REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9913

Members:

DEL ROSARIO, *P.J., Chairperson*, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 29 2021 8:30 a.m.

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DECISION

MANAHAN, *J.:*

This case involves a *Petition for Review* filed by petitioner Philippine Airlines, Inc. against respondent Commissioner of Internal Revenue on August 28, 2018, praying that the Court render judgment ordering respondent to refund or issue a tax credit certificate (TCC) in favor of petitioner in the amount of ₱4,492,243.43, representing the excise taxes imposed on petitioner's importations which have been allegedly illegally collected and paid under protest.[1]

THE FACTS

Petitioner Philippine Airlines, Inc. is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR), with address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, and TIN 000-597-645-00000.[2]

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal

[1] Statement of the Case, Pre-Trial Order dated May 8, 2019, Docket– Vol. I, p. 466.
[2] Exhibit "P-3", Docket – Vol. II, p. 836.

Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes imposed on wines and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue 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 Between the Philippines and Other Countries."*[4]

From October 2012 to March 2013, petitioner imported various liquors and wines, as parts of its in-flight and commissary supplies.[5]

Thereafter, the Bureau of Customs (BOC) in separate letters dated April 17, 2013[6] and June 25, 2013,[7] ordered the collection of excise taxes from petitioner in the amounts of ₱2,139,699.09[8] and ₱2,352,544.34[9] for its importation of alcohol and tobacco products.

On August 26, 2016, petitioner paid under protest excise taxes on its cigarette and alcohol importations in the total amount of ₱4,492,243.43, as follows:[10]

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[3] Par. 1, The Parties, *Petition for Review*, Docket – Vol. 1, p. 10 vis-à-vis Par. 1, *Answer*, Docket – Vol. I, p. 169.
[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 392.
[5] Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24", "P-4.25", "P-4.26", "P-4.27", "P-4.28", "P-5", "P-5.1", "P-5.2", "P-5.3", "P-5.4", "P-5.5", "P-5.6", "P-5.7", "P-5.8", "P-5.9", "P-5.10", "P-5.11", "P-5.12", "P-5.13", "P-5.14", "P-5.15", "P-5.16", "P-5.17", "P-5.18", "P-5.19", "P-5.20", "P-5.21", "P-5.22", "P-5.23", "P-5.24", "P-5.25", "P-5.26", "P-5.27", "P-5.28", "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24", "P-6.25", "P-6.26", "P-6.27", and "P-6.28", Docket – Vol. II, pp. 837 to 923, respectively.
[6] Exhibits "P-7", Docket – Vol. II, p. 924.
[7] Exhibits "P-7.1", Docket – Vol. II, p. 1111.
[8] Exhibits "P-7", Docket – Vol. II, p. 924.
[9] Exhibits "P-7.1", Docket – Vol. II, p. 1111.
[10] Exhibit "P-9", Docket – Vol. II, p. 1112; Exhibit "P-9.1", Docket – Vol. II, p. 929.

BOC Official Receipt Number	***Amount Paid***
0187731999[11]	₱2,139,699.09
0187732001[12]	₱2,352,544.34

Petitioner filed an administrative claim for refund before the office of respondent on August 23, 2018.[13]

Petitioner filed a *Petition for Review* on August 28, 2018.[14] This case was originally raffled to this Court's Second Division.

Pursuant to the Court's Order dated September 24, 2018,[15] this case was transferred to this Court's First Division.

On September 26, 2018, respondent filed his *Answer*[16] interposing his defenses.

The Pre-Trial Conference of the case was subsequently scheduled and held on January 24, 2019.[17] Prior thereto, the *Respondent's Pre-Trial Brief* was filed on October 24, 2018,[18] while petitioner's *Pre-Trial Brief* was submitted on January 18, 2019.[19]

On February 26, 2019, the parties submitted to this Court their *Joint Stipulation of Facts and Issues* (JSFI).[20] In the Resolution dated March 7, 2019,[21] the Court approved the said JSFI, and deemed the Pre-Trial terminated. The Pre-Trial Order was issued on May 8, 2019,[22] wherein the Court, *inter*

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[11] Exhibit "P-8", Docket – Vol. II, p. 926.
[12] Exhibit "P-8.1", Docket – Vol. II, p. 927
[13] Par. 5, *Petition for Review*, vis-à-vis Par. 10, *Answer*, Docket– Vol. I, pp. 11 and 171, respectively.
[14] Docket – Vol. I, pp. 10 to 25.
[15] Docket – Vol. I, p.167.
[16] Docket – Vol. I, pp. 169 to 175.
[17] *Notice of Pre-Trial Conference* dated October 19, 2018, Docket – Vol. I, pp. 178 to 179; Minutes of the hearing held on, and Order dated, January 24, 2019, Docket – Vol. I, pp. 298 to 299.
[18] Docket – Vol. I, pp. 180 to 183.
[19] Docket – Vol. I, pp.187 to 193.
[20] Docket – Vol. I, pp. 392 to 398.
[21] Docket – Vol. I, p. 414.
[22] Docket – Vol. I, pp. 466 to 482.

alia, noted respondent counsel's manifestation that she will no longer present any witness.[23]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Cheryl V. Capinpin,[24] the Manager for petitioner's In-flight Materials Purchasing Division; (2) Ms. Ruel Ryan O. Julian,[25] Manager for petitioner's Tax Services Division; (3) Mr. Jonathan R. Castillo Lee,[26] Manager for petitioner's Company Materials Handling Division; and (4) Ms. Katherine O. Constantino,[27] the Court-commissioned Independent Certified Public Accountant (ICPA).[28]

The ICPA submitted her *Report* on June 27, 2019.[29]

On August 7, 2019, petitioner filed its *Formal Offer of Evidence*.[30] Respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 8, 2019.[31]

In the Resolution dated September 19, 2019,[32] the Court admitted petitioner's exhibits, *except* for Exhibit "P-7.1", for failure of the formally offered and identified exhibit to correspond with the duly marked exhibit; and Exhibit "P-9", for failure to present the original for comparison.

Petitioner then filed an *Omnibus Motion (I. For Partial Reconsideration of the Resolution dated 19 September 2019;*

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[23] *Cf.* Minutes of the hearing held on, and Order dated, July 23, 2019, Docket – Vol. II, (in- between pp. 775 and 776).

[24] Exhibit "P-29", Docket – Vol. I, pp. 497 to 507; Minutes of the hearing held on May 28, 2019, Docket – Vol. II, (in- between pp. 507 and 508); Order dated May 28, 2019, Docket – Vol. I, pp. 620 to 621.

[25] Exhibit "P-30", Docket – Vol. I, pp. 648 to 655; Minutes of the hearing held on, and Order dated, July 23, 2019, Docket – Vol. II, (in- between pp. 775 and 776).

[26] Exhibit "P-31", Docket – Vol. I, pp. 194 to 202; Minutes of the hearing held on, and Order dated, July 23, 2019, Docket – Vol. II, (in- between pp. 775 and 776).

[27] Exhibit "P-33", Docket – Vol. II, pp. 780 to 794; Minutes of the hearing held on, and Order dated, July 23, 2019, Docket – Vol. II, (in- between pp. 775 and 776).

[28] *Oath of Commission* dated May 28, 2019, and the minutes of the hearing held on May 28, 2019, Docket – Vol. II, (in- between pp. 507 and 508); Order dated May 28, 2019, Docket – Vol. I, pp. 620 to 621.

[29] Exhibit "P-32", Docket – Vol. II, pp. 732 to 752.

[30] Docket – Vol. II, pp. 799 to 835.

[31] Docket – Vol. II, pp. 1058 to 1060.

[32] Docket – Vol. II, pp. 1066 to 1069.

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and II. Motion for Commissioner's Hearing) on October 22, 2019.[33] On even date, respondent filed his *Memorandum.*[34]

On November 6, 2019, petitioner filed a *Manifestation (With Motion to Suspend Filing of Memorandum),*[35] praying that this Court suspend the filing of the parties' respective memoranda until the *Omnibus Motion* is resolved. In the Resolution dated November 14, 2019,[36] the Court noted and granted petitioner's *Manifestation (With Motion to Suspend Filing of Memorandum),* and deferred the filing of the parties' respective memoranda until further orders from this Court.

Respondent failed to file his comment on petitioner's *Omnibus Motion.*[37]

In the Resolution dated January 23, 2020,[38] the Court granted petitioner's *Motion for Commissioner's Hearing* and set the case for Commissioner's Hearing on March 3, 2020; and held in abeyance the resolution of petitioner's *Motion for Partial Reconsideration of the Resolution dated 19 September 2019.*

Subsequently, the Court, in the Resolution dated June 23, 2020,[39] granted petitioner's *Motion for Partial Reconsideration of the Resolution dated 19 September 2019,* and admitted petitioner's Exhibits "P-7.1" and "P-9".

On September 10, 2020, petitioner electronically filed its *Memorandum.*[40]

This case was submitted for decision on September 28, 2020.[41]

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[33] Docket – Vol. II, pp. 1101 to 1110; cf: *Manifestation*, Docket – Vol. II, pp. 1086 to 1087; Resolution dated November 6, 2019, Docket – Vol. II, p. 1117.
[34] Docket – Vol. II, pp. 1070 to 1084.
[35] Docket – Vol. II, pp. 1118 to 1123.
[36] Docket – Vol. II, p. 1126.
[37] Records Verification dated December 5, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 1127.
[38] Docket – Vol. II, pp. 1133 to 1135.
[39] Docket – Vol. II, pp. 1146 to 1148.
[40] Docket – Vol. II, pp. 1149 to 1164.
[41] Resolution dated September 28, 2020, Docket – Vol. II, p. 1166.

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ISSUE

As stipulated, the sole issue for the Court's determination is as follows:

> "1. Whether Petitioner PAL is entitled to the refund of excise taxes paid for various importations on 26 August 2016 amounting to **Four Million Four Hundred Ninety Two Thousand Two Hundred Forty Three Pesos and 43/100 (PhP4,492,243.43)** for its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption."[42]

Petitioner's arguments:

Petitioner argues that PAL's importation of commissary and catering supplies is exempt from all taxes pursuant to its franchise considering that Republic Act (RA) No. 9334 did not repeal PD No. 1590.

Respondent's counter-arguments:

Respondent contends that Section 131 of the NIRC of 1997, as amended by RA No. 9334, expressly withdrew the conditional tax exemption granted to petitioner; that the letter of the law should prevail over rules of construction; that petitioner failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price; that the exemption granted to petitioner is not absolute; that to sustain petitioner's misguided and self-serving interpretation of its franchise provisions would ultimately convert the conditional exemption to one that is absolute; that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation; and that petitioner fell short of proving the merit and veracity of its claim for refund.

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[42] Stipulated Issue, JSFI, Docket – Vol. I, p. 394.

THE COURT'S RULING

The instant *Petition for Review* is denied.

Governing provisions for refund claims.

Sections 204(C) and 229 of the NIRC of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment

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was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**, and the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[43]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal.[44]

Thus, for the instant claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

Petitioner timely filed its administrative and judicial claims.

In the instant case, it is shown that petitioner paid excise taxes totaling ₱4,492,243.43 to the BOC on August 26, 2016.[45] Counting from this date, petitioner had until August 26, 2018 to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim for refund

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[43] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[44] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[45] Exhibits "P-8" and "P-8.1", Docket – Vol. II, pp. 926 to 927.

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filed on August 23, 2018 before respondent,[46] and the judicial claim for refund filed before this Court on August 28, 2018,[47] which is the next working day after August 26, 2018,[48] both fell within the two-year prescriptive period.

Correspondingly, petitioner timely filed its administrative and judicial claims.

However, petitioner failed to prove that there was an erroneous or illegal excise tax which was collected by the government.

Respondent argues that Section 131 of the NIRC of 1997, as amended by RA No. 9334,[49] reveals the unmistakable intent

[46] Par. 5, *Petition for Review*, vis-à-vis Par. 10, *Answer*, Docket– Vol. I, pp. 11 and 171, respectively.
[47] Docket – Vol. I, pp. 10 to 25.
[48] It is noteworthy that August 28, 2018 fell on a Sunday; while August 27, 2018 was declared by the President as a legal holiday, pursuant to Proclamation No. 269 dated July 17, 2017. Thus, the instant *Petition for Review* was timely filed.
[49] "SEC. 131. **Payment of Excise Taxes on Imported Articles.** –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Frec Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled "duty-free" and "not for resale": *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and of Congress to withdraw the conditional tax exemptions granted to respondent under Section 13, PD No. 1590.[50] On the other hand, petitioner contends that despite the passage of RA No. 9334, its tax exemption under PD No. 1590 remained unamended.

We agree with petitioner.

The Supreme Court, in a number of cases, has already specifically ruled that the tax privilege of petitioner under Section 13 of PD No. 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334, subject to certain conditions.

In *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*,[51] the Supreme Court said:

> "This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.
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> In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*,[52] the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:

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the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) *Rate and Basis of the Excise Tax on Imported Articles.* - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

[50] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

[51] G.R. Nos. 215705-07, February 22, 2017.

[52] G.R. Nos. 212536-37, August 27, 2014.

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It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.

Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc. [G.R. No. 180066, July 7, 2009, 609 Phil. 695]*:

> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that 'the provisions of any special or general law to the contrary notwithstanding,' such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x
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> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special

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> law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.
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> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue.* In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. x x x

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)*[53] and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL),*[54] this Court, echoing the ruling in the abovecited case of *CIR v. PAL,* held that:

> In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax - whichever is lower - shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees

[53] G.R. Nos. 209353-54, July 6, 2015.
[54] G.R. Nos. 211733-34, July 6, 2015.

> and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

> **SEC. 22.** *Franchises of Domestic Airlines.* - **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc.**, R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
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> **(A) The franchise tax is abolished;**
>
> **(B) The franchisee shall be liable to the corporate income tax;**
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> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
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> **(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.**

Thus, this Court held in the abovecited PAL consolidated cases:

> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). **PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.**
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> **It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.**" *(Emphases added)*

The foregoing pronouncements were reiterated in the more recent case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et seq.*,[55] declaring that:

> "PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337 further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from 'any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.'
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> xxx xxx xxx
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> Again, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[56] this Court maintained that **despite these amendments to the National Internal Revenue Code, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that no explicit repeals were made on Presidential Decree No. 1590.**

[55] G.R. Nos. 206079-80 and 206309, January 17, 2018.
[56] G.R. Nos. 215705-07, February 22, 2017.

> **Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist.** xxx." *(Emphases added)*

Correspondingly, despite the enactment and effectivity of RA No. 9334, amending Section 131 of the NIRC of 1997, petitioner's tax exemptions subsist.

However, it must be emphasized that petitioner's tax exemptions are *not* without conditions.

As already intimated in the above-quoted ruling of the High Court, petitioner remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, ***provided* it pays corporate income tax as granted in its franchise agreement**; the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

In addition to the payment of the corporate income tax, Section 13(b)(2) of PD No. 1590 enumerates certain conditions that petitioner must comply with, in order to be exempt from excise tax for its imported tobacco and alcohol products, to wit:

> "SECTION 13. xxx
>
> xxx xxx xxx
>
> 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:
>
> xxx xxx xxx
>
> (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; **<u>provided</u>, 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; x x x." *(Emphases and underscoring added)*

Thus, on the basis of jurisprudence and the foregoing provision, the following conditions must be fulfilled by petitioner for it to be exempt from excise tax on its importation of tobacco and alcohol products, to wit:

(1) payment of the corporate income tax;
(2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities;[57] and
(3) they are not locally available in reasonable quantity, quality or price.[58]

In this case, petitioner submitted in evidence its Amended Annual Income Tax Return,[59] for fiscal year ended March 31, 2013 to prove payment of its corporate income tax. Such being the case, petitioner has fulfilled the *first* condition.

Parenthetically, petitioner is a VAT-registered entity and paid its VAT for the fiscal year ended March 31, 2013.[60]

As for the second condition, the imported articles were described as *"Inflight Materials"* under the column *"Description of Articles"* in the *Informal Import Declaration and Entry* submitted by petitioner.[61] Moreover, the *Authority to Release Imported Goods* (ATRIG) issued by the BIR itself and addressed

[57] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017; *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, August 27, 2014.
[58] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017; *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, August 27, 2014.
[59] Exhibits "P-11", Docket – Vol. II, pp. 932 to 948.
[60] Exhibits "P-3" and "P-10" , Docket – Vol. II, pp. 836 and 930, respectively; and Exhibits "P-12", "P-12-a", "P-12-b", "P-12-c", "P-13", "P-13a", "P-14", "P-14-a", "P-15", and "P-15-a", Docket – Vol. II, pp. 950 to 951, 952 to 953, 954 to 955, 956 to 957, 958 to 959, 960 to 963, 964 to 965, 966 to 968, 969 to 970, and 971 to 972, respectively.
[61] Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24", "P-4.25", "P-4.26", "P-4.27", and "P-4.28", Docket – Vol. II, pp. 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, and 865, respectively.

to the Commissioner of Customs also provided that the pertinent shipment to be released at the port of Ninoy Aquino International Airport consisting of the said articles will be used exclusively for *"international inflight consumption only"*.[62] Thus, the subject importations of alcohol and tobacco products are for the use of petitioner in its transport operations, fulfilling the *second* condition.

However, with regard to the *third* condition, *i.e.*, the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, We find that petitioner fell short of proving compliance therewith.

To prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, petitioner submitted the (1) Judicial Affidavit of Ms. Cheryl V. Capinpin,[63] its Manager for In-flight Materials Purchasing Division; (2) Absolute Sales Corporation Price List for 2013;[64] (3) Future Trade International Price List Effective February 1, 2013;[65] (4) BIR Revenue Memorandum Circular No. 90-2012;[66] (5) report of the Court-commissioned ICPA;[67] and (6) Judicial Affidavit of the Court-commissioned ICPA.[68]

The Court, however, finds the foregoing evidence as insufficient.

During the cross-examination of Ms. Capinpin, she testified that her observation that the imported products are not available locally in reasonable quantity, quality or price, is merely based on the price lists from Absolute Sales Corporation and Future Trade International, *viz*:

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[62] Exhibits "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24", "P-6.25", "P-6.26", "P-6.27", and "P-6.28", pp. 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, and 923, respectively.

[63] Exhibit "P-29", Docket – Vol. I, pp. 497 to 507; Minutes of the hearing held on May 28, 2019, Docket – Vol. II, (in- between pp. 507 and 508); Order dated May 28, 2019, Docket – Vol. I, pp. 620 to 621.

[64] Exhibit "P-22", Docket – Vol. II, pp. 1010 to 1012.

[65] Exhibit "P-24", Docket – Vol. II, pp. 1019 to 1024.

[66] Exhibit "P-25", Docket – Vol. II, pp. 1026 to 1045.

[67] Exhibit "P-32", Docket – Vol. II, pp. 734 to 752.

[68] Exhibit "P-33" Docket – Vol. II, pp. 780 to 793.

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"ATTY. CAYETANO

Q Ms. Witness, in Question No. 11 of your Judicial Affidavit, you answered that you compared the prices in relation to the Absolute Sales Corporation price list, Future Trade International retail price list and RMC No. 90-2012. Is Absolute Sales Corporation and Future Trade International the only one who sell these products in the Philippines?

MS. CAPINPIN

A They are not the only one who sell these products but those are the suppliers who responded to our request for price list.

ATTY. CAYETANO

Q So, you were not able to get price list from other suppliers although they do exist?

MS. CAPINPIN

A Yes, they did not respond to our request.

ATTY. CAYETANO

Q In Question No. 7, you mentioned that the products are not available locally in reasonable quantity, quality or price? Is this correct?

MS. CAPINPIN

A Yes.

ATTY. CAYETANO

Q But this observation is based on the price list that were given to you when you requested that?

MS. CAPINPIN

A Yes." [69]

In like manner, during the cross and re-direct examinations of Ms. Constantino, the Court-commissioned ICPA, she testified that her finding that importation is cheaper

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[69] Transcript of Stenographic Notes (TSN) at the hearing held on May 28, 2019, pp. 20 to 21.

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than purchasing liquor locally is based on the two (2) price lists provided by petitioner, and RMC No. 90-2012,[70] *viz*:[71]

> "CROSS EXAMINATION BY ATTY. BABARAN:
>
> xxx xxx xxx
>
> ATTY. BABARAN:
>
> Q. So, as far as you know, the petitioner requested for the price list only from these two (2) companies?
>
> MS. CONSTANTINO
>
> A. Yes.
>
> ATTY. BABARAN:
>
> Q. No other company or any other price list survey was given to you?
>
> MS. CONSTANTINO
>
> A. None.
>
> ATTY. BABARAN:
>
> Q. And, you did not make also any survey?
>
> MS. CONSTANTINO
>
> A. Not.
>
> xxx xxx xxx
>
> RE-DIRECT EXAMINATION BY ATTY. SEGUNDO:
>
> xxx xxx xxx
>
> JUSTICE VICTORINO:
> Just a clarification.
>
> Your conclusion that importation is cheaper than purchasing the liquor locally. This conclusion was based on the two (2) quotations provided to you by petitioner from two (2) companies?

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[70] SUBJECT: 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.

[71] TSN at the hearing held on May July 23, 2019, pp. 25, 27 to 30.

MS. CONSTANTINO:

A. Yes, your Honors, and the BIR.

JUSTICE VICTORINO:

And that you also consider its BIR Revenue Memorandum Circular 90-2012?

MS. CONSTANTINO:

A. Yes, your Honors.

JUSTICE VICTORINO:

Yes.

And, with these documents, you already concluded that it's cheaper to import rather than to buy those liquors locally?

MS. CONSTANTINO:

A. We tried searching in the internet for the prices, but then, we could not really find. So, there was an effort made on our part, unfortunately, we could not really find sources that could provide us with additional information as to the prices.

JUSTICE VICTORINO:

Did you consider your conclusion enough for the Court to sustain the relief being prayed for by petitioner?

MS. CONSTANTINO:

A. My conclusion was based only on the documents that we've examined, that some of the products were not available.

JUSTICE VICTORINO:
That would be all.

JUSTICE DEL ROSARIO:

Just a follow-up question on that.

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There were two (2) price quotations you were able to get, one, from the Absolute Sales, the other one from Future Trade International. Did you verify the nature of the business of these two (2) supposed corporations?

MS. CONSTANTINO:

A. No, your Honors.

JUSTICE DEL ROSARIO:

Would you know if these two (2) corporations are the exclusive distributors of the alcohol products involving this case?

MS. CONSTANTINO:

A. No, I'm not certain, your Honors.

JUSTICE DEL ROSARIO:

You have no information as to whether there is any dealer that exclusively sells the alcohol products in the country?

MS. CONSTANTINO:

A. We tried looking in the internet for a dealer but we could not really find one.

JUSTICE DEL ROSARIO:

So, it is uncertain whether there is an exclusive distributor or seller of the alcohol products that are involved in this present case?

MS. CONSTANTINO:
A. Yes, your Honors, we only based it on the internet."

The Court, however, cannot simply rely on the product price lists from two (2) dealers, and the testimonies merely based thereon. It is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country.

With the lack of corroborating evidence to prove that the price lists of Absolute Sales Corporation and Future Trade

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International represent the local market prices for the subject alcohol products in 2013 vis-à-vis the totality of local suppliers who are engaged in selling similar products in the same year, this Court cannot conclude that petitioner's comparison of the prices of its imported alcohol products with that of the said dealers is deemed sufficient. Likewise, 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 2013 with that of the said price survey. Simply put, with the evidence presented by petitioner, the Court cannot determine, with certainty, whether the cost of importing alcohol is lower than purchasing them locally.

As regards its importation of tobacco products, petitioner failed to offer supporting evidence through which the Court can verify the statements made by Ms. Capinpin in her Judicial Affidavit. Petitioner failed to submit, at the very least, price lists of tobacco products which indicate the local market prices of the said products. *Apropos*, the testimony of Ms. Capinpin, standing alone, is insufficient to ascertain whether the subject tobacco products were, indeed, not locally available in reasonable quantity, quality or price.

In sum, petitioner failed to present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation. Such being the case, petitioner has not fulfilled all conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590. Thus, this Court finds no erroneous or illegal excise taxes that are refundable in favor of petitioner.

Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[72] Petitioner, unfortunately, failed to discharge this burden.

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[72] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice