REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8362

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 22 2016 ; 4:13 p.m.

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is petitioner Philippine Airlines, Inc.'s (PAL) **Motion for Reconsideration**, filed through registered mail on January 28, 2016 and received by the Court on February 5, 2016, with respondent Commissioner of Customs' (COC) **Manifestation (In Lieu of Comment)**, filed through registered mail on March 3, 2016 and received by the Court on March 10, 2016, and respondent Commissioner of Internal Revenue's (CIR) **Comment (Re: Motion for Reconsideration Dated 28 January 2016)**, filed on April 4, 2016.

Petitioner seeks reconsideration of the assailed Decision[1] dated January 4, 2016, the dispositive portion of which reads:

[1] Docket, pp. 1333-1373.

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

SO ORDERED."[2]

In the assailed Decision, the Court denied petitioner's claim for refund of the amount of Three Million Four Hundred Eleven Thousand Fifty-Four Pesos and 48/100 (₱3,411,054.48), allegedly representing erroneous collection of excise tax, in connection with its importations of liquor, wine and cigarettes for international flights. The Court held that petitioner failed to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

In its Motion, petitioner moves for the reconsideration of the subject Decision on the ground that "the evidence on record shows that PAL clearly established that it has satisfied all the requisites for excise tax exemption on its commissary supplies, hence, entitled to a refund". It contends that the Court erred in ruling that PAL is not entitled to a refund of the total amount of excise taxes paid on the subject importations. Petitioner alleges that it was able to prove that the commissary supplies are not locally available in reasonable quantity, quality, or price. It emphasizes that respondents never presented anything to counter petitioner's preponderant evidence.

Likewise, petitioner argues that, in similar cases involving the same issues, the Court itself acknowledged that the submission of the comparison between the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with the local prices reflected in the Philippine Wine Merchants' List and/or Duty Free Philippines Retail Prices was enough for the Court to rule that the cost of importing the imported articles is lower than purchasing them locally and enough to grant the claim for refund.

Moreover, petitioner asserts that the documents it presented and the positive and uncontroverted testimony of its witness, Ms. Cheryl Capinpin, have established that petitioner PAL adequately proved the existence of the condition that the commissary and catering supplies imported must "not be locally available in reasonable quantity, quality or price".

[2] Docket, p. 1373.

Further, petitioner avers that the evidentiary value of its evidence should not be discounted especially in the face of bare allegations without any contrary proof being presented. It contends that in a number of criminal cases where the degree of evidence required is that of proof beyond reasonable doubt, the Supreme Court even ruled that the lone testimony of the private complainant is sufficient and may be the sole basis for conviction even in the absence of corroborative testimony of other witnesses.

On the other hand, respondent CIR, in her Comment, states that petitioner failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price. She contends that the exemption granted to petitioner is not absolute and that petitioner's misguided interpretation of its franchise provisions would erroneously convert the conditional exemption to an absolute one. Lastly, respondent CIR avers that petitioner failed to prove that its right to tax refund indubitably exists.

Respondent COC manifests that he is adopting his Memorandum as his Comment on the Motion for Reconsideration.

Petitioner's Motion for Reconsideration lacks merit.

The issue on whether petitioner proved that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price has been sufficiently passed upon and fully discussed in the assailed Decision, the pertinent portions of which are quoted hereunder for ready reference:

> "To support the claim that the imported articles were not locally available in reasonable quantity, quality or price, petitioner submitted the Judicial Affidavit of Ms. Cheryl Capinpin (petitioner's Manager for In-flight Materials Purchasing Division), the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, the Philippine Wine Merchants (PWM) Price List for the years 2007, 2008, and 2009, the Affidavit of Gilbert M. Galedo, and the Monthly Philippine Dealing System (PDS) rates for the years 2007 to 2010.

An examination of the Judicial Affidavit of Ms. Cheryl Capinpin shows that except for the year 2009, petitioner compared the prices of its imported wines and liquors only with the local price list of Philippine Wine Merchants, and the prices of its imported cigarettes were compared only with the costs of the cigarettes sold by Duty Free Philippines for the year 2009 gathered by Mr. Gilbert M. Galedo, Senior Planning and Purchasing Specialist of Catering and In-flight Materials Purchasing Sub-Department, Corporate Logistics and Service Department of petitioner. An excerpt of the Judicial Affidavit of Ms. Cheryl Capinpin is quoted hereunder:

> '12. Q. Looking at Annex 'A' of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?
>
> 12. A. The costs of importing the commissary supplies involved and listed under the column 'Product Imported', are specified under the columns labelled 'Sales Invoice/Quantity & Value per Sales Invoice/Unit Cost Per Sales Invoice', 'Authority to Release Imported Goods (ATRIG) No./Unit Cost per ATRIG', and 'Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.', while the costs of locally buying the same supplies are specified under the columns labelled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', 'Philippine Wine Merchants 2009 Price List', 'Duty Free Phils 2009 Retail Prices', and 'Future Trade International Travel Retail Price List as of Feb 2009'. As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

13\. Q. What are those sales invoices mentioned in your table which are the bases of your costs of importing the products involved?

13\. A. They are the sales invoices of PAL's suppliers of the imported product.

14\. Q. How did you arrive at the unit cost per sales invoice?

14\. A. As shown by the table, in the case of alcoholic products, I divided the cost per case or carton stated in the sales invoice, by twelve (12) or by six (6), depending upon the number of bottles per case or carton of the alcoholic product covered by the invoice, to arrive at the unit cost per bottle.

In the case of tobacco products or cigarettes, I divided the total value of the product as stated in the sales invoices, by the number of cartons or cases also stated therein, to arrive at the cost per carton. I then divided the cost per carton by fifty (50), the number of reams per cartons to arrive at the cost per ream of cigarettes. To arrive at the unit cost per pack of cigarettes, I divided the cost per ream by ten (10) which is the number of packs in a ream.

15\. Q. How about the 'Unit Cost per ATRIG'? How did you arrive at the unit cost of the imported product?

15\. A. The total number of cases of all the products imported and the total value of such number of cases are usually stated in the ATRIG or the Authority to Release Imported Goods issued by the BIR. To arrive at the cost per case, I just divided the total value of the product by the total number of cases stated therein. As in the case of the computation of unit costs of alcoholic products per sales invoice, I then divided the value per case by twelve (12) or six (6) bottles to arrive at the unit cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total value of the importation as given by the ATRIG by the total number of bottles. The resulting figure is the importation value per bottle.

In the case of cigarettes, the total number of cases of all the cigarettes imported and the total value of such number of cases are usually stated in the ATRIG. I divided the total value by the total number of cases to arrive at the cost per case. I then divided the cost per case by fifty (50) ream to arrive at the cost per ream. I then divided the cost per ream by ten (10) packs to arrive at the unit cost per pack.

16. Q. How about the 'Unit Cost per Informal Import Declaration Entry No.'? How did you arrive at the unit cost of the imported product?

16. A. I follow the same computation as in the case of the ATRIG. The Informal Import Declaration Entry usually states the total dutiable value of all the imported products. It does not state the dutiable value of each product. In such a case, I divided the total dutiable value by the number of cases of the product imported. I then divided the average value per case by the number of bottles contained therein to arrive at the average cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total dutiable value of the importation as given by the Informal Import Declaration Entry by the total number of bottles. The resulting figure is the average importation value per bottle.

17\. Q. Why do you still have the unit cost per ATRIG and Informal Declaration Entry in addition to your 'Unit Cost per Sales Invoice'?

17\. A. I am showing the said unit costs per ATRIG to show the cost of importing the same product as fixed or determined by the Bureau of Internal Revenue and the cost per Informal Import Declaration to show the cost of importing the same product as fixed by the Bureau of Customs. I have to show those alternative sources of importation costs especially when the sales invoice of the foreign supplier of product involved is no longer available. Said sources are reliable considering that the number of cases imported shown in the ATRIG is the source of the BIR in computing the excise taxes due thereon, while the total dutiable value of the products given by the BOC as shown by the Informal Import Declaration Entry is their basis in computing the duties due thereon.

18\. Q. How do the 'Unit Cost per ATRIG' and the 'Unit Cost per Informal Import Declaration Entry No.' compare with the 'Unit Cost per Sales Invoice' of the product?

18\. A. As you can see in Annex 'A', they are about the same, if not slightly higher or lower.

19. Q. What do the columns labelled 'Philippine Wine Merchants Price List 2007', 'Philippine Wine Merchants Price List 2008', and 'Philippine Wine Merchants Price List 2009' contain?

19. A. Said columns contain the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2007 2008, and 2009, respectively, of the alcoholic products mentioned therein, if the same products were purchased from them.

20. Q. What is your source of the local price of Philippine Wine Merchants for the years 2007, 2008, and 2009?

20. A. **My source is the 2007, 2008, and 2009 Price Lists of Philippine Wine Merchants given to us by Philippine Wine Merchants, a local wine dealer.**

21. Q. Showing to you these documents labeled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', and 'Philippine Wine Merchants 2009 Price List', with a signature appearing at the bottom of the page of each Price List, on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and attached as Annexes 'B', 'C', and 'D', respectively, how are they related to the 2007, 2008, and 2009 Price Lists of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the years 2007, 2008, and 2009 appearing in your table of comparison? ζ

21. A. Those are the price lists for the years 2007, 2008, and 2009 of Philippine Wine Merchants which I mentioned.

22. Q. Do you have other sources of local prices of the products involved?

22. A. **Except for the year 2009, we have no other sources of said local prices because the other local wine merchants or dealers, including Duty Free Philippines, refused to give us their list of prices despite our persistent requests. For the year 2009, due to the refusal of Duty Free Philippines to give us their price list, we sent our Senior Planning & Purchasing Specialist of Catering & In-Flight Materials Purchasing Sub-Department, Corporate Logistics & Service Department, Mr. Gilbert M. Galedo, to at least look at the shelf prices of various wines, liqueurs, and cigarettes similar to our importation.**

23. Q. And what were the findings of Mr. Galedo?

23. A. Mr. Galedo found out that the prices of Duty Free Philippines of the products similar to our importations are very much higher than our importation cost.

xxx xxx xxx

25. Q. Aside from Duty Free Philippines, do you have other sources of 2009 local prices of the products involved?

25. A. As shown in Annex 'A', for the year 2009 we have another source and that is the

Future Trade International Retail Price List as of Feb. 2009.'

xxx xxx xxx

27. Q. How about the local costs of the imported cigarettes involved?

27. A. **Except for the costs of certain brands of cigarettes sold by Duty Free Philippines for the year 2009 appearing in the list attached to the affidavit of Mr. Galedo, I have no local costs of the imported cigarettes involved because, as I have stated earlier there were no local suppliers of the said cigarettes who could regularly supply PAL with the quantity and brand of the cigarettes it needs for its commissary supplies for sale in its international flights. Furthermore, if ever there were local suppliers of the said cigarettes, for the reasons I have stated earlier, their selling prices would definitely be higher than the importation costs of PAL.**' *(Emphasis supplied)*

xxx xxx xxx

Based on the foregoing, petitioner failed to make a comprehensive study on the availability, quantity, and price of the subject imported wines or alcoholic drinks and cigarettes in the local market as to justify importation of the said items. It is noteworthy that the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty Free Philippines was made by Mr. Gilbert Galedo, an employee of petitioner. This canvassed list and the price lists of Philippine Wine Merchants are not sufficient to prove the unavailability in the local market of the commissary supplies imported by petitioner.

Clearly, petitioner failed to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price."

While the present case is not criminal in nature, and thus, only preponderance of evidence is required to sustain the case, however, the evidence must establish that the legally mandated requisites have been satisfied, otherwise a denial of the petition is warranted.

Furthermore, the Court does not find any merit to petitioner's argument that the Court, in similar cases involving the same issues, acknowledged that the submission of the comparison between the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with the local prices reflected in the Philippine Wine Merchants' List and/or Duty Free Philippines Retail Prices was enough to rule that the cost of importing the imported articles is lower than purchasing them locally and sufficient to grant the claim for refund.

It must be stressed that Courts may be required to take judicial notice of the decisions or rulings of the appellate courts but not of the decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory.[3]

More importantly, each case is decided on its own merit and on the probative value of the evidence presented therein, which in the present case, is lacking. It must be stressed that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[4] In this case, petitioner failed in overcoming said burden of proof.

[3] *Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] vs. Central Azucarera De Bais, Inc. [CAB]*, G.R. No. 186605, November 17, 2010, citing *Tboli Agro-Industrial Development, Inc. (TADI) vs. Solilapsi*, Adm. Case No. 4766, December 27, 2002.

[4] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated January 4, 2016.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

"I maintain my Dissenting Opinion on the Decision dated 4 Jan. 2016."
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice