REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AIR PHILIPPINES CORPORATION (APC), Petitioner,	**CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	***Promulgated:*** MAY 03 2016 ; 3:45pm

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RESOLUTION

UY, J.:

For resolution are respondent Commissioner of Internal Revenue's **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision dated 1 December 2015)"** and respondent Commissioner of Customs' **"MOTION FOR PARTIAL RECONSIDERATION"**, both filed on December 18, 2015, together with the "**COMMENT/OPPOSITION**" thereto filed by petitioner Air Philippines Corporation on February 1, 2016. In the said Motions, respondents assail this Court's Decision dated December 1, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the Petitions for Review in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734 are hereby **GRANTED**.
>
> Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner Of Customs are **ORDERED** to refund to Air Philippines Corporation the aggregate amount of **ONE HUNDRED TWELVE MILLION THREE HUNDRED EIGHTY THREE THOUSAND FOUR**

HUNDRED SIXTY THREE PESOS and NINETY NINE CENTAVOS (₱112,383,463.99), representing the specific tax APC paid for the importation of Jet A-1 aviation fuel on the dates stated below and computed as follows:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
7630	April 15, 2005	₱ 17,698,480.00
7642	June 13, 2005	₱ 23,678,242.00
7673	August 4, 2005	₱ 23,605,733.60
7712	November 28, 2005	₱ 23,707,161.39
7734	February 22, 2006	₱ 23,693,847.00
	Total	**₱112,383,463.99**

On the other hand, the Petition for Review in CTA Case No. 7643 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

In the Resolution dated February 4, 2016, both Motions were considered submitted for resolution.

Hence, this resolution.

Respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration.

In her Motion for Partial Reconsideration, respondent Commissioner of Internal Revenue or CIR, invokes the following grounds to seek a partial reconsideration of the assailed Decision dated December 1, 2015, to wit:

> "THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO PROVE THAT ITS IMPORTATIONS OF JET A-1 AVIATION FUEL ARE USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS.
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> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO PROVE THAT THE IMPORTED ARTICLES WERE NOT LOCALLY

AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE BASED SOLELY ON THE AIR TRANSPORTATION OFFICE (ATO) CERTIFICATIONS ISSUED TO PETITIONER."[1]

According to respondent CIR, contrary to the findings of the Court, petitioner failed to prove that the Jet A-1 Aviation fuel were actually used for its transport and non-transport operations, and that the exemption granted to petitioner is not absolute as it is subject to the condition that aviation fuel is not locally available in reasonable quantity, quality or price, as stated in Par. 13 of PD No. 1590.

Allegedly, petitioner failed to substantiate its claim that it is entitled to the refund being prayed for, as the Authority to Release Imported Goods or ATRIGs alone are not sufficient to prove that the imported Jet A-1 aviation fuel was used for its transport and non-transport operations based on the ATRIGs submitted. Petitioner should have presented other independent and relevant evidence to support the testimony of its witnesses Jhonathan Chiong and Edwin Segundo.

Further, as regards the ATO Certifications, it is the position of respondent CIR that the Court erred in relying on the ATO Certifications in ruling that Jet A-1 Aviation Fuel is not locally available in reasonable quantity, quality or price as it is allegedly the Department of Energy (DOE) which is in the best position to determine whether the total supply is enough for total demand, and that the Court should have considered the testimony of Glendalyn P. Dela Cruz, a Senior Science Research Specialist of the DOE who handles the monitoring, inventory and local refinery production of the oil companies in the country.

Petitioner points out that the DOE issued a Certification dated 20 December 2002 stating to the effect that aviation fuel for use in domestic operations is locally available in reasonable quantity and price.

Thus, respondent CIR prays that the Decision promulgated on December 1, 2015 be partially reversed and set aside and another one be rendered denying the entire claim for refund.

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[1] Docket (CTA Case No. 7630) – Vol. V, pp. 3006 to 3007.

Respondent Commissioner of Custom's Motion for Partial Reconsideration

Respondent Commissioner of Customs, in his Motion for Partial Reconsideration invokes the following grounds in seeking a partial reconsideration of the assailed Decision dated December 1, 2015, to wit:

> "I
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> The entries in the ATRIG, as well as petitioner's witness' testimony, relative to petitioner's use of the subject importation for its domestic operations, cannot sufficiently establish petitioner's compliance with the second requisite for excise tax exemption.
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> II.
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> The ATO, now CAAP, was not vested under its Charter with the power and duty to certify as to the availability or non-availability of Jet A-1 fuel, and hence, cannot validly issue any certification as to the alleged non-availability in reasonable quantity, quality or price. Thus, the subject ATO Certifications cannot be *prima facie* evidence of the facts stated therein as provided under Section 44. Rule 130 of the Rules on Evidence.
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> III.
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> There is locally available supply of Jet A-1 fuel during the period subject of petitioner's importations, and hence, an absence of the third requisite for petitioner to be entitled to exemption from payment of excise tax under Section 11 of R.A. No. 8339, as amended by R.A. No. 9215, in relation to Section 13 of P.D. No. 1590."[2]

According to respondent Commissioner of Customs or COC, the entries in the ATRIG, as well as petitioner's witness' testimony, relative to petitioner's use of the subject importation for its domestic operations, cannot sufficiently establish petitioner's compliance with the second requisite for excise tax exemption. Allegedly, considering that the entries in the said ATRIGs were supplied by petitioner itself, these are self-serving declarations, and therefore cannot sufficiently establish the existence of the second element. Neither can petitioner

[2] Docket (CTA Case No. 7630) – Vol. V, pp. 3020 to 3021.

rely on the testimonies of its witness Chiong because his testimony merely referred to the fact of importation by petitioner of the subject Jet A-1 fuel and nothing more.

It is allegedly necessary for petitioner to present other independent evidence to establish its compliance with the second requisite.

With respect to the ATO Certifications, respondent COC similarly claims that the ATO, now CAAP, was not vested under its Charter with the power and duty to certify as to the availability or non-availability of Jet A-1 fuel, and hence, cannot validly issue any certification as to the alleged non-availability in reasonable quantity, quality or price. Thus, allegedly, the subject ATO Certifications cannot be *prima facie* evidence of the facts stated therein as provided under Section 44, Rule 130 of the Rules of Evidence.

Respondent COC insists that it is the Department of Energy or DOE which is vested under the law with the express power and duty to monitor the prices, quality, and supply of petroleum products in the country. Moreover, under DOE Circular No. 98-34-004 issued on March 11, 1998, which is also known as the Implementing Rules and Regulations of Republic Act 8479, or the "Downstream Oil Industry Deregulation Act of 1998", it is clearly provided that the DOE is the sole government agency which has the power or authority to monitor the quantity, quality, and price of oil and petroleum products in the country.

Thus, contrary to petitioner's claim, it is allegedly the DOE and not CAAP which has the express power and duty to certify as to the local availability of aviation fuel in the country.

Hence, respondent COC prays in his Motion that the Decision dated December 2, 2015 be partially reversed and set aside insofar as it granted petitioner's petition for review subject of CTA Case Nos. 7630, 7642, 7673, 7712 and 7734, for allegedly being contrary to law and the evidence on record.

Petitioner's Comment/Opposition

In its Comment/Opposition filed on February 1, 2016, petitioner Air Philippines submits that the ATRIG and testimony of petitioner's witness are not self- serving but are sufficient to establish petitioner's compliance with the second requisite for tax exemption, which refers to petitioner's use of the subject Jet A-1 fuel for its operations and other activities incidental thereto.

Petitioner stresses that such argument of the CIR and COC belies the significance and content of the subject ATRIG processed, approved and issued by the Bureau of Internal Revenue (BIR) itself and which is required and actually used by the Bureau of Customs (BOC) in its procedures for collection and release of subject imported fuel.

Allegedly, the BIR-issued ATRIG clearly and categorically indicates the use of the jet fuel for petitioner's domestic operations. While the CIR claims that the ATRIG are self-serving, it cannot deny that said ATRIG went through its verification procedure and was issued by its own office.

Thus, to claim that the subject ATRIG or its contents are self-serving, without taking into account the procedures required of the BIR to issue the same, is actually self-defeating for the BIR itself. Such argument, if conceded, allegedly creates a general precedent that the content of any ATRIG even if processed, approved and issued by the BIR cannot be relied upon by the taxpayer, by the courts and by the government agencies including the BIR and BOC themselves.

Anent the ATO Certifications, petitioner argues that while the respondents claim that DOE is in the best position to determine whether the total supply is enough for total demand, respondents did not state *per se* that ATO is precluded from issuing the subject Certifications relating to the availability of supply of aviation fuel. According to petitioner, the matters on aviation fuel and oil, including the certification of their availability in reasonable quality, quantity and price, is consistent with the policy of the ATO (now CAAP) for the development of civil aeronautics and air potential of the Philippines.

Unlike the 2002 DOE Certification, the ATO Certifications clearly and specifically state that at the period of the subject importations, there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality and price. In fact, the ATO Certification's validity and sufficiency were recognized and upheld by the Department of Finance in their indorsements addressed to the Bureau of Customs for the duty free release of the subject

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importations.[3]

Petitioner further points out that the DOE 2002 Certification cannot be relied upon because it was already declared null and void by the Pasay Regional Trial Court, Branch 114, in the case of *"PAL v. Secretary of the Department of Finance and Secretary of the Department of Energy"*, docketed as Civil Case No. R-Psy-10-03889-CV on 27 February 2014. Thus, it will allegedly be illogical to apply the doctrine of presumption of regularity to an issuance already declared null and void.

Petitioner also stresses that the 2002 DOE Certification is factually incorrect. The Table Report[4] prepared by the DOE itself clearly shows that for the years 1998 to the first quarter of 2010, the demand for petroleum products, including and especially jet fuel or kerosene, far exceeded the local refinery productions figures.

It is allegedly commonsensical that the 2002 DOE Certification would be based on data available for or up to the year 2002, and could not reasonably be relied upon for importations of aviation fuels made in the subsequent years 2005 and 2006, which are the subject period of this case. In fact, respondents' witness Director Monsada, admitted that the data used for the 2002 DOE Certification was based on the data "for the full year of 2001 and first half of 2002 consolidated supply and demand situation"

As such, respondents' reliance on the 2002 DOE Certification for importations made in the years 2005 and 2006 is allegedly baseless.

Petitioner thus prays for the denial of both respondents' Motions for Partial Reconsideration in the instant cases.

THE COURT'S RULING

Both respondents' respective Motions for Partial Reconsideration lack merit.

After a careful and through examination of the arguments raised in both respondents' respective Motion for Reconsideration, and

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[3] Exhibits "LLL", "OOOO", "SSSS", "XXXX" and "RRRRR".
[4] Exhibit "4".

petitioner's Comment/Opposition thereto, the Court finds that the grounds relied upon in the instant Motions for Reconsideration are matters which have already been thoroughly weighed and considered by the Court when it rendered its assailed Decision.

Nevertheless the Court reiterates its findings in the assailed Decision dated December 1, 2015 that petitioner has complied with legal requirements for entitlement to its refund claims in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734. These requisites are as follows:

First Requisite: ***Basic Corporate Income Tax must be paid.***

Records show that APC filed its Annual Income Tax Returns for calendar years 2005[5] and 2006[6] on April 12, 2006 and April 11, 2007, respectively. Since APC paid its basic corporate income tax for the said years, it has satisfied the said first requisite.

Second Requisite: ***The subject imported Jet A-1 fuel must be for use in APC's transport and non-transport operations and other activities incidental thereto.***

As regards the second requisite, to prove that the subject imported Jet A-1 fuel was for its transport and non-transport operations and other activities incidental thereto, APC submitted the corresponding Authority to Release Imported Goods (ATRIG), and presented its witnesses, Jhonathan Chiong and Edwin Segundo. All of the said ATRIG, **which were issued by the Commissioner of Internal Revenue**, without qualification, are all to the effect that the Jet A-1 fuel imported by the APC are for its transport or flight operations.

However, respondent COC, in his subject Motion claims that the entries in the ATRIG, as well as petitioner's witness' testimony, relative to petitioner's use of the subject importation for its domestic operations are self-serving declarations, and therefore cannot sufficiently establish the existence of the second element. The same argument is raised with respect to the testimony of petitioners witness Chiong because his testimony merely referred to the fact of importation by petitioner of the subject Jet A-1 fuel and nothing more.

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[5] Exhibit "A[7]", Docket (CTA Case No. 7630) – Vol. III, pp. 2139 to 2140.
[6] Exhibit "B[7]", Docket (CTA Case No. 7630) – Vol. III, pp. 2141 to 2146.

On the probative value of the ATRIG, the Court agrees with petitioner that the ATRIG is a document that is issued by the BIR in accordance with the guidelines set forth in Revenue Memorandum Order No. 35-2002, and the same is addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable. And while respondent COC claims that the ATRIGs are self-serving, it cannot deny that said ATRIGs went through verification procedure by the BIR prior to its issuance. Therefore, it is not correct to claim that the contents thereof are self-serving.

With respect to the contention that the testimonies of petitioner's witnesses are likewise self-serving, the Court finds the said witnesses to be competent and credible witnesses, who testified of their personal knowledge. If respondents claim otherwise, then, they should have presented controverting evidence to show that the imported Jet A-1 fuel were not to be used for petitioner's transport and non-transport operations and other activities incidental thereto. Failing which, the Court sustains its findings on the matter.

<u>**Third Requisite**</u>: ***The imported articles must not be locally available in reasonable quantity, quality or price.***

With regard to the third requisite, APC was able to show compliance thereon with respect to the following importations: on April 15, 2005, June 13, 2005, August 4, 2005, November 28, 2005 and February 22, 2006, which are covered by Bill of Lading Nos. 42636,[7] 0506-2-04371-E,[8] 05/746,[9] 504710-00006492,[10] and 06/139,[11] respectively. This must be so because said importations are supported by Certifications dated April 14, 2005,[12] August 8, 2005;[13] November 30, 2005;[14] and February 21, 2006,[15] all of which

[7] Exhibit "I-5", Docket (CTA Case No. 7630) – Vol. III, p. 1310.
[8] Exhibit "F^5-7", Docket (CTA Case No. 7630) – Vol. III, p. 1793.
[9] Exhibit "F^5-8", Docket (CTA Case No. 7630) – Vol. III, p. 1794.
[10] Exhibit "F^5-9", Docket (CTA Case No. 7630) – Vol. III, p. 1795.
[11] Exhibit "F^5-10", Docket (CTA Case No. 7630) – Vol. III, p. 1796.
[12] Exhibit "KKKK" in relation to Exhibits "I-9" (ATRIG) and "I-8" (IEIRD), and Exhibit "NNNN" in relation to Exhibits "T-3" (ATRIG) and "T-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1873, 1315, 1313, 1877,1437, and 1436, respectively.
[13] Exhibit "RRRR" in relation to Exhibits "Z-3" (ATRIG) and "Z-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1882, 1577, and 1576, respectively.
[14] Exhibit "WWWW" in relation to Exhibits "CC-3" (ATRIG) and "CC-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1887, 1612 and 1611.
[15] Exhibit "S^5" in relation to Exhibits "FF-3" (ATRIG) and "FF-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1911, 1683, and 1682.

were issued by the Air Transportation Office (ATO), through its Assistant Secretary, Nilo C. Jatico, stating to the effect that the imported Jet A-1 aviation fuel under the aforementioned Bills of Lading were not locally available in reasonable quantity, quality and price and is necessary/incidental for the operation of Air Philippines Corporation.

The said ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court, which provides:

> "SEC. 44. *Entries in official records.*—Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated."

For their part, respondents insist that the Court cannot rely on the ATO Certifications in arriving at its conclusion that there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality and price during the period when the subject importations were made but must instead rely on the 2002 DOE Certification.

The Court notes petitioner's manifestation in its "REPLY (To CIR'S Memorandum dated 09 January 2015)[16] filed on January 28, 2015 stating that the 2002 DOE Certification invoked herein by respondents, and on which the 2003 BIR Ruling is solely based, was already declared null and void by the Regional Trial Court of Pasay City, Branch 114, on 27 February 2014, in the case of *"PAL v. Secretary of the Department of Finance and Secretary of the Department of Energy"* (Civil Case No. R-Psy-10-03889-CV).

Although as a general rule, courts are not authorized to take judicial notice of the foregoing action of the Regional Trial Court of Pasay City, in the case of *"Occidental Land Transportation Company, Inc. v. Court of Appeals and Heirs of Trencio Almedilla, et al."*[17], the Supreme Court held that the general rule admits of exceptions, among which is, in the absence of objection, and as a matter of convenience to all parties.

In the instant case, respondents have not refuted nor objected to said contention. Thus, considering that the enforceability of said

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[16] Docket, Vol. IV, pp. 2917 to 2924, at p. 2922.
[17] G.R. No. 96721, March 19, 1993.

DOE Certification is still subject of appellate review, respondents' reliance thereon bears little probative value in this case.

On the other hand, We agree with petitioner and correspondingly find that when the ATO Certifications were issued by the Air Transportation Office or ATO, prior to its replacement by the Civil Aviation Authority of the Philippines under Republic Act (RA) No. 9497, it was not precluded from issuing the subject Certifications with respect to the availability of supply of aviation fuel. A perusal of the powers of the ATO (now CAAP) in relation with its authority to issue the ATO Certifications, would show that such is in line with its general powers under Sections 32 and 35 of its charter, RA No. 776, to wit:

> "SECTION 32. **Powers and duties of the Administrator.** - Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:
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> (1) To carry out the purposes and policies established in this Act; to enforce the provisions of, the rules and regulations issued in pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
>
> xxx xxx xxx
>
> (21) **To cooperate, assist and coordinate with any research and technical studies on** design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances and air navigation facilities <u>**including aircraft fuel and oil**</u>; Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. *(Emphases and underscoring supplied)"*

With the foregoing functions mandated by law before the abolition of the ATO, the latter had the means of knowing the facts stated in the subject ATO Certifications. Thus, there can be no merit on respondents' contention to the effect that it is only the DOE which is in a best position to determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 Aviation fuel.

functions of the ATO[18]. Thus, there can be no merit in respondents' contention to the effect that it is only the DOE which is in a best position to determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 Aviation fuel.

All told, respondents failed to convince this Court that its findings and conclusions thoroughly discussed in the assailed Decision dated December 1, 2015, as supported by evidence presented during trial, are erroneous and contrary to law. Hence, the instant motions must necessarily fail.

WHEREFORE, in light of the foregoing considerations, both respondent's **Motions for Partial Reconsideration** are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[18] Paragraph (q) of Sec. 35 of Republic Act No. 9497 reads:

"Sec. 35. Powers and Functions of the Director General. – The Director General shall be the Chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:

> (a) To carry out the purposes and policies established in this Act; to enforce the provisions of the rules and regulations issued in pursuance to said Act; and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
> xxx xxx xxx
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> (q)**To cooperate, assist and coordinate with any research and technical agency of the government** on matters relating to research and technical studies on design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities **<u>including aircraft fuel and oil</u>**; *Provided,* That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. *(Emphases and underscoring supplied)"*