REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.
Respondent.

CTA EB No. 2866
(CTA Case No. 8340)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
APR 24 2025 4:10 pm

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DECISION

REYES-FAJARDO, *J.*:

For action is the Petition for Review filed by the Commissioner of Internal Revenue, challenging the Amended Decision[1] dated October 5, 2023 and the Resolution[2] dated January 12, 2024 in CTA Case No. 8340, whereby the Second Division of the Court (Court in Division) partially granted Philippine Airlines, Inc.'s claim for refund of erroneously paid excise taxes on its importations of wine and liquor products for its international in-flight consumption for the period August 2007 to December 2008, to the extent of ₱3,133,270.14.

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1 *Rollo*, pp. 18-38
2 *Id.* at pp. 40-44.

PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue with authority to assess and collect all national internal revenue taxes, fees and charges, including excise taxes paid on wine, liquor, and cigarettes under Sections 142 and 145 of the 1997 National Internal Revenue Code (NIRC), as amended, with office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

On the other hand, respondent Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[4]

ANTECEDENTS

On June 11, 1978, petitioner was granted a franchise to operate domestic and international air transport services[5] under Presidential Decree (PD) No. 1590.[6] Section 13 thereof reads:

> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two percent (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

3 Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Volume I, p. 257.
4 Par. 1, JSFI, Docket, Volume I, p. 257
5 Par. 4, JSFI, Docket, Volume I, p. 258.
6 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.

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. ...**[7]

From August 2007 to December 2008, respondent made several importations of wine, liquor and cigarette for use in its commissary supplies during international flights.[8] The Bureau of Customs (BOC) required respondent to pay excise taxes on these importations.

On September 23, 2009, respondent paid under protest the excise taxes on its wine, liquor and cigarette importations, in the total amount of ₱5,553,624.40, broken down as follows:

BOC Official Receipt Number	Amount Paid
167361092	₱2,630,868.83[9]
16731083	₱2,922,755.57[10]

7 Boldfacing supplied.

8 Exhibits "I," "J," "K," "L," "M," "N," "O," "P," "Q," "FF, "GG," "HH," "II," "JJ," "KK," "LL" and "MM," Docket, Volume II, pp. 690, 692, 695, 698, 701, 704, 707, 710, 713, 748, 751, 754, 757, 760, 763, 766, and 769, respectively.

9 Exhibit "S." Docket, Volume II, p. 717.

10 Exhibit "OO." *Id.* at p. 773.

On January 28, 2010, respondent filed with the BIR an administrative claim for refund of, or issuance of tax credit certificate in the amount of ₱5,553,624.40, allegedly representing erroneously paid excise taxes on its importations of liquor, wine and cigarettes for its international in-flight consumption.

CTA Case No. 8340

On September 23, 2011, respondent filed a Petition for Review, docketed as CTA Case No. 8340, initially raffled before the Court's First Division.

Under Order dated April 22, 2013, CTA Case No. 8340 was transferred from the First Division to the Court's Third Division.[11]

On February 17, 2015, the Court's Third Division rendered its Decision, denying respondent's petition for lack of merit. The Court's Third Division found that respondent is not entitled to exemption from the payment of excise taxes on its importation of wine, liquor and cigarettes because it failed to present sufficient and credible evidence to justify the non-availability in the local market of the imported items in terms of quantity, quality or price.

On March 10, 2015, respondent moved for partial reconsideration, which was denied for lack of merit in the Resolution dated July 22, 2015.

CTA EB No. 1347

On September 3, 2015, respondent filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 1347.

On August 30, 2017, the Court *En Banc* rendered a judgment partially granting the petition and setting aside the Decision dated February 17, 2015, and the Resolution dated July 22, 2015 of the Court's Third Division's in CTA Case No. 8340. The Court *En Banc*

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[11] Docket, Volume III, p. 848.

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found that that respondent established its compliance with the requisites of exemption because the imported alcohol products were not available in reasonable quantity, quality or price locally. However, as for cigarettes, the Court *En Banc* held that respondent fell short in proving its non-availability locally at a reasonable quantity, quality or prices. Thus, the Court *En Banc* deemed it proper to remand the case to the Court's Third Division for a complete determination of the amount of refund due to respondent.

On September 29, 2017, and October 3, 2017, respondent and the Commissioner of Customs, respectively, sought reconsideration of the Court *En Banc's* Decision, which was denied under Resolution dated February 21, 2018.

G.R. No. 238163

On April 20, 2018, petitioner filed with the Supreme Court a Petition for Review on *Certiorari* docketed as G.R. No. 238163.

On July 9, 2018, the Supreme Court rendered a Resolution denying the petition for failure of petitioner to sufficiently show that the CTA *En Banc* committed any reversible error in the Decision dated August 30, 2017, and Resolution dated February 21, 2018. The Supreme Court's resolution reads in part:

> ...
>
> Under Section 13 of Presidential Decree No. 1590, the Philippine Airlines, Inc. (PAL) shall enjoy exemption from tax on its commissary supplies when the following conditions are met: (a) it paid its corporate income tax covering the period when the subject importations were made; (b) the articles, supplies, or materials are imported for PAL's use in its transport and non-transport operation and other activities incidental thereto; and (c) the imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.
>
> ...
>
> The CTA *En Banc's* decision is clearly supported by evidence. In its evaluation, the CTA *En Banc* found it fit to grant PAL's claim only to the extent of the refund of taxes paid on imported liquors, **because its evidence only established that the cost of importing alcohol for its commissary and catering**

> **supplies is lower than purchasing them locally.** It did not prove the same as to its imported cigarettes. Thus, the remand of the case for the reception of evidence on this point is likewise proper.
>
> **SO ORDERED.**

Through Resolution dated May 25, 2022,[12] the CTA *En Banc* stated that on March 31, 2022, it received the Entry of Judgment from the Supreme Court declaring that the Resolution dated July 9, 2018 rendered in G.R. No. 238163 has become final and executory and is recorded in the Book of Entries of Judgment on November 25, 2020. In view thereof, CTA Case No. 8340 was remanded to the Court's Third Division for the determination of the final amount to be refunded to respondent.

On October 5, 2023, the Court in Division rendered the challenged Amended Decision, the dispositive portion of which states:

> **WHEREFORE**, in view of the foregoing, petitioner's claim for refund is **PARTIALLY GRANTED**. Accordingly, the Decision dated February 17, 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** petitioner the amount of **Php3,133,270.14**, representing the latter's erroneously paid excise tax on its importations of wine and liquor products for its international flight consumption.
>
> **SO ORDERED.**

On October 23, 2023, petitioner filed a Motion for Reconsideration (Re: Amended Decision promulgated 5 October 2023) with the Court in Division.

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12 Docket, Volume III, pp. 1200-1203.

On January 12, 2024, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Reconsideration (Re: Amended Decision promulgated 5 October 2023), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, respondent CIR's Motion for Reconsideration (Re: Amended Decision promulgated 5 October 2023) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On February 13, 2024, petitioner filed a Petition for Review with the Court *En Banc*,[13] to which respondent filed its Comment (Re: Petitioner's Petition for Review dated 13 February 2024) on April 1, 2024.[14]

Under Resolution dated April 24, 2024, CTA EB No. 2866 was submitted for decision.[15]

ISSUE

> Did the Court in Division err in ruling that respondent is entitled to the refund of excise taxes erroneously paid on its importations of wine and liquor products for its international in-flight consumption for the period August 2007 to December 2008, to the extent of ₱3,133,270.14?

ARGUMENTS

Petitioner maintains that respondent's claim for refund must fail because it failed to satisfy all the conditions for its exemption from the payment of excise tax. Particularly, respondent failed to prove that the imported alcohol products are not locally available at reasonable quantity, quality or price.

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13 *Rollo*, pp. 1- 10. Petitioner received the Resolution denying its Motion for Reconsideration on January 30, 2024. Counting fifteen (15) days therefrom, petitioner had until February 14, 2024, within which to elevate the appeal before the Court. Petitioner, thus, timely filed the instant Petition for Review on February 13, 2024.

14 *Id.* at pp. 67-86.

15 *Id.* at p. 87.

On the other hand, respondent echoes the Court in Division's factual conclusion that the imported wine and liquor products were not available in reasonable quantity, quality or price in the local market.

Finally, in view of the finality of the Supreme Court's Resolution on respondent's entitlement to refund, petitioner concludes that the remand of the case to the Court in Division is for the sole purpose of determining the amount due for refund.

RULING

The Petition for Review is denied.

To be entitled to excise tax exemption on its commissary supplies, respondent must prove compliance with the three (3) requisites laid down in Section 13[16] of PD No. 1590. These are: (1) its payment of corporate income tax; (2) the imported commissary supplies are to be the used in its transport and non-transport operations and other incidental activities;[17] and (3) said supplies are not locally available in reasonable quantity, quality or price.[18]

In its Resolution dated July 9, 2018,[19] the Supreme Court explained the requisites for exemption from excise tax under Section 13 of PD No. 1590. Affirming the CTA *En Banc's* Decision that such

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16 SECTION 13. ...

...

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**; .... (Boldfacing supplied)

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

18 *Ibid.*

19 *Rollo*, CTA EB No. 1347, unpaginated.

requisites were met with respect to respondent's importation of wine and liquor products, the Supreme Court directed the remand of the case to the CTA for the reception of evidence related to the computation of respondent's claim for refund, to wit:

> **Under Section 13 of Presidential Decree No. 1590, the Philippine Airlines, Inc. (PAL) shall enjoy exemption from tax on its commissary supplies when the following conditions are met: (a) it paid its corporate income tax covering the period when the subject importations were made; (b) the articles, supplies, or materials are imported for PAL's use in its transport and non-transport operation and other activities incidental thereto; and (c) the imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.**
>
> Petitioner primarily question the CTA *En Banc*'s finding that PAL's evidence was sufficient to prove its compliance with the requisites for exemption, in particular, that the imported articles are not locally available in reasonable quantity, quality, or price.
>
> ...
>
> **The CTA *En Banc's* decision is clearly supported by evidence. In its evaluation, the CTA *En Banc* found it fit to grant PAL's claim only to the extent of the refund of taxes paid on imported liquors, because its evidence only established that the cost of importing alcohol for its commissary and catering supplies is lower than purchasing them locally.** It did not prove the same as to its imported cigarettes. **Thus, the remand of the case for the reception of evidence on this point is likewise proper.**
>
> **SO ORDERED.**[20]

Following the Supreme Court's Resolution dated July 9, 2018, and the Court *En Banc*'s Decision and Resolution dated August 30, 2017, and February 21, 2018, respectively, the Court in Division arrived at the amount of ₱3,133,270.14 to be refunded, representing the excise paid for those wine and liquor products whose importation costs are lower than purchasing them locally, detailed as follows:

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20 Boldfacing supplied.

Arrival Date	Description	Amount of Excise Taxes Paid Under Protest	Total Purchase Price per Importation	Price per PWM (Exhibits "DDD-3"; "DDD-4"; and "DDD-5")	Per Future Trade International (Exhibit "DDD-7")
August 18, 2007	Lindemans Premier Shiraz Cabernet (Australian Wine)	Php27,513.00	**Php120.40**	Php267.50	*None*
August 20, 2007	Carlos I Brandy	395,048.64	**792.11**	1,099.00	*None*
August 26, 2007	Camus Cognac XO Superieur	21,163.32	**1,868.39**	4,200.00	*None*
August 27, 2007	Chivas Regal Whisky	546,121.94	**714.60**	1,100.00	*None*
November 21, 2008	Chivas Regal Whisky	100,100.80	**807.97**	1,100.00	*None*
December 6, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	*None*
December 19, 2008	Piper Heidsieck Brut	802,431.00	**1,126.59**	2,540.00	*None*
December 17, 2008	Lindemans Premier Chardonnay (Australian Wine)	20,176.20	**191.58**	267.50	*None*
	Lindemans Premier Shiraz Cabernet (Australian Wine)	29,347.20	**191.58**	267.50	*None*
	Penfolds Chardonnay (Australian Wine)	20,176.20	**243.99**	267.50	*None*
	Penfolds Shiraz Cabernet (Australian Wine)	34,849.80	**243.99**	267.50	*None*
	Carlos 1	355,661.35	**798.93**	1,099.00	*None*
January 21,	Camus Cognac	47,617.47	**977.66**	1,800.00	*None*

2009	VSOP Elegance				
	Camus Cognac XO Superieur	28,217.76	**235.15**	4,200.00	*None*
February 4, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
February 5, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
December 11, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	*None*
TOTAL		**Php3,133,270.14**			

Here, petitioner again harps that respondent failed to establish that the wine and liquor products it imported were not locally available in reasonable quantity, quality, or price. In the CTA *En Banc* Decision[21] this argument has already been debunked in the wise:

> . . .
>
> In a catena of cases involving Philippine Airlines, Inc.,[22] although involving different taxable periods, the Court *En Banc* had consistently ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price List and/or Duty Free Philippines Retail Prices, coupled with the testimony of petitioner's witness, were deemed sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.
>
> The Supreme court even affirmed the factual findings of the Court of Tax Appeals in Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.[23] where We ruled that the "tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally x x x and Price List for 2005 of Duty-Free Philippines," together with the testimony of petitioner's witness, were sufficient in proving that the subject imported articles were not locally available in reasonable quantity, quality or price.

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21 CTA EB No. 1347, August 30, 2017.

22 CTA EB Case Nos. 1216, 1217 and 1221 (CTA Case No. 8184), May 27,2016, CTA EB Case Nos. 954 & 1046 (CTA Case Nos. 7677, 7685 and 7746), October 14, 2014; CTA EB Case Nos. 920 & 922 (CTA Case Nos. 7665 and 7713), September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032 (CTA Case No. 8153), Apri130, 2014; CTA Case No. 8236, December 18, 2013.

23 G.R. Nos. 209353-54, 211733-34, July 6, 2015.

> Similarly, in the more recent case of Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.[24], the Second Division of the Supreme Court acknowledged the factual determinations of this Court in the consolidated cases of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc., and Commissioner of Customs v. Philippine Airlines Inc.*[25], docketed as CTA EB Nos. 1029, 1031 and 1032, that PAL made a prima facie case that the cost of importing the alcohol products were reasonably cheaper than purchasing them locally through the following evidence: (a) testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing; (b) Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; **(c) Philippine Wine Merchant's January 11, 2007 Price List;** and, (6) Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010.
>
> **Therefore, it is of no moment even if petitioner will compare the prices of its imported wines and liquor with only one supplier.**
>
> **Applying the foregoing, the Court *En Banc* is convinced that petitioner has sufficiently established that the alcohol products it imported were not available in reasonable quantity, quality or price in the local market...**[26]

The CTA *En Banc* in CTA EB No. 1347 considered acceptable and sufficient the following pieces of evidence that established that the imported wines and liquors are locally unavailable in reasonable quantity, quality or price: testimony of Ms. Cheryl V. Capinpin, petitioner's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department[27]; Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[28]; sales invoices issued by foreign suppliers[29]; Philippine Wine Merchants Price Lists for 2007[30], 2008[31] and 2009[32]; Future Trade International Price list

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24 G.R. Nos. 215705-07, February 22, 2017.

25 CTA EB Nos. 1029, 1031 and 1032, April 30, 2014.

26 Boldfacing supplied.

27 Exhibit "DDD." Docket, Volume II, pp. 522-541.

28 Exhibit "DDD-2." Docket, Volume II, p. 542-549.

29 Exhibits "I-2,""J-2," "K-2," "L-2," "M-2," "N-2," "0-2," "P-2," "Q-2," "FF-2," "GG-2," "HH-2," "11-2," "JJ-2," "KK-2," "LL-2," and "MM-2." Docket, Volume II, pp. 691, 694, 697, 700, 703, 706, 709, 712, 715, 750, 753, 756, 759, 762, 765, 768, and 771, respectively.

30 Exhibit "DDD-3." Docket, Volume II, p.601.

31 Exhibit "DDD-4." Docket, Volume II, p. 602.

32 Exhibit "DDD-5." Docket, Volume II, p. 603.

dated April 8, 2009[33]; Booking Rates-August 2007[34]; and, Monthly Philippine Dealing System rates.[35]

Thus, there is no reason for the Court *En Banc* to deviate from the Court in Division's conclusion that respondent should be exempt from excise tax to the extent of its imported wine and liquor products which were undoubtedly supported by evidence showing that the cost per bottle of importing the same is lower than purchasing them locally.

To conclude, "[a]lthough the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim."[36] Petitioner failed in this regard.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue on February 13, 2024 in CTA EB No. 2866, is **DENIED**, for lack of merit. The Amended Decision dated October 5, 2023 and the Resolution dated January 12, 2024, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[33] Exhibit "DDD-7." Docket, Volume III, p. 886.
[34] Exhibit "DDD-8." Docket, Volume III, pp. 887-891.
[35] Exhibit "DDD-9." Docket, Volume II, p. 613.
[36] *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022. Citations omitted.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA *EB* NO. 2866** *(CTA Case No. 8340)*
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 24 2025 4:10

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CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

In previous cases involving the petitioner and the same issue of refund of excise taxes on its importation of wine for its international in-flight consumption, I have recognized the Supreme Court decisions holding that the presentation of just one supplier cannot be the basis for finding the evidence of petitioner insufficient. Indeed, it would appear that the ultimate holding is that the presentation of one supplier's price list, together with a Table of Comparison and testimonial evidence that importing the subject alcohol products is cheaper than purchasing them locally, is sufficient to prove that the subject imported products were not locally available in reasonable quantity, quality, or price at the time of importation.

However, I have also still voted, in other cases involving petitioner and this issue, to deny the claim for refund on the ground that from this one source, the evidence presented was not reliable. In so voting, I have looked into the quality of the evidence presented by petitioner and not just the quantity.

thereof. Indeed, the denial was based on the finding that the comparative prices presented in evidence only represented a measly 8% of the products for the taxable period or only 16%, of the alcohol products for a two year period involved. I thus agreed with the conclusion that petitioner miserably failed to exert diligent effort to study the availability of local products and the reasonableness of their prices from other local suppliers. With such meager evidence presented by petitioner, I could not reach the conclusion that, indeed, the imported products were not locally available in reasonable quantity, quality or price at the time of importation.

Here, however, it would appear that of the 13 types of liquor, comparative prices for all four types for which excise taxes were paid in 2007 were presented. For the year 2008, comparative prices for all nine types of the liquor were all likewise presented. Such comparative prices were consistently higher for the local supplier for all the 13 types of liquor.

In the instant case, then, I find that petitioner has presented evidence sufficient in both quantity and quality, and I, thus, **CONCUR** with the Decision.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice