REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 8198

Members:

RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

OCT 03 2024

x --- x

10:30 a.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a remanded case for the determination of the final amount to be refunded to petitioner Philippine Airlines, Inc., (PAL), pursuant to the Supreme Court Resolution dated March 27, 2019 rendered in G.R. No. 240532,[1] and this Court *En Banc's* Amended Decision dated February 13, 2018[2] (*En Banc Decision*) remanding the case to this Court in Division.

The Facts

To recall, on December 10, 2010, petitioner PAL filed a *Petition for Review* before this Court,[3] praying for a declaration that under its franchise, Presidential Decree (PD) No. 1590, it is exempt from specific tax on its importation of liquors, cigarettes and wines for international flight consumption and, therefore, entitled to the refund of the following:

a) ₱2,610,430.72 specific tax paid under protest on December 11, 2008; and

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[1] Docket (CTA EB No. 1363) – Vol. 2, pp. 838 to 840.
[2] *Id.* at 731 to 744.
[3] *Rollo* – Vol. 1, pp. 1 to 22.

b) ₱5,147,669.00 specific tax paid under protest on December 11, 2008, or a total of ₱7,758,099.72 all paid to the respondent COC.

Petitioner further prays that respondents Commissioner of Customs (COC) and Commissioner of Internal Revenue (CIR) be ordered to refund the total amount of ₱7,758,099.72 specific taxes, which was erroneously collected form petitioner in connection with its subject importations of assorted liquor and wine for international flight consumption.

On June 2, 2015, this Court in Division promulgated its Decision[4] (Division Decision), denying petitioner's *Petition for Review*, the dispositive portion of which reads:

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

While petitioner assailed this through a *Motion for Reconsideration*, filed on on June 25, 2015,[5] the Court denied the same through a Resolution, dated September 10, 2015.[6]

Consequently, petitioner filed its *Petition for Review* with this Court *En Banc* on October 15, 2015.[7] The case was docketed as CTA EB No. 1363.

The Court *En* Banc eventually ruled on said *Petition* through a Decision, dated April 5, 2017,[8] the dispositive portion of which reads:

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

Petitioner then posted a *Motion for Reconsideration* with the Court *En Banc* on May 11, 2017.[9] This was partially granted in *En Banc* Decision,[10] the dispositive portion of which states:

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4 *Rollo* – Vol. 3, pp. 1700 to 1730.
5 *Rollo* – Vol. 4, pp. 1731 to 1744.
6 *Id.* at 1796 to 1800.
7 *Rollo* – Vol. 1, pp. 46 to 61.
8 *Rollo* – Vol. 2, pp. 639 to 655.
9 *Id.* at 671 to 677.
10 *Id.* at 731 to 744.

> **WHEREFORE**, in view of the foregoing considerations, the Motion for Reconsideration filed by petitioner Philippine Airlines, Inc. is **PARTIALLY GRANTED**. Let the case 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.
>
> **SO ORDERED**.

Thus, a *Motion for Reconsideration Re: Amended Decision dated 13 February 2018* was filed by respondent CIR on March 23, 2018,[11] while a *Motion for Reconsideration (of the Amended Decision dated February 13, 2018)* was posted by respondent COC on March 28, 2018.[12] Both were denied in a Resolution, dated June 19, 2018.[13]

Respondents then filed a *Petition for Review on Certiorari* entitled "*Commissioner of Internal Revenue (CIR) and the Commissioner of Customs (COC), Petitioners versus Philippine Airlines, Inc., Respondent*" with the Supreme Court, which was docketed as G.R. No 240532.

On March 27, 2019, the Supreme Court rendered a Resolution,[14] denying the *Petition for Review on Certiorari*, the pertinent portions of which read:

> After reviewing the Petition and its annexes, including the Amended Decision dated February 13, 2018 and Resolution dated June 19, 2018 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1363, the Court resolves to **DENY** the same for failure of the petitioners to sufficiently show that the CTA *En Banc* committed any reversible error in the assailed Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.
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> . . . .
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> Moreover, the Court, in subsequent cases involving the legal issue of whether the respondent, pursuant to Section 13 of PD 1590, is exempt from the payment of excise taxes on its importation of alcohol and tobacco products for its commissary supplies, consistently echoed the ruling in the afore-cited case. Hence, it is erroneous for the petitioners to continuously insist that the respondent's privileges under PD 1590 no longer stand.
>
> . . . .
>
> As regards the respondent's noncompliance with the conditions set by Section 13 of PD 1590 for its imported wines and liquors, the Court notes that these are factual determinations that are best left to the CTA and cannot be reviewed by this Court under Rule 45. The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Thus, without any

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[11] *Id.* at pp. 755 to 764.
[12] *Id.* at pp. 766 to 790.
[13] *Id.* at pp. 811 to 815.
[14] *Id.* at pp. 838 to 840.

> showing that the findings of the CTA are completely unsupported by substantial evidence, as in the case, its findings are binding on this Court.
>
> Verily, the Court finds no reason to deviate from the CTA *En Banc* findings. The assailed Decision and Resolution of the CTA *En Banc* are hereby **AFFIRMED**.
>
> **SO ORDERED.**

Thereafter, the Second Division of the Supreme Court issued the Entry of Judgment certifying that the above-entitled case with G.R. No 240532 had become final and executory on June 3, 2019 and had been recorded in the Book of Entries of Judgments.[15]

In response, petitioner filed a *Motion for Execution of Judgment* on June 6, 2023,[16] praying for this Court in Division to implement and execute the *En Banc* Decision and to provide computation for the partial granting of PAL's claim for refund.

Accordingly, this Court issued the Resolution dated July 21, 2023,[17] directing the parties to submit, within five days from notice, their respective manifestations to inform this Court of any supervening event which may have transpired that would affect the final resolution of the present case, and to determine whether there is a need to conduct further proceedings.

On August 2, 2023, petitioner filed a *Manifestation*,[18] stating that it has no knowledge of any supervening events which would affect the final resolution of the case and that there is no need for further proceedings. On the other hand, respondent COC filed his *Manifestation* on August 1, 2023,[19] while respondent CIR filed his *Manifestation* on August 29, 2023.[20] In both *Manifestations*, respondents likewise informed the Court that they do not have any knowledge of any supervening evening event which may have transpired that would affect the final resolution of the present case.

Thereafter, the present case was transferred to this Court's Second Division per the Notice of Resolution, dated September 12, 2023.[21]

In the Resolution dated October 6, 2023,[22] the *Manifestations* of all the parties were noted, and the case was submitted anew for decision to determine the amount refundable to the taxpayer.

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15 *Id.* at pp. 850 to 852.
16 *Rollo* – Vol. 4. pp. 1894 to 1901.
17 *Id.* at 1928 to 1929.
18 *Id.* at 1935 to 1938.
19 *Id.* at 1930 to 1932.
20 *Id.* at 1940 to 1943.
21 *Id.* at 1945.
22 *Id.* at 1947 to 1949.

Pending resolution of the present case, on March 20, 2024, petitioner filed another *Manifestation*,[23] stating that it filed with the Securities and Exchange Commission (SEC) an Amended General Information Sheet bearing its new office address at Philippine Airlines, Lucio K. Tan Jr. Center (LKTJC), PAL Gate 5, Andrews Avenue, Nichols, Pasay City, where it may be served with court orders and processes.

The Ruling of The Court

The present *Petition for Review* must be partially granted.

As previously mentioned, the Supreme Court, in G.R. No 240532, pursuant to its Resolution, dated March 27, 2019,[24] denied respondents CIR and COC's *Petition for Review on Certiorari,* which assailed the *En Banc* Decision, and Resolution, dated June 19, 2018, of the CTA *En Banc* in CTA EB No. 1363, for failure to sufficiently show that the CTA *En Banc* committed any reversible error in the challenged Decision and Resolution. The Supreme Court thus upheld the Court *En Banc*'s ruling to remand the case for the determination of the substantiated refundable amount of excise taxes paid on petitioner's importation of liquors.

Accordingly, the Court shall confine the succeeding discussions on the findings of the Court *En Banc* and the determination of the above matters as ordered by the Supreme Court and this Court *En Banc*.

Requisites in claiming exemption under Section 13 of PD No. 1590

In the *En Banc* Decision,[25] it was stated that the pronouncement of the Supreme Court in the consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)* is unequivocal — *Republic Act (RA) No. 8424* and *RA No. 9334* did not amend the exemption granted to PAL under *PD No. 1590*. As such, petitioner's tax privilege provided under *Section 13 of PD No. 1590* has not been repealed or revoked by *Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334*. The matter has already been exhaustively discussed in the Division Decision.[26] As ruled therein, the governing law therefore in petitioner's franchise is *PD No. 1590*, subject however to certain conditions:

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[23] *Manifestation* with attached *Amended General Information Sheet, id.* at 1950 to 1951.
[24] Docket (CTA EB No. 1363) – Vol. 2, pp. 838 to 840.
[25] *Id.* at 734 to 738.
[26] Docket (CTA Case No. 8198) – Vol. 3., pp. 1714 to 1716.

> 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:
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> (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
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> (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.*
> (Italics supplied.)

On the basis of the foregoing provision, petitioner must thus comply with the following three requisites in order for the exemption on excise tax to apply, *viz*:

1. the corporate income tax and VAT liabilities for the subject period of importation was 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.

It must be pointed out this Court, in the Division, Decision, had already ruled that petitioner complied with the *first* requisite,[27] a finding that was later upheld in the *En Banc* Decision.[28] Thus, the Court shall proceed to discuss petitioner's compliance with the *second* and *third* requisites.

Petitioner was able to show compliance with the second requisite

Anent the *second* requisite, a perusal of the pertinent documents submitted by petitioner, and as found in the *En Banc* Decision,[29] the imported articles were described as "Inflight Materials" under the column "Description of Articles" in the Informal Import Declaration and Entry[30] (IIDEs); also, in the Authority to Release Imported Goods[31] (ATRIGs) issued by the respondent CIR addressed to respondent COC, it was indicated that "the shipment to be released at the port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption." Such being the case, the said supplies are for the use of petitioner in its transport operations.

Petitioner also complied with the third requisite only insofar as its importation of alcohol products is concerned

It must be stressed that it is no longer for this Court in Division to determine compliance by petitioner with the third requisite as the Court *En Banc* already made a finding on this score, which is already final. Instead, what is left for determination is merely the amount refundable to petitioner.

As regards the imported cigarettes, the Court *En Banc* held that Ms. Capinpin's testimony, standing alone, *sans* any credible document, is insufficient to prove that the cost of importing cigarettes is lower than purchasing them locally or that they are not locally available in reasonable quantity, quality, or price.[32] Evidently, petitioner fell short in proving the non-availability of imported cigarettes at a reasonable quantity, quality, or price in the local market.

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27 *Id.* at 1718 to 1722.
28 Docket (CTA EB No. 1363) – Vol. 2, p. 741.
29 *Id.*
30 Exhibits "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY", "ZZ", and "AAA", Docket (CTA Case No. 8198) – Vol. 2, pp. 1089 to 1112 and 1126 to 1157.
31 Exhibits "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", and "SSS", *id.* at pp. 1114 to 1125 and 1159 to 1174.
32 Docket (CTA EB No. 1363) – Vol. 2, p. 743.

Considering petitioner's failure to prove compliance with the *third* requisite on its importation of cigarettes, the aforementioned ruling in the *En Banc* Decision is reiterated.

As to the imported liquors, the Court *En Banc* explicitly stated that the evidence presented by petitioner is *sufficient* to evaluate that the costs of importing liquors are lower than purchasing them locally:[33]

> Anent the third requisite, to prove that the imported articles were not locally available in reasonable quantity, quality or price, petitioner submitted the Judicial Affidavit of Ms. Cheryl Capinpin, petitioner's Manager for In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department; the Philippine Wine Merchant Price List; sales invoices issued to petitioner for its purchase of the subject articles, Monthly Philippine Dealing System Rates (2007 to 2010); 2008 Booking Rates for the Month of May; Letters of Ms. Marianne C. Raymundo, petitioner's Vice-President – Financial Services re: Booking Rates for the Months of January, March, and April 2008; and a Table of Comparison.
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> The controversy relating to the sufficiency of evidence of PAL to support its refund claim with respect to the third requisite, *i.e.*, the imported articles are not locally available in reasonable quantity, quality or price, is not of first impression as the same was raised in earlier cases before the Court involving the same parties, albeit relating to different taxable years.
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> In the following cases, the Court 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 one price list, *i.e.*, 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:
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> . . . .

In other words, the Court *En Banc*, in its determination of petitioner's fulfillment of the *third* requisite, gave evidentiary weight to petitioner's documentary and testimonial evidence relating to its importation of alcohol products. Thus, in compliance with the *En Banc* Decision[34] and the Resolution, dated June 19, 2018,[35] as well as the Supreme Court Resolution, dated March 27, 2019,[36] in G.R. No. 240532, the same evidence shall be considered in ascertaining the amount of excise tax to be refunded to petitioner in this case.

Records show that the excise taxes paid under protest by petitioner on December 11, 2008 which totaled to ₱7,758,099.72 pertain to its importation for the period January 23, 2008, to July 21, 2008, of assorted liquors and wine

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33 *Id.* at 741 to 743.
34 *Id.* at 731 to 744.
35 *Id.* at 811 to 815.
36 *Id.* at 838 to 840.

constituting its commissary and catering supplies for international flight consumption, detailed as follows:

No.	Arrival Date	Informal Import Declaration and Entry[37]	Air Waybill/ Bill of Lading[38]	Authority to Release Imported Goods[39]	Sales Invoice [40]	Description	Value (in US$)	Amount of Excise Taxes Paid Under Protest (in PHP)
1	23 January 2008	"I"	"I-1"	"W"	"HHHH"	Vin de Table Blanc PAL, Vin de Table Rouge PAL	24,967.90	169,999.83
2	28 January 2008	"J"	"J-1"	"X"	"IIII"	Ballantine 17 YO 21YO, Royal Salute & Martell VSOP	24,961.68	252,481.74
3	22 February 2008	"K"	"K-1"	"Y"	"JJJJ"	Ballantine 17YO and 21YO & Chivas Regal	46,177.20	599,655.57
4	1 March 2008	"L"	"L-1"	"Z"	"KKKK"	Vin de Table Blanc PAL, Vin de Table Rouge PAL	25,527.23	169,999.83
5	22 March 2008	"M"	"M-1"	"AA"	"LLLL"	Lindemans Premier Shiraz Cabernet, Penfolds Shiraz Cabernet	18,420.24	55,194.75
6	26 March 2008	"N"	"N-1"	"BB"	"MMM M"	Vin de Table Blanc PAL, Vin de Table Rouge PAL	26,558.77	169,999.83
7	4 April 2008	"O"	"O-1"	"CC"	"NNNN"	Ballantines 21 YO	9,360.00	78,643.35
8	11 April 2008	"P"	"P-1"	"DD"	"OOOO"	Jack Daniels	14,400.00	235,146.24
9	16 April 2008	"Q"	"Q-1"	"EE"	"PPPP"	Lindemans Premier Selection Chardonnay	4,430.76	24,285.69
10	19 April 2008	"R"	"R-1"	"FF"	"QQQQ" and "QQQQ-1"	JW Black Label & Gordons Gin	17,558.25	321,244.06
11	21 April 2008	"S"	"S-1"	"GG"	"RRRR"	Chivas Regal Martel VSOP	32,382.00	530,156.79
12	25 April 2008	"T"	"T-1"	"HH"	"SSSS"	Martini Dry & Sweet Vermouth	2,097.12	3,623.04
Subtotal (BOC OR No. 158197024[41])							**246,841.15**	**2,610,430.71**[42]

No.	Arrival Date	Informal Import Declaration and Entry[43]	Air Waybill/ Bill of Lading[44]	Authority to Release Imported Goods[45]	Sales Invoice [46]	Description	Value (in US$)	Amount of Excise Taxes Paid Under Protest
13	1 May 2008	"LL"	"LL-1"	"DDD"	"TTTT"	Camus Cognac VSOP Elegance	$4,920.00	146,313.22
14	2 May 2008	"MM"	"MM-1"	"EEE"	"UUUU"	Ballantines, Carlos I, Royal Salute Whisky	33,008.40	539,529.98

37 Docket – Vol. 2, pp. 1089, 1091, 1093, 1095, 1097, 1099, 1101, 1103, 1105, 1107, 1109, & 1111.
38 *Id.* at 1090, 1092, 1094, 1096, 1098, 1100, 1102, 1104, 1106, 1108, & 1110; Docket – Vol. 3, p. 1320.
39 Docket – Vol. 2, pp. 1114 to 1125.
40 *Id.* at 1183 to 1189 & 1192 to 1193; Docket – Vol. 3, pp. 1397 to 1400.
41 Exhibit "V", Docket – Vol. 1, p. 100.
42 The difference of ₱0.01 is due to rounding off to the nearest peso.
43 Docket – Vol. 2, pp. 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, 1148, 1150, 1152, 1154, & 1156.
44 *Id.* at 1127, 1129, 1131, 1133, 1135, 1137, 1139, 1141, 1143, 1145, 1147, 1149, 1151, 1153, 1155, & 1157.
45 *Id.* at 1159 to 1174.
46 *Id.* at 1195 to 1197, 1199, &1202 to 1207; Docket – Vol. 3, pp. 1401 to 1404.

15	10 May 2008	"NN"	"NN-1"	"FFF"	"VVVV" and "VVVV-1"	Piper Heidsieck Brut, Absolut Vodka	32,512.50	759,320.46
16	16 May 2008	"OO"	"OO-1"	"GGG"	"WWWW"	Remy Martin VSOP Cognac	8,572.50	164,602.37
17	17 May 2008	"PP"	"PP-1"	"HHH"	"XXXX"	Camus Cognac VSOP Elegance	6,724.00	149,971.05
18	21 May 2008	"QQ"	"QQ-1"	"III"	"YYYY"	Center Merlot MRP Rouge & Blanc	62,220.06	161,338.50
19	24 May 2008	"RR"	"RR-1"	"JJJ"	"ZZZZ"	Wine Lindemans Premier Shiraz Cabernet, Penfolds Shiraz Cabernet	11,796.00	42,457.50
20	28 May 2008	"SS"	"SS-1"	"KKK"	"AAAAA"	Johnie Walker Black Label	8,493.12	176,947.55
21	3 June 2008	"TT"	"TT-1"	"LLL"	"BBBBB"	Chivas Regal Scotch Whisky, Royal Salute Whisky, Martell VSOP Cognac	45,306.00	651,877.63
22	7 June 2008	"UU"	"UU-1"	"MMM"	None	Piper Heidsieck Brut	30,937.50	700,533.90
23	21 June 2008	"VV"	"VV-1"	"NNN"	Denied Exhibits[47]	JW Black Label, J&B Rare	23,463.17	824,579.48
24	25 June 2008	"WW"	"WW-1"	"OOO"	"EEEEE"	Camus Cognac XO Superieur	4,200.00	26,127.36
25	9 July 2008	"XX"	"XX-1"	"PPP"	"FFFFF"	Wine Lindemans Premier Shiraz Cabernet	9,450.00	38,211.75
26	10 July 2008	"YY"	"YY-1"	"QQQ"	"GGGGG"	Ballantines 17YO & 21 YO , Carlos I	33,528.00	542,730.59
27	18 July 2008	"ZZ"	"ZZ-1"	"RRR"	None	Camus Cognac XO Superior	30.00	3,657.83
28	21 July 2008	"AAA"	"AAA-1"	"SSS"	"IIIII"	Camus Cognac VSOP Elegance	7,380.00	219,469.82
Subtotal (BOC OR No. 158197006[48])							**$322,541.25**	**5,147,668.99[49]**
TOTAL							**$569,382.40**	**₱ 7,758,099.72**

To determine whether the above listed imported liquor and wine products were not locally available in reasonable quantity, quality, or price, a comparison of the importation costs vis-à-vis the prices provided by the Philippine Wine Merchants (PWM) for the year 2008 is necessary.[50]

Accordingly, the importation cost per bottle of the subject imported liquors and wine is tabulated below:

No	Description	Amount of Excise Taxes Paid Under Protest (in PHP)	Value (in US$)	No. of Bottles	Ave. Purchase Price Per Bottle (in US$)	US$ Conversion Rate Per PDS Rates[51]	Ave. Purchase Price Per Bottle (in PHP)	Ave. Excise Tax Per Bottle (in PHP)	Total Importation Cost Per Bottle (in PHP)
		(A)	*(B)*	*(C)*	*(D=B/C)*	*(E)*	*(F=DxE)*	*(G=A/C)*	*(H=F+G)*
1	Vin de Table Blanc PAL	70,819.11	10,401.21	5,004	2.08	40.6260	84.44	14.15	98.60

[47] Exhibits "ZZZ" and "ZZZ-1".
[48] Exhibit "CCC", Docket – Vol. 1, p. 168; Docket – Vol. 2, p. 734.
[49] The difference of ₱0.01 is due to rounding off to the nearest peso.
[50] Exhibit "JJJJJ-2", Docket – Vol. 2, p. 999.
[51] Exhibit "JJJJJ-3", *id.* at 1000.

	Vin de Table Rouge PAL	99,180.72	14,566.69	7,008	2.08	40.6260	84.44	14.15	98.60
	Subtotal	**169,999.83**	**24,967.90**	**12,012**					
2	Ballantines 17YO	51,118.18	5,503.68	156	35.28	40.6260	1,433.29	327.68	1,760.97
	Ballantines 21YO	55,050.34	6,552.00	168	39.00	40.6260	1,584.41	327.68	1,912.09
	Royal Salute	58,525.29	8,874.00	192	46.22	40.6260	1,877.68	304.82	2,182.50
	Martell VSOP	87,787.93	4,032.00	288	14.00	40.6260	568.76	304.82	873.58
	Subtotal	**252,481.74**	**24,961.68**	**804**					
3	Ballantines 17YO	78,643.35	8,467.20	240	35.28	40.4570	1,427.32	327.68	1,755.00
	Ballantines 21YO	78,643.35	9,360.00	240	39.00	40.4570	1,577.82	327.68	1,905.50
	Chivas Regal	442,368.86	28,350.00	2,520	11.25	40.4570	455.14	175.54	630.68
	Subtotal	**599,655.57**	**46,177.20**	**3,000**					
4	Vin de Table Blanc PAL	70,819.11	10,634.22	5,004	2.13	41.7560	88.74	14.15	102.89
	Vin de Table Rouge PAL	99,180.72	14,893.01	7,008	2.13	41.7560	88.74	14.15	102.89
	Subtotal	**169,999.83**	**25,527.23**	**12,012**					
5	Lindemans Primier Shiraz Cabernet	25,474.50	18,420.24	1,800					
	Penfords Shiraz Cabernet	29,720.25		2,100					
	Subtotal	**55,194.75**	**18,420.24**	**3,900**	4.72	41.7560	197.22	14.15	211.37
6	Vin de Table Blanc PAL	70,819.11	11,063.94	5,004	2.21	41.7560	92.32	14.15	106.48
	Vin de Table Rouge PAL	99,180.72	15,494.83	7,008	2.21	41.7560	92.32	14.15	106.48
	Subtotal	**169,999.83**	**26,558.77**	**12,012**					
7	Ballantines 21YO	78,643.35	9,360.00	240	39.00	42.2270	1,646.85	327.68	1,974.53
	Subtotal	**78,643.35**	**9,360.00**	**240**					
8	Jack Daniels	235,146.24	14,400.00	240	60.00	42.2270	2,533.62	979.78	3,513.40
	Subtotal	**235,146.24**	**14,400.00**	**240**					
9	Lindemans Premier Selection Chardonnay	24,285.69	4,430.78	1,716	2.58	42.2270	109.03	14.15	123.18
	Subtotal	**24,285.69**	**4,430.78**	**1,716**					
10	JW Black Label	294,912.58	16,560.00	1,680	9.86	42.2270	416.24	175.54	591.78
	Gordons Gin	26,331.48	998.25	300	3.33	42.2270	140.51	87.77	228.28
	Subtotal	**321,244.06**	**17,558.25**	**1,980**					
11	Chivas Regal	442,368.86	28,350.00	2,520	11.25	42.2270	475.05	175.54	650.60
	Martel VSOP	87,787.93	4,032.00	288	14.00	42.2270	591.18	304.82	896.00
	Subtotal	**530,156.79**	**32,382.00**	**2,808**					
12	Martini Dry & Sweet Vermouth	3,623.04	2,097.12	1,920	1.09	42.2270	46.12	1.89	48.01
	Subtotal	**3,623.04**	**2,097.12**	**1,920**					
	Total[52]	**2,610,430.72**	**246,841.15**	**52,644**					

No	Description	Amount of Excise Taxes Paid Under Protest (in PHP)	Value (in US$)	No. of Bottles	Ave. Purchase Price Per Bottle (in US$)	US$ Conversion Rate Per PDS Rates[53]	Ave. Purchase Price Per Bottle (in PHP)	Ave. Excise Tax Per Bottle (in PHP)	Total Importation Cost Per Bottle (in PHP)
		(A)	*(B)*	*(C)*	*(D=B/C)*	*(E)*	*(F=DxE)*	*(G=A/C)*	*(H=F+G)*
13	Camus Cognac VSOP Elegance	146,313.22	4,920.00	480	10.25	43.8200	449.16	304.82	753.97

[52] Exhibit "V", Docket – Vol. 1, p. 100.
[53] Exhibit "JJJJJ-3", Docket – Vol. 2, p. 1000.

	Subtotal	**146,313.22**	**4,920.00**	**480**					
14	Ballantines	78,643.35	11,040.00	240	46.00	43.8200	2,015.72	327.68	2,343.40
	Carlos I	402,361.34	13,094.40	1,320	9.92	43.8200	434.69	304.82	739.51
	Royal Salute Whisky	58,525.29	8,874.00	192	46.22	43.8200	2,025.31	304.82	2,330.12
	Subtotal	**539,529.98**	**33,008.40**	**1,752**					
15	Piper Heidsieck Brut	700,533.90	30,937.50	1,980	15.63	43.8200	684.69	353.81	1,038.49
	Absolut Vodka	58,786.56	1,575.00	360	4.38	43.8200	191.71	163.30	355.01
	Subtotal	**759,320.46**	**32,512.50**	**2,340**					
16	Remy Martin VSOP Cognac	164,602.37	8,572.50	540	15.88	43.8200	695.64	304.82	1,000.46
	Subtotal	**164,602.37**	**8,572.50**	**540**					
17	Camus Cognac VSOP Elegance	149,971.05	6,724.00	492	13.67	43.8200	598.87	304.82	903.69
	Subtotal	**149,971.05**	**6,724.00**	**492**					
18	Canter Merlot MRP Bordeaux Rouge	106,143.75	62,220.06						
	Canter Merlot MRP Bordeaux Blanc	55,194.75							
	Subtotal	**161,338.50**	**2,220.06**	**11,400**	5.46	43.8200	239.17	14.15	253.32
19	Lindemans Shiraz Cab.	25,474.50	6,300.00	1,800	3.50	43.8200	153.37	14.15	167.52
	Penfolds Shiraz Cab.	16,983.00	5,496.00	1,200	4.58	43.8200	200.70	14.15	214.85
	Subtotal	**42,457.50**	**1,796.00**	**3,000**					
20	Johnnie Walker Black Label	176,947.55	8,493.12	1,008	8.43	43.8200	369.21	175.54	544.76
	Subtotal	**176,947.55**	**8,493.12**	**1,008**					
21	Chivas Regal Scotch Whisky	505,564.42	32,400.00	2,880	11.25	44.8960	505.08	175.54	680.62
	Royal Salute Whisky	58,525.29	8,874.00	192	46.22	44.8960	2,075.04	304.82	2,379.86
	Martell VSOP Cognac	87,787.92	4,032.00	288	14.00	44.8960	628.54	304.82	933.36
	Subtotal	**651,877.63**[54]	**45,306.00**	**3,360**					
22	Piper Heidsieck Brut	700,533.90	30,937.50	1,980	15.63	44.8960	701.50	353.81	1,055.31
	Subtotal	**700,533.90**	**30,937.50**	**1,980**					
23	JW Black Label	471,860.12	23,463.17	2,688	4.84	44.8960	217.30	175.54	392.84
	J&B Rare	352,719.36		2,160	4.84	44.8960	217.30	163.30	380.59
	Subtotal	**824,579.48**	**23,463.17**	**4,848**					
24	Camus Cognac XO Superieur	26,127.36	4,200.00	120	35.00	44.8960	1,571.36	217.73	1,789.09
	Subtotal	**26,127.36**	**4,200.00**	**120**					
25	Wine Lindeman's Shiraz Cab.	38,211.75	9,450.00	2,700	3.50	44.2100	154.74	14.15	168.89
	Subtotal	**38,211.75**	**9,450.00**	**2,700**					
26	Ballantines 17YO	98,304.19	10,584.00	300	35.28	44.2100	1,559.73	327.68	1,887.41
	Ballantines 21YO	78,643.35	11,040.00	240	46.00	44.2100	2,033.66	327.68	2,361.34
	Carlos I	365,783.04	11,904.00	1,200	9.92	44.2100	438.56	304.82	743.38

[54] The difference of ₱0.01 is due to rounding off to the nearest peso.

	Subtotal	**542,730.58**[55]	**33,528.00**	**1,740**					
27	Camus Cognac XO Superior	3,657.83	30.00	12	2.50	44.2100	110.53	304.82	415.34
	Subtotal	**3,657.83**	**30.00**	**12**					
28	Camus Cognac VSOP Elegance	219,469.82	7,380.00	720	10.25	44.2100	453.15	304.82	757.97
	Subtotal	**219,469.82**	**7,380.00**	**720**					
	Total[56]	**5,147,668.98**	**322,541.25**						
	GRAND TOTAL	**7,758,099.70**[57]	**569,382.40**						

For ease of reference, a side-by-side comparison of the importation costs (as computed above) and the prices reflected in the Philippine Wine Merchants (PWM) Price List for the year 2008[58] is presented below:

No	Description	Amount of Excise Taxes Paid Under Protest	Importation Cost Per Bottle	Retail Price/Bottle if Purchased Domestically (Per PWM Price List for year 2008)
1	Vin de Table Blanc PAL	₱ 70,819.11	₱ 98.60	₱ 353.50
	Vin de Table Rouge PAL	99,180.72	98.60	353.50
2	Ballantines 17YO	51,118.18	1,760.97	*None*
	Ballantines 21YO	55,050.34	1,912.09	*None*
	Royal Salute	58,525.29	2,182.50	6,400.00
	Martell VSOP	87,787.93	873.58	1,620.00
3	Ballantines 17YO	78,643.35	1,755.00	*None*
	Ballantines 21YO	78,643.35	1,905.50	*None*
	Chivas Regal	442,368.86	630.68	1,100.00
4	Vin de Table Blanc PAL	70,819.11	102.89	353.50
	Vin de Table Rouge PAL	99,180.72	102.89	353.50
5	Lindemans Primier Shiraz Cabernet, Penfords Shiraz Cabernet	55,194.75	211.37	353.50
6	Vin de Table Blanc PAL	70,819.11	106.48	353.50
	Vin de Table Rouge PAL	99,180.72	106.48	353.50
7	Ballantines 21YO	78,643.35	1,974.53	*None*
8	Jack Daniels	235,146.24	3,513.40	920.00
9	Lindemans Premier Selection Chardonnay	24,285.69	123.18	267.50
10	JW Black Label	294,912.58	591.78	1,003.00
	Gordons Gin	26,331.48	228.28	*None*
11	Chivas Regal	442,368.86	650.60	1,100.00
	Martel VSOP	87,787.93	896.00	1,620.00
12	Martini Dry & Sweet Vermouth	3,623.04	48.01	400.00
13	Camus Cognac VSOP Elegance	146,313.22	753.97	1,800.00
14	Ballantines	78,643.35	2,343.40	*None*
	Carlos I	402,361.34	739.51	1,099.00
	Royal Salute Whisky	58,525.29	2,330.12	6,400.00
15	Piper Heidsieck Brut	700,533.90	1,038.49	2,540.00
	Absolut Vodka	58,786.56	355.01	450.00
16	Remy Martin VSOP Cognac	164,602.37	1,000.46	1,485.00
17	Camus Cognac VSOP Elegance	149,971.05	903.69	1,800.00
18	Canter Merlot MRP Bordeaux Rouge, Canter Merlot MRP Bordeaux Blanc	161,338.50	253.32	353.50
19	Lindemans Shiraz Cab.	25,474.50	167.52	267.50
	Penfolds Shiraz Cab.	16,983.00	214.85	267.50
20	Johnnie Walker Black Label	176,947.55	544.76	1,003.00
21	Chivas Regal Scotch Whisky	505,564.42	680.62	1,100.00
	Royal Salute Whisky	58,525.29	2,379.86	6,400.00
	Martell VSOP Cognac	87,787.92	933.36	1,620.00
22	Piper Heidsieck Brut	700,533.90	1,055.31	2,540.00
23	JW Black Label	471,860.12	392.84	1,003.00

55 The difference of ₱0.01 is due to rounding off to the nearest peso.
56 Exhibit "CCC", Docket – Vol. 1, p. 168; Docket – Vol. 2, p. 734.
57 The difference of ₱0.02 is due to rounding off to the nearest peso.
58 Exhibit "JJJJJ-2", Docket – Vol. 2, p. 999.

	J&B Rare	352,719.36	380.59	863.50
24	Camus Cognac XO Superieur	26,127.36	1,789.09	4,200.00
25	Wine Lindeman's Shiraz Cab.	38,211.75	168.89	267.50
26	Ballantines 17YO	98,304.19	1,887.41	*None*
	Ballantines 21YO	78,643.35	2,361.34	*None*
	Carlos I	365,783.04	743.38	1,099.00
27	Camus Cognac XO Superior	3,657.83	415.34	4,200.00
28	Camus Cognac VSOP Elegance	219,469.82	757.97	1,800.00
	TOTAL	**₱ 7,758,099.70**[59]		

Evidently, petitioner complied with the *third* requisite relative to its importation of liquor and wine products, but only to the extent of the claimed excise tax payment of ₱6,898,932.51 which were shown to have lower cost per bottle of importation than purchasing them locally, detailed as follows:

No	Description	Amount of Excise Taxes Paid Under Protest	Importation Cost Per Bottle	Retail Price/Bottle if Purchased Domestically (Per PWM Price List for year 2008)
1	Vin de Table Blanc PAL	₱ 70,819.11	₱ 98.60	₱ 353.50
	Vin de Table Rouge PAL	99,180.72	98.60	353.50
2	Royal Salute	58,525.29	2,182.50	6,400.00
	Martell VSOP	87,787.93	873.58	1,620.00
3	Chivas Regal	442,368.86	630.68	1,100.00
4	Vin de Table Blanc PAL	70,819.11	102.89	353.50
	Vin de Table Rouge PAL	99,180.72	102.89	353.50
5	Lindemans Primier Shiraz Cabernet, Penfords Shiraz Cabernet	55,194.75	211.37	353.50
6	Vin de Table Blanc PAL	70,819.11	106.48	353.50
	Vin de Table Rouge PAL	99,180.72	106.48	353.50
9	Lindemans Premier Selection Chardonnay	24,285.69	123.18	267.50
10	JW Black Label	294,912.58	591.78	1,003.00
11	Chivas Regal	442,368.86	650.60	1,100.00
	Martel VSOP	87,787.93	896.00	1,620.00
12	Martini Dry & Sweet Vermouth	3,623.04	48.01	400.00
13	Camus Cognac VSOP Elegance	146,313.22	753.97	1,800.00
14	Carlos I	402,361.34	739.51	1,099.00
	Royal Salute Whisky	58,525.29	2,330.12	6,400.00
15	Piper Heidsieck Brut	700,533.90	1,038.49	2,540.00
	Absolut Vodka	58,786.56	355.01	450.00
16	Remy Martin VSOP Cognac	164,602.37	1,000.47	1,485.00
17	Camus Cognac VSOP Elegance	149,971.05	903.69	1,800.00
18	Canter Merlot MRP Bordeaux Rouge, Canter Merlot MRP Bordeaux Blanc	161,338.50	253.32	353.50
19	Lindemans Shiraz Cab.	25,474.50	167.52	267.50
	Penfolds Shiraz Cab.	16,983.00	214.85	267.50
20	Johnnie Walker Black Label	176,947.55	544.76	1,003.00
21	Chivas Regal Scotch Whisky	505,564.42	680.62	1,100.00
	Royal Salute Whisky	58,525.29	2,379.86	6,400.00
	Martell VSOP Cognac	87,787.92	933.36	1,620.00
22	Piper Heidsieck Brut	700,533.90	1,055.31	2,540.00
23	JW Black Label	471,860.12	392.84	1,003.00
	J&B Rare	352,719.36	380.59	863.50
24	Camus Cognac XO Superieur	26,127.36	1,789.09	4,200.00
25	Wine Lindeman's Shiraz Cab.	38,211.75	168.89	267.50
26	Carlos I	365,783.04	743.38	1,099.00
27	Camus Cognac XO Superior	3,657.83	415.34	4,200.00
28	Camus Cognac VSOP Elegance	219,469.82	757.97	1,800.00
	TOTAL	**₱ 6,898,932.51**		

The disallowance of the items listed below is either due to petitioner's failure to provide information on the retail price per bottle if purchased domestically or upon determination that such domestic price is lower than importation cost per bottle.

[59] The difference of ₱0.02 is due to rounding off to the nearest peso.

No	Description	Amount of Excise Taxes Paid Under Protest	Importation Cost Per Bottle	Retail Price/Bottle if Purchased Domestically (Per PWM Price List for year 2008)
2	Ballantines 17YO	51,118.18	1,760.97	*None*
	Ballantines 21YO	55,050.34	1,912.09	*None*
3	Ballantines 17YO	78,643.35	1,755.00	*None*
3	Ballantines 21YO	78,643.35	1,905.50	*None*
7	Ballantines 21YO	78,643.35	1,974.53	*None*
8	Jack Daniels	235,146.24	3,513.40	920.00
10	Gordons Gin	26,331.48	228.28	*None*
14	Ballantines	78,643.35	2,343.40	*None*
26	Ballantines 17YO	98,304.19	1,887.41	*None*
	Ballantines 21YO	78,643.35	2,361.34	*None*
	TOTAL	**₱859,167.18**		

In sum, only the amount of **₱6,898,932.51** constitutes erroneously paid excise tax that is refundable pursuant to Sections 204 and 229(C) of the NIRC of 1997, as amended.

ACCORDINGLY, in view of the foregoing, petitioner's claim for refund is **PARTIALLY GRANTED**. The Decision, dated June 2, 2015 of this Court in Division is **AMENDED** to read as follows:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** to petitioner the amount of **₱6,898,932.51**, representing the latter's erroneously paid excise tax on importations of wine and liquor products for its international flight consumption.
>
> **SO ORDERED.**

Furthermore, petitioner's Manifestation, filed on March 20, 2024, is hereby **NOTED**. Let all Court orders and processes be served and furnished upon petitioner at the address provided therein.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice