REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 9913**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 26 2022 2:10pm

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RESOLUTION

MANAHAN, J.:

Before this Court is petitioner's Motion for Reconsideration (Re: Decision promulgated 29 July 2021) filed on November 8, 2021, without respondent's comment per Records Verification dated March 7, 2022.

On July 29, 2021, the Court promulgated a Decision denying petitioner's claim for refund in the amount of ₱4,492,243.43, representing the excise taxes imposed and collected on petitioner's importations of alcohol and tobacco products, the dispositive portion of which reads:

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

In its Motion, petitioner assails the above Decision and raises the following grounds for the Court's consideration, *viz.*:

A. The evidence presented by Philippine Airlines (PAL) sufficiently established that the subject imported liquors, wines, and tobacco products are not locally available in reasonable quantity, quality, or price.

B. The Honorable Court's imposition of stringent requirements in proving that PAL's importation of liquors, wines, and cigarettes are not locally available in reasonable quantity, quality, or price defeats the purpose of the tax-exemption granted to PAL under Presidential Decree (PD) No. 1590.

As to the *first* ground, petitioner asserts that the Court erred in appreciating the evidence it presented considering that it has proven, by sufficient and preponderant evidence, that the subject importations were not locally available in reasonable quantity, quality, or price.

Petitioner submits that under Section 13 of PD No. 1590,[1] it is required, among others, that for petitioner to be exempt from paying taxes on imported products, the said products should not be locally available in reasonable quantity, quality, or price. Petitioner insists that to prove its compliance with the aforementioned requirement, its witness, Ms. Cheryl V. Capinpin, prepared a table of comparison based on official commercial documents such as invoices, import entries, as well as the available price list of another trader. Petitioner continues that the table of comparison was further corroborated by the court-commissioned Independent Certified Public Accountant (ICPA), Ms. Katherine O. Constantino, who affirmed that the cost of importing the subject commissary supplies is lower than purchasing them locally.

Petitioner likewise emphasized that in several cases of similar nature involving the same parties, this Court and the Supreme Court have consistently ruled that the *Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies* is more than sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.

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[1] 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."*

With regard to the *second* ground, petitioner argues that should this Court impose stringent and additional requirements on petitioner's tax exemption, it would be difficult, if not impossible for it to exercise the privilege its franchise sought to achieve. Petitioner maintains that it is promoting the interest of the general public, especially so that this Court, as well as the Supreme Court, have already consistently accepted these documents as sufficient to prove PAL's entitlement to refund.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

In the assailed Decision, it was discussed that petitioner's tax privilege under Section 13 of PD No. 1590 still applies, subject, however, to certain conditions. As held in a number of similar cases, petitioner remains exempt from paying taxes, duties, royalties, registrations, licenses, and other fees and charges, *provided,* it pays corporate income tax as granted in its franchise agreement. In addition thereto, Section 13(b)(2)[2] of PD No. 1590, enumerates certain conditions which 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; and,

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[2] "SECTION 13. XXX

x x x

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:

x x x

(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;** xxx." *(Emphases supplied)*

3. They are not locally available in reasonable quantity, quality or price.

Although the Court found that petitioner complied with the *first* and *second* conditions, it however fell short of proving compliance with the *third* condition.

To recall, petitioner presented in evidence the following documents to prove its compliance with the *third* condition, *viz.*: (1) Judicial Affidavit of Ms. Cheryl V. Capinpin, its Manager for In-flight Materials Purchasing Division;[3] (2) Absolute Sales Corporation Price List for 2013;[4] (3) Future Trade International Price List Effective February 1, 2013;[5] (4) Bureau of Internal Revenue (BIR) Revenue Memorandum Circular (RMC) No. 90-2012;[6] (5) the ICPA Report;[7] and (6) Judicial Affidavit of the Court-commissioned ICPA.[8]

Again, the Court cannot simply rely on the product price lists from the said two (2) dealers and the lone testimony of petitioner's officer Ms. Cheryl V. Capinpin. Albeit Ms. Capinpin's testimony was further corroborated by the Court-commissioned ICPA, the latter's findings however are based on the limited documentary evidence presented by petitioner (*i.e.* RMC No. 90-2012, Absolute Sales Corporation Price List for 2013, and Future Trade International Price List Effective February 1, 2013). To emphasize, RMC No. 90-2012 was founded on the 2010 BIR price survey of alcohol products. No valid comparison can be made to the prices herein of petitioner's imported alcohol products since they were imported from October 2012 to March 2013. As such, the foregoing are not sufficient to prove compliance with the aforementioned *third* condition.

With regard to petitioner's argument that in several Court of Tax Appeals (CTA) decisions, it has been consistently accepted that the *Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies*, Philippine Wine Merchant's Pricelist, and testimony of PAL's Manager for In-flight Materials Purchasing

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[3] Exhibit "P-29", Docket – Vol. I, pp. 497 to 507.
[4] Exhibit "P-22", Docket – Vol. II, pp. 1010 to 1012.
[5] Exhibit "P-24", Docket – Vol. II, pp. 1019 to 1024.
[6] Exhibit "P-25", Docket – Vol. II, pp. 1026 to 1045.
[7] Exhibit "P-32", Docket – Vol. II, pp. 734 to 752.
[8] Exhibit "P-33", Docket – Vol. II, pp. 780 to 793.

Division are more than sufficient to prove PAL's entitlement to refund, the Court finds petitioner's argument misplaced.

In the case of *San Roque Power Corporation v. Commissioner of Internal Revenue,*[9] the Supreme Court held that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to Supreme Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[10]

Similarly, as for petitioner's reliance on several PAL cases in the Supreme Court,[11] this Court holds that the facts and circumstances in the said cases are not squarely applicable herein. In the cited Supreme Court cases, PAL was able to provide therein sufficient evidence to show compliance with the *third* condition for it to be exempt from excise tax on its importation of tobacco and alcohol products. Aside from the testimony of PAL's witness and tabulation of comparison, PAL was able to provide a *Price List of Duty-Free Philippines* corresponding to the same articles subject of the claim for refund and a *Letter from Duty-Free Philippines* stating that they do not have wines that meet PAL's price budget and required quality.

More so, in the said cases, PAL was deemed to have satisfactorily established by presenting sufficient and convincing evidence *(i.e. Price Lists for various years, Duty-Free Philippines Prices, Monthly PDS rates for different years, Booking Rates for various years, Bangko Sentral ng Pilipinas Reference Exhange Rate Bulletin, etc.)* that the alcohol products it imported were not available in reasonable quantity, quality, or price in the local market to prove compliance for excise tax exemption, which is clearly wanting in the present case.

Lastly, as to the recent pronouncement of the Supreme Court in *Philippine Airlines, Inc. v. Commissioner of Internal*

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[9] G.R. No. 203249, July 23, 2018.

[10] Article 8, Civil Code of the Philippines.

[11] *Commissioner of Internal Revenue and Commissioner Of Customs v. Philippine Airlines, Inc.*, G.R. No. 215705-07, February 22, 2017; and *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 238672 (Notice), July 9, 2018.

Revenue and Commissioner of Customs,[12] being a Minute Resolution, the same is not binding precedent. Perforce, in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue,*[13] citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,*[14] it was held that a minute resolution is not a binding precedent, to wit:

> **"A minute resolution is not a binding precedent**
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> At the outset, this Court's minute resolution on Mirant is not a binding precedent. The Court has clarified this matter in Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue as follows:
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>> 'It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
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>> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes res judicata. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** xxx.
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>> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine

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[12] G.R. No. 231638, February 17, 2021.
[13] G.R. No. 188550, August 19, 2013.
[14] G.R. No. 167330, September 18, 2009.

> Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. (emphasis supplied)'
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> Even if we had affirmed the CTA in Mirant, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution."

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on July 29, 2021.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 29 July 2021) is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice