REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA Case No. 8361

- versus-

Members:

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

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
MAR 26 2014
10:30 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed on October 26, 2011 by Philippine Airlines, Inc. praying for the refund of the aggregate amount of P1,948,175.07, representing excise taxes paid under protest on October 26, 2009 on account of its importations of liquor and wine 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. 478.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), the 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, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), which is the government agency tasked with of the assessment and collection of customs duties and other lawful revenues from imported articles, including the excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (BIR Form No. 1918) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC of 1997, as amended. Respondent COC holds office at G/F OCOM Building, Bureau of Customs, Port Area, Manila City.

On June 11, 1978, by virtue of Presidential Decree No. 1590 (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 Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.[2]

On January 1, 2005, Republic Act No. 9334 (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.[3]

On February 3, 2005, then CIR Guillermo L. Parayno, Jr. wrote then COC George M. Jereos, calling attention to Section 6 of RA No. 9334 and the failure of the BOC to collect excise taxes "on all importations of alcohol and tobacco products

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[2] Par. 4, Facts, JSFI, docket, p. 479.
[3] Par. 5, Facts, JSFI, docket, p. 480.

destined for Duty Free Philippines (DFP) and the freeport zones such as the Subic Bay Freeport Zone." In the said letter, the BIR also requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to DFP and the freeport zones be immediately collected.[4]

On February 4, 2005, then COC Jereos issued a Memorandum to BOC officers and personnel directing them to "effect the collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".[5]

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO No. 13-2005), which provides 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 Regulation No. 12-2004".[6]

On various dates in 2007 and 2008, petitioner's importations of assorted liquors and wines subject of the instant claim arrived in Manila through the Ninoy Aquino International Airport (NAIA), as follows:

Arrival Date	**Articles**	**Informal Import Declaration and Entry (IIDE) No.**	**Airway Bill No.**	**Authority to Release Imported Goods (ATRIG) No.**	**Excise Taxes Paid (Php)**
Aug. 31, 2007	Martini Sweet/Dry Vermouth	9552 (Exh. "I")	079-3005330-6 (Exh. "I-1")	00030396 (Exh "S")	3,423.84
Nov. 28, 2008	Johnnie Walker Black Label	12443 (Exh. "J")	079-3214570-2 (Exh. "J-1")	00032082 (Exh "T")	91,118.30
Nov. 28, 2008	Johnnie Walker Black Label	12442 (Exh. "K")	079-3214571-3 (Exh. "K-1")	00032081 (Exh "U")	113,750.91
Nov. 28, 2008	Chivas Regal Whisky	12441 (Exh. "L")	079-3214582-0 (Exh. "L-1")	00026177 (Exh "V")	100,230.13
Dec. 2, 2008	Johnnie Walker Black Label	12437 (Exh. "M")	079-3214586-4 (Exh. "M-1")	00031873 (Exh "W")	127,271.69
Dec. 2, 2008	Johnnie Walker Black Label	12439 (Exh. "N")	079-3214584-2 (Exh. "N-1")	00032071 (Exh "X")	127,271.69
Dec. 2, 2008	Johnnie Walker	12438 (Exh. "O")	079-3214585-3 (Exh. "O-1")	00032070 (Exh "Y")	127,271.69

[4] Par. 6, Facts, JSFI, docket, p. 481.
[5] Par. 7, Facts, JSFI, docket, p. 481.
[6] Par. 8, Facts, JSFI, docket, p. 481.

	Black Label				
Dec. 3, 2008	J&B Rare Scotch Whisky	12460 (Exh. "P")	079-3214588-6 (Exh. "P-1")	00031881 (Exh "Z")	105,814.80
					796,153.05

On June 23, 2009, Ms. Gilda L. Cinco, Acting Chief-WAU, wrote a letter addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse, assessing petitioner for excise tax on the above importations.[7]

On October 26, 2009, petitioner paid under protest to the BOC the amount of P796,153.05, representing the excise taxes on the above importations, as evidence by BOC Official Receipt No. 168546987.[8]

On the same day, petitioner wrote a letter address to Mrs. Silveria Salazar, Chief - Collection Division, Collection District III, BOC, to formally protest the assessment and collection of P796,153.05 representing excise taxes on the above importations.[9]

On November 6, 2009, petitioner filed with the District Collector of Customs of NAIA, a written protest dated November 4, 2009 against the assessment and collection of P796,153.05 representing excise taxes on the above importations.[10]

On January 28, 2010, petitioner filed an administrative claim for refund with respondent CIR for the refund of the amount of P796,153.05, representing its excise tax paid on October 26, 2009 through the BOC, on the above importations.[11]

Additionally, on various dates in 2008 and 2009, petitioner's importations of assorted liquors and wines subject of the instant claim arrived in Manila through NAIA, as follows:

Arrival Date	Articles	IIDE No.	Airway Bill No.	ATRIG No.	Excