CTA Form No. 8 (For DCC)

22-000020-0039

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10730

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. KARISSA INEZ A. SEGUNDO
ATTY. ARJUNA DAS MATTHEW F. GUEVARRA
PAL LEGAL AFFAIRS DEPARTMENT
E/F, Legal Affairs Department
Philippine Airlines, Lucia K. Tan, Jr. Center (LKTJC)
PAL Gate 5, Andrews Avenue, Nichols, Pasay City

GREETINGS:

You are hereby notified by these presents that on **June 13, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 19, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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PHILIPPINE AIRLINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10730

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 13 2024 2:40PM

x- -x

RESOLUTION

MANAHAN, *J.*:

For resolution of the Court is petitioner Philippine Airlines, Inc. (PAL)'s Motion for Reconsideration (Re: Decision dated 21 February 2024) filed on March 13, 2024,[1] with respondent Commissioner of Internal Revenue (CIR)'s Comment/Opposition (to Petitioner's Motion for Reconsideration) filed on April 8, 2024.[2]

PAL argues in its motion that the evidence presented by PAL sufficiently established that the subject imported liquors and wine products are not locally available in reasonable quantity, quality, or price. PAL cites several cases where the Court of Tax Appeals (CTA) and the Supreme Court ruled on the sufficiency of PAL's evidence to prove its claim for refund.

On the other hand, the CIR asserts that this Court correctly ruled that petitioner failed to prove that petitioner's imported supplies are not locally available in reasonable quantity, quality, or price.

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[1] Docket, pp. 655-682.
[2] Docket, pp. 703-706.

After careful review of the arguments of both parties, the Court finds the present motion unmeritorious.

As previously held in the assailed Decision, PAL failed to show before the Court the unavailability of its imported supplies in reasonable quantity, quality, or price. Thus:

> "In both the present case and in the previous *PAL* case, petitioner presented essentially the same suppliers. Likewise, in both cases, petitioner failed to present corroborating evidence that the price list of the said suppliers represent the local market prices for the imported alcohol products *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same years. Finally, considering that RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's imported alcohol products for 2018 to 2019 with that of the said price survey.
>
> Consequently, based on the evidence presented by petitioner, it cannot be determined with certainty whether the subject imported alcohol products are not locally available in reasonable quantity, quality or price. Thus, the Court finds that petitioner failed to satisfy the third (3rd) requirement for it to avail the benefits of Section 13 of PD No. 1590."[3]

Still, even if the price lists presented by PAL are sufficient to prove its claim, the Court cannot give probative weight to these pieces of evidence for being <u>hearsay documents</u>.

Witness Cheryl V. Capinpin testifies in her Judicial Affidavit that:

> "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. Absolut Sales Corporation 2019 Price List;
>
> ii. Future trade International Travel Retail Price List effective 20 October 2018;

[3] Decision, Docket, p. 648.

iii. Minivan Enterprise 2019 Price List; and

iv. Bureau of Internal Revenue's ('BIR') Revenue Memorandum Circular ('R.M.C.') No. 90-2012 Price List.

xxx xxx xxx

17. Q: How did you secure the local prices of these local suppliers?

A: These price Lists were given to me by their authorized representatives.

18. Q: On the bottom left corner of Annex 'P-11', there appears a signature on top of the name Melvin Zablan. Whose signature is this?

A: This is the signature of Mr. Melvin Zablan, Business Development Manager of Absolut Sales Corporation. **He was the one who prepared the local Price List for Absolut Sales Corporation for 2019**.

19. Q: On each and every page of Annex 'P-11.1', there appears a signature of one Rowena Miralles. Whose signature is this?

A: This is the signature of Ms. Rowena Miralles, Credit and Collection Officer of Future Trade International, Inc. **She was the one who prepared the local Price List for Future Trade as of 20 October 2018**.

20. Q: On the bottom-right corner of 'P-11.2', there appears a signature on top of the name Ivan Tan. Whose signature is this?

A: This is the signature of Mr. Ivan Tan, Authorized Representative of Minivan Enterprise. **He was the one who prepared the local Price List for Minivan Enterprise for 2019**."[4] *(Emphasis supplied)*

Based on the above-testimony, witness Cheryl V. Capinpin has no personal knowledge on the subject price lists because she had no participation whatsoever in their preparation or execution. Instead, the alleged authorized representatives of these suppliers should have been presented as witnesses to afford the CIR the opportunity to cross-examine them.

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[4] Judicial Affidavit of Ms. Cheryl V. Capinpin, Docket, pp. 103-106.

While a scrutiny of the records reveals that the CIR failed to object to the hearsay nature of the subject price lists, the Supreme Court has consistently held that "hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule."[5] As such, despite the CIR's failure to object, the Court cannot give probative weight to the subject pieces of evidence.

Considering the foregoing, the Court sees no reason to reverse its ruling in the assailed Decision and hence, the denial of the instant motion is in order.

FOR THESE REASONS, the instant Motion for Reconsideration (Re: Decision dated 21 February 2024) is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(With due respect, I reiterate my Concurring and Dissenting Opinion in the Assailed Decision)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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5 *Metropolitan Waterworks and Sewerage System v. Provincial Government of Bulacan*, G.R. No. 185184, October 3, 2023, citing *Republic v. Galeno*, 803 Phil. 742 (2017).