Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISIONER OF CUSTOMS,
Petitioner,

-versus-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1456
(CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734)

x--x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

-versus-

AIR PHILIPPINES CORPORATION,
Respondent

CTA EB No. 1458
(CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734

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

Promulgated:

MAR 27 2018 10:03 a.m.

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RESOLUTION

CASANOVA, J.:

Submitted for resolution are petitioner Commissioner of Internal Revenue's (CIR) Motion for Reconsideration[1], filed on November 17, 2017, and petitioner Commissioner of Customs' (COC) Motion for

[1]CTA EB No. 1456, En Banc Rollo (Vol. II), pp. 1064-1075.

Reconsideration[2], filed on November 21, 2017, with respondent Air Philippines Corporation's (APC) Consolidated Comment (To Commissioner of Internal Revenue's Motion for Reconsideration dated 17 November 2017 and Commissioner of Custom's Motion for Reconsideration dated 17 November 2017)[3], filed on January 25, 2018.

Both Motions seek to reverse the Decision[4] dated October 18, 2017 of the Court En Banc denying the consolidated Petitions for Review separately filed by petitioner COC on June 6, 2016, docketed as CTA EB No. 1456[5], and by petitioners CIR and COC on May 19, 2016, docketed as CTA EB No. 1458[6].

CIR's Motion for Reconsideration

In his Motion for Reconsideration, CIR raised the following grounds for resolution of this Court:

1. The Honorable Court erred in ruling that respondent APC was able to prove that its importations of Jet A-1 Aviation fuel were used for its transport and non-transport operations; and,

2. The Honorable Court erred in ruling that respondent was able to prove that the imported articles were not locally available in reasonable quantity, quality or price based solely on the Air Transportation Office's (ATO) Certifications issued to respondent APC.

In support of the foregoing, petitioner CIR argues that the Authority to Release Imported Goods (ATRIGs) and ATO's Certifications were not sufficient to verify that the subject Jet A-1 aviation fuel were actually used by respondent APC in its transport and non-transport operations; that it is the Department of Energy (DOE) and not Civil Aviation Authority of the Philippines (CAAP) that has the task to determine whether the total supply is enough for total demand; and that the Court in Division should have considered the testimony of Ms. Glendalyn P. Dela Cruz, a Senior Science Research Specialist of the DOE, who testified that the aviation fuel was locally available in sufficient quantity, quality and price.

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[2] Ibid., pp. 1076-1089.
[3] Id., pp. 1100-1113.
[4] Id., pp. 1025-1054.
[5] CTA EB No. 1456, En Banc Rollo (Vol. I), pp. 8-66.
[6] CTA EB No. 1458, En Banc Rollo, pp. 1-30.

COC's Motion for Reconsideration

In his Motion, petitioner COC raised this sole issue for the consideration of the Court En Banc:

> **"THE HONORABLE COURT ERRED IN DENYING PETITIONER COC'S PETITION FOR REVIEW, AS IT FAILED TO CONSIDER THE FACT THAT RESPONDENT APC HAD MISERABLY FAILED TO PROVE ITS COMPLIANCE WITH THE REQUIREMENTS NECESSARY FOR ITS ENTITLEMENT TO EXCISE TAX EXEMPTION.**

Petitioner COC mainly argues that the entries in the ATRIGs cannot be relied upon since the same were supplied by respondent APC itself and were merely relied upon by the BIR in issuing said ATRIGs; the testimony of respondent APC's witness, Mr. Chiong, was only with respect to the fact of importation and to its actual use, hence, cannot be considered as sufficient proof in establishing the second requirement; that CAAP, as well as its predecessor, ATO, is not vested with the power and duty to certify as to the availability or non-availability of Jet A-1 aviation fuel in reasonable quantity, quality or price; that its witnesses have sufficiently testified on the CAAP's apparent lack of authority; that it is the DOE which is vested under the law with the express power and duty to monitor the prices, quality and supply of petroleum products of the country; and, that Director Zanaida Y. Monsada of the DOE has sufficiently testified that there was a reasonable supply, quality and price of aviation fuel during the period material to APC's importations subject of the instant case.

Respondent APC's Consolidated Comment

Respondent APC submits that the foregoing arguments are mere rehash of petitioners CIR and COC's arguments in their respective Petitions for Review which were already addressed by the Court En Banc in its assailed decision; that it has sufficiently proved that the subject Jet A-1 fuel were used for its transport and non-transport operations; that it has sufficiently proved that there was no locally available Jet A-1 fuel in reasonable quantity, quality and price; and that the 2002 DOE Certification cannot be relied upon because it was already declared null and void by the Pasay Regional Trial Court and the Court of Appeals.

Upon review of the records, the Court En Banc agrees with respondent APC that all the arguments presented by CIR and COC deal with the very same issues which have been thoroughly passed upon in the assailed Decision.

All told, the Court En Banc finds no compelling reason or substantial justification to modify its findings much more reverse the assailed Decision.

WHEREFORE, premises considered, petitioners CIR and COC's respective Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

INHIBITED
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice