REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., *Petitioner,*	CTA EB No. 1363 (CTA CASE No. 8198)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, *Respondents.*	Promulgated: APR 05 2017 3:15 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by Philippine Airlines, Inc., under *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1]*, as amended*, seeking the reversal of the Decision dated June 2, 2015[2] and the Resolution dated

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[1] RULE 8, Sec. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal. (n)

[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp.9-39.

September 10, 2015[3] rendered by the Third Division of this Court denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P7,758,099.72 representing excise taxes paid on PAL's importations of cigarettes and liquor products for its in-flight consumption, the dispositive portions of which, respectively, read as follows:

Decision dated June 2, 2015:

> "**WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Resolution dated September 10, 2015:

> "**WHEREFORE**, premises considered, the instant "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The following facts of the case, as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

> "On June 11, 1978, by virtue of P.D. 1590[6] petitioner was granted a franchise to operate air transport services domestically and internationally.
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> On January 1, 2005, R.A. 9334 took effect.
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> On February 3, 2005, CIR Commissioner Guillermo L. Parayno, Jr. *(Com.* Parayno") called the attention of COC Commissioner George M. Jereos ("Com. Jereos") to implement Section 6 of R.A. No. 9334 and to immediately collect the excise tax due on the imported alcohol and tobacco

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[3] *Id.*, pp.40-44.
[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues dated June 4, 2014, Division Docket pp. 431-438.
[6] An Act Granting a New Franchise to Philippine Airlines, Inc., to Establish , Operate and Maintain Air-Transport Services in the Philippines and Between Philippines and Other Countries.

products brought to Duty Free Philippines ("DFP") and freeport zones.

On February 4, 2005, Com. Jereos issued a Memorandum, directing the collection of excise tax due on imported alcohol and tobacco products even if destined to DFP and to Freeport Zones.

On March 1, 2005, COC Commissioner Alberto D. Lina ("Com. Lina") issued Customs Memorandum Order No. 13-200513 ("CMO 13-2005"), which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to R.A. 9334 and BIR Regulation No. 12-2004."

On April 4, 2005, petitioner contested the action taken by the District Collector of Customs of the Manila International Container Port ("MICP") in seeking to collect excise taxes and customs duties on petitioner's importation of cigarettes for use in its operations and to release the shipment immediately without condition or payment of excise tax.

On April 25, 2005, the Bureau of Customs Legal Service issued a Memorandum addressed to Com. Lina, recommending the strict and proper implementation of CMO 13-2005 in adherence to Section 131 of the NIRC of 1997, as amended by R.A. 9334, subject to duty drawback and/or tax refund, if applicable. It further recommended that any claims of exemptions should be strictly interpreted against the claimant/taxpayer.

On May 16, 2005, petitioner wrote Com. Lina stating that it is being required to pay excise tax, value added tax, and customs duties as a condition or before it could withdraw their goods from MICP; that it is going to pay under protest the subject claim; and that it shall claim tax refund or other alternative action allowed under the law.

Importations of assorted liquor and wine from January to April 2008 ("First Batch")[7] arrived at the Ninoy Aquino International Airport ("NAIA") and South Harbor, were assessed excise taxes in the total of PHP2,610,430.72, and were duly covered by Authority to Release Imported Goods ("ATRIG")[8]. The details are as follows:

Port of Entry	Arrival Date	Informal Import Declaration and Entry	Air Waybill/Bill of Lading No.	ATRIG No.	Excise Taxes (Php)
South Harbor	23 January 2008	873	D0712/33255	00011651	169,999.83
NAIA	28 January 2008	904	079-2999-2491	00014836	252,481.74
NAIA	22 February 2008	2047	079-2999-3036	00014816	599,655.57
South Harbor	01 March 2008	2084	D0802/3446	00014826	169,999.83
NAIA	22 March 2008	2549	079-3070-8484	00014808	55,194.75
South Harbor	26 March 2008	3002	D083/3624	00014824	169,999.83
NAIA	04 April 2008	3742	079-2999-3946	00014810	78,643.35
NAIA	11 April 2008	3733	079-2999-4042	00014811	235,146.24
NAIA	16 April 2008	3761	079-3070-8506	00014829	24,285.69
NAIA	19 April 2008	4225	079-2999-4193	00014815	321,244.06
NAIA	21 April 2008	4252	079-2999-4252	00014827	530,156.79
NAIA	25 April 2008	4251	079-3012-9481	00014809	3,623.04

Likewise, importations for the period May to July 2, 2008 ("Second Batch")[9] were assessed excise taxes amounting to PHP5,147,669.00, and each item is covered by a corresponding ATRIG[10], broken down as follows:

Port of Entry	Arrival Date	Informal Import Declaration and Entry	Air Waybill/Bill of Lading No.	ATRIG No.	Excise Taxes (Php)
NAIA	01 May 2008	4303	079-3012-9573	00014823	146,313.22
NAIA	02 May 2008	4310	079-2999-4694	00014835	539,529.98
NAIA	10 May 2008	4906	079-2999-4845	00014822	759,320.46
NAIA	16 May 2008	5390	079-2999-4926	00018766	164,320.46
NAIA	17 May 2008	4980	079-3148-0595	00014828	149,971.05
South Harbor	21 May 2008	5873	D0804/3889	00019238	161,338.50
NAIA	24 May 2008	5398	079-3192-9811	00019236	42,457.50
NAIA	28 May 2008	5413	079-3150-7070	00019241	176,947.55
NAIA	03 June 2008	5880	079-3150-7195	00018764	651,877.64
NAIA	07 June 2008	5887	079-3150-7280	00019245	700,533.90
NAIA	21 June 2008	6372	079-3150-7534	00018761	824,579.48
NAIA	25 June 2008	6401	079-3148-1531	00018765	26,127.36
NAIA	9 July 2008	6952	079-3192-9833	00019239	38,211.75
NAIA	10 July 2008	7178	079-3150-7836	00019240	542,730.59
NAIA	18 July 2008	7160	160-6452-4121	00019244	3,657.83
NAIA	21 July 2008	7182	079-3148-2253	00019237	219,469.82

On November 4, 2008, Gilda L. Cinco, Acting Chief, WAU/FED of the BOC, submitted petitioner's Batch 1 and Batch 2 documents to Coll. Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse for payment of customs duties,

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[7] Division Docket, Exhibits "I" to "T", pp. 1089-1112.
[8] *Id.,* Exhibits "W" to "HH", pp. 1114-1125
[9] *Id.,* Exhibits "LL" to "AAA", pp. 1126-1157.
[10] *Id.,* Exhibits "DDD" to "SSS", pp. 1159-1174.

excise tax, and IPF due on their importation of alcohol and tobacco products.

On December 11, 2008, petitioner paid the excise taxes for both batches of importations of assorted liquor and wine, to wit:

Batch	Amount	Date of Payment	Receipt Number
Batch 1 (January 23-April 25, 2008)	Php 2,610,430.72	December 11, 2008	158197024
Batch 2 (May 1-July 21, 2008)	Php 5,147,669.00	December 11, 2008	158197006
TOTAL	**Php 7,758,099.72**		

On the same date, petitioner wrote two (2) separate letters[11] to Mrs. Silveria Salazar, Chief Collection Division of the Bureau of Customs, Collection District III, stating therein that it is paying under protest the excise taxes for both batches of importations, amounting to PHP2,610,430.72 and PHP5,147,669.00, respectively.

On December 17, 2008, petitioner filed before the District Collector of Customs of NAIA a protest against the said assessment and collection in accordance with Section 2308 of the Tariff and Customs Code.

On March 5, 2009, petitioner filed with respondent CIR its request for refund of the amounts 2,610,430.72 and 5,147,669.00, representing the excise taxes paid under protest on the importations of assorted wines, liquors and cigarettes for the period January 28 to April 25, 2008 and May 1 to July 21, 2008, respectively, and alleging that the taxes collected from them were erroneously or illegally collected.

On December 10, 2010, pursuant to Section 229 of the NIRC, petitioner filed the instant Petition for Review, since respondent CIR has not acted upon petitioner's claim for refund or tax credit.

On January 12, 2011, respondent Commissioner of Internal Revenue (" CIR"), in her

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[11] *Id.*, Exhibit "II", p. 679 and Exhibit "TTT", p. 751.

Answer[12], raised the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not ipso facto granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 6. The claim for refund in the amount of Seven Million, Seven Hundred Fifty Eight Thousand, Ninety Nine and 72/100 (P7,758,099.72) being claimed by petitioner paid and incurred for the taxable year 2008 is not warranted.
>
> 7. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes.
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> xxx xxx xxx
>
> 10. Taxes are essential to government's very existence; (CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003) hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008) Since tax refunds are regarded as tax exemptions and these are to be construed *strictissimi juris* against the person or entity claiming the exemption. (Philippine Phospate Fertilizer Corporation

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[12] Division Docket, Records, pp. 234-242.

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vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On January 28, 2011, respondent COC filed his Answer[13], raising the following Affirmative Defenses:

"Respondent Commissioner of Customs hereby repleads and incorporates all the above allegations and further respectfully states:

I. Sections 6 and 10 of R.A. 9334 have repealed Sections 13 and 24 of P.D. 1590.

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II. Petitioner is no longer entitled to tax exemption, having become a private entity.

Petitioner argues that respondent's collection of excise taxes on its imported cigars, cigarettes and wines violates its franchise and its right to due process. Prior to the enactment of R.A. No. 9334, petitioner asserts, it has always been allowed to bring in its commissary and catering supplies without the collection of any excise taxes, duties and import processing fees.

As already discussed, Section 6 of R.A. No. 9334 has plainly withdrawn petitioner's

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[13] *Id.*, pp. 260-272.

exemption from excise taxes on the importation of commissary supplies.

More, a reading of P.D. No. 1590 promulgated in 1978 reveals that the latter franchise was granted when petitioner was still a government-owned and controlled corporation. P.D. No. 1590's first whereas clause states thus:

> 'WHEREAS, the ownership, control, and management of Philippine Airlines, our national flag carrier have been reacquired by the Government."

It can be then reasonably inferred that the tax exemption under Section 13 was extended petitioner in consideration of its former status as a government-owned and controlled corporation. Having been acquired by private investors in the late 1990s, petitioner cannot now assert the continued enjoyment of this privilege, especially in light of the modification of its franchise by R.A. No. 9334.

A franchise shall not be granted except under the condition that it shall be subject to amendment, alteration, or repeal from Congress when directed by the common good.

At any rate, it is settled that tax exemptions are never presumed and when granted are strictly construed against the grantee. The privilege petitioner invokes, under Section 13 and 24 of P.D. 1590, partakes the nature of a tax exemption. Such privilege must perforce be strictly construed against petitioner in light of a later enactment like Section 6, R.A. No. 9334, effectively withdrawing petitioner's tax exemption under Sections 13 and 24 of P.D. 1590."

On April 26, 2011, the parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues.

On May 2, 2011, a Pre-trial Order was issued by the Third Division terminating pre-trial and setting the date for the presentation of evidence by the parties.

During trial, petitioner presented the following as witnesses: (1) Mr. Joseph Brian T.L. Tan, Manager-Aircraft Materials Purchasing Division; (2) Ma. Evelyn L. Taghap, Manager of the Tax Services and Compliance Department; and (3) Cheryl V. Capinpin, Manager, In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department.

On March 13, 2014, during the initial presentation of evidence for respondents, counsels for respondents jointly manifested that they have no evidence to present. Thus, on March 19, 2014, the Court issued a Resolution[14] ordering the parties to file their respective memoranda within a period of thirty (30) days.

On June 4, 2014, the Court resolved to submit the case for decision, taking into consideration the Memorandum filed by petitioner on April 10, 2014[15], by respondent Commissioner of Internal Revenue on May 12, 2014[16] and by respondent Commissioner of Customs on May 12, 2014[17].

On June 2, 2015, in a Decision promulgated by the Court in Division, it held that despite petitioner's exemption from the payment of excise taxes, petitioner was not able to prove compliance with the requirements set forth by Section 13[18] of

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[14] *Id.*, p. 1574.
[15] *Id.*, pp. 1575-1604.
[16] *Id.*, pp. 1615-1642.
[17] *Id.*, pp. 1643-1684.
[18] 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:

P.D. No. 1590. Thereafter, petitioner filed a Motion for Reconsideration, but was also denied in a Resolution dated September 10, 2015.

Hence, this Petition for Review was filed.

Philippine Airlines, Inc. assails the Decision on the ground that the Court in Division erred in ruling that it is not entitled to the claim for refund representing the excise taxes paid on its importations. It insists that it has sufficiently proven that the commissary supplies are not locally available in reasonable quantity, quality, or price.

The Court En Banc is not persuaded and We rule to DENY the Petition.

We cannot stress enough that the controversy is not novel. It is a well known principle in taxation that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is the claimant's burden to prove the factual basis of a claim for refund or tax credit[19]. Indubitably, in the recent case of *Winebrenner and Iñigo Insurance Brokers Inc. vs. Commisioner of Internal Revenue*[20] the Supreme Court ruled in this wise:

(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 nontransport 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:

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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 use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;** (Emphasis Supplied)

[19] Eastern Telecommunications Philippines vs. commissioner of Internal Revenue, G.R No. 183531, March 25, 2015.
[20] G.R. No. 206526, January 28, 2015.

> "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim"

Applying this in the case at bar, while we have sustained PAL's exemption from Section 13 of its franchise, it is imperative for PAL to show competent evidence that it has complied with the requirements set forth under the afore-mentioned provision, particularly regarding the unavailability of such imported articles locally in reasonable quality, quantity or price.

Regrettably, a perusal of the records would reveal that PAL was unable to prove that the imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.

Accordingly, an examination of the Judicial Affidavit of Ms. Cheryl Capinpin, PAL's In-Flight Manager, shows that petitioner compared the prices of its imported wines and liquors with the pricelist ***only*** of a single local wine supplier, the Philippine Wine Merchant. The pertinent portions of the Judicial Affidavit as cited by the Court in Division are as follows:

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> "9.Q. As such supervisor would you know why PAL imported such supplies instead of just buying them from local sellers of similar products?
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> 9.A. PAL imported said alcoholic products because the importation of said products is cheaper than buying said products locally, and in the case of cigarettes, there are no local suppliers or dealers big enough to supply the quantity of the various foreign brands of cigarettes PAL is importing, and if ever there are said local dealers, their selling prices would definitely be higher than PAL's cost of importing the cigarettes.

10.Q. Why do you say that importing said catering and commissary supplies is cheaper for PAL than if it purchased the same, locally?

10.A. Because, as shown in a comparative table which is attached hereto as Annex "A", comparing the cost of purchasing them locally, PAL's cost of importing them is definitely much lower than the cost of buying them locally.

11.Q. Looking at Annex "A" of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

11.A The cost of importing the commissary supplies involved and listed under the column "Product Imported", are specified under the columns labelled "Unit Cost Per Sales Invoice," Unit Cost per ATRIG," and "Unit Cost per Informal Import Declaration No.," while the cost of locally buying the same supplies are specified under the column labelled "Philippine Wine Merchants 2008 Price List". As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

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18.Q What does the column labelled "Philippine Wine Merchants Price List 2008" contain?

18.A. Said column contains the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the year 2008, of the alcoholic product mentioned therein, if the same product is purchased from them.

19.Q. What is your source of the local price of the Philippine Wine Merchants for the year 2008?

19.A. My source of the 2008 Price List of Philippine Wine Merchants are given to me by Philippine Wine Merchants, a local wine dealer.

20.Q. Showing to you this document labelled "Philippine Wine Merchant, 2008 Price List" with a signature appearing at the botton [sic] of the page on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and marked as Annex "B", how is this related to the 2008 Price List of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the year 2008 appearing in your table of comparison?

20.A. That is the price list for the year 2008 of the Philippine Wine Merchant which you mentioned.

21.Q. Do you have other sources of local prices of the products involved?

21.A. We have no other sources of said local prices because other local wine merchants or dealers refused to give us their list of prices despite our persistent requests. We even tried getting the quotation of Duty Free Philippines, but they also refused to give us any.

22. Q. How about the local costs of the imported cigarettes involved?

22.A. I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the cigarettes who could regularly supply PAL with the quantity it regularly needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.

> 23.Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?
>
> 23.A. Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and custom duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will, in turn add the same to its selling price to PAL.
>
> On the other hand, because of its franchise, P.D. No. 1590 PAL does not have to pay any excise tax and customs duties on the imported products involved."

Based on the foregoing testimony of PAL's In-Flight Manager, this Court is led to conclude that no valid comparison can be made between the prices of the imported articles indicated in the sales invoices and prices reflected in the Philippine Wine Merchant Price list for the year 2008. Furthermore, other than the said price list, and testimony of the petitioner's witnesses, petitioner had no other evidence that woud convince this Court that the articles imported are not locally available in reasonable quantity, quality, or price. More so, the unavailability of a comparative price list for tobacco products.

Under the premises, PAL could not have sufficiently determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by only one supplier. Also, with respect to the imported cigarettes, PAL failed to make a comparison in contrast to its local prices and merely assumed based on speculations that its requirement on imported cigarettes could not be satisfied by any local supplier.

Given the circumstances at bar, there are no other reliable data left through which this Court may evaluate and verify that the cost of importing the subject wines, liquor, and cigarettes are indeed reasonably lower than purchasing them locally, other than the testimony of PAL's In-Flight Manager. Incidentally, an uncorroborated testimony is just a mere conclusion based on conjectures and assumptions which definitely bears no credence.

In sum, despite the exemption from payment of excise taxes, PAL was not able to prove compliance with the requirements set forth by Section 13 of P.D. 1590. To reiterate, it is settled in a long line of cases that claims for tax refund or credit, like claims for tax exemption, are construed strictly against the taxpayer.[21] As already stated in the assailed Decision, *the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.*[22]

Considering that petitioner failed to offer evidence to show that the articles imported are not locally available in reasonable quantity, quality or price, petitioner's claim for refund must be denied. Undoubtedly, the Court in Division made no pronouncement that would bolster petitioner's argument that the Court in Division made a reversible error.

On another note, when the Court in Division said that submission of a comparative local price is not the only determining factor to justify the exemption of the imported product, it only meant that the petitioner should have other sufficient evidence to prove compliance with the last requisite set forth under the law, that is, the imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.

Thus, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, the petition is **DISMISSED**. The Decision of the Third Division of this Court in CTA Case. No. 8198 dated June 2, 2015, and its Resolution dated

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[21] Applied Food Ingredients Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 184266, November 11, 2013.
[22] Philippine Geothermal, Inc., vs. The Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005.

September 10, 2015, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

"I join Presiding Justice Del Rosario's Concurring and Dissenting Opinion."
ERLINDA P. UY
Associate Justice

"I join Presiding Justice Del Rosario's Concurring and Dissenting Opinion."
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

"I join Presiding Justice Del Rosario's Concurring and Dissenting Opinion."
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB NO. 1363
(CTA Case No. 8198)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

APR 05 2017 3:15 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I agree with the *ponencia's* conclusion that with respect to petitioner's importation of tobacco products, petitioner failed to prove that it is not available in reasonable quantity, quality or price in the local market.

With due respect, however, I dissent with the *ponencia* in denying petitioner's claim for refund or issuance of a tax credit certificate of excise taxes paid on its importations of liquors for its in-flight consumption for petitioner's alleged failure to prove compliance with the requirements set forth by Section 13 of Presidential Decree (PD) No. 1590.

In affirming the Court in Division's assailed Decision and Resolution, the *ponencia* reiterates that no valid comparison can be made between the prices of the imported articles indicated in the supplier's sales invoices issued to petitioner *vis-à-vis* the prices reflected in the Philippine Wine Merchant Price list for the year 2008. It states that other than the said price list and testimony of the petitioner's witnesses, it had no other evidence that would convince the Court *En Banc* that the articles imported are not locally available in reasonable quantity, quality, or price. The *ponencia* further emphasizes that petitioner could not have sufficiently determined the availability of the imported liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by only one supplier.

Section 13 of Presidential Degree No. 1590 exempts petitioner from paying taxes, duties, charges, royalties or fees on the importation of its commissary and catering supplies, *viz.*:

> "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 nontransport 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:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as

> part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> 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 use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; xxx xxx xxx"

Pursuant to the afore-quoted provision, in order to claim exemption from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:

1. Its corporate income tax and VAT liabilities for the subject period of importation had been paid;

2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

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

Anent the imported liquors, I concur with the findings of the *ponencia* that petitioner had complied with the first and second requisites. With regard to the third requisite, I submit that petitioner sufficiently proved that its imported liquors were not locally available in reasonable quantity, quality or price, contrary to the conclusion of the *ponencia*.

Records show that as to the third requisite, in order to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price, petitioner presented the **Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager of the In-flight Materials Purchasing Division, Catering & In-flight**

Materials Purchasing Sub-Department, the Philippine Wine Merchant Price List[1], sales invoices issued to PAL for its purchase of the subject articles, Monthly Philippine Dealing System Rates (2007 to 2010),[2] 2008 Booking Rates for the Month of May[3], Letters of Ms. Marianne C. Raymundo, PAL VP-Financial Services re: Booking Rates for the months of January, March, and April 2008[4], and a Table of Comparison.[5]

The issue involved in the case is not of first impression, as the same was raised in earlier cases before the CTA involving the same parties, albeit relating to different taxable years. In the following cases, the CTA found that a **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies** and the local prices reflected in the **Philippine Wine Merchants' Price List** were sufficient to establish that the cost of importing the imported articles is lower than purchasing them locally and accordingly granted the claims for refund:

Case Number	Evidence Presented	Ruling
CTA Case Nos. 7677, 7685, and 7746 (Decision and Amended Decision) affirmed with modifications in CTA EB 954 & 1046, October 14, 2014	1. Affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight Sub-department; 2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 3. Invoices issued to PAL for its purchase of the subject articles; 4. Philippine Wine Merchants' Price List for 2005 and 2006; and 5. Monthly Philippine Dealing Systems rates for the year 2005-2006.	The claim for refund was partially granted. The Court emphasized that imported articles are not locally available in reasonable quantity, quality or price provided that sales invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence were presented to prove such fact.
CTA Case No. 8153, January 17, 2013 (affirmed in CTA EB Nos. 1029, 1031 and 1032, April 30, 2014)	1. Judicial Affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Materials and Purchasing Subdepartment;	The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on wines and liquors fully complied with the requirements under PD 1590.

[1] Exhibit "JJJJJ-2".
[2] Exhibit "JJJJJ-3".
[3] Exhibit "JJJJJ-4".
[4] Exhibits "JJJJJ-5", "JJJJJ-6" and "JJJJJ-7".
[5] Exhibit "JJJJJ-1".

	2. Table of Comparison Between Cost of Locally Purchasing Commissary and Catering Supplies; 3. Philippine Wine Merchants' January 11, 2007 Price List; 4. Monthly PDS rates for the year 2007-2008, 2008-2009 and 2009-2010; 5. Bureau of Customs Official Receipt No. 15545075775; and 6. Authority to Release Imported Goods issued on various dates for the said importation of liquors and cigarettes.	The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a price list of local dealers or suppliers.

Consistent with the rulings in the abovementioned cases, I submit that the evidence presented by petitioner is sufficient for the Court in Division to evaluate that the costs of importing liquors are lower than purchasing them locally. With regard to the imported tobacco products, petitioner presented only the sole testimony of Ms. Capinpin in support of its position that such items are not available in reasonable quantity, quality or price locally. Ms. Capinpin's testimony, standing alone, is insufficient to prove that indeed the cost of importing tobacco products is lower than purchasing them locally or that they are not locally available in reasonable quantity, quality or price. Thus, the Court in Division should have granted petitioner's refund claim but only to the extent of substantiated excise taxes paid on its importation of liquors.

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review filed by petitioner Philippine Airlines, Inc. The case should be remanded to the Court in Division for the determination of the amount of refundable, substantiated excise taxes paid on petitioner's importation of liquors.

ROMAN G. DEL ROSARIO
Presiding Justice