REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case No. 8220

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 28 2015
4:30 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1] instituted on January 27, 2011, petitioner Philippine Airlines, Inc. (PAL) seeks for refund or issuance of Tax Credit Certificate in the aggregate amount of Four Hundred Two Million Eight Hundred Fifty-Five Thousand Nine Hundred Forty-Three Pesos (₱402,855,943.00), allegedly representing specific taxes on importations of Jet A-1 fuel for domestic operations paid under protest on January 28, 2009, April 29, 2009, June 3, 2009, July 24, 2009, September 25, 2009, and December 18, 2009.

Petitioner is a domestic corporation organized and existing by virtue of its franchise, *viz*, Presidential Decree (PD) No. 1590, with principal office at 8th Floor, PNB Financial Center, Pres. Diosdado P. Macapagal Ave., CCP Complex, Pasay City 1300.[2]

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[1] Docket, pp 1-18.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF), docket, p. 195.

Respondent is the Commissioner of Internal Revenue (CIR) with the power to assess and collect internal revenue taxes, fees, and charges, including excise tax on aviation turbo jet fuel imposed under Section 148(g) of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent, the Commissioner of Customs (COC), is the head of the Bureau of Customs (BOC), with delegated authority, by virtue of an Authority to Release Imported Goods (ATRIG), to assess and collect national internal revenue taxes on imported goods, including the excise tax on imported turbo jet fuel imposed under Section 148(g) of the NIRC of 1997, as amended. Respondent COC holds office at the Port Area, Bureau of Customs, Manila.

Petitioner claims that under its franchise, specifically Section 13 (b) thereof, it has the option to pay either the basic corporate income tax or a franchise tax of two percent (2%) of its gross revenues, which shall be in lieu of all other taxes, duties and fees that may be imposed by the State.

On October 11, 1985, Letter of Instruction (LOI) No. 1483 was issued withdrawing petitioner's tax exemption on its purchase of domestic petroleum products for use in its domestic operations but not on its importation of fuel for domestic operation. This was confirmed in the BIR Ruling No. 013-99 dated January 29, 1999.

On January 29, 2003, the respondent CIR issued BIR Ruling No. 001-2003 addressed to petitioner, Cebu Air Inc., Air Philippines Corporation, and Pacific Airways Corporation. The pertinent portion of BIR Ruling No. 001-2003 reads:

> "This refers to the rulings of this Office that have been separately issued to you, namely:
>
> 1. *BIR Ruling No.* ***013-99*** issued to **PAL** on January 29, 1999;

w/

xxx xxx xxx

> In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. **Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.**
>
> **This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling,** and constitutes the final decision of this Office on the matter." *(Emphasis supplied)*

On the basis of BIR Ruling No. 013-99, the CIR, through the COC, assessed petitioner for specific taxes on importations of aviation fuel or Jet A-1 for use in its domestic operations.

From December 2008 to November 2009, petitioner made several importations of Jet A-1 fuel for its domestic operations. It paid the specific taxes due thereon under protest with the District Collector of Customs of the Port of Batangas, Batangas City, detailed as follows:

Date of Importation	Date of Payment	Amount Paid	Volume of Importation (in Liters)

December 30, 2008	January 28, 2009[3]	₱68,300,000.00	18,610,354
March 24, 2009	April 29, 2009[4]	₱48,521,088.00	13,210,060
May 12, 2009	June 3, 2009[5]	₱73,901,708.00	20,123,767
July 2, 2009	July 24, 2009[6]	₱70,201,687.00	19,128,525
August 28, 2009	September 25, 2009[7]	₱67,790,611.00	18,471,556
November 19, 2009	December 18, 2009[8]	₱38,531,969.00	10,499,174
November 19, 2009	December 18, 2009[9]	₱35,608,880.00	9,702,692

On the following dates, petitioner filed a written protest in each of the above importations with respondent COC:

Date of Importation	Date of Payment under Protest	Date of Filing of Protest Letter
December 30, 2008	January 28, 2009[10]	February 11, 2009
March 24, 2009	April 29, 2009[11]	May 12, 2009
May 12, 2009	June 3, 2009[12]	June 16, 2009
July 2, 2009	July 24, 2009[13]	August 4, 2009
August 28, 2009	September 25, 2009[14]	October 8, 2009
November 19, 2009	December 18, 2009[15]	December 28, 2009
November 19, 2009	December 18, 2009[16]	December 28, 2009

For failure of respondent COC to act on the protests, petitioner, on January 10, 2011, filed with respondent CIR a request for refund of the specific taxes it paid, in the total amount of ₱402,855,943.00.[17]

To avoid the lapse of the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, petitioner filed the instant *Petition for Review* on January 27, 2011.[18]

[3] Exhibit "N-2", docket, p. 897.
[4] Exhibit "O-1", docket, p. 909.
[5] Exhibit "P-1", docket, p. 921.
[6] Exhibit "Q-1", docket, p. 933.
[7] Exhibit "R-1", docket, p. 945.
[8] Exhibit "S-1", docket, p. 957.
[9] Exhibit "T-1", docket, p. 968.
[10] Exhibit "N", docket, p. 890.
[11] Exhibit "O", docket, p. 903.
[12] Exhibit "P", docket, p. 915.
[13] Exhibit "Q", docket, p. 927.
[14] Exhibit "R", docket, p. 939.
[15] Exhibit "S", docket, p. 951.
[16] Exhibit "T", docket, p. 962.
[17] Exhibit "M", docket, pp. 856-861.
[18] Docket, pp. 1-18.

In her *Answer*[19], respondent CIR moves to dismiss the instant petition on ground that petitioner failed to exhaust administrative remedies. Allegedly, petitioner seeks the nullification of the Certification of the Department of Energy (DOE) dated December 20, 2003 and the resultant BIR Ruling No. 001-2003 but did not assail the alleged invalid Certification with the DOE. Petitioner likewise failed to appeal the said BIR Ruling to the office of the Secretary of Finance before assailing its validity before the Court. For respondent CIR, the alleged cause of action for refund of taxes is merely consequential considering that absent the nullification of the aforesaid issuances; petitioner would have no cause of action.

Respondent CIR, citing *Ang Tibay vs. Court of Industrial Relations*,[20] also contends that petitioner failed to present evidence to justify the grant of its administrative claim for refund/tax credit. There was neither proof that it filed an administrative claim for refund with the BOC nor the alleged payment of excise taxes were actually remitted by the BOC to the BIR. And since claims for refund partake of the nature of tax exemption, it is construed strictly against petitioner.

On May 30, 2011, the parties filed their Joint Stipulation of Facts[21], on the basis of which a Pre-Trial Order[22] was issued.

In the Resolution[23] dated September 9, 2011, respondent COC was declared in default as moved by petitioner[24].

During the trial, petitioner presented the following witnesses: (1) its Senior Assistant Vice President - Fuel Management Department Elvis Yao; (2) the Independent Certified Public Accountant (ICPA) Myra Celeste O. Dabalos; (3) the Manager of its Tax Services Division Evelyn L.

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[19] Docket, pp. 114-121.
[20] G.R. No. L-46496.
[21] Docket, pp. 195-205.
[22] Docket, pp. 218-228.
[23] Docket, pp. 483-486.
[24] Docket, pp. 145-151.

Taghap; (4) the Senior Partner of Zambrano and Gruba Law Offices Atty. Antero Jose M. Caganda; and (5), the former Secretary of the Department of Energy Mario V. Tiaoqui.

By way of a Judicial Affidavit[25], witness **Elvis Yao** testified that as the Senior Assistant Vice President of petitioner's Fuel Management Department, he is in-charge of the procurement of Jet A-1 fuel, both by importation and by local purchase, for the international and domestic flights of petitioner.

On January 5, 2009, March 29, 2009, May 18, 2009, July 10, 2009, September 2, 2009 and November 24, 2009, shipments of petitioner's imported Jet A-1 fuel arrived at Pinamucan, Batangas. Believing that it was exempt from payment of excise taxes on such importations by virtue of PD No. 1590, LOI No. 1483, BIR Ruling No. 013-99 and the Letter of Secretary of Finance dated September 8, 1999, addressed to Mr. Andrew L. Huang, petitioner paid under protest excise taxes on the said importations.

He further testified that the Collector of Customs of the Port of Batangas collected the said excise taxes by virtue of the ATRIGs issued by the Large Taxpayers Service of the BIR on the basis of BIR Ruling No. 001-03, dated January 29, 2003, which allegedly superseded BIR Ruling No. 013-99. However, petitioner never requested for BIR Ruling No. 001-03; neither was it notified about it prior to its promulgation even as it imposed such tax burden.

On January 10, 2011, petitioner filed a written claim for refund with respondent CIR since respondent COC failed to act on its protest filed on February 11, 2009, May 12, 2009, June 16, 2009, August 4, 2009, October 8, 2009 and December 28, 2009. On January 27, 2011, just when the two-year prescriptive period was about to expire, petitioner filed the instant petition with this Court.

The witness admitted that BIR Ruling No. 001-03 was conditional since it was ineffectual in the absence of locally

[25] Exhibit "MMMM", docket, pp. 1043-1058.

available aviation fuel in reasonable quantity, quality and price. He also added that the 2002 DOE Certification, which was the basis of BIR Ruling No. 001-03, could not cover 2003 and subsequent years since 2003 aviation fuel data was not available as of 2002 as evidenced by the subsequent certifications issued by the Air Transportation Office (ATO) certifying that Jet A-1 fuel was not locally available in reasonable quantity, quality and price.

ICPA **Myra Celeste O. Dabalos**, also by way of a Judicial Affidavit[26], testified that she was tasked to verify documents and schedules to check whether the amount of the specific taxes sought to be refunded tallies with the amount of specific taxes paid as shown in the original copies of the official receipts issued by the Authorized Agent Banks (AABs) and of the BOC. She also verified whether Jet A-1 fuel was locally available at a reasonable price for the period December 2008 to November 2009.

Her audit revealed that the amount of specific taxes being claimed for refund tallied with the amount in the original official receipts issued by the AABs and BOC. Further, after comparison, she discovered that the cost per liter of imported Jet A-1 fuel for the period December 2008 to November 2009 was consistently lower than the cost of Jet A-1 fuel if purchased locally from Petron Corporation or Pilipinas Shell Petroleum Corporation.

The ICPA however admitted that the documents she examined were all provided by petitioner.

Witness **Evelyn L. Taghap**, in her Judicial Affidavit[27], declared that as the Manager of petitioner's Tax Services Division, she prepared and filed its various tax returns and that by virtue of PD No. 1590, as amended by Republic Act (RA) No. 9337, petitioner was liable only for corporate income tax and VAT. Petitioner paid its income tax for the fiscal year ended March 2010, which covered the importations of Jet A-1 fuel involved in the present case.

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[26] Exhibit "E[7]", docket, pp. 1105-1110.
[27] Exhibit "Q[7]", docket, pp. 1111-1115.

Petitioner also filed and paid its quarterly VAT for the fiscal year ended March 2010. In view of such payments and by virtue of PD No. 1590, as amended by RA No. 9337, petitioner must no longer be made liable for excise taxes on the subject importations.

For his part, **Attorney Antero M. Caganda**, through his Judicial Affidavit[28] admitted that petitioner was a client of Zambrano and Gruba Law Offices where he was a Senior Partner. He personally supervised the handling of the present case. In relation thereto, he wrote a letter[29] to the DOE requesting for the breakdown of Jet A-1 fuel importation data for the years 2001 to 2010 to which the DOE sent a letter reply[30] dated June 6, 2011 containing a table report on the importation of airline companies of Jet A-1 fuel for the years 2001 to 2010.

Presented as an expert witness, Former Secretary of DOE **Mario V. Tiaoqui** testified that given his more than 30 years background in the petroleum industry, he believed that he had the knowledge, experience and expertise to acquaint the Court about certain matters concerning the petroleum industry. According to him, local supply and local domestic refinery production had been considered by the DOE and the oil companies as one and the same, and that importation or any imported product was different from locally available supply or one that had been processed and produced in the country by local refineries. He opined that the phrase "not locally available" under Section 13 of PD No. 1590 would mean that which was not refined or processed in the Philippines.

The witness confirmed that no written or specific definition of local available supply exists and that total supply would mean local supply plus imported fuel and that once imported it is deemed available to the consumers.

Further, despite the Oil Deregulation Law, the DOE is still in the best position to certify whether there is enough

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[28] Exhibit "U7", docket, pp. 1142-1145.
[29] Exhibit "R7".
[30] Exhibit "S7".

supply of aviation fuel in the country as it monitors the supply and demand of petroleum products. Any importation of aviation fuel or Jet A-1 fuel by airline company is for its own use and not for sale to the public.

On March 25, 2013, petitioner filed its *Formal Offer of Documentary Evidence*[31] which the Court admitted per Resolutions dated May 28, 2013[32] and December 6, 2013.[33]

On February 6, 2014, respondent CIR manifested that she would not present any evidence and moved for thirty (30) days to file her *Memorandum*.[34] Respondent COC, on the other hand, though declared in default, was allowed to file his *Memorandum* within the same period there being no objection registered by petitioner.

On March 3, 2014, petitioner filed an *Urgent Omnibus Motion (With Prayer to Defer Filing of Memorandum and to Re-open Proceedings)*[35] to establish its claims for refund using secondary evidence. The same was granted in a Resolution[36] dated April 15, 2014.

On April 3, 2014, petitioner filed a *Manifestation and Request for Admission*[37] of the February 27, 2014 Decision[38] of the Regional Trial Court Branch 114 of Pasay City in the case entitled "*Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*", docketed as Civil Case No. R-PSY-10-03889-CV.

On April 14, 2014, respondent COC filed his *Memorandum*[39].

[31] Docket, pp. 764-817.
[32] Docket, pp. 1317-1319.
[33] Docket, pp. 1356-1360.
[34] Minutes of the Hearing, docket, p. 1361.
[35] Docket, pp. 1364-1369.
[36] Docket, pp. 1441-1442.
[37] Docket, pp. 1388-1391.
[38] Annex "A", petitioner's "Manifestation and Request for Admission", docket, pp. 1392-1410.
[39] Docket, pp. 1421-1438.

On July 8, 2014, petitioner filed *Supplemental Formal Offer of Documentary Evidence*,[40] which the Court admitted in a Resolution[41] dated September 10, 2014.

On November 25, 2014, the instant case was submitted for decision after the petitioner and respondent CIR filed their respective memoranda, and respondent COC, his Manifestation to adopt his arguments in his *Memorandum* filed on April 14, 2014.[42]

On August 24, 2015, or almost three (3) months before the decision became due, petitioner filed a *Motion to Re-open Trial and/or for Leave of Court to File Supplemental Memorandum.* Despite the opportunity granted, both respondents failed to file any comment or register any objection.

THE ISSUES

In the Resolution of May 18, 2011[43], the Court, at the instance of the parties, simplified the issues for resolution as follows:

1. Whether or not this Court has jurisdiction over the subject Petition for Review considering:

    a) The BIR raised the issue that petitioner failed to exhaust administrative remedies in questioning the validity of BIR Ruling 2003; and

    b) Whether petitioner has complied with the prescriptive periods under Sections 204(C) and 229 of the NIRC of 1997, as amended.

2. Whether or not petitioner is entitled to its claim for refund in the amount of P402,855,943.00, representing excise taxes paid under protest on its importations of Jet A-1 fuel or aviation fuel.

[40] Docket, pp. 1461-1468.
[41] Docket, pp. 1483-1484.
[42] Resolution dated November 25, 2014, docket, p. 1584.
[43] Docket, pp. 191-192.

THE COURT'S RULING

The Court will first resolve petitioner's *Motion to Re-open Trial and/or for Leave of Court to File Supplemental Memorandum* in which it prays in the alternative that:

a) Trial be reopened for it to present additional evidence; and

b) or at least, it be allowed leave to file a Supplemental Memorandum.

Petitioner avers that on October 22, 2014, the Court issued a Decision in another case involving the same parties docketed as CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, and 7518. It claims that the issues in the cited cases are similar with the instant case, specifically with regard to the interpretation of Section 13(b)(2) of PD No. 1590, as amended by LOI No. 1483. Allegedly, in the Decision of October 22, 2014, the Court held, though without finality, that *"'locally available supply' is the supply which is available to petitioner within the Philippines, be it imported or domestic production"*. Further, the Court allegedly stated that *"[petitioner] chose only to substantiate domestically manufacture supply in terms of quality and price to prove that there was no locally available supply. Petitioner chose not to consider the articles or goods which were already imported into the Philippines, which petitioner could have purchased. Had petitioner included this, the Court would have the ability to determine if the second condition to the tax exemption was fulfilled."*

Invoking interest of justice and in light of the Court's Decision in cited cases, it should be allowed to present additional evidence or to submit supplemental memorandum to establish that, even if such interpretation of the phrase "locally available supply" were applied in the instant case, it is still compliant with the second condition for tax-free importation at the time the subject importations were made. In addition, the reopening of trial for the reception of additional evidence will aid the Court in the determination of the instant case.

Petitioner's motion is **DENIED**.

The reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by the Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[44]

It must be stressed that in the instant case, this is the second time that petitioner is asking for a re-opening of trial – the first was granted in the Resolution of April 15, 2014. In its *Memorandum* dated November 10, 2014, petitioner explicitly stated, *viz*: "*During trial, PAL* ***adduced more than sufficient, competent and uncontroverted evidence proving its entitlement to the refund or tax credit of the specific taxes subject of this case***".

It cannot be denied that the Court had been lenient to petitioner such that it was given more than ample time to collate and gather all possible evidence to substantiate its case. In fact, petitioner's trial dates as agreed upon per *Pre-Trial Order* dated June 30, 2011, had been exhausted as early as November 14, 2011. It rested its case only on May 28, 2013, or more than eighteen (18) months after its supposed last day for presentation of evidence, per Resolution of even date.

Indeed, to allow petitioner to re-open trial for the second time under the circumstances is to set a bad precedent. Significantly, the cited Decision of October 22, 2014 in CTA Case Nos. 7152 *et al.* is not yet final and executory. It can still be subject of review, hence, cannot even be considered as persuasive, at this point.

On the issue of whether the Court has jurisdiction to take cognizance of the instant petition, it must be stressed that the CTA, being a court of special jurisdiction, can take

[44] Alegre vs. Reyes, G.R. No. L-56923, May 9, 1988.

cognizance only of matters that are clearly within its jurisdiction.[45] Section 7(a)(1)(2) of Republic Act (RA) No. 1125,[46] as further amended by R.A. No. 9282, provides:

> "Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> >
> > (2) **Inaction by the Commissioner of Internal Revenue** in cases **involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;" (*Boldfacingsupplied*)

Clearly, the alleged inactions by respondent CIR regarding claims for refund of internal revenue taxes, fees or

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[45] *Allied Banking Corporation vs. CIR*, G.R. No. 175097, February 5, 2010.
[46] An Act Creating the Court of Tax Appeals.

other charges fall within the ambit of this Court's jurisdiction.

Further, in the recent case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue,*[47] the Supreme Court enunciated that the CTA has jurisdiction to rule on the validity of a particular administrative rule or regulation as long as it is within its appellate jurisdiction. The pertinent portion of the decision reads:

> "Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, City of Manila diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, **<u>to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction</u>. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**" (*Emphases supplied*)

With the foregoing pronouncement by no less than the Final Arbiter, the CTA has jurisdiction to rule on the validity of the assailed BIR Ruling No. 001-2003.

As to whether the instant petition was timely filed, Sections 204(C) and 229 of the 1997 NIRC, as amended, pertinently provides:

[47] G.R. No. 210987, November 24, 2014.

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

xxx xxx xxx

(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."

"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.

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

Thus, a claim for refund in both the administrative and judicial levels must be lodged within two years from the payment of the tax. In other words, both the filing of the administrative claim with the CIR and the filing of a Petition for Review before this Court must be within the two-year prescriptive period.

Petitioner filed its administrative and judicial claims for refund on the following dates:

DATE OF PAYMENT OF SPECIFIC TAX	EXPIRATION OF THE TWO-YEAR PERIOD	DATE OF FILING OF ADMINISTRATIVE CLAIM	DATE OF FILING OF JUDICIAL CLAIM
January 28, 2009[48]	January 28, 2011	January 10, 2011	January 27, 2011
April 29, 2009[49]	April 29, 2011	January 10, 2011	January 27, 2011
June 3, 2009[50]	June 3, 2011	January 10, 2011	January 27, 2011
July 24, 2009[51]	July 24, 2011	January 10, 2011	January 27, 2011
September 25, 2009[52]	September 25, 2011	January 10, 2011	January 27, 2011
December 18, 2009[53]	December 18, 2011	January 10, 2011	January 27, 2011
December 18, 2009[54]	December 18, 2011	January 10, 2011	January 27, 2011

Evidently, petitioner's administrative and judicial claims for refund were both seasonably filed.

To determine if petitioner is entitled to refund of excise taxes allegedly paid under protest, the Court must first examine petitioner's franchise - PD No. 1590. Section 13 thereof states:

[48] Exhibit "N-2", docket, p. 897.
[49] Exhibit "O-1", docket, p. 909.
[50] Exhibit "P-1", docket, p. 921.
[51] Exhibit "Q-1", docket, p. 933.
[52] Exhibit "R", docket, p. 945.
[53] Exhibit "S-1", docket, p. 957.
[54] Exhibit "T-1", docket, p. 968.

"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 per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross 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:

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; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;
>
> xxx xxx xxx"

Therefore, petitioner must comply with the following requirements for it to be exempted from paying specific taxes on its importation of Jet A-1 fuel and be entitled to a refund:

1. payment has been made either on its basic corporate income tax or franchise tax, whichever is lower, pursuant to Section 13 of PD No. 1590;

2. the imported Jet A-1 fuel should be for petitioner's use in its transport and non-transport operations; and

3. the imported Jet A-1 fuel not be locally available in reasonable quantity, quality or price.

Whether petitioner paid its basic corporate income tax or franchise tax:

Evidence shows that petitioner filed its Annual Income Tax Return for fiscal year ended March 2010, indicating payment of the appropriate tax.[55] Thus, the first requisite is deemed satisfied.

Whether petitioner sufficiently proved that its importations of Jet A-1 fuel were used for its transport and non-transport operations:

To prove compliance with the second requisite, petitioner presented its Senior Assistant Vice President of its Fuel Management Department Elvis Yao. He confirmed that petitioner imported the subject Jet A-1 fuels for use in its transport operations as evidenced by the various ATRIGs[56] with the following information:

> "xxx **according to the documents submitted by the abovementioned importer**, the shipment to be released at the Port of xxx consisting of the above described articles, will be used exclusively for domestic flight operations." (*Emphasis supplied*)

However, the ATRIGs presented reveal that the information pertaining to the nature of petitioner's importations, *i.e.,* the imported Jet A-1 fuel shall be used for petitioner's transport operations, was supplied by petitioner itself, hence, self-serving. Standing alone and without any other evidence to substantiate the claim that the imported Jet A-1 fuel were actually used for its transport and non-transport operations, the said self-serving evidence cannot be given weight or probative value.

To be sure, the Court cannot simply adopt petitioner's assertion unsupported by any evidence that the imported Jet A-1 fuel were actually utilized for petitioner's transport and non-transport operations. A legal and valid conclusion

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[55] Exhibit "M6", docket, p. 1079.
[56] Exhibit "N-6", docket, p. 902; Exhibit "O-5", docket, p. 914; Exhibit "P-5", docket, p. 926; Exhibit "Q-5", docket, p. 938; Exhibit "R-5", docket, p. 950; Exhibit "S-5", docket, p. 961; Exhibit "T-5", docket, p. 973.

cannot be made to rest on mere assumptions or bare allegations of the witnesses. In fine, petitioner failed to satisfy the second requisite.

Whether petitioner sufficiently proved that its imported Jet A-1 fuel were not locally available in reasonable quantity, quality, or price at the time of such importations:

The third requisite provides that the imported Jet A-1 fuel was not locally available in reasonable quantity, quality or price. For this requirement, petitioner presented as evidence a Report dated April 14, 2011 entitled Supply Demand Balance, 2001-2010 in Thousand Barrels (MB)[57], prepared by one Glendalyn Dela Cruz from the Department of Energy. Based on the table, the supply of Jet A-1 fuel for the years 2001-2010 was constantly higher than the demand. According to DOE's interpretation, local supply included locally produced and imported, combined.

To counter this interpretation, petitioner presented as expert witness former DOE Secretary Mario V. Tiaoqui, who claimed that "locally available supply" refers only to local domestic refinery production, and excludes importations[58].

However, well-established is the rule that factual findings of administrative agencies are generally accorded respect by the courts, if such findings are supported by substantial evidence.[59] It cannot be denied that one of the functions of the DOE is to determine the availability of Jet A-1 fuel in the Philippines.

The pure opinion of an alleged expert witness is insufficient to controvert or overturn the official data that petitioner itself secured from the DOE. The testimony of an expert witness, although merits attention, is not conclusive

[57] Exhibit "T[7]", docket, p. 1141.
[58] TSN dated June 11, 2002, docket, pp. 68-79.
[59] *Pagtalunan vs. Manlapig, et al.*, G.R. No. 155738, August 9, 2005.

upon the courts, but must be weighed and its probative value determined *viz-a-viz* the other proofs adduced during the trial.[60] In the instant case, no other evidence was adduced to show that "locally available supply" did in fact exclude imported Jet A-1 fuel. Moreover, petitioner did not even present evidence and/or question the DOE official responsible for the research, the result thereof and preparation of the said table reflecting the data gathered.

Significantly, this issue had been settled in previous Court of Tax Appeals' decisions such as in *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*[61]. The Court explained its observation in the following fashion:

> "It is the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. The exemption is when it is shown that the word is intended to be given a different or restricted meaning.
>
> To clarify, locally available should be taken in the plain, ordinary and common usage. Petitioner's theory that this should exclude importations is incorrect. The term 'locally available supply', taken in its ordinary sense is the supply which is available to petitioner within the Philippines, be it imported or domestic production. Petitioner is also incorrect in saying that this interpretation will

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[60] *United States vs. Trono, et al.*, G.R. No. 1344, January 19, 1904.
[61] CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, and 7518, October 22, 2014.

contribute to a condition that prevents it from using the same tax exemption."

All said, the Court must give due respect and yield to DOE's official interpretation of "locally available supply", which includes both local production and importations, absent more evidence to the contrary. Consequently, petitioner failed to prove that its imported Jet A-1 fuel was not locally available in reasonable quantity.

With regard to the question of whether Jet A-1 fuel was locally available at a reasonable price at the time of the subject importations, petitioner presented the conclusion of the ICPA in her Final Report filed on October 17 2011[62] and Addendum to the Final Report Filed on December 9, 2011[63]. But the data upon which she based her conclusion came from petitioner itself. And as stated earlier, simply self-serving.

Interestingly, the parties did not bother to discuss the question of whether the imported Jet A-1 fuel was locally available in reasonable quality. Hence, the Court will not discuss the matter.

Anent petitioner's prayer to declare BIR Ruling No. 001-2003 null and void, suffice it to say that said ruling did not impose a tax burden on petitioner but merely interpreted the tax privileges and exemption given to it under PD No. 1590. Besides, petitioner has not shown any proof that it sought reconsideration/review of said BIR Ruling with the Secretary of Finance as required under Section 3[64] of Revenue Memorandum Circular (RMC) No. 44-2001. Clearly, petitioner failed to exhaust administrative remedies available under the law.

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[62] Exhibit "Y[6]", docket, pp. 1157-1169.
[63] Exhibit "G[7]", docket, pp. 1248-1258.
[64] Section 3. *Rulings Adverse to the Taxpayer.* — A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must: xxx

Finally, claims for tax refund are in the nature of tax exemption. As such, the same must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. Petitioner having failed to sufficiently comply with the legal requirements for entitlement for the tax refund sought, this Court is left with no choice but to deny the Petition.

WHEREFORE, the instant Petition for Review filed by petitioner Philippine Airlines, Inc. is hereby **DENIED,** for insufficiency of evidence.

For lack of merit, petitioner's Motion to Re-open the case is likewise **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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