REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA Case No. 8220

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

FEB 26 2020
3:58 p.m.

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RESOLUTION

Fabon-Victorino, J.:

For resolution is the *Motion for Reconsideration (Re: Amended Decision promulgated 26 September 2019)*[1] filed by respondent Commissioner of Internal Revenue (CIR) on October 17, 2019, to which petitioner filed its *Comment* on December 5, 2019. The dispositive portion of the assailed Amended Decision reads as follows:

> **WHEREFORE**, in view of the foregoing, the Petition for Review is **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Philippine Airlines, Inc. the aggregate amount of **₱402,855,943.00**, representing specific taxes on its importation of Jet A-1 fuel for its domestic operations paid under protest on January 28, 2009, April 29, 2009, June 3, 2009,

[1] Docket, pp. 1939-1949.

July 24, 2009, September 25, 2009, and December 18, 2009.

SO ORDERED.

In his *motion,* respondent claims that:

> THE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO REFUND IN THE AMOUNT OF P402,855,943.00 ALLEGEDLY REPRESENTING SPECIFIC TAXES ON ITS IMPORTATION OF JET A-1 FUEL FOR ITS DOMESTIC OPERATION.

Respondent claims that the Court erroneously ruled that petitioner was able to sufficiently establish its entitlement to the refund of excise taxes in the aggregate amount of ₱402,855,943.00 paid in relation to petitioner's importation of Jet A-1 Fuel for its domestic use. For him, petitioner's presentation of the Authority to Release Imported Goods (ATRIGs) was not sufficient to justify the conclusion that the imported Jet A-1 Aviation Fuel were actually used in petitioner's transport and non-transport operations, citing the ruling in *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*[2] promulgated by the Court's First Division.

Respondent also submits that it is the Department of Energy (DOE) which is in the best position to determine whether the supply of Jet A-1 fuel is sufficient for total demand as all policies, programs and updates on utilization, supply and distribution of energy resources are under the its mandate. Hence, reliance should not have been given by the Court on the Certifications issued by the Air Transportation Office (ATO) [now the Civil Aviation Authority of the Philippines (CAAP)], that Jet A-1 fuel, during the pertinent period, was not available in reasonable quantity, quality or price. ATO had nothing to do with the monitoring of fuel supply and demand as its functions were specific and limited under Republic Act (RA) No. 9497.

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[2] CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566, October 2, 2015.

Finally, respondent claims that based on DOE interpretation, the supply of Jet A-1 fuel for the years 2001 to 2010 was always higher than the demand.

By way of *Comment*, petitioner submits that respondent's contentions in his *motion* are misplaced and bereft of merit.

Petitioner states that contrary to respondent's assertion, it did not merely present the ATRIGs as evidence to prove that the subject imported Jet A-1 fuel was used for its transport and non-transport operations for it also presented the testimonies of witness Elvis Yao, Roberto Razal, and the Court-commissioned Independent Certified Public Accountant, all of whom testified that petitioner actually used the subject imported Jet A-1 fuel for its operations. The same was given significance by the Court when it ruled that "*the additional evidence presented, which corroborated the contents of the ATRIGs, sufficiently established that the importation of the Jet A-1 fuel was for petitioner's transport operation*."

Moreover, respondent conveniently failed ignore the fact that the decision he invoked to shore up his contention was already amended[3] last May 8, 2017, when it was ruled that the testimonies of witnesses, ATRIGs, ATO Certifications, First Endorsements and ICPA findings, taken together, were sufficient to prove that the imported Jet A-1 fuel was actually used for flight operations of Air Philippines Corporation.

As to which agency of the government is in the best position to determine the sufficiency of supply versus the demand for jet-A fuel, petitioner points out that the Court of Appeals, in *Philippine Airlines vs. Secretary of the Department of Finance and Secretary of the Department of Energy*,[4] affirmed the ruling[5] of the Regional Trial Court, Branch 114, Pasay City, declaring that it is the ATO (now CAAP) which has the authority to issue Certifications

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[3] *Air Philippines Corporation vs. Commissioner of Internal Revenue*, CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566, May 8, 2017.
[4] CA-G.R. CV No. 102468, January 27, 2017.
[5] *PAL vs. Secretary of the Department of Finance and Secretary of the Department of Energy*, Civil Case No. R-PSY-10-03889-CV.

concerning the local availability of the said Jet-A fuel, that unlike the 2002 DOE Certification, the ATO Certifications clearly and specifically indicated that during the subject period, there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality or price. Besides, the 2002 DOE Certifications could not be relied upon since it was based on the data available up to 2002 only. Finally, the issuance of ATO Certification was in line with its general power under Section 32 of RA No. 776 and Section 35 of RA No. 9497.

Respondent's *motion* must fail.

After a meticulous evaluation of the arguments proffered by respondent in his *Motion for Reconsideration*, the Court finds no sufficient and cogent reason to disturb its ruling in the assailed Amended Decision of September 26, 2019. The arguments stated in the *motion* have already been thoroughly discussed and passed upon by the Court in pages 4–18 of the assailed Amended Decision. To restate the discussion is a waste of time and resources of the Court.

WHEREFORE, there being no new matters and issues advanced that will merit reconsideration, let alone modification of the assailed Amended Decision of September 26, 2019, respondent's *Motion for Reconsideration (Re: Amended Decision promulgated 26 September 2019)* is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice