REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA *EB* NO. 2949** *(CTA Case No. 10730)*
	Present: **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,**
-versus-	**REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	OCT 29 2025 3:43 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* ("Petition"), filed on July 17, 2024,[1] without respondent's Comment.[2] The Petition assails the February 21, 2024 Decision[3] of the Court's Special First Division denying its Petition for Review, which sought the refund of or issuance of a tax credit certificate for the amount of ₱586,326.28 allegedly representing erroneously paid excise taxes on importations of alcohol products for the period from September to December 2019, as well as the June 13, 2024 Resolution[4] denying its Motion for Reconsideration.

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[1] *Rollo*, pp. 1-65.
[2] *Id.* at 66.
[3] *Id.*, at 46-60.
[4] *Id.* at 61-65.

The Parties

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 business address at Philippine Airlines, Lucio K. Tan Jr. Center, PAL Gate 5, Andrews Avenue, Nichols, Pasay City, Philippines.[5]

On the other hand, respondent is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to *Section 112 (C) of the National Internal Revenue Code of 1997, as amended* ("*Tax Code*"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

The Facts

The case began on January 11, 2022 when petitioner filed an administrative claim for refund before the BIR's Excise Large Taxpayers Audit Division seeking the refund of or issuance of tax credit certificate for the amount of ₱586,326.28, representing excise taxes it paid under protest on January 17, 2020 for its importation of alcohol products, which, under *Presidential Decree* ("*PD*") *No. 1590*, are exempt from excise tax.[7]

On February 2, 2022, petitioner instituted its judicial claim for refund via a Petition for Review filed before the Court in Division.[8] Respondent filed his Answer[9] on May 2, 2022.

Following trial, the Court, acting through its Special First Division, issued the assailed Decision denying the case for lack of merit. Petitioner's Motion for Reconsideration, filed on March 13, 2024[10], was denied per the June 13, 2024 Resolution.

Having received said Resolution on July 2, 2024, petitioner filed the instant Petition on July 17, 2024 before the Court *En Banc*.

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[5] Petition for Review, *id.*, p. 2.
[6] *Id.*
[7] *Id.*, at 3.
[8] *Ibid.*
[9] *Ibid.*
[10] *Id.* at 4.

The Court *En Banc* then issued a Resolution, dated August 16, 2024, requiring respondent to file its Comment to the Petition within 10 days from notice.[11] However, respondent did not comply with such directive.[12]

On October 30, 2024, this Court *En Banc* issued a Resolution submitting the instant case for Decision.[13]

Hence, this Decision.

The Issue

The sole issue for this Court's resolution is whether the denial of the Petition for Review before the Court in Division was proper as petitioner's evidence did not sufficiently establish that the subject imported alcohol and tobacco products were not locally available in reasonable quantity, quality or price at the time of importation.

Arguments of the Parties

Petitioner's Arguments

Petitioner insists that the evidence it presented sufficiently established that the subject imported alcohol and tobacco products are not locally available in reasonable quantity, quality or price. It holds out that in several cases involving the same parties, this Court and the Supreme Court have ruled that the Table of Comparison with testimonial evidence and price list of just one retailer has been found to be sufficient and convincing evidence. Per petitioner, the Court in Division mistakenly applied the rule on hearsay evidence as to the price lists it provided. Moreover, petitioner insists that the Court in Division failed to consider that the third requisite should show that the imported articles are not locally available either in reasonable quality, quantity or price. For petitioner, the Court in Division disregarded the fact that the submission of comparative local price is not the only determining factor to justify the exemption of the subject importation. Further, petitioner insists that the Court in Division is mistaken when it relied the Assailed Decision and Assailed Resolution on a case that is still currently pending appeal. Petitioner concludes that the Court in Division has clearly deviated from settled jurisprudence. It argues that the Special First Division failed to appreciate the preponderant and uncontroverted evidence it adduced. According to petitioner, the Court in Division's imposition of stringent requirement in proving that its importation of liquors, wines, and cigarettes are not locally available in reasonable quantity, quality or price defeats the purpose of the tax exemption it is entitled under *PD No. 1590.*

[11] Rollo, at 66.
[12] *Id.* at. 67.
[13] *Id.* at 68.

The Ruling of the Court

Petitioner's claim for refund is anchored upon *PD No. 1590* which exempts it from the payment of excise taxes for its imported commissary and catering supplies, subject to its compliance with set requirements.

The pertinent section of *PD No. 1590* provides, 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
> >
> > (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:
> >
> > 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
> >
> > 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 transport operations and other

> activities incidental thereto and ***are not locally available in reasonable quantity, quality, or price***;
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> . . . .
>
> (Emphasis, supplied)

Hence, the issue in this case is whether the imported products for which petitioner claims a tax refund *are not locally available in reasonable quantity, quality or price.*

In denying the claim for refund, the Court, acting in Division, elucidated as follows:

> Finally, with respect to the third (3rd) requisite, *i.e.*, said supplies are not locally available in reasonable quantity, quality or price, petitioner presented as evidence the price lists form various local suppliers, *viz:*
>
> (1) 2019 Price List of Absolute Sales Corporation (ASC);
>
> (2) Future Trade International Travel Retail Price List, effective October 20, 2018 (FTI)
>
> (3) 2019 Price List of Minivan Enterprises (ME);
>
> (4) On top of these price lists, Revenue Memorandum Circular (RMC) No. 90-2012.
>
> . . . .
>
> In both the present case and in the previous PAL case, petitioner presented essentially the same suppliers. Likewise, in both cases, petitioner failed to present corroborating evidence that the price list of the said suppliers represent the local market prices for the imported alcohol products vis-a-vis the totality of local suppliers who are engaged in selling similar products in the same years. Finally, considering that RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's imported alcohol products for 2018 to 2019 with that of the said price survey.
>
> Consequently, based on the evidence presented by petitioner, it cannot be determined with certainty whether the subject imported alcohol products are not locally available in reasonable quantity, quality or price. Thus, the Court finds that petitioner failed to satisfy the third (3rd) requirement for it to avail the benefits of Section 13 of PD No. 1590.[14]

At this point, it would be instructive to review jurisprudence on this issue. It would appear that there are seven Supreme Court decisions touching on the issue of whether petitioner has presented evidence sufficient to entitle it to its claim for refund of excise taxes it paid under protest for importations of liquor and wine. Of these seven, four are Notices of unsigned Resolutions, and three are full Decisions. A summary of the conclusions in these cases and

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[14] *Id.*, at 52-54.

those in the corresponding En Banc and Division cases appealed from is contained in the table below:

	CASE NO.	TESTIMONY	EVIDENCE	WHY REJECTED	CONCLUSION
1	G.R. No. 236343-45, 236372-74; Notice (2023-01-17) – granted; sufficient Unsigned Resolution but discussed facts and law on which it was based	Capinpin – Carlsberg, Absolut, Gordons	Tables of Comparison; Supporting price list – corroborated Capinpin's testimony		Disagreed with CTA finding that PAL has inadequately shown its compliance with Section 13 (b) (2) of PD 1590 as regards the amount of P240,283.71.
	CTA EB No. 1308, 1309, 1311 (2017-02-27) J Liban – partially granted	Capinpin - No local suppliers; no reasonable quantity available locally – as to Volupta Blanco and Rosso Lee; Galedo	Table of Comparison:	Testimony that PAL imported because cheaper than buying locally insufficient - Local prices not available for comparison	Due to testimony on no local suppliers, as to one product, additional P550,810.26 refunded; alternative, not cumulative qualification for exemption; partial refund of P3,983,223.10
	CTA Case No. 8514 (2015-01-06) J Casanova – partially granted	Capinpin; Lee; Galedo	Table of Comparison; Philippine Wine Merchants Price List; Future Trade International Price List; Duty Free Price List	Local prices of some alcohol products not available for comparison;	Costs of importing identified liquors and wines are lower than the costs of purchasing them locally – Partial refund granted
2	G.R. No. 231638 Notice (2021-02-16) – granted; sufficient Unsigned Resolution but discussed facts and law on which it was based	Capinpin - PAL imported because cheaper than buying locally	Philippine Wine Merchants Price list; Table of Comparison		CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence PAL presented are "inadequate" to show compliance with Section 13 (b) (2)
	CTA EB No. 1299 (2016-10-03) J Uy – dismissed; insufficient	Alcohol - PAL imported because cheaper than buying locally Cigarettes – no local suppliers		Capinpin Cross Examination – only Phil Wine Merchants submitted quotation; Duty Free – only visited to see prices; did not try to obtain	Affirmed Division dismissing Petition; PJ Del Rosario dissented

