REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA Case No. 8415

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

AUG 0 7 2014

11:25 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed on January 26, 2012 by Philippine Airlines, Inc., praying for the refund of the amount of P2,774,912.56 which allegedly represents erroneously collected excise taxes in connection with its importations of assorted liquor, wine and cigarettes for international flight consumption.

FACTS

Petitioner 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.[1]

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 463.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended.[2]

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, on the basis of the delegated authority of respondent CIR through an Authority to Release Imported Goods (BIR Form No. 1918) (ATRIG) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC of 1997, as amended.[3]

On June 11, 1978, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries."[4]

On January 1, 2005, Republic Act (RA) No. 9334, otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect.[5]

On February 4, 2005, then COC George M. Jereos issued a Memorandum to BOC officers and personnel directing them to "effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".[6]

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[2] Par. 2, Facts, JSFI, docket, p. 463.
[3] Par. 3, Facts, JSFI, docket, p. 464.
[4] Par. 4, Facts, JSFI, docket, p. 464.
[5] Par. 5, Facts, JSFI, docket, p. 465.
[6] Par. 6, Facts, JSFI, docket, p. 466.

On March 1, 2005, former COC Alberto D. Lina issued Customs Memorandum Order (CMO) No. 13-2005, which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulation No. 12-2004".[7]

Accordingly, Ms. Gilda L. Cinco, Acting Chief-WAU of the BOC, wrote two letters[8] dated September 23, 2009 to Collector Silveria S. Salazar, Chief of Collection Division-NAIA Customhouse, listing petitioner's importations for collection of petitioner's payment of duties, taxes and other charges including excise taxes in the total amount of P1,672,926.66[9] and P1,101,985.90[10] for petitioner's importations pursuant to CMO No. 13-2005 and Revenue Regulations No. 3-2006, as follows:

IMPORT ENTRY NO.	DATE OF ARRIVAL	ATRIG NO.	EXCISE TAX
8122	July 12, 2006	00081869	P 159,902.91
14876	December 28, 2006	00090117	173,226.60
4612	April 19, 2006	00074997	149,368.50
7036	August 23, 2009	00039208	507,911.04
5051	May 17, 2006	00075462	144,179.91
01807	February 7, 2007	00030393	165,078.00
8879	August 4, 2007	00030398	186,171.30
01365	February 2, 2007	00030399	187,088.40
			P1,672,926.66

IMPORT ENTRY NO.	DATE OF ARRIVAL	ATRIG NO.	EXCISE TAX
11103	October 21, 2008	00030630	P 162,972.00
5343	August 14, 2009	00038724	186,354.79
7085	August 29, 2009	00039249	18,342.00
6205	July 16, 2009	00038309	227,501.82
7056	August 28, 2009	00039212	158,137.03
6980	August 6, 2009	00038723	316,274.06
7002	August 15, 2009	00038727	27,513.00
7063	August 29, 2009	00039211	4,891.20
			P1,101,985.90

On January 27, 2010, petitioner paid the foregoing excise tax liabilities.[11]

On February 22, 2011, petitioner filed an administrative claim for refund with respondent CIR for the refund of the

[7] Par. 7, Facts, JSFI, docket, p. 466.
[8] Exhibits "Q" and "LL", docket, pp. 852 and 909.
[9] Exhibit "Q", docket, p. 852.
[10] Exhibit "LL", docket, p. 909.
[11] Exhibits "R" and "MM", docket, pp. 853 and 910.

amounts of P1,672,926.66 and P1,101,985.90, representing excise taxes paid on January 27, 2010 through the BOC, on the above importations.[12]

Thereafter, petitioner filed before this Court the instant Petition for Review on January 26, 2012 for the refund of excise taxes paid on January 27, 2010.

Respondent CIR filed her Answer[13] on March 6, 2012, and interposed special and affirmative defenses, alleging, among others, that petitioner's claim for refund is not warranted; in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications; RA No. 9334 served as the basis for assessment and collection of excise taxes; the contention of petitioner that its tax exemption under its franchise subsists notwithstanding the passage of RA No. 9334 is clearly unfounded; no less than the Constitution provides that a franchise is subject to amendment, alteration or repeal by Congress; there can be no serious doubt as to the intention of Congress to withdraw petitioner's tax exemption; and the explicit language of Section 6 of RA No. 9334 which authorizes the imposition of excise taxes 'notwithstanding contrary provisions in general or special law' is all-encompassing and clear.

On the other hand, respondent COC filed his Answer/Comment[14] on March 16, 2012, arguing, among others, that RA No. 9334 is not limited to previously tax-free and duty-free importations of freeports and duty-free shops; Section 6 of RA No. 9334 shows that all importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines are subject to applicable taxes, duties and charges – including excise tax; this is underscored by the use of the phrases "[t]he provision of any special or general law to the contrary notwithstanding" and "even if destined for tax and duty-free shops"; RA No. 9334 amended PD No. 1590; the wording of the repealing clause of RA No. 9334 strongly manifests the intent of Congress to amend any special or general law inconsistent with it, including PD No. 1590; the Constitution is explicit that a franchise is subject to amendment, alteration or repeal by Congress; tax exemptions

[12] Exhibits "CC" and "XX", docket, pp. 873-882 and 930-939.
[13] Docket, pp. 192-201.
[14] Docket, pp. 205-223.

are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and RA No. 9334 is clear – all importations of alcohol and tobacco products from a foreign country into the Philippines are liable for excise tax which includes the subject importations.

The case was set for Pre-Trial Conference on April 12, 2012.[15] Petitioner submitted its Pre-Trial Brief[16] on April 11, 2012; while respondent CIR filed her Pre-Trial Brief[17] on March 30, 2012 and respondent COC filed his Pre-Trial Brief[18] through registered mail on April 4, 2012 and received by this Court on April 19, 2012.

The parties filed their Joint Stipulation of Facts and Issues[19] on May 29, 2012, which was approved during the hearing held on June 14, 2012.[20]

The Court issued a Pre-Trial Order on June 25, 2012, which, among others, terminated the pre-trial of the case.[21]

During trial, petitioner presented, by way of Judicial Affidavit, the testimony of Mr. Jonathan Castillo Lee, Manager of petitioner's Company Materials Handling Division[22], Ms. Ma. Evelyn L. Taghap, Manager of petitioner's Tax Services Division[23], and Ms. Cheryl V. Capinpin, Manager of petitioner's In-Flight Materials Purchasing Division, Catering and In-Flight Materials Purchasing Sub-Department[24].

Petitioner also formally offered its documentary evidence. In the Resolution[25] dated November 21, 2013, the Court admitted Exhibits "I" to "M", "M-2" to "N", "O", "P", "Q" to "AA", "DD" to "EE-2-a", "FF" to "II", "II-2" to "UU", "YY" to "YY-1", "BBB", "BBB-1", "DDD", "DDD-1", "FFF", "FFF-1", "HHH" to "TTT-1", and "VVV" to "BBBB"; but denied Exhibits "M-1", "O-1", "EE-2-b", "II-1", "AAA" to "AAA-1", "VV", "EEE", "EEE-1", "GGG", "GGG-1", and "UUU" to "UUU-1".

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[15] Notice of Pre-Trial Conference issued on March 19, 2012, docket, p. 225.
[16] Docket, pp. 243-259.
[17] Docket, pp. 226-231.
[18] Docket, pp. 263-269.
[19] Docket, pp. 463-468.
[20] Minutes of the Hearing on June 14, 2012, docket, p. 469.
[21] Docket, pp. 473-487.
[22] Exhibit "YY", docket, pp. 287-305.
[23] Exhibit "OOO", docket, pp. 517-522.
[24] Exhibit "PPP", docket, pp. 594-614.
[25] Docket, pp. 1114-1115.

On the other hand, respondents manifested that they would no longer present their respective testimonial and documentary evidence.[26]

In the Resolution[27] dated January 13, 2014, the case was submitted for decision after petitioner filed its Memorandum[28] on December 20, 2013 and respondents CIR and COC filed their respective Memorandum on December 10, 2013[29] and January 24, 2014[30].

ISSUES

The parties submitted the following issues[31] for this Court's resolution:

1. Whether or not petitioner PAL, under its franchise, PD No. 1590, is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

2. Whether or not RA No. 9334 amended, modified, or repealed PAL's exemption under its franchise, PD No. 1590, from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

3. Whether or not PAL is entitled to a refund of the total amount of P2,774,912.56 specific taxes paid under protest to respondent Commissioner of Internal Revenue through the Commissioner of Customs as follows:

   a. P1,672,926.66 paid on January 27, 2010; and

   b. P1,101,985.90 paid on January 27, 2010.

[26] Minutes of the hearing on September 23, 2013, docket, p. 1110.
[27] Docket, p. 1176.
[28] Docket, pp. 1136-1173.
[29] Docket, pp. 1116-1134.
[30] Docket, pp. 1181-1194.
[31] Stipulated Issues, Pre-Trial Order, docket, pp. 476-477.

4. Whether petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the NIRC of 1997, as amended;

5. Whether petitioner's claim for tax refund of excise tax was filed within the period prescribed by law;

6. Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund; and

7. Whether or not respondent Commissioner of Customs acted within the scope of his authority.

DISCUSSION/RULING

The Court shall resolve first petitioner's compliance with the procedures governing the filing of claims for refund under Sections 204(C) and 229 of the NIRC of 1997, as amended, which read:

> "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."

Based on the foregoing provisions, both the administrative and judicial claims for refund must be filed within two years from the date of payment of the tax.

Records show that petitioner paid excise taxes in the amounts of P1,672,926.66[32] and P1,101,985.90[33] on January 27, 2010. Counting from the said date, petitioner had until January 27, 2012 within which to file both the administrative and the judicial claims for refund. Considering that the administrative and the judicial claims for refund were filed on February 22, 2011[34] and January 26, 2012[35], respectively, the same were filed within the 2-year prescriptive period.

The Court shall now proceed to determine petitioner's entitlement to the refund of the total amount of P2,774,912.56 (P1,672,926.66 and P1,101,985.90) by resolving the issue pertaining to petitioner's alleged exemption from payment of excise tax.

The basis of petitioner's claim for refund is Section 13 of PD No. 1590, petitioner's charter, which provides for its exemption from all taxes, duties and other fees, and charges of any kind or nature on all importation of commissary and catering supplies, and other articles, supplies or materials imported by petitioner for use in its transport and non-transport operations and other activities incident thereto; thus, making petitioner exempt from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its

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[32] Exhibit "R", BOC Official Receipt No. 171046635, docket, p. 853.
[33] Exhibit "MM", BOC Official Receipt No. 171046626, docket, p. 910.
[34] Exhibits "CC" and "XX", docket, pp. 873-882 and 930-939.
[35] Docket, p.6.

catering and commissary supplies for international consumption.

On the alleged repeal of the relevant provision under PD No. 1590 by Section 6 of RA No. 9334, petitioner averred that RA No. 9334 did not amend, withdraw or repeal the exemption from excise taxes under Section 13 of PD No. 1590.

Petitioner argued that RA No. 9334 is not a special law or decree which would "specifically modify, amend or repeal PD No. 1590 or any section or provision thereof" as contemplated under Section 24 of PD No. 1590. Petitioner concluded that it should remain exempt from the payment of excise tax for its importation of commissary supplies under its franchise.

On the other hand, respondent CIR alleged that a close reading of the third paragraph of Section 131 of the NIRC, as amended by RA No. 9334, reveals the unmistakable intent of Congress to withdraw the conditional tax exemptions granted to petitioner under Section 13 of PD No. 1590. Respondent CIR maintained that Section 6 of RA No. 9334 employs the clear and all-encompassing phrase "[t]he provision of any special or general law to the contrary notwithstanding." Respondent CIR contends that RA No. 9334 repealed all inconsistent provisions whether contained in general or special statues like PD No. 1590. She further alleged that Section 6 of RA No. 9334 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction. According to respondent CIR, the said law has no provision exempting petitioner's importation of wines and tobacco products for its commissary and catering supplies from payment of taxes.

Respondent COC shared respondent CIR's argument that the tax privilege under Section 13 of PD No. 1590 is no longer available to petitioner as RA No. 9334 has amended it insofar as the imposition of excise tax is concerned. He added that RA No. 9334 need not specifically mention PD No. 1590 to modify, amend or repeal it. Even assuming that PD No. 1590 may only be amended by a special law that specifically amends it, respondent COC claimed that RA No. 9334 is such an amendatory law. In this regard, respondent COC asserted that the intent of RA No. 9334 is manifest in the plain and unmistakable language used in Section 6 of RA No. 9334; that RA No. 9334 is a special law that treats a specific matter, which is excise tax on alcohol and tobacco importations, while

PD No. 1590 is a general law; and that the absolute and mandatory tenor of RA No. 9334 makes clear the intent of Congress to impose excise tax on all alcohol and tobacco importations, including petitioner's importations.

It must be pointed out that the Court has consistently held that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590.[36]

The Court quotes Section 6 of RA No. 9334, *to wit*:

> "SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> > 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
> >
> > (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes **other than those legally entitled to exemption**.
> >
> > In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
> >
> > **The provision of any special or general law to the contrary notwithstanding**, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-

[36] CTA EB No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 and 7746, August 24, 2012); CTA EB Nos. 942 and 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 and 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Nos. 920 and 922, September 9, 2013 (CTA Case Nos. 7665 and 7713, April 17, 2012); CTA Case No. 8153, January 17, 2013; CTA Case No. 7935, December 20, 2012; CTA Case No. 8361, March 26, 2014.

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

As already ruled by this Court in previous cases, there is nothing in the provision above-quoted which would show that the exemptions granted to petitioner under PD No. 1590 are already repealed.

In the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc. (PAL)*[37], the Court *En Banc* held that other than a specific mention of RA Nos. 7227, 7922, and 7903, there is no express mention of PD No. 1590 with respect to petitioner's payment to the government of excise tax.

The Court *En Banc* in the same case further pointed out that had Congress intended to repeal petitioner's franchise, it could have easily included PD No. 1590 in the enumeration of

[37] CTA EB Nos. 928 and 929, October 21, 2013.

those liable for such excise tax, not only under RA No. 9334, but also under the later law, RA No. 9337.

Clearly, Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise.

It is true that Section 6 of RA No. 9334 states the all-encompassing phrase "[t]he provision of any special or general law to the contrary notwithstanding." However, such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it failed to specifically identify the provisions of PD No. 1590 intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[38] Thus, all doubts must be exerted in order to harmonize and give effect to all laws on the subject.[39]

Also, the Court finds no repugnancy between the provisions of PD No. 1590 and Section 131 of the NIRC of 1997, as amended by RA No. 9334. In fact, Section 131 actually recognized the existence of entities which are legally entitled to exemption such as petitioner in this case. The pertinent portion of Section 131 reads:

> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
>
> (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes **other than those legally entitled to exemption**." *(Emphasis supplied)*

[38] *Tan vs. Pereña*, G.R. No. 149743, February 18, 2005.
[39] Agpalo, *Statutory Construction*, Fifth Edition 2003, p. 405.

Considering that no irreconcilable repugnancy exists between the subject provisions of PD No. 1590 and RA No. 9334, the same should be harmonized in order to give effect to all laws on the subject. In this regard, the rules in statutory construction dictate that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.[40]

Let it be noted that PD No. 1590 is a special law which governs the franchise of petitioner; while the Tax Code, as amended by RA No. 9334, is a general law.

Accordingly, between the provisions of PD No. 1590, which, among others, specifically govern petitioner's tax exemption on its importation of commissary supplies for international consumption, as against the provisions of the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails.

In view of respondent's failure to show the clear intent of the legislature to repeal the exemption granted to petitioner under PD No. 1590, the Court shall now move on to determine whether petitioner is entitled to be refunded the amount claimed on the basis of the exemptions granted under its charter.

The pertinent portions of Section 13 of PD No. 1590 provide as follows:

> "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

[40] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.

(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 nontransport 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.**" *(Emphasis supplied)*

In other words, petitioner may be deemed exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of commissary and catering supplies and other articles, supplies, or materials upon payment by the grantee of either of the above-mentioned alternatives, provided that:

1. 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

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

It is noteworthy that Section 22 of RA No. 9337, which took effect on July 1, 2005, abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and VAT. Nevertheless, the same

Section provides that petitioner shall remain exempt from taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise.

Section 22 of RA No. 9337 reads:

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

As a result, petitioner is only left with one option, which is to pay for basic corporate income tax and value-added tax (VAT). The payment of basic corporate income tax shall be in lieu of all taxes subject to certain conditions as may be provided under petitioner's charter.

In compliance with the foregoing, petitioner presented its Annual Income Tax Returns for fiscal years ending March 2008[41] and 2009[42]. Petitioner also presented its Certificates of Registration dated February 1, 1941[43], Payment Forms No. 0605[44], and its Quarterly VAT Returns for the four quarters of

[41] Exhibit "BBB", docket, pp. 961-962.
[42] Exhibit "DDD", docket, pp. 963-964.
[43] Exhibits "FFF" and "FFF-1", docket, pp. 967-968.
[44] Exhibits "HHH", "III" and "JJJ", docket, pp. 972, 981 and 990.

fiscal years ending March 2008[45], March 2009[46] and March 2010[47]. However, petitioner was not able to prove that it paid its corporate income tax for fiscal years ending March 2007 and 2010[48] and that it paid for its VAT for fiscal year ending March 2007[49]. Consequently, importations made during the fiscal years ending March 2007 and March 2010 are not exempt from excise tax.

Nevertheless, even if petitioner was able to present the subject returns and/or were admitted in evidence, still the claim for refund must fail as will be discussed below.

Petitioner was able to substantiate its payment of excise tax in the amounts of P1,672,926.66 and P1,101,985.90 subject of the instant claim for refund as evidenced by BOC Official Receipt Nos. 171046635[50] and 171046626[51], respectively, both dated January 27, 2010.

Petitioner also submitted in evidence its Informal Import Declaration and Entry and Authority to Release Imported Goods (ATRIG), the contents of which are detailed as follows:

IMPORT ENTRY NO.	ARTICLES	DATE OF ARRIVAL	ATRIG NO.	EXCISE TAX
8122 (Exh. "I")	Vin De Table Blanc PAL, Vin De Table Rouge PAL	July 12, 2006	00081869 (Exh. "S")	P 159,902.91
14876 (Exh. "J")	Vin De Table Blanc PAL, Vin De Table Rouge PAL	December 28, 2006	00090117 (Exh. "T")	173,226.60
4612 (Exh. "K")	Canter Merlot MRP, Canter MRP BZ M	April 19, 2006	00074997 (Exh. "U")	149,368.50
7036 (Exh. "L")	Chivas Regal 12 YO	August 23, 2009	00039208 (Exh. "V")	507,911.04
5051 (Exh. "M")	Vin De Table Blanc PAL, Vin De Table Rouge PAL	May 17, 2006	00075462 (Exh. "W")	144,179.91
01807 (Exh. "N")	Canter Merlot Bordeaux, Canter Sauvignon Bordeaux	February 7, 2007	00030393 (Exh. "X")	165,078.00
8879 (Exh. "O")	Vin De Table Blanc PAL, Vin De Table Rouge PAL	August 4, 2007	00030398 (Exh. "Y")	186,171.30
01365 (Exh. "P")	Vin De Table Blanc PAL, Vin De Table Rouge PAL	February 2, 2007	00030399 (Exh. "Z")	187,088.40
				P1,672,926.66

[45] Exhibits "HHH-1" to "HHH-4", docket, pp. 973-980.
[46] Exhibits "III-1" to "III-4", docket, pp. 982-989.
[47] Exhibits "JJJ-1" to "JJJ-4", docket, pp. 991-998.
[48] Admission of petitioner's Annual Income Tax Returns for fiscal year ending March 2007 and 2010, Exhibits "AAA" and "EEE", respectively, was denied in the Resolution dated November 21, 2013, docket, pp. 1114-1115.
[49] Admission of petitioner's VAT Return for the 4th quarter of fiscal year ending March 31, 2007 (Exhibit "GGG-1") was denied in the Resolution dated November 21, 2013, docket, pp. 1114-1115, while VAT Returns for 1st to 3rd quarters of fiscal year ending March 31, 2007 were not presented.
[50] Exhibit "R", docket, p. 853.
[51] Exhibit "MM", docket, p. 910.

IMPORT ENTRY NO.	ARTICLES	DATE OF ARRIVAL	ATRIG NO.	EXCISE TAX
11103 (Exh. "DD")	Davidoff Classic Cigarette	October 21, 2008	00030630 (Exh. "NN")	P 162,972.00
5343 (Exh. "EE")	Camus Cognac VSOP Elegance, Camus Cognac XO Superieur	August 14, 2009	00038724 (Exh. "OO")	186,354.79
7085 (Exh. "FF")	Wine Lindemans Chardonnay	August 29, 2009	00039249 (Exh. "PP")	18,342.00
6205 (Exh. "GG")	JW Black Label	July 16, 2009	00038309 (Exh. "QQ")	227,501.82
7056 (Exh. "HH")	Camus Cognac VSOP Elegance	August 28, 2009	00039212 (Exh. "RR")	158,137.03
6980 (Exh. "II")	Camus Cognac VSOP Elegance	August 6, 2009	00038723 (Exh. "SS")	316,274.06
7002 (Exh. "JJ")	Lindemans Shiraz Cab.	August 15, 2009	00038727 (Exh. "TT")	27,513.00
7063 (Exh. "KK")	Martini Sweet Vermouth, Martini Dry Vermouth	August 29, 2009	00039211 (Exh. "UU")	4,891.20
				P1,101,985.90

As to whether or not the subject imported articles are imported for the use of petitioner in its transport and non-transport operations and other activities incidental thereto, compliance with the said requisite can be verified in the copies of the Authority to Release Imported Goods issued by the CIR, which show that the imported articles subject of the instant petition will be used exclusively for international in-flight consumption.

Lastly, as to the requisite that the imported commissary supplies are not locally available in reasonable quantity, quality or price, respondent CIR alleged that no independent and credible evidence was presented by petitioner to prove this matter. She contended that petitioner's study on prices is not comprehensive in nature. Respondent CIR argues that petitioner misguidedly equates reasonableness with the "cheapest" prices. Petitioner's direct importations will always be "cheaper" over locally available products doesn't make the locally available products' price "unreasonable". Respondent CIR cited Black's Law Dictionary's definition of "reasonable price" as the "decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit. A reasonable price is not necessarily the lowest price."

Respondent CIR explained that while the manufacturer's price (or proximate thereto) abroad is definitely cheaper, it does not follow that local prices are unreasonable. She concluded that petitioner failed to prove that the imported commissary supplies are not locally available in reasonable quantity, quality or price and so the claim for refund should be denied.

Respondent COC shared the same conclusion with respondent CIR that the mere fact that importing the subject alcohol products is cheaper than purchasing them locally does not *ipso facto* prove that there are no reasonably priced alternatives available in the Philippines. Also, respondent COC alleged that the comparative table presented by petitioner has no probative value considering that it was personally prepared by PAL's own manager; that the data reflected in the comparative table do not represent the actual prices of alcohol products sold in the Philippines; that the comparative table is imprecise; that the subject articles were sold in bulk order while the Philippine Wine Merchants' (PWM) and Duty-Free Philippines' (DFP) prices are based on a per bottle order and that it is common knowledge that the prices of articles are lower when the items are purchased in bulk which makes the PWM and DFP price-lists inaccurate bases for comparison; and that petitioner failed to take into account other variables which would increase the importation costs.

After scrutiny of the sales invoices[52], the Philippine Wine Merchants' (PWM) Price Lists for the years 2006[53], 2007[54] and 2009[55], Future Trade International's (FTI) Price List dated April 8, 2009[56], and the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[57] prepared by petitioner, the Court noted the following:

IMPORT ENTRY NO.	ARTICLES	FINDINGS
8122	Vin De Table Blanc PAL, Vin De Table Rouge PAL	Item not found in PWM's price list.
14876	Vin De Table Blanc PAL, Vin De Table Rouge PAL	Item not found in PWM's price list.
4612	Canter Merlot MRP, Canter MRP BZ M	Item not found in PWM's price list.
7036	Chivas Regal 12 YO	Variant and volume not specified in PWM's price list; item not found in FTI's price list.

[52] Exhibits "I-2", "J-2", "K-2", "L-2", "M-2", "N-2", "P-2", "DD-2", "EE-2", "EE-2-a", "FF-2", "GG-2", "HH-2", "II-2", "JJ-2" and "KK-2", docket, pp. 831, 834, 837, 840, 843, 846, 851, 885, 888, 889, 893, 896, 899, 902, 905 and 908, respectively.
[53] Exhibit "LLL", docket, p. 1004.
[54] Exhibit "MMM", docket, p. 1005.
[55] Exhibit "QQQ", docket, p. 1038.
[56] Exhibit "RRR", docket, p. 1039.
[57] Exhibit "KKK", docket, pp. 999-1004.

5051	Vin De Table Blanc PAL, Vin De Table Rouge PAL	Item not found in PWM's price list.
01807	Canter Merlot Bordeaux, Canter Sauvignon Bordeaux	Item not found in PWM's price list.
8879	Vin De Table Blanc PAL, Vin De Table Rouge PAL	No Sales Invoice presented; Item not found in PWM's price list.
01365	Vin De Table Blanc PAL, Vin De Table Rouge PAL	Item not found in PWM's price list.

IMPORT ENTRY NO.	ARTICLES	FINDINGS
11103	Davidoff Classic Cigarette	No price list for cigarettes was presented.
5343	Camus Cognac VSOP Elegance, Camus Cognac XO Superieur	Volume not specified in PWM's price list; item not found in FTI's price list.
7085	Wine Lindemans Chardonnay	Item not found in PWM's and FTI's price list.
6205	JW Black Label	Imported items are 75cl (750ml) in volume while volume specified in PWM"s price list is 700ml; item not found in FTI's price list.
7056	Camus Cognac VSOP Elegance	Volume not specified in PWM's price list; item not found in FTI's price list.
6980	Camus Cognac VSOP Elegance	Volume not specified in PWM's price list; item not found in FTI's price list.
7002	Lindemans Shiraz Cab.	Item not found in PWM's and FTI's price list.
7063	Martini Sweet Vermouth, Martini Dry Vermouth	Brand and volume not specified in PWM's price list; item not found in FTI's price list.

From the above observations, the Court concludes that no valid comparison can be made between the prices of the imported articles indicated in the sales invoices and the prices reflected in the PWM Price Lists for 2006, 2007 and 2009 and FTI Price List presented by petitioner as summarized in petitioner's comparative table[58]. Furthermore, other than the said Price Lists and the testimonies of petitioner's witnesses, petitioner failed to present any other evidence to show that the foregoing articles imported are not locally available in reasonable quantity, quality or price.

It must be pointed out that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[59] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[60]

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[58] Exhibit "KKK", docket, pp. 999-1004.

[59] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[60] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

Considering that petitioner failed to offer evidence to show that the articles imported, from which petitioner paid the excise tax of P2,774,912.56, are not locally available in reasonable quantity, quality or price, petitioner's claim for refund must be denied.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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