REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, *Petitioners,*	CTA EB CASE No. 1545 (CTA CASE Nos. 8039, 8069, 8104 and 8113)
-versus-	*Present*: DEL ROSARIO, *P.J*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
AIR PHILIPPINES CORPORATION, *Respondent.*	Promulgated: NOV 13 2018 3:28 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* are separate Motions for Reconsideration filed by the Commissioner of Internal Revenue[1] and the Commissioner of Customs,[2] seeking to set aside this Court's Decision promulgated on May 21, 2018,[3] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Amended Decision dated July 1, 2016 and the Resolution dated October 10, 2016 are hereby **AFFIRMED**.

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[1] *En Banc* Docket, pp. 258-267.
[2] *Ibid.*, p. 290-305.
[3] *Ibid.*, p. 231-253.

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SO ORDERED."

In his Motion, the CIR claims that the Court erred in relying on the Air Transportation Office (ATO) certifications, as the authority to certify as to the availability of Jet A-1 fuel is lodged exclusively with the Department of Energy (DOE). Moreover, the 2002 DOE Certification stating that there is locally available Jet A-1 fuel in the country is still in full force and effect, pending the appeal of its validity. In terms of quantity, the CIR reiterated the testimony of Ms. Glendalyn P. Cruz that inventory of locally available Jet A-1 fuel in the country includes those imported.

COC's motion, on the other hand, insists that ATO (now Civil Aviation Authority of the Philippines or CAAP) does not have any authority to issue certifications as to the availability of Jet A-1 fuel in the Philippines, stating therein that only those mentioned in its creating laws[4] are the only certificates that can be issued by ATO and/or CAAP. COC further reiterates the testimony of former DOE Secretary Zenaida Y. Monsada and Air Philippine Corporation (APC)'s own witness, Ms. Glendalyn P. Cruz, that locally available supply of Jet A-1 fuel includes importation in the Philippines. Lastly, COC claims that the Court erred in ruling that there is no available Jet A-1 fuel as to reasonable price in this case.

APC filed its Comments to the Motion for Reconsideration of the CIR and the COC on September 10, 2018[5] and September 13, 2018,[6] respectively.

The motions are bereft of merit.

There is no compelling reason to reverse or modify the assailed Decision as far as the CIR is concerned. Records reveal that the arguments raised by the CIR are a mere

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[4] Republic Act 776, "An act, to reorganize the Civil Aeronautics Board and the Civil Aeronautics Administration to provide for the regulation of Civil Aeronautics in the Philippines and authorizing the appropriation of funds therefor," and subsequently abolished by Republic Act 9497, "An Act Creating the Civil Aviation Authority of the Philippines, Authorizing the Appropriation of Funds Therefor, and for Other Purposes".
[5] *Supra,* note 3, pp. 315-326.
[6] *En Banc* Docket.

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rehash of his arguments before the Court in Division and which have been exhaustively passed upon and resolved by said Court in Division, as well as in the assailed Decision.

Section 13 of Presidential Decree (PD) 1590[7] imposes an alternative, not cumulative, qualification for the determination of whether there is locally available Jet A-1 fuel, *i.e.,* in order for APC to satisfy the third condition, APC must prove that Jet A-1 fuel is not locally available in reasonable quantity, quality, or price. Accordingly, it would suffice to prove even just one qualification.[8] The word "or" signifies that a preference can be made among the presented alternatives.[9] Simply put, as long as APC is able to prove the absence of one condition, either reasonable quantity, quality, or price, the exemption applies. APC is not required to prove the absence of all three conditions. This position was later affirmed by the Court *En Banc* in *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[10] promulgated on February 27, 2017.

As stated in the assailed Decision:

> "xxx In this case, the said alleged available supply failed as to the reasonable price requirement. APC was able to prove that the price of locally available supply in the Philippines is unreasonable. Using the conjunction "or" in "quantity, quality *or* price," the law imposes an alternative qualification for exemption. APC is not required to prove the absence of all three conditions.[11] The lawmakers could simply use the conjunction "and" if they mean otherwise. As shown in the Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 and the Cost of Domestic Purchases of Locally Available Turbo Jet Fuel or Jet A-1 for the Period February to October 2008 Using the Price Quotation Issued to the Company by Pilipinas Shell Petroleum Corporation, the ICPA's

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[7] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and other Countries, which applies to Air Philippines Corporation, through Section 15 of Republic Act 8339, or "An Act Granting Air Philippines Corporation (Air Philippines) A Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services."
[8] *Commissioner of Internal Revenue and Commissioner of Customs, vs. Air Philippines Corporation*, CTA EB Nos. 1537 & 1550, May 21, 2018.
[9] *Ibid.*
[10] CTA EB Nos. 1308, 1309, & 1311.
[11] *Ibid.*

Financial and Supplemental Reports, it would have cost APC a substantial additional amount had it purchased from the local refiners. As correctly observed by the Third Division:

> To require petitioner to prove the absence of all three conditions – locally available supply in reasonable quantity, quality and price -- would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.
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> xxx xxx xxx
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> It is evident from the above-quoted provisions that the law exacts from common carriers extraordinary diligence in its affairs, and the utmost diligence of very cautious persons when it comes to the safety of its passengers. xxx This would include an adequate source of materials of good quality, inadequate quantities, and at the lowest possible price, especially since that price is passed on to the public, its ultimate consumers." (Underlining supplied.)

As to the issue raised by the CIR with respect to the probative value of the ATO Certifications, and the definition of "locally available supply," it is worthy to cite the case of *Commissioner of Internal Revenue and Commissioner of Customs, vs. Air Philippines Corporation,*[12] that addressed through various jurisprudence the same issues, to wit:

[12] *Supra,* note 8.

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"The ATO Certifications have been discussed in another case involving the same parties and issues, as follows:

> Basically, in their respective Motions, the *crux* of respondents' arguments revolve around the adequacy of the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) xxx in sustaining petitioner's exemption from excise taxes. In disputing the Air Transportation Office (ATO) certifications, respondent COC cited Republic Act (RA) No. 776, which created, among others, the Civil Aeronautics Administration (CAA) who is tasked to administer all laws relating to civil aviation in the Philippines. In this regard, respondent COC claims that nowhere in the powers and duties granted to the CAA does it provide the power to issue certification concerning the availability or nonavailability of aviation fuel, such as Jet A-1 fuel.
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> This Court does not agree.
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> It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497, are not by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same. As correctly pointed by petitioner, perusal of the charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel. In fact, Section 35(a) of RA No. 9497, which essentially reiterated Section 32(1) of RA No. 776, as amended, states that the CAAP is vested with "authority to take charge of the technical and operational phase of civil aviation matters" which, naturally, include aircraft fuel and oil.

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> Also, the 1st Indorsement dated August 31, 2007,October 23, 2007, and January 3, 2008, respectively, issued by the Department of Finance, categorically states that "[t]he ATO certification is deemed sufficient for purposes of the tax exemption x x x." Furthermore, as to which office should certify the availability /non availability of aviation jet A-1 fuel, the said indorsements state, "xxx addressed to the Department of Transportation and Communications and its attached agencies, the Civil Aeronautics Board and the Air Transportation Office, as it relates principally to the availment by the airline concerned of incentives for its operation pursuant to the exercise by these agencies of general supervision and regulation of air carriers." Thus, in view of the foregoing, this Court believes that the ATO / CAAP has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel. [13]

With respect to what is included in "local available supply" the Courts have been guided by the Supreme Court decision in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[14] which held that domestic petroleum products excluded imported products, to wit:

> First, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported."

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[13] Citing *Air Philippines Corporation vs. Commissioner of Internal Revenue,* CTA Case Nos. 7966, 7990 & 8020, March 15, 2017.
[14] G.R. No. 198759, July 1, 2013.

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In view of the foregoing, the Court *En Banc* finds no cogent reason to reverse or modify the findings in the assailed Decision that APC has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate.

As to the COC's Motion for Reconsideration, such should be dismissed for lack of jurisdiction. Upon promulgation of the Resolution by the now Special Third Division on October 10, 2016, the COC had fifteen (15) days to appeal through filing of a Petition for Review before the Court *En Banc,* pursuant to *Section 18 of Republic Act (RA) No. 1125,*[15] *as amended by Section 11*[16] *of RA No. 9282,*[17] as well as Rule 8, Section 3(b) of the Revised Rules of Court of Tax Appeals,[18] which states that:

"SEC. 3. Who may appeal; period to file petition. -

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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

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[15] An Act Creating the Court of Tax Appeals.

[16] Section 11. Section 18 of the same Act is hereby amended as follows:

"SEC. 18. Appeal to the Court of Tax Appeals *En Banc*. -

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"A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

[17] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes

[18] A.M. No. 05-11-07-CTA.

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

The COC failed to do so. In fact, the assailed Decision refers only to the denial of the CIR's Petition for Review, and does not resolve any Petition for Review filed by the COC as there was none. Thus, as far as the COC is concerned, this case has already attained finality after the lapse of 15 days to appeal before this Court *En Banc.* It is elementary that failure to file an appeal within the reglementary period renders the decision final and executory against the party who failed to appeal.[19]

WHEREFORE, premises considered, the Motion for Reconsideration of the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit, while the Motion for Reconsideration of the Commissioner of Customs is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[19] *Philippine Rabbit Bus Lines, Inc. vs. People of the Philippines*, G.R. No. 147703, April 14, 2004, citing *Neplum, Inc. vs. Orbeso*, 384 SCRA 466 (2002); *Oro vs. Diaz*, 361 SCRA 108 (2001); *Mercury Drug Corp. vs. Court of Appeals*, 390 Phil. 902 (2000); *Ortiz vs. Court of Appeals*, 299 SCRA 708 (1998); *Pedrosa vs. Hill*, 257 SCRA 373 (1996); *Del Rosario vs. Court of Appeals*, 241 SCRA 553 (1995); *Casim vs. Flordeliza*, 374 SCRA 386 (2002); *People vs. Marong*, 119 SCRA 430 (1982); *Videogram Regulatory Board vs. Court of Appeals*, 265 SCRA 50 (1996), cited in *Spouses Baniqued vs. Teresita S. Ramos and Register of Deeds*, G.R. No. G.R. No. 158615, March 4, 2005.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice