeks to reverse respondent's actions that are only results of prior factual determinations of another government agency.

> 15.1 Thus, the DOE issued the Certification dated December 20, 2002 which essentially states that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.
>
> Pursuant thereto, the BIR issued BIR Ruling No. 001-2003 dated January 29, 2003, the pertinent portion of which reads:
>
> > 'xxx In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operations of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's charter (PD 1950, as amended by LOI 1493) and which condition applies ipso facto to the other airlines. Accordingly, your importations may not be given the same tax treatment as before as long as there is such available domestic supply for petroleum products.
> >
> > This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.'
>
> Consistent with the DOE Certification, the BIR imposed specific taxes on petitioner's fuel importations.

The Bureau of Customs presumably collected those taxes at the respective ports where the fuels were delivered on different dates.

15.2 Evidently, respondents' actions are rooted on the DOE Certification, which, absent any ruling to the contrary, remains a valid administrative issuance of the government agency tasked with the management of the energy sector.

16. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

16.1 Petitioner failed to show that the total amount of **₱14,762,792.00** it allegedly paid on different dates as specific taxes on the importation of fuel was erroneously or illegally collected or that the same was properly documented pursuant to the requirements of Sections 204 (C) and 229 of the National Internal Revenue Code of 1997.

16.2 Tax refunds are in the nature of tax exemptions. They are regarded as in derogation of sovereign authority. Thus, as held in **Digital Telecommunications Philippines vs. City Government of Batangas, et al., G.R. No. 156494, December 11, 2008:**

> In Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue, the Court ruled that 'the governing principle is that tax exemptions are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority – he who claims an exemption must be able to justify his claim by the clearest grant of statute'. A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.
>
> Tax refunds cannot be permitted to exist upon 'vague implications' (Commissioner of Internal Revenue vs. Procter and Gamble, 204 SCRA 377 [1991]).

17. Finally, if it were true that petitioner paid specific taxes to the Bureau of Customs, the latter merely acted as a collection

agency that does not have any power and jurisdiction to adjudicate any issue arising from any tax impositions and other rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions. Hence, petitioner cannot maintain a cause of action against it."

Moreover, in his Answer in CTA Case Nos. 8069[39] and 8104[40], respondent COC argues that petitioner failed to exhaust administrative remedies before seeking relief from this Court. He also contends that in claims for refund, the burden of proof is on the taxpayer and that petitioner failed to show that the amount it allegedly paid as specific taxes was erroneously or illegally collected. Meanwhile, in his Answer[41] in CTA Case No. 8113, he asserts that the petition is premature and fails to state a cause of action and that petitioner is not entitled to a refund or issuance of the tax credit certificate as it is not entitled to tax-free benefits on importation of aviation fuel considering that no other airline company like PAL is exempted thereon. He further claims that BIR Ruling No. 001-2003 is valid.

On April 26, 2010, respondent CIR filed her Pre-Trial Brief[42]. On May 4, 2010, petitioner filed its Pre-Trial Brief[43]; while, on May 5, 2010, respondent COC filed his Pre-Trial Brief[44].

On June 29, 2010, petitioner filed a Motion to Consolidate to the First Division CTA Case Nos. 8039, 8069 and 8104[45], praying that CTA Case Nos. 8069 and 8104 be consolidated with CTA Case No. 8039, since they involved the same parties and issues. On July 27, 2010, a Resolution[46] was issued by the former Third Division of the Court, granting the consolidation of the cases docketed as CTA Case Nos. 8039 and 8104. On July 30, 2010, petitioner filed a Motion to Consolidate to the First Division CTA Case Nos. 8039 and 8113.[47] Thereafter, a Resolution[48] was promulgated on August 3, 2010 by the Second Division of the Court, granting the consolidation of CTA Case Nos. 8069 and 8039.

On August 13, 2010, respondent CIR filed her Respondent's Consolidated Pre-Trial Brief[49]. Subsequently, the Court issued another Resolution[50] on August 24, 2010, confirming the previously issued Resolutions

[39] CTA Case No. 8069, *Docket,* pp. 219 to 236.
[40] CTA Case No. 8104, *Docket,* pp. 95 to 106.
[41] CTA Case No. 8113, *Docket,* pp. 115 to 131.
[42] *Docket,* pp. 128 to 132.
[43] *Docket,* pp. 135 to 141.
[44] *Docket,* pp. 143 to 147.
[45] *Docket,* pp. 171 to 176.
[46] *Docket,* p. 193.
[47] *Docket,* pp. 194 to 199.
[48] *Docket,* p. 201.
[49] *Docket,* pp. 202 to 206.
[50] *Docket,* pp. 210 to 211.

promulgated by the Third and Second Divisions, and consolidating CTA Case Nos. 8039, 8069, and 8104. On September 9, 2010, petitioner filed its Petitioner's Consolidated Pre-Trial Brief[51]. On September 14, 2010, petitioner amended its Consolidated Pre-Trial Brief[52] and respondent COC filed his Pre-Trial Brief[53]. During the hearing held on September 17, 2010, the parties agreed to adopt the issues raised by petitioner and respondent CIR.[54]

The Court promulgated a Resolution[55] on November 15, 2010 that granted the consolidation of CTA Case Nos. 8113, 8039, 8069, and 8104. On November 25, 2010, respondent CIR filed her Respondent's Consolidated Pre-Trial Brief[56]. On November 30, 2010, petitioner filed its Petitioner's Consolidated Pre-Trial Brief[57]. On the same day, respondent COC filed a Manifestation and Motion[58], praying that his Pre-Trial Brief dated September 13, 2010 be adopted as his Pre-Trial Brief in CTA Case No. 8113. The motion to adopt Pre-Trial Brief was granted by the Court in an Order[59] dated December 1, 2010.

On December 21, 2010, petitioner filed a Motion to Set Case for Commissioner's Hearing[60] for the marking of its documentary evidence, which the Court granted in an Order[61] dated December 23, 2010.

On January 20, 2011, the parties filed a Joint Stipulation of Facts[62], which was approved by the Court on January 24, 2011.[63] On February 8, 15, and 17, 2011, Commissioner's Hearings[64] were held for the pre-marking of petitioner's exhibits. The initial presentation of petitioner's evidence was then set on February 24, 2011.[65]

Petitioner presented the following witnesses: Mr. Edwin J. Segundo[66], Supervisor of Fuel Department of petitioner; Atty. Jonathan Andrew Lim[67], Senior Legal Counsel of the Legal Department of petitioner; Ms. Myra Celeste O. Dabalos[68], Independent Certified Public Accountant; Ms. Glendalyn Dela

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[51] *Docket*, pp. 212 to 223.
[52] *Docket*, pp. 224 to 235.
[53] *Docket*, pp. 236 to 241.
[54] *Docket*, p. 251.
[55] *Docket*, pp. 260 to 262.
[56] *Docket*, pp. 263 to 267.
[57] *Docket*, pp. 269 to 281.
[58] *Docket*, pp. 282 to 285.
[59] *Docket*, pp. 288 to 289.
[60] *Docket*, pp. 291 to 294.
[61] *Docket*, pp. 295 to 296.
[62] *Docket*, pp. 306-A to 306-E.
[63] Resolution, *Docket*, pp. 309 to 310.
[64] *Docket*, pp. 314, 318, and 323.
[65] *Docket*, p. 311.
[66] Minutes of the Hearing, *Docket*, p. 354.
[67] Minutes of the Hearing, *Docket*, p. 395.
[68] Minutes of the Hearing, *Docket*, pp. 416 and 537.

Cruz[69], Senior Science Research Specialist of the DOE; Ms. Jennifer I. Sedigo[70], Financial Reporting Manager of petitioner; Atty. John Voltaire A. Almeda[71], Legal Counsel of the Legal Department of petitioner; Secretary Mario V. Tiaoqui[72], former Secretary of the DOE; and Ms. Veronica Granados[73], Customs Acting Appraiser of Port of Subic.

Petitioner likewise formally offered its documentary evidence[74] on April 5, 2013, with respondent CIR's Comment (On Petitioner's Formal Offer of Evidence)[75] and respondent COC's Comment (On Petitioner's Formal Offer of Evidence)[76]. On May 22, 2013, the Court issued a Resolution[77], where it admitted as evidence Exhibits "B", "C", "D", "E", "F", "H", "I", "I-1", "K", "L", "M", "M-1", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "W-1", "X", "Y", "Z", "AA", "BB", "CC", "CC-1", "DD", "EE", "EE-1", "FF", "GG", "HH", "HH-1", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY", "ZZ", "AAA", "BBB", "CCC", "CCC-1", "DDD", "DDD-1", "FFF", "FFF-1", "GGG", "HHH", "III", "JJJ", "KKK", "KKK-1", "LLL", "LLL-1", "MMM", "MMM-1", "NNN", "NNN-1", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "TTT-1", "UUU", "UUU-1", "VVV", "VVV-1", "WWW", "XXX", "XXX-1", "YYY", "ZZZ", "A^{4}", "B^{4}", "C^{4}", "D^{4}", "E^{4}", "F^{4}", "G^{4}", "H^{4}", "I^{4}", "J^{4}", "K^{4}", "L^{4}", "M^{4}", "N^{4}", "O^{4}", "O^{4}-1", "P^{4}", "Q^{4}", "Q^{4}-1", "Q^{4}-2", "Q^{4}-3", "Q^{4}-4", "Q^{4}-5", "Q^{4}-6", "Q^{4}-7", "R^{4}", "R^{4}-1", "R^{4}-2", "R^{4}-3", "R^{4}-4", "R^{4}-5", "R^{4}-6", "R^{4}-7", "S^{4}", "S^{4}-1", "T^{4}", "T^{4}-1", "U^{4}", "U^{4}-1", "V^{4}", "X^{4}", "Y^{4}", "Z^{4}", "Z^{4}-1", "A^{5}", "A^{5}-1", "B^{5}", "B^{5}-1", "C^{5}", "C^{5}-1", "D^{5}", "E^{5}", "F^{5}", "G^{5}", "H^{5}", "I^{5}", "J^{5}", "K^{5}", "L^{5}", "M^{5}", "N^{5}", "O^{5}", "P^{5}", "Q^{5}", "R^{5}", "S^{5}", "T^{5}", "U^{5}", "V^{5}", "W^{5}", "X^{5}", "X^{5}-1", "Z^{5}", "A^{6}", "A^{6}-1", "B^{6}", "C^{6}", "C^{6}-1", "C^{6}-2", "C^{6}-3", "C^{6}-4", "C^{6}-5", "C^{6}-6", "C^{6}-7", and "D^{6}". However, the Court denied the admission of Exhibits "G", "G-1", "J", "EEE", "EEE-1", "Y^{5}", and "Y^{4}-1".