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				price from other suppliers; none of the comparative price list contain price on cigarettes	
	CTA Case No. 8130 (2014-12-01) J Victorino – dismissed; insufficient	Capinpin – only 1 supplier granted request for price list; but request was only to Duty Free			The information gathered from the two sources insofar as imported wine and liquors are concerned are seriously deficient to justify conclusion that the said imported items are not available in reasonable quantity, quality or price in the local market ; Denied Petition
3	G.R. No. 240532 Notice (2019-03-27) - sufficient				Respect CTA findings of fact
	EB No. 1363 – Amended Decision (2018-02-13) – PJ Del Rosario - sufficient	Capinpin	Philippine Wine Merchants Price List		Followed 2 other CTA cases where Table of Comparison and local prices reflected in 1 price list found sufficient; remanded to Division to determine refund amount 2 other cases - CTA Case Nos. 7677, 7685, and 7746 (Decision and Amended Decision) affirmed with modifications in CTA EB 954 & 1046, October 14, 2014; and CTA Case No. 8153, January 17, 2013 (affirmed in CTA EB Nos. 1029, 1031 and April 30, 2014)
	Original Decision CTA EB No. 1363 (2017-04-05) J Grulla; insufficient	Capinpin – only 1 price list because other local merchants refused to give their price list	Philippine Wine Merchant		Affirmed Division – only 1 supplier insufficient; Capinin testimony is uncorroborated

	CTA Case No. 8198 (2015-06-02) J Bautista - insufficient	Capinpin - only 1 price list because other local merchants refused to give their price list	Table of Comparison; Philippine Wine Merchants Price List	PAL could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by only one supplier.	Denied Petition Presenting only 1 supplier is insufficient
4	G.R. No. 238672 Notice (2018-07-09) sufficient				Respect CTA findings of fact
	CTA EB No. 1433 (2017-10-18) J Casanova - sufficient	Capinpin	Table of Comparison; Philippine Wine Merchants price list; Future Trade International Price List; Duty Free Retail Prices		Cited several CTA EB cases (CTA EB Case Nos. 1216, 1217 and 1221 {CTA Case No. 8184), May 27, 2016, CTA EB Case Nos. 954 & 1046 (CTA Case Nos. 7677, 7685 and 7746), October 14, 2014; CTA EB Case Nos. 920 & 922 (CTA Case Nos. 7665 and 7713), September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032 (CTA Case No. 8153), April 30, 2014; CTA Case No. 8236, December 18, 2013.) which consistently ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price List *and/or* Duty Free Philippines Retail Prices, together with the

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					testimony of petitioner's witness, were deemed sufficient Also cited SC ruling in G.R. Nos. 215705-07 where there was only one price list presented and evidence still found sufficient Noted that PAL's evidence remained unrebutted as the BIR did not present any evidence to refute PAL's claim Remand to Division to determine refund amount
	CTA Case Nos. 8529 and 8590 (2015-10-27) J Victorino - insufficient	Capinpin	Table of Comparison; Philippine Wine Merchants Price List; Duty Free Retail Prices	Imported brands not mentioned in price list of Philippine Wine Merchants nor Duty Free When the subject importations were made in 2009, petitioner did not have any data, reliable or otherwise, on the price and availability of the subject imported items; Witness also admitted in open court that petitioner had nothing to show that it conducted internal canvassing pertaining to the local availability of the subject imported products	Denied Petition

5	G.R. No. 215705-07 (2017-02-22) – sufficient				Respect CTA findings of fact
	CTA EB No. 1029, 1031, 1032 (2014-04-30) J Uy - sufficient	Santos	Philippine Wine Merchants Price List; Table of Comparison; Prima facie case established, burden of evidence shifts to respondent which presented no controverting evidence		Affirmed Division in toto
	CTA Case No. 8153 (2013-01-17) J Castaneda - sufficient	Santos – importing supplies cheaper than purchasing locally	Philippine Wine Merchants Price List; Table of Comparison		Partially granted as to wine products; 1 supplier sufficient
6	G.R. No. 209353-54, 211733-34 (2015-07-06) – sufficient				Respect CTA findings of fact
	CTA EB No. 920, 922 (2013-09-09) J Grulla -sufficient				Affirmed Division; issue not discussed
	CTA Case No. 7665, 7713 (2012-04-17) J Castaneda - sufficient	Li – importation cheaper than purchasing locally	Duty Free Price list; Table of Comparison		One supplier sufficient; Refund granted
7	G.R. No. 212536-37 (2014-08-27) – sufficient				Respect CTA findings of fact
	CTA EB No. 942, 944 (2013-12-09) J Castaneda – sufficient				Affirmed Division
	CTA Case No. 7868 (2012-06-22) J Casanova - sufficient	Santos – importing is cheaper than purchasing locally	Various price lists (3)		Refund granted

As it stands, then, the presentation of just one supplier cannot be the basis for finding the evidence of petitioner insufficient. Indeed, in six of the seven cases, above, the ultimate holding is that the presentation of one supplier's price list, together with a Table of Comparison and testimonial evidence that importing the subject alcohol products is cheaper than purchasing them locally, is sufficient to prove that the subject imported products were not locally available in reasonable quantity, quality or price at the time of importation.

At first blush, then, it would appear that the Court in Division erred in finding the evidence of petitioner insufficient, given that not only did it present the testimony of its usual witness, Cheryl V. Capinpin, but also a Table of Comparison and price lists from four sources.

Yet, the Court still agrees with the Division's finding.

The rationale is found in the following disquisition found in the questioned Resolution:

> Still, even if the price lists presented by PAL are sufficient to prove its claim, the Court cannot give probative weight to these pieces of evidence for being hearsay documents. Witness Cheryl V. Capinpin testifies in her Judicial Affidavit that:
>
> "13. Q: You mentioned that you compared the local prices and the importation costs for the alcohol products. What documents did you use in comparing these prices?
>
> A: For alcohol products, I used the following as my sources of local prices:
>
> 1. Absolut Sales Corporation 2019 Price List;
>
> 2. Future trade International Travel Retail Price List effective 20 October 2018;
>
> 3. Minivan Enterprise 2019 Price List; and
>
> 4. Bureau of Internal Revenue's (BIR) Revenue Memorandum Circular (R.M.C.) No. 90-2012 Price List.
>
> . . . .
>
> 17. Q: How did you secure the local prices of these local suppliers?
>
> A: These price Lists were given to me by their authorized representatives.
>
> 18. Q: On the bottom left corner of Annex 'P-11', there appears a signature on top of the name Melvin Zablan. Whose signature is this?
>
> A: This is the signature of Mr. Melvin Zablan, Business Development Manager of Absolut Sales Corporation. He was the one who prepared the local Price List for Absolut Sales Corporation for 2019.
>
> 19. Q: On each and every page of Annex 'P-11.1', there appears a signature of one Rowena Miralles. Whose signature is this?
>
> A: This is the signature of Ms. Rowena Miralles, Credit and Collection Officer of Future Trade International, Inc. She was the one who prepared the local Price List for Future Trade as of 20 October 2018.
>
> 20. Q: On the bottom-right corner of 'P-11.2', there appears a signature on top of the name Ivan Tan. Whose signature is this?
>
> A: This is the signature of Mr. Ivan Tan, Authorized Representative of Minivan Enterprise. He was the one who prepared the local Price List for Minivan Enterprise for 2019."
>
> Based on the above-testimony, witness Cheryl V. Capinpin has no personal knowledge on the subject price lists because she had no participation whatsoever in their preparation or execution. Instead, the

> alleged authorized representatives of these suppliers should have been presented as witnesses to afford the CIR the opportunity to cross examine them.
>
> While a scrutiny of the records reveals that the CIR failed to object to the hearsay nature of the subject price lists, the Supreme Court has consistently held that 'hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.' As such, despite the CIR's failure to object, the Court cannot give probative weight to the subject pieces of evidence.
> (Citations omitted)

Clearly, the denial of the claim for refund is not simply because there were only four price lists presented (as the presentation of one price list will suffice) but because the evidence presented was not reliable.

As admitted by petitioner's witness herself, she was not the one who prepared the price lists introduced in evidence, *i.e.*, 2019 ASC Price List, 2018 FTI price list, 2019 ME price list. Petitioner failed to present the persons who actually prepared the price lists, *i.e.*, Melvin Zablan – ASC Price List, Rowena Miralles – FTI price list, and Ivan Tan – ME price list. Without the testimony of the persons who actually prepared such price lists, these documents are hearsay. As such, this Court *En Banc* cannot give probative value on such documentary evidence regardless if respondent objected or not to the presentation of these price lists. As said in *Republic of the Philippines v. Manansala*:[15]

> The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are thereby impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value.

Contrary to the arguments posited by petitioner, it is not the testimony of Ms. Capinpin with respect to the preparation of the Table of Comparison which is hearsay considering that she had a hand and personal knowledge in the preparation of the same. Instead, the hearsay evidence are the price lists as the actual persons who prepared the same were not presented before the Court a quo.

All told, in finding that petitioner's evidence was insufficient to prove that the imported products were not locally available in reasonable quantity, quality or price at the time of importation, the questioned Decision looked into the quality of the evidence presented by petitioner and not just the quantity thereof.

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[15] G.R. No. 241890, May 3, 2021.

With the meager evidence presented by petitioner, the Court cannot make the conclusion that, indeed, the imported products were not locally available in reasonable quantity, quality or price at the time of importation.

It is well-settled that the party who alleges the affirmative of the issue has the burden of proof, and that with the plaintiff in a civil case, the burden of proof never parts. Once the plaintiff makes out a *prima facie* case in his or her favor in the course of the trial, however, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of the plaintiff.[16]

In turn, *"prima facie" is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of law, is sufficient to establish, a given fact, or the group of chain* of facts constituting the party's claim or defense and which if *not* rebutted or contradicted will remain sufficient.[17]

Here, as explained above, the evidence presented by petitioner can hardly qualify as good and sufficient on its face such that it does not even require controverting evidence. Indeed, it is only when "the plaintiff makes out a *prima facie* case in his or her favor in the course of trial that the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case."[18]

Finally, the Court must emphasize that being a derogation of the State's power of taxation, tax refunds or credits, just like tax exemptions, are strictly construed against taxpayers and liberally in favor of the State. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[19]

Perhaps with this ruling, petitioner can see fit in the future to present evidence sufficient not just in quantity but more importantly, in quality.

ACCORDINGLY, the Petition for Review, filed on July 17, 2024, is hereby **DENIED** for lack of merit. The Assailed Decision, dated February 21, 2024, and the Assailed Resolution, dated June 13, 2024, of the Court in Division are hereby **AFFIRMED.**

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16 *Singson v. Spouses Carpio*, G.R. No. 238714, August 30, 2023.
17 *Uganiza y Quinday v. People*, G.R. No. 236379 (Notice), October 9, 2023.
18 *Sps. Ponce & Nerosa v. Aldanese*, G.R. No. 216587, August 4, 2021.
19 *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647 & 243814 & 242842-43 (Notice), March 15, 2022.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I reiterate my CDO in the Decision in CTA Case No. 10730
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

I join the CDO of Justice Fajardo in the Decision in CTA Case No. 10730
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, 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.

Ma. Belen M. R

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2949
(CTA Case No. 10730)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 29 2025 3:43 p.m.

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CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* in denying petitioner Philippine Airlines, Inc.'s (**petitioner**'s/**PAL**'s) *Petition for Review* for lack of merit. Consequently, this affirms the First Division's Decision dated 21 February 2024 (**Assailed Decision**) and Resolution dated 13 June 2024 (**Assailed Resolution**), which denied petitioner's claim for a refund amounting to **₱586,326.28**. This amount represents excise taxes imposed on petitioner's importation of alcohol products (**from September to December 2019**), which were allegedly collected erroneously or illegally and paid under protest on 17 January 2020. The denial is based on petitioner's failure to present sufficient and convincing evidence demonstrating compliance with the *third (3^{rd}) condition* required by Presidential Decree (**PD**) No. 1590[1], as amended, *i.e.*, that the imported

[1] 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.

alcohol products were not locally available in reasonable quantity, quality, or price at the time of importation.

I wish to emphasize that the 2014[2] and 2017 PAL Decisions[3], 2015[4] PAL Resolution and the PAL Minute Resolutions of 2018[5], 2019[6], 2021[7], and 2023[8] cannot be used as bases for deeming the pieces of evidence presented (*i.e.*, the testimony of Cheryl V. Capinpin[9] [**Capinpin**], petitioner's Manager for In-flight Materials Purchasing Division, the Table of Comparison[10] and the Price Lists[11] that were deemed hearsay) as sufficient compliance with the *3rd condition*. **Unfortunately, the cited Decisions, Resolution and Minute Resolutions are clearly inapplicable to the instant case. Additionally, and more particularly, the Minute Resolutions are not binding precedents.**

To expound, Section 13(2) of PD 1590 reads:

> ...
>
> SEC. 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:
>
> ...
>
> 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:
>
> ...
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment,

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2 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, 27 August 2014.

3 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, 22 February 2017.

4 *Republic of the Philippines, rep. by the Commissioner of Customs v. Philippine Airlines, Inc. (PAL)*, G.R. Nos. 209353-54 & 211733-34 (Resolution), 06 July 2015.

5 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. No. 238672 (Notice), 09 July 2018.

6 *Commissioner of Internal Revenue (CIR), et al. v. Philippine Airlines, Inc. (PAL)*, G.R. No. 240532 (Notice), 27 March 2019.

7 *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 231638 (Notice), 17 February 2021.

8 *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, G.R. Nos. 236343-45 & 236372-74 (Notice), 17 January 2023.

9 Exhibit "P-22", Division Docket, pp. 101-192, with attached exhibits.

10 Exhibit "P-10", id., p. 461.

11 Exhibits "P-11", "P-11.1", "P-11.2" and "P-11.3", id., pp. 463, 464-472, 473 and 474-494 (with annexes), respectively.

> 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.
>
> ...

The foregoing provision requires the concurrence of three (3) requisites before petitioner's importations may be considered tax-exempt, to wit:

1. Petitioner paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies, or materials are imported for petitioner's use in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.[12]

As to the *3rd condition*, the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*[13], ruled that such qualification for exemption is in the alternative, and not cumulative. Simply stated, petitioner only needs to prove that the locally available article is **either** insufficient in quantity, **or** is of subpar quality, **or** is severely overpriced compared to its imported variant.

In this case, petitioner submitted the following pieces of documentary evidence to prove that the subject imported alcohol products were not locally available in reasonable quantity, quality or price: (1) the Judicial Affidavit of Capinpin[14], petitioner's Manager for In-flight Materials Purchasing Division; (2) Absolute Sales Corporation's (**ASC**'s) Price List for 2019[15]; (3) Future Trade International's (**FTI**'s) Travel Retail Price List effective 20 October 2018[16]; (4) Minivan Enterprise's (**ME**'s) Price List for 2019[17]; and (5) the Bureau of Internal Revenue's (**BIR**'s) Price List *per* Revenue Memorandum Circular (**RMC**) No. 90-2012.[18]

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12 *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, 01 April 2024.
13 Id.
14 Exhibit "P-22", supra at note 9.
15 Exhibit "P-11", supra at note 11.
16 Exhibit "P-11.1", supra at note 11.
17 Exhibit "P-11.2", supra at note 11.
18 Exhibit "P-11.3", supra at note 11.

It is my considered view that petitioner's pieces of evidence are insufficient to prove that the locally available alcohol products are either overpriced or scarce or subpar compared to their imported variants.

First, as highlighted in the *ponencia*, **RMC No. 90-2012[19] was based on the 2010 BIR price survey of alcohol products. Given this, no valid comparison can be made between the prices of petitioner's wines and liquors imported from September to December 2019 and those reflected in the 2010 price survey.** It is common knowledge that the quantity, quality, and price of locally available alcohol and tobacco products fluctuate over time. Consequently, the contents of RMC No. 90-2012, which relied on a price survey conducted in 2010 — several years before the subject importations — should not be accorded significant weight or relied upon as a basis for comparison.

Second, a meticulous examination of petitioner's Table of Comparison[20] reveals that **there is only one (1) merchant or supplier (*i.e.*, either ASC, FTI or ME) that supposedly establishes local prices for some (and, in fact, none for 'Camus Cognac VSOP Elegance') of the imported alcohol products listed therein**. Pertinent portions of the Table of Comparison are reproduced below:

Bill of Lading	Product Imported	Price *Per* Bottle (PHP)	Absolute Sales (PHP)	Future Trade (PHP)	Minivan (PHP)	RMC No. 90-2012 Price List (PHP)
079-4527-1214	Beringer California Chardonnay	195.39	*	*	579.00	739.77
079-4527-1225	Beringer California Chardonnay	195.39	*	*	579.00	739.77
079-4611-8553	Asahi Super Dry Can 330 ml	37.88	56.25	*	*	103.43
079-4611-8660	Asahi Super Dry Can 330 ml	37.45	56.25	*	*	103.43
079-4611-8671	Camus Cognac VSOP Elegance	635.22	*	*	*	*
079-4266-0844	Hardy's Stamp Riesling	194.69	*	340.00	*	*
079-4611-8844	Asahi Super Dry Can 330 ml	36.94	56.25	*	*	103.43
079-4611-9032	Camus Cognac VSOP Elegance	625.63	*	*	*	*
079-4611-9010	Asahi Super Dry Can 330 ml	37.16	56.25	*	*	103.43

Clearly from the foregoing, although petitioner submitted price lists from three (3) merchants (ASC, FTI and ME) not all of these suppliers provided retail prices for each of the imported alcohol products. Consequently, the pricing data for petitioner's imported alcohol products rests either on the figures of a single supplier alone, on a combination of RMC No. 90-2012 and a single supplier, or on neither source.

Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes".

19 Exhibit "P-11.3", supra at note 18.

20 Exhibit "P-10", supra at note 10.

Third, **petitioner submitted no reliable evidence to prove that the price lists from ASC, FTI and ME represent the local market prices (or that these merchants or suppliers serve as the exclusive distributors) of the above-listed alcohol products from September to December 2019 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same period. Consequently, the Court is left unable to ascertain whether the subject imported alcohol products are unavailable locally at a reasonable price.**

Fourth, it cannot be determined from the pieces of evidence presented whether the subject imported alcohol products are not available locally in reasonable quantity and/or quality. **There is no indication from Capinpin's testimony, nor from evidence on record, that the subject imported alcohol products are unavailable locally at a reasonable quantity and/or quality.**

Lastly, it is worth noting that, **as regards petitioner's importation of alcohol products from September to December 2019, reliance cannot be made on the aforesaid 2014 and 2017 PAL Decisions, 2015 PAL Resolution and the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 in terms of appreciating the price lists from three (3) local suppliers to establish compliance with the 3rd *condition* since the subject matter of these cases pertain to importations made prior to the issuance of the BIR's RMC No. 90-2012.** Particularly, the 2014 and 2017 PAL Decisions and 2015 PAL Resolution involved importations of various liquors and wines **from February to March 2007, from October to December 2007** and **from July 2005 to February 2006**, respectively, whereas the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 involved those imported on **various dates in 2007, 2009 and 2010, from January to April 2008, from March to November 2007** and **from June 2007 to October 2008 and July 2009 to October 2009**, respectively.[21]

[21]

Supreme Court Issuance	Case No.	Period of Importation
2014 PAL Decision	G.R. Nos. 212536-37	From February to March 2007
2017 PAL Decision	G.R. Nos. 215705-07	From October to December 2007
2015 PAL Resolution	G.R. Nos. 209353-54 & 211733-34	From July 2005 to February 2006
2018 PAL Minute Resolution	G.R. No. 238672	Various dates in 2007, 2009 and 2010
2019 PAL Minute Resolution	G.R. No. 240532	From January to July 2008
2021 PAL Minute Resolution	G.R. No. 231638	From March to November 2007
2023 PAL Minute Resolution	G.R. Nos. 236343-45	From June 2007 to October 2008 and July 2009 to October 2009

Notably, RMC No. 90-2012[22] was based on the BIR's 2010 price survey of alcohol products. Therefore, it is understandable that for liquors and wines imported before and during 2010, a price list from a single local supplier would suffice to meet the *3rd condition*, as RMC No. 90-2012 already provides a benchmark for the prices of those available in the local market.

Since the instant case involves petitioner's imported alcohol products for the period from September to December 2019, which is *beyond* the scope of the BIR's 2010 price survey of alcohol products as *per* RMC No. 90-2012, it is reasonable to conclude that this issuance can no longer serve as a benchmark for the prices of those available in the local market. Without such a benchmark, the 2018 and 2019 price lists obtained from three (3) local merchants or suppliers in this case (apart from being inadmissible for being mere hearsay) cannot be considered sufficient, as it can hardly be said that the prices indicated therein are representative of the prevailing local prices corresponding to petitioner's imported alcohol products.

I also wish to emphasize that, in determining compliance with the *3rd condition*, the focus should not be on the number of price lists obtained from local suppliers. Instead, it should be on whether petitioner was able to ascertain, within a reasonable time prior to importation, that the alcohol products sought to be imported could not be sourced from the local market in the necessary quantity, quality, or price — thereby justifying the need for importation. There should be evidence that petitioner determined the prices and availability of each imported alcohol product through a survey conducted with a representative number of local dealers, in order to reasonably conclude that such products cannot be sourced locally and must be imported.

Certainly, since a statute granting tax exemption is strictly construed against the person or entity claiming the exemption[23], it is incumbent upon petitioner to demonstrate that the *3rd condition* for excise tax exemption on the importation of alcohol products under PD 1590 was met not after, but within a reasonable time before or at the very least by the date of importation.

It must be remembered that every case is evaluated and decided based on the evidence presented. A divergence in the rulings of the priorly-promulgated cases is not violative of the doctrine of *stare decisis*.

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[22] Exhibit "P-11.3", supra at note 18.
[23] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, 07 July 2010.

Additionally, **the rulings in the PAL Minute Resolutions of 2018[24], 2019[25], 2021[26], and 2023[27] are not applicable since a minute resolution is not considered a binding precedent**. Citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*[28], in *San Miguel Corporation v. Commissioner of Internal Revenue*[29] (**San Miguel**), the Supreme Court clarified that a previous case ruled with a different subject matter albeit with the same parties and same issues will not be considered *res judicata* to the other cases as well as stressed that there is a substantial distinction between a minute resolution and a decision, *viz*:

> ...
>
> In the case of *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Court clarified that a Minute Resolution is not binding precedent:
>
>> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>>
>> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court through a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case "(h)ad no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>>
>> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of

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24 Supra at note 5
25 Supra at note 6.
26 Supra at note 7.
27 Supra at note 8.
28 G.R. No. 167330 (Resolution). 18 September 2009.
29 G.R. No. 257697 and 259446. 12 April 2023.

> Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.[30]

...

Here, **the subject alcohol products were imported from September to December 2019. In contrast, as aforementioned, the PAL Minute Resolutions dealt with importations from 2007 to 2010. Thus, any declarations made in the said minute resolutions will not affect the instant case.**

With the foregoing disquisitions, I submit that petitioner failed to present sufficient and convincing evidence to prove that the subject alcohol products it imported were not locally available in sufficient quantity, quality, or price at the time of their importation.

All told, I vote to **DENY** the present *Petition for Review* for lack of merit and thereby, **AFFIRM** the First Division's Decision dated 21 February 2024 and Resolution dated 13 June 2024.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[30] Citation omitted, emphasis and italics in the original text, and underscoring supplied.