REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

SECOND DIVISION

**PHILIPPINE AIRLINES, INC.**, Petitioner,

CTA CASE NO. **10133**

Members:

- versus -

**CASTAÑEDA, JR.**, *Chairperson*,
**BACORRO-VILLENA**, *and*
**CUI-DAVID**, *JJ.*

**COMMISSIONER OF INTERNAL REVENUE**, Respondent.

Promulgated:
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# RESOLUTION

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

For the Court's resolution is petitioner Philippine Airlines, Inc.'s (**petitioner**'s/**PAL**'s) "Motion for Reconsideration (Re: Decision dated 28 September 2021)"[1] (**MR**), filed *via* registered mail on 03 November 2021[2], with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment/Opposition Re: Petitioner's Motion for Reconsideration"[3] (**Comment**) thereto, filed on 13 December 2021.

The present MR seeks the reversal and setting aside of this Court's Decision in the above-captioned case dated 28 September 2021[4] (**assailed Decision**). The dispositive portion thereof reads:

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1 Division Docket, Volume II, pp. 823-841.
2 Received by the Court on 17 November 2021.
3 Division Docket, Volume II, pp. 847-851.
4 Id., pp. 794-822.

...

**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review filed on 25 July 2019 by petitioner Philippine Airlines, Inc. is hereby **DENIED** for lack of merit.

**SO ORDERED.**

...

As the records show, petitioner is seeking the refund or issuance of a tax credit certificate (**TCC**) in the total amount of ₱2,904,585.91, representing the excise taxes imposed on petitioner's importations of alcohol products that have been allegedly illegally collected and paid under protest on 27 July 2017 and 19 October 2017.

However, this Court denied petitioner's claim for its failure to present sufficient and convincing evidence to prove that the subject importations of alcohol products were not locally available in sufficient quantity, quality, or price at the time of importation, which is the *third* condition that must be fulfilled to avail of the excise tax exemption for its imported alcohol products exemption granted under Section 13(b)(2)[5] of Presidential Decree (**PD**) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries".

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[5] **SEC. 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:

...

(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:**

...

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**[.] (Emphases supplied.)

In its present MR, petitioner insists that it presented sufficient evidence to prove compliance with the *third* condition under Section 13(b)(2)[6] of PD No. 1590, *i.e.*, the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market.

Petitioner asserts that contrary to the Court's ruling in the assailed Decision, the Supreme Court has consistently affirmed the validity of a Table of Comparison as evidence that importing commissary and catering supplies is significantly cheaper than purchasing them locally and declared that such comparison, the price lists and other similar documents are more than sufficient to establish PAL's claim.

Citing the Supreme Court's ruling in its recent Resolution dated 17 February 2021 in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*[7] (**PAL**), petitioner claims that this Court committed a severe departure from settled jurisprudence when it ruled that the pieces of evidence PAL presented are "inadequate" to show compliance with Section 13(b)(2)[8] of PD No. 1590 considering that the pieces of evidence it presented are substantially the same to those that have already been determined sufficient by no less than the Supreme Court. In this regard, petitioner also points out that it had always presented pieces of evidence of the same kind and nature, only differing in the periods covered.

Lastly, petitioner argues that this Court's imposition of a stringent requirement in proving that its importation of alcohol products that are not locally available in reasonable quantity, quality or price defeats the purpose of the tax exemption granted to PAL under PD No. 1590. Since the Supreme Court has already consistently accepted the pieces of evidence (*i.e.*, table of comparison, price lists, and other similar documents) it presented as sufficient to prove PAL's entitlement to refund, petitioner maintains that the imposition of such stringent and additional requirement on its tax exemption is a disservice to the general public as it defeats the legislative purpose of granting PAL a franchise.

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[6] Supra at note 5.
[7] G.R. No. 231638, 17 February 2021.
[8] Supra at note 5.

On the other hand, in his Comment, respondent contends that petitioner's arguments are without merit. Respondent likewise reiterates the contentions set out in his Memorandum filed on 01 July 2020[9] (*i.e.*, the arguments in his *Comment* are exactly the same arguments raised in his *Memorandum*).

**We resolve below.**

After due consideration of the parties' arguments, the Court finds petitioner's MR bereft of merit.

As regards the sufficiency of the pieces of evidence on record, respondent does not question petitioner's compliance with the first two (2) conditions for the exemption from the payment of excise tax on its importation of alcohol products to apply. *First*, that PAL paid its corporate income tax and value-added tax (**VAT**) liabilities for the subject period of importation; and, *second*, that the imported articles, supplies or materials were used in PAL's transport and non-transport operations and other activities incidental thereto.

It is with regard to the *third* condition, *i.e.*, that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price, that this Court deemed insufficient the pieces of evidence presented by petitioner.

As explained in the assailed Decision, the *third* condition is satisfied if petitioner proves that the imported alcohol products are not locally available in reasonable (**1**) quantity, (**2**) quality, or (**3**) price.

In this case, petitioner submitted the following pieces of documentary evidence to prove that the subject imported alcohol products were not locally available in reasonable quantity, quality or price: (**1**) Judicial Affidavit of Cheryl V. Capinpin[10] (**Capinpin**), its Manager for In-flight Materials Purchasing Division; (**2**) Absolute Sales Corporation's (**ASC**'s) Product Price Lists for 2013 and 2014[11]; (**3**) Future Trade International's (**FTI**'s) Product Price Lists for 2013 and 2014[12]; (**4**) BIR's Revenue Memorandum Circular (**RMC**) No. 90-2012[13] Price List; (**5**) Minivan Enterprise's (**ME**'s) Product Price Lists

[9] Division Docket, Volume II, pp. 768-773.
[10] Exhibit "P-31", id., Volume I, pp. 339-458.
[11] Exhibit "P-22", id., Volume II, pp. 697-702.
[12] Exhibit "P-23", id., pp. 703-713.
[13] Exhibit "P-24", id., pp. 714-736.

for 2013 and 2014[14]; and, (**6**) Table of Comparison[15] that shows a comparison of prices for the alcohol products imported by petitioner for the period December 2013 to September 2014.

In Capinpin's Judicial Affidavit[16], she testified that she compared the local prices based on the ASC, FTI, ME and RMC No. 90-2012 price lists against the importation costs based on the actual product value and prepared a Table of Comparison comparing the local prices with importation costs. She then concluded that it is cheaper to import the alcohol products than to purchase them locally, *viz*:

> . . .
>
> 7. **Q: As the Manager of the In-flight Materials Purchasing Division, why would PAL import said supplies instead of just buying them for the local sellers of similar products?**
>
> A: PAL imported catering and commissary supplies, such as, alcohol, liquor, and tobacco products because the cost of said products, <u>when imported, are cheaper compared to those locally available. Said products are not available locally in reasonable quantity, quality, or price</u>.
>
> 8. **Q: Why do you say that importing the said catering and commissary supplies are cheaper and reasonably priced than purchasing them locally?**
>
> A: <u>I have compared the local prices and the importation costs for the alcohol products. Upon comparison of these prices, it is easily determinable that importing these products are way cheaper than purchasing them locally.</u>
>
> 9. **Q: How do you compare the local prices and importation costs?**
>
> A: <u>I have prepared a *Table of Comparison* to show the complete comparison of prices for the alcohol products imported by PAL for the period December 2013 to September 2014</u>.

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

14 Exhibit "P-29", id., pp. 754-755.

15 Exhibit "P-28, id., p. 753.

16 Exhibit "P-31", supra at note 10.

. . .

13. **Q: You mentioned that you compared the local prices and the importation costs for the alcohol products. What documents did you use in comparing these prices?**

A: For alcohol products, I used the following as my sources of local prices:

i. Absolute Sales Corporation 2013 and 2014 Price Lists;

ii. Future Trade International Travel Retail 2013 and 2014 Price List[s];

iii. Minivan Enterprise for 2013 and 2014 Price Lists; and

iv. Bureau of Internal Revenue's ("BIR") Revenue Memorandum Circular ("RMC") No. 90-2012 Price List.

For the importation costs, I used the actual product value as shown in the sales invoice issued by PAL's suppliers, product value as shown in the Authority to Release Imported Goods ("ATRIG"), and Product Value as shown in the Informal Import Declaration Entry ("IIDE").

. . .

38. **Q: After converting the prices to PHP, how does the cost of locally buying the commissary and catering supplies compare with the cost of importing the same product?**

A: As I have explained earlier, the cost of locally buying the products are (sic) definitely higher than the cost of importing the same if compared with the Product Value per sales invoice, ATRIG, and IIDE from the local suppliers such as Absolute Sales Corporation, Future Trade International, and the 2012 (sic) price survey conducted by the BIR. This is shown in the *Table of Comparison*.[17]

. . .

Then, as noted in the assailed Decision, Capinpin testified on cross-examination that they approached more than five (5) local merchants of wines and liquors to get local prices for comparison with

[17] Emphases and italics in the original text; underscoring supplied.

importation costs, but only three (3), namely, ASC, FTI and ME, submitted their price lists.[18]

However, a closer look at the Table of Comparison reveals that there is only one (1) merchant or supplier (*i.e.*, either ASC, FTI or ME) that supposedly establishes local prices for some (and, in fact, none for the rest) of the imported alcohol products listed therein. Pertinent portions of the Table of Comparison are reproduced below:

| IIDE Entry | Product Imported | Price *Per* Bottle (PHP) | Absolute Sales 2013 (PHP) | Absolute Sales 2014 (PHP) | Future Trade 2013 (PHP) | RMC No. 90-2012 Price List (PHP) | Minivan Enterprise 2014 (PHP) |
|---|---|---|---|---|---|---|---|
| 10176 | Charles Headstick Brut Reserve 12% | 998.08 | | * | 3,595.00 | * | |
| | Remy Martin VSOP | 550.94 | | * | 2,430.00 | * | |
| | Russian Vodka Standard Original | 209.36 | | * | * | * | |
| 4519 | Ballantines Scotch Whisky | 2,228.68 | | * | * | * | |
| | Camus Extra Elegance | 3,815.21 | | * | * | * | |
| 895 | Rawson Private Release Shiraz Cabernet | 215.50 | | * | * | * | 451.50 |
| | Penfolds Private Release Chardonnay | 215.50 | | * | * | * | |
| 1408 | Charles Heidsick Brut Reserve 12% | 1,016.65 | | * | 3,595.00 | * | |
| 2179 | Penfolds Private Release Chardonnay | 215.00 | | * | * | * | |
| | Rawson Private Release Shiraz Cabernet | 215.00 | | * | * | * | 451.50 |
| 59 | Johnnie Walker Black Label (Genex) | 614.00 | | * | * | * | |
| | J & B Rare Scotch Whisky | 198.43 | | * | * | * | |
| 836 | Asahi Super Dry Beer | 26.93 | | 50.00 | * | * | |
| 10450 | Ballantines Scotch Whisky | 2,124.06 | | * | * | * | |
| | Chivas Royal Salute 21 Years Old Scotch Whisky | 2,161.99 | | * | * | * | |
| | Stolichnaya Gold 70 cl | 410.17 | | * | * | * | |
| | Patron Silver Tequila | 1,043.07 | | * | * | * | |
| 5833 | J & B Rare Scotch Whisky | 344.07 | | * | * | * | |
| 894 | Patron Silver Tequila | 1,409.25 | | * | * | * | |
| | Chivas Royal Whisky | 1,061.77 | | * | * | * | |
| 5832 | Asahi Super Dry Beer | 28.26 | | 50.00 | * | * | |
| 3532 | Queen Adelaide Chardonnay | 108.62 | | * | * | * | |
| 2194 | Asahi Super Dry Beer | 26.84 | | 50.00 | * | * | |
| 2532 | Rawson Private Release Chardonnay | 215.00 | | * | * | * | |

Regrettably, this Court cannot rely on the price of only one (1) merchant or supplier absent any corroborating evidence that such merchant or supplier adequately represents the local market prices or that said merchant or supplier is the exclusive distributor of the above-listed alcohol products. Thus, with petitioner's single evidence on the matter, it has placed the Court in a position where it is unable to determine if the subject imported alcohol products are not available locally in reasonable price.

[18] TSN dated 09 December 2019, pp. 6-7.

Similarly, this Court cannot determine from the pieces of evidence presented whether the subject imported alcohol products are not available locally in reasonable quantity. There is no indication from Capinpin's testimony, nor from evidence on record, that the subject imported alcohol products are not available locally in reasonable quantity.

Moreover, a cursory reading of RMC No. 90-2012 would reveal that it was based on a 2010 price survey of alcohol products. Considering that it is based on a 2010 price survey, no valid comparison can be made with importations in 2013 and 2014. More importantly, RMC No. 90-2012 does not contain any price quotation for any of the above-listed alcohol products. Neither did petitioner present any proof to establish that the absence of price quotation is due to the non-availability of the identified alcohol products in the local market.

Clearly, the pieces of evidence presented by petitioner are inadequate to prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, and is insufficient to establish its tax refund claim. Likewise, petitioner's allegation, through Capinpin's testimony, that it made efforts to secure price lists from local suppliers to determine whether the imported articles were in fact, locally unavailable in reasonable quantity, quality or price, cannot convince this Court to act favorably on petitioner's claims.

In *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[19], the Supreme Court emphasized that the pieces of evidence presented to entitle a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven, *viz*:

> ...
>
> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, **but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.** Since

[19] G.R. No. 222428, 19 February 2018 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008; Citations omitted and emphasis supplied.

> taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. ...
>
> ...

As regards petitioner's contention that this Court committed a severe departure from settled jurisprudence in finding petitioner's pieces of evidence "inadequate" to show compliance with Section 13(b)(2)[20] of PD 1590, We find the Supreme Court's 2nd Division's ruling inapplicable as it is *not* on all fours with the present case. While both involve a refund claim of alleged erroneously paid excise taxes pursuant to PAL's exemption under PD 1590 and the issue of whether it presented sufficient evidence to prove that its imported alcohol products were not locally available in reasonable quantity, quality or price, it must be considered that petitioner's pieces of evidence in this case are not the same as those it submitted in the earlier cases (decided in 2015[21], 2017[22] and 2018[23]) cited by the Supreme Court in its 2nd Division's 17 February 2021 Resolution in *PAL*.[24]

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20 Supra at note 5.

21 *Republic of the Philippines v. Philippine Airlines, Inc.*, G.R. Nos. 209353-54, 06 July 2015.

22 *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, 22 February 2017.

23 *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 238762, 09 July 2018 (Resolution).

24

| Evidence | Present Case | 2015 Case | 2017 Case | 2018 Case |
|---|---|---|---|---|
| Affidavit Stating that importation of the subject articles was cheaper for PAL than if it purchased locally | Yes | Yes | Yes | Yes |
| Table of Comparison of the cost of importing the subject articles and the cost of buying them locally | Yes, but the comparison covers only some (not all) of the subject imported alcohol products. | Yes | Yes | Yes |
| Letter from Merchant/Supplier that it does not have alcohol products that meet PAL's price budget and required quality | No | Yes | No | No |
| Invoices issued to PAL for its acquisition of the subject imported articles | Yes | Yes | No | Yes |
| Price List(s) corresponding to the same articles subject of the claim for refund | Yes, but only for some (not all) of the subject imported alcohol products. | Yes | Yes | Yes |
| Duty-Free Philippines Retail Prices | No | No | No | Yes |
| Monthly PDS rates | Yes | No | Yes | Yes |

All told, petitioner was unable to prove the *third* condition for it to be exempt from excise taxes, *i.e.*, that the imported alcohol products are not available locally in reasonable quantity, quality or price. Unfortunately, such failure on its part is fatal to its cause.

In view of the foregoing, this Court finds no compelling reason to reconsider or modify the assailed Decision.

**WHEREFORE,** premises considered, the present Motion for Reconsideration, filed by petitioner Philippine Airlines, Inc. on 03 November 2021, is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

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

**LANEE S. CUI-DAVID**
Associate Justice