On June 6, 2013, petitioner filed its Motion for Reconsideration (Resolution dated 22 May 2013).[78] On June 18, 2013, respondent COC filed his Omnibus Motion (a) to allow the parties to stipulate on the existence of Director Monsada's Judicial Affidavit and the transcript of stenographic notes of her testimony rendered in the proceeding before the RTC; and (b) to set additional hearing dates for the presentation of respondent's evidence.[79] Respondent COC filed his Comment (On Petitioner's Motion for

[69] Minutes of the Hearing, *Docket*, p. 563.
[70] Minutes of the Hearing, *Docket*, p. 1066.
[71] Minutes of the Hearing, *Docket*, p. 1173.
[72] Minutes of the Hearing, *Docket*, p. 1177.
[73] Minutes of the Hearing, *Docket*, p. 1209.
[74] Petitioner's Formal Offer of Evidence, pp. 1314 to 1352.
[75] *Docket*, pp. 2002 to 2004.
[76] *Docket*, pp. 2006 to 2049.
[77] *Docket*, pp. 2052 to 2053.
[78] *Docket*, pp. 2056 to 2061.
[79] *Docket*, pp. 2064 to 2079.

Reconsideration dated June 6, 2013)[80] on June 27, 2010. Meanwhile, petitioner filed its Comment on Commissioner of Customs' Omnibus Motion[81] on July 5, 2013. The Court's Resolution[82] dated October 17, 2013 denied both petitioner's Motion for Reconsideration and respondent COC's Omnibus Motion.

Considering the exclusion of some of its documentary evidence, petitioner filed a Proffer of Excluded Evidence[83] on November 21, 2013. Respondent COC filed his Comment (On Petitioner's Proffer of Excluded Evidence)[84] on December 20, 2013. The Court declared said denied evidence as part of the case records in its Resolution[85] dated January 7, 2014.

On the other hand, respondent COC filed a Motion (To Adopt the Testimonies of Mr. Saturnino B. Dela Cruz and Ms. Zenaida Y. Monsada as Respondent COC's Evidence)[86] on January 24, 2014. The Court granted the Motion in its Resolution[87] dated February 11, 2014, adopting Director Zenaida Y. Monsada's and Assistant Director General I Saturnino B. Dela Cruz's testimonies in CTA Case Nos. 7966, 7990, and 8020, as part of respondent COC's evidence.

On April 4, 2014, petitioner filed its Manifestation and Request for Admission, stating that in the case entitled *Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*[88], the Regional Trial Court (RTC) of Pasay City declared the DOE Certification dated December 20, 2002 as null and void and of no force and effect. Petitioner prayed that respondents CIR and COC admit the rendition and genuineness of the said Decision.

On April 7, 2014, respondent COC formally offered his evidence,[89] with petitioner's Comment (On Respondent Commissioner of Customs' Formal Offer of Evidence dated 02 April 2014)[90].

On April 22, 2014, respondent CIR manifested that she is adopting the Comment (Petitioner's Manifestation and Request for Admission) filed by the Office of the Solicitor General on April 14, 2014.[91] On the other hand,

[80] *Docket*, pp. 2341 to 2349.
[81] *Docket*, pp. 2352 to 2358.
[82] *Docket*, pp. 2362 to 2369.
[83] *Docket*, pp. 2372 to 2377.
[84] *Docket*, pp. 2391 to 2395.
[85] *Docket*, p. 2399.
[86] *Docket*, pp. 2400 to 2405.
[87] *Docket*, pp. 2515 to 2516.
[88] Docketed as Civil Case No. R-PSY-10-03889-CV.
[89] Formal Offer of Evidence, *Docket*, pp. 2552 to 2560.
[90] *Docket*, pp. 2599 to 2604.
[91] Manifestation, *Docket*, p. 2605.

respondent COC filed his Comment (on Petitioner's Manifestation and Request for Admission dated April 4, 2014), admitting the existence of the Decision but subject to the qualification that the same is not yet final, as the same is the subject of a Notice of Appeal filed on March 19, 2014.[92] The Court noted this admission in a Resolution[93] dated May 20, 2014.

Meanwhile, on April 14, 2014, the Court issued a Resolution[94], granting the parties twenty (20) days from receipt of the Resolution to submit their respective Memoranda. Thus, on May 29, 2014, June 16, 2014, and June 30, 2014, respondent CIR[95], respondent COC[96], and petitioner[97], respectively, submitted their Memoranda. Thereafter, on July 7, 2014, petitioner filed its Petitioner's Supplemental Formal Offer of Evidence[98] in accordance with the Resolution[99] dated June 16, 2014. On July 14, 2014, respondent COC filed his Comment (On Petitioner's Supplemental Formal Offer of Evidence)[100].

Finally, on August 1, 2014, the Court issued a Resolution[101] admitting Exhibit "E[6]" and submitting the case for decision.

THE ISSUES

The parties submitted the following issues[102] for this Court's disposition:

1. Whether or not the Court has jurisdiction over the Petitions for Review.

2. Whether or not BIR Ruling No. 001-2003, dated 29 January 2003, is void for having been issued without factual or legal basis.

3. Whether or not petitioner is exempt by virtue of its franchise, more specifically Section 15 of R.A. 8330 (as amended by Section 11 of R.A. 9215), in relation to Section 13 of the franchise of PAL, P.D. No. 1590, from the excise tax collected on its importations of Jet A-1 fuel for domestic operation, and,

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92 *Docket*, pp. 2608 to 2610.
93 *Docket*, pp. 2630 to 2632.
94 *Docket*, pp. 2597 to 2598.
95 *Docket*, pp. 2633 to 2643.
96 *Docket*, pp. 2659 to 2714.
97 *Docket*, pp. 2722 to 2796.
98 *Docket*, pp. 2800 to 2803.
99 *Docket*, pp. 2717 to 2719.
100 *Docket*, pp. 2804 to 2806.
101 *Docket*, p. 2810.
102 As agreed upon by the parties during the September 17, 2010 hearing.

therefore, entitled to the refund of the specific taxes and additional specific taxes it paid under protest.

The above-enumerated issues may be summarized into one main issue: Whether or not petitioner is entitled to a refund of the amount of ₱74,498,009.11, allegedly representing specific taxes paid for importation of Jet A-1 fuel for its domestic flight operations from March 2008 to October 2008.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court has jurisdiction under Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals, which was promulgated pursuant to Section 8 of RA No. 1125, as further amended by Republic Act No. 9282.[103] Meanwhile, respondents contend that the Court may not take cognizance of the Petition because petitioner failed to appeal BIR Ruling No. 001-2003 to the Office of the Secretary of Finance, before questioning its legality before this Court.

Petitioner points out that this argument is misplaced because the primary issue sought to be resolved in the consolidated cases is petitioner's entitlement to a refund of the specific taxes it paid on various importations of Jet A-1 aviation fuel. Accordingly, it is incumbent upon petitioner to prove the propriety of the refund by contesting the very issuances and rulings on which the assessments are based. Petitioner alleges that contrary to respondents' contention, the principle of exhaustion of administrative remedies is not applicable in the instant case because the urgency of judicial intervention is readily apparent, considering the imminence of the expiration of the two-year prescriptive period, within which to file a suit or proceeding before the courts.[104]

Petitioner explains that as a public utility, it is imbued with public interest and is necessarily granted numerous incentives such as special tax privileges and benefits.[105] Petitioner insists that it is entitled to the same tax treatment as PAL pursuant to Section 11 of its franchise, RA No. 8339, as amended, in relation to Section 13(B)(2) of PD No. 1590, as amended. It argues that by express provision of petitioner's franchise, favorable terms contained in a franchise of a competing individual, partnership or corporation engaged in the same business as petitioner shall automatically be considered incorporated in the franchise of petitioner.[106] Thus, the tax exemption privileges granted to PAL should operate equally in petitioner's favor.[107]

[103] Memorandum for the Petitioner, *Docket,* p. 2739.
[104] Memorandum for the Petitioner, *Docket,* p. 2741.
[105] Memorandum for the Petitioner, *Docket,* p. 2743.
[106] Memorandum for the Petitioner, *Docket,* p. 2745.
[107] Memorandum for the Petitioner, *Docket,* p. 2746.

Petitioner likewise contends that its exemption was arbitrarily taken away by the mere issuance of the 2003 BIR Ruling.[108] Petitioner points out that the 2003 BIR Ruling is void for being violative of the provisions of PD No. 1590 and for being issued without the due process requirements of notice and hearing.[109] Petitioner maintains that the BIR could only withdraw PAL's and, consequently, petitioner's tax exemption, from excise taxes on fuel importations, by proving that there was a sufficient locally available supply of jet fuel in reasonable quantity, quality and price. Petitioner asserts that the data consistently showed that there was no locally available supply, in reasonable quantity and/or in reasonable price.[110] It further claims that contrary to respondents' argument, "locally available supply", by definition, excludes imported products.[111]

Moreover, it points out that the sole basis for the 2003 BIR Ruling is the 2002 DOE Certification. Petitioner claims that the BIR did not even inform petitioner of the issuance of the 2002 DOE Certification, which would have given petitioner a reasonable opportunity to contest the same prior to the issuance of the 2003 BIR Ruling.[112] It stresses that the 2002 DOE Certification is arbitrary, as it consists merely of two sentences and does not elaborate on the basis for its issuance other than simply stating that it was based on data and reports, without disclosing concrete details and attaching supporting documents.[113] Petitioner adds that the 2002 DOE Certification is contrary to the very data of DOE itself.[114] In fact, it was already declared null and void in a decision rendered by the RTC of Pasay City on February 27, 2014.[115]

Petitioner maintains that it has proven its entitlement to a refund, having complied with the requirements for administrative claims for refund. It also notes that the Petitions for Review were filed within the two-year reglementary period.[116]

RESPONDENT CIR'S ARGUMENTS

Respondent CIR contends that the consolidated Petitions for Review primarily seek the nullification of the 2002 DOE Certification and BIR Ruling No. 001-2003, and that the refund of taxes is a mere consequence.[117] Even assuming that the nullification was a mere consequence of a tax refund, it

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[108] Memorandum for the Petitioner, *Docket,* p. 2747.
[109] Memorandum for the Petitioner, *Docket,* pp. 2779 and 2782.
[110] Memorandum for the Petitioner, *Docket,* p. 2749.
[111] Memorandum for the Petitioner, *Docket,* p. 2756.
[112] Memorandum for the Petitioner, *Docket,* p. 2750.
[113] Memorandum for the Petitioner, *Docket,* p. 2750.
[114] Memorandum for the Petitioner, *Docket,* p. 2752.
[115] Memorandum for the Petitioner, *Docket,* p. 2778.
[116] Memorandum for the Petitioner, *Docket,* pp. 2785 to 2788.
[117] Memorandum, *Docket,* p. 2634.

should be considered a collateral attack on a presumably valid administrative issuance and should not be allowed.[118] Respondent alleges that petitioner failed to seek redress through proper administrative or judicial remedies available to petitioner in contesting such issuances. Since petitioner's primary cause of action is the nullification of the issued administrative issuances, the Court of Tax Appeals has no jurisdiction over the same.[119]

Moreover, respondent CIR claims that the Court is bound to give effect to duly issued administrative issuances. The Court would have to accord all legality and validity to the factual findings of the DOE, and thus, the claim for refund must fail.[120] Assuming the Court would choose to disregard the findings of the DOE, the claim for refund must still fail because petitioner was not able to prove that aviation fuel was not locally available in reasonable quantity, quality and price.[121]

RESPONDENT COC'S ARGUMENTS

On the other hand, respondent COC argues that petitioner is not exempt from the payment of excise taxes on its importations of Jet A-1 fuel. According to respondent COC, in order for petitioner to avail of and enjoy the tax benefits and privileges provided to its competitors, such as PAL, it must first be established that indeed PAL receives or enjoys such tax privileges or other favorable terms which tend to place petitioner at any disadvantage.[122] He claims that aside from petitioner's self-serving allegations, no concrete and substantial evidence was presented by petitioner to establish that PAL or any other competitors of petitioner, had indeed received or enjoyed, or is receiving or enjoying, tax privileges with respect to its importations of Jet A-1 fuel. Respondent COC adds that petitioner is not entitled to a refund because it failed to adduce proof of compliance with the conditions required to avail of the tax exemption, *i.e.*, that the imported articles or supplies are not locally available in reasonable quantity, quality or price.[123]

THE RULING OF THE COURT

The Court will determine first the timeliness of the filing of the Petitions for Review.

Timeliness of Filing the Petitions for Review

[118] Memorandum, *Docket,* p. 2636.
[119] Memorandum, *Docket,* p. 2635.
[120] Memorandum, *Docket,* p. 2637.
[121] Memorandum, *Docket,* p. 2638.
[122] Memorandum, *Docket,* p. 2672.
[123] Memorandum, *Docket,* p. 2676.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the above-quoted provisions, both administrative and judicial claims for refund must be made within two (2) years from petitioner's payment of tax. Thus, the two-year period must be applied to the filing of an administrative claim for refund before respondent CIR, and a Petition for Review before this Court.

Here, the dates of filing of petitioner's administrative and judicial claims for refund vis-à-vis the 2-year prescriptive period for filing such, are summarized as follows:

CTA Case No.	Amount Involved in Php (₱)	Date of Payment Under Protest	Date of Expiration of 2-Year Prescriptive Period	Date of Filing the Claim for Refund with the CIR	Date of Filing of Petition for Review
8039	14,762,792.00	March 19, 2008	March 19, 2010	March 12, 2010	March 19, 2010
8069	5,872,385.00	April 10, 2008	April 10, 2010	March 24, 2010	April 12, 2010
8104	23,649,135.00	May 7, 2008	May 7, 2010	May 5, 2010	May 7, 2010
8113	17,754,847.11	June 27, 2008	June 27, 2010	June 17, 2010	June 25, 2010
	2,966,116.00	September 18, 2008	September 18, 2010	June 17, 2010	June 25, 2010
	3,557,423.00	October 10, 2008	October 10, 2010	June 17, 2010	June 25, 2010
	5,935,311.00	October 31, 2008	October 31, 2010	June 17, 2010	June 25, 2010

Based on the foregoing, it appears that petitioner's claim for refund in the amount of ₱5,872,385.00, which was paid under protest on April 10, 2008, has already lapsed as petitioner filed the Petition for Review only on April 12, 2010, or two days later than the expiration of the two-year prescriptive period. However, the Court notes that April 10, 2010 fell on a Saturday and considering that April 12, 2010 was the next working day, petitioner's judicial claim for refund is considered as timely filed.

Jurisdiction of the Court of Tax Appeals

The Court of Tax Appeals (CTA) is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[124] The jurisdiction of the CTA is conferred by RA No. 1125, as amended by RA No. 9282. Section 7 of RA No. 1125, as amended, provides:

[124] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717 (CTA Case No. 7876), April 17, 2012.

"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 Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction."

Based on the above-quoted provision, the CTA has the power to determine whether petitioner is entitled to the refund of the allegedly paid specific taxes, since it lies within the jurisdiction of the Court.[125]

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[125] Section 3, Rule 4, Revised Rules of the Court of Tax Appeals.

Entitlement to Refund

Section 229 of the NIRC of 1997, as amended, allows the taxpayer recovery of any of the following:

1. National internal revenue tax that has been erroneously collected;
2. National internal revenue tax that has been illegally collected;
3. Penalty claimed to have been collected without authority; or
4. Sum that has been excessively or in any manner wrongfully collected.

However, in a claim for refund of erroneously paid or illegally collected taxes, the claimant has the burden of proof to establish the factual basis of its own claim for tax credit or refund.[126] Since tax refunds are in the nature of tax exemptions, they are to be construed *strictissimi juris* against the person or entity claiming the refund.[127]

To resolve the issue of whether or not the taxes have been erroneously paid by petitioner, it must be determined first whether or not petitioner is exempt under PD No. 1590 from specific tax on its importations of Jet A-1 fuel for domestic operations.

Petitioner's franchise, RA No. 8339, as amended by RA No. 9215, governs its taxability. It provides that petitioner is entitled to the same tax-exemption privileges currently enjoyed by PAL under the latter's franchise. Section 11 thereof states:

> "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.
>
> **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.**

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[126] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.

[127] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

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." *(Emphasis supplied)*

Meanwhile, Section 13 of PAL's franchise, PD No. 1590, provides:

"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 non-transport 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:

xxx xxx xxx

(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 form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the

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> 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;
>
> xxx xxx xxx"

An analysis of Section 13 of PD No. 1590 shows that to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

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

First Requisite: Basic Corporate Income Tax or Franchise Tax must be paid

Petitioner filed its Annual Income Tax Return[128] for taxable year ended December 31, 2008 on April 13, 2009. Since it was able to prove that the basic corporate income tax was paid, the first requisite has been satisfied.

Second Requisite: Imported Jet A-1 fuel must be for use in its Transport and Non-transport Operations

To prove the fact of importations of Jet A-1 fuel, petitioner submitted its Bills of Lading[129], Commercial Invoices[130], and Import Declarations[131]. As regards the question of whether such imported Jet A-1 fuel was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner submitted ATRIGs[132] and presented Mr. Edwin J.

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[128] Exhibit "K^5", *Docket*, p. 1801.
[129] Exhibits "C", "O", "Y", "MM", "NN", "OO", and "PP".
[130] Exhibits "D", "P", "Z", "QQ", "RR", "SS", and "TT".
[131] Exhibits "F", "R", "BB", "YY", "ZZ", "AAA", and "BBB".
[132] Exhibits "E", "Q", "AA", "UU", "VV", "WW", and "XX".

Segundo as witness. In his Judicial Affidavit, Mr. Segundo made the following statements:

> "3.Q: Mr. Segundo, what is your present occupation?
>
> A: I am the Supervisor of the Fuel Department of Air Philippines Corporation (APC).
>
> 4.Q: How long have you been the Supervisor of the Fuel Department of APC?
>
> A: I have been the Supervisor of the Fuel Department of APC for nine (9) years, since April 2001.
>
> 5.Q: What are your more important functions as a Supervisor of the Fuel Department of APC?
>
> A: As Supervisor of the Fuel Department, I coordinate with the suppliers of Jet A-1 aviation fuel concerning the fuel requirements of APC for its operation, schedule of fueling of aircraft, validate and recommend payment of billings. I am also the custodian of all documents and records covering the procurement by APC of Jet A-1 aviation fuel through importation and local purchase.
>
> xxx xxx xxx
>
> 6.Q: Do you remember shipments of Jet A-1 aviation fuel imported by APC which arrived at Pinamucan, Batangas on 4 February 2008, 14 March 2008, 29 April 2008, 04 June 2008, 23 August 2008, 24 September 2008, and 22 October 2008?
>
> A: Yes.
>
> 7.Q: What were the shipments of Jet A-1 aviation fuel for?
>
> A: **The shipments of Jet A-1 aviation fuel were imported for APC's domestic flight operations.**" *(Emphasis supplied)*

With the aforequoted testimony of petitioner's witness that the shipments of Jet A-1 aviation fuel were imported for petitioner's domestic flight operations, 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.

Third Requisite: Imported Articles must not be Locally Available in Reasonable Quantity, Quality or Price

As regards the issue of whether its imported Jet A-1 fuel is locally available in reasonable quantity, quality or price, petitioner presented Ms. Glendalyn Dela Cruz, and her tabular reports on Product Importation, Product Exportation, Refinery Production, Total Industry Petroleum Products Demand for 1998 to first quarter of 2010[133], and Supply Demand Balance for 2001 to 2010[134].

In her Judicial Affidavit, Ms. Glendalyn Dela Cruz testified:

> **"15. Q: Ms. Dela Cruz, for the DOE, what is the composition of Total Local Available Supply?**
>
> **A: Total Local Available Supply pertains to the sum of three components, namely: Refinery Production, Product Importation and Inventory.**
>
> 16. Q: Do you remember preparing a report entitled Supply Demand Balance 2001-2010 in thousand barrels dated 14 April 2011, specifically containing tables with the headings 'Inventory (beginning)', 'Production Local', 'Importation', 'Total Local Available Supply', 'Demand', 'Export', and '+(-) Local Available Supply vs. Demand' covering the years 2001 until 2010?
>
> A: Yes. xxx"[135] *(Emphasis Supplied)*

During her cross-examination, she testified, as follows:

> "ASSO. SOL. MANABAT:
> Q: In your Judicial Affidavit, you attached therein a table of report marked as Exh. 'Z^4', do you recall when did you issue the table to the petitioner and to whom did you give the table report?

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[133] Exhibit "Z^4".
[134] Exhibit "A^5".
[135] Exhibit "C^5", *Docket*, p. 1781.

MS. DELA CRUZ:
A: The report was given to a walk-in researcher in our office who said that he released the information in a feasibility study. I think, last year.

ASSO. SOL. MANABAT:
Q: So, you were approached by a walk-in researcher?

MS. DELA CRUZ:
A: Yes.

ASSO. SOL. MANABAT:
Q: So, ma'am, what is the nature of this table report which you gave to the said walk-in researcher with respect to the supply and demand?

xxx xxx xxx

MS. DELA CRUZ:
A: The data is complete, separately listed, for example, total imports, total production, total demand and total exports **but if you will use the data to compute for the total local available supply, then, it is not complete.**

xxx xxx xxx

ASSO. SOL. MANABAT:
Q: So, ma'am, you stated that this data is complete if it will take independently, for example, independent consideration of importation, exportation, product refinery and demand, **but not complete when we pertain to total local available supply. Is that your previous answer?**

MS. DELA CRUZ:
A: **Yes, ma'am.**

ASSO. SOL. MANABAT:
Q: When we say total local available supply and total demand, does your office likewise prepare a similar report to the one attached to your Judicial Affidavit?

MS. DELA CRUZ:

A: Yes. It is called the Supply Demand Balance Table.

ASSO. SOL. MANABAT:
Q: So, ma'am, why did you only give partial or standard data to the walk in researcher and not the complete report?

MS. DELA CRUZ:
A: To assist our researchers, we formulated a standard data which contains the basic information of supply and demand, but if a researcher specifically requested for petroleum inventory data, this will also be given to the requesting party.

ASSO. SOL. MANABAT:
Q: So, ma'am, if the walk in researcher would ask for the complete data, you would give the data not only for importation and refinery production, but also the inventory?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: Ma'am, in your Judicial Affidavit, you stated that the total local available supply pertains to the sum of three components, the refinery production, product importation and inventory?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: So, in this table, what do you mean by refinery production?

MS. DELA CRUZ:
A: Refinery production refers only to the local production of the oil refineries in the country.

ASSO. SOL. MANABAT:
Q: How about the importation?

MS. DELA CRUZ:
A: The importation refers to the total industry imports which include the oil companies' importation as well as the domestic airline companies' importation.

ASSO. SOL. MANABAT:
Q: So, ma'am, you said that the **refinery production is merely one of the components of total local available supply?**

MS. DELA CRUZ:
A: **Yes. It is only one of the components of the total local available supply.**

ASSO. SOL. MANABAT:
Q: **It is not equal to total local available supply?**

MS. DELA CRUZ:
A: **No.**

ASSO. SOL. MANABAT:
Q: So, ma'am, **naturally, in the ordinary course of events, being one of the components in computing the total local available supply, refinery supply is always lower than the total local available supply?**

MS. DELA CRUZ:
A: **Yes, ma'am.**

ASSO. SOL. MANABAT:
Q: **Because you have to add the two other components?**

MS. DELA CRUZ:
A: **Yes, the inventory and the importation data.**

ASSO. SOL. MANABAT:
Q: So, ma'am, I observe in your Judicial Affidavit, you made a comparison under Question No. 9, Question No. 9, particularly for the year 2008, you were asked what figures appear under refinery production and total demand, and you answered that the refinery production is merely 6,596 thousand barrels and the demand is 10,115 thousand barrels?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: So, your answer is when asked which is greater, you answered that the demand is greater than the refinery production?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: However, ma'am, **you said earlier, that for purposes of computing total local available supply, it is not similar to refinery production?**

MS. DELA CRUZ:
A: **Yes, ma'am.** xxx"[136] *(Emphasis supplied)*

Clearly, based on the foregoing testimonies, petitioner's own witness stated that for purposes of determining whether there is locally available supply of aviation fuel at a given time, one must consider not only the refinery production, but also the inventory and the product importation. Ms. Dela Cruz even admitted that the table she has prepared is not complete in terms of computing for the total local available supply. The pertinent parts of the testimony of Ms. Dela Cruz are quoted hereunder:

"ASSO. SOL. MANABAT:
Q: So, when I will look for a Supply Demand Balance, which factors will I compare with total demand, the refinery production only, or the total local available supply or the sum components of refinery production, product importation and inventory?

MS. DELA CRUZ:
A: No, it is the sum of three components of total local available supply.

ASSO. SOL. MANABAT:
Q: So, your comparison in Questions 9 and 10, is, to say the least, is improper for purposes of determining the Supply Demand Balance?

MS. DELA CRUZ:
A: Yes, ma'am.

[136] TSN, September 6, 2011, pp. 21 to 32.

ASSO. SOL. MANABAT:
Q: So, ma'am, in your Judicial Affidavit, you likewise attached a table report entitled Supply Demand Balance marked as Exh. 'A5'. For the year material to the instant case which is 2008, in your Judicial Affidavit, particularly in Question No. 23, there appears figures opposite the sub-heading, Total Local Available Supply, ma'am, can you read the data appearing for total local available supply for the year 2008?

A: For 2008, for Jet Fuel, the Total Local Available Supply is 9,456 resulting from the total of adding the inventory, the production and the importation.

ASSO. SOL. MANABAT:
Q: How about the demand side, what figure appears therein for the year 2008 also for Jet A Fuel?

MS. DELA CRUZ:
A: Total demand is 8,850 plus the export data which is 78.

ASSO. SOL. MANABAT:
Q: So, ma'am, can we compare, for purposes of determining Supply Demand Balance that is to be compared with the Total Local Available Balance against the Total Demand, which is higher, the Total Local Available Supply or the Total Demand?

MS. DELA CRUZ:
A: Total local available supply is higher.

ASSO. SOL. MANABAT:
Q: On the same data, Jet A Fuel, particularly the first table, Exh. 'A5', for the periods 2001 to 2010, I noted that the figures opposite the total local available supply are always higher than the figures appearing opposite the demand. Is my observation correct?

MS. DELA CRUZ:
A: Yes.

ASSO. SOL. MANABAT:
Q: You mean to say the period 2001 to 2010, on a year to year basis, the supply is always higher than the demand?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: Also, ma'am, in that table, you said that the importation includes all importation made by airline companies and local oil companies?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: How about the demand side, does it also include the demand made by airline companies and local oil companies?

MS. DELA CRUZ:
A: Yes, ma'am.

ASSO. SOL. MANABAT:
Q: So, in determining the supply and demand of Jet Fuel made by airline companies in the Philippines, what factors do you consider?

MS. DELA CRUZ:
A: We have to include the direct importation of the airline companies to be included in the total supply and then, whatever volume of the imported is also equal to their demand and that would be also reflected in the total demand to get the Supply Demand Balance of the fuel.

ASSO. SOL. MANABAT:
Q: The supply is equal to the volume of importation which is also equal to the demand?

MS. DELA CRUZ:
A: Yes, for the airline companies.

ASSO. SOL. MANABAT:
Q: So, ma'am, for the years 2001 to 2010, under the sub-heading importation, if we remove from those figures the importation made by the airline companies, then, the total

local available supply would be less than the demand, is that a correct observation?

MS. DELA CRUZ:
A: No, because, as I have said before, all imports should be included in the total local available supply whether you are an airline company or you are an oil company.

ASSO. SOL. MANABAT:
Q: So, it is not correct to exclude the importations made by airline companies in the figures appearing on the importation?

MS. DELA CRUZ:
A: No.

ASSO. SOL. MANABAT:
Q: So, ma'am, am I correct to say that, for example, we remove the importation made by the airline companies in the importation data, does it also follow that the demand of airline company will also be excluded in computing the demand?

MS. DELA CRUZ:
A: Yes.

ASSO. SOL. MANABAT:
Q: So, if you excluded it in the importation, we will exclude it in the demand side?

MS. DELA CRUZ:
A: Yes.

ASSO. SOL. MANABAT:
Q: Otherwise?

MS. DELA CRUZ:
A: Otherwise, this will be misconstrued as demand of the oil companies which is not correct because this volume is purchased from the oil companies."[137] *(Emphasis supplied)*

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[137] TSN, September 6, 2011, pp. 33 to 41.

Based on the foregoing testimonies of petitioner's witness and on the tables that have been prepared, the total local supply of Jet A-1 fuel is equivalent to the sum of local production, inventory, and importations. This means that the importation component of the supply side of Jet A-1 fuel cannot be taken out without adjusting its demand side or else, it would give out inaccurate results.

Thus, contrary to petitioner's stand, its own witness stated that the local supply of Jet A-1 fuel is sufficient to satisfy the needs of the market. Petitioner's own witness also debunked its argument that "locally available supply", by definition, excludes imported products.

In the instant case, petitioner is bound by its witness' testimony regarding the definition of "locally available supply" and the sufficiency of the total local supply of Jet A-1 fuel. Considering the foregoing, petitioner failed to prove that Jet A-1 fuel is not locally available in reasonable quantity.

Regarding the question of whether the imported Jet A-1 fuel of petitioner is locally available in reasonable price, petitioner presented as evidence a document denominated as **Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 and the Cost of Domestic Purchases of Locally Available Turbo Jet Fuel or Jet A-1 for the Period February to October 2008 Using the Price Quotation Issued to the Company by Pilipinas Shell Petroleum Corporation**[138], which shows the comparison between the prices of Jet A-1 fuel if imported and if domestically purchased.

A perusal of such document shows that even if the specific taxes and customs duties are not considered as part of the local price of Jet A-1 fuel, the total cost of purchasing it locally would still be greater than the total cost of its importation.[139] However, since petitioner was not able to prove that its imported Jet A-1 fuel is not locally available in reasonable quantity, its claim for refund in the total amount of ₱74,498,009.11 must be denied.

WHEREFORE, premises considered, petitioner Air Philippines Corporation's claim for refund is hereby **DENIED**.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[138] Exhibit "C[6]".
[139] Exhibit "C[6]" under item "Difference (Savings)", (a), (b), (d), (e), (f), and (g), under column "Total Cost".

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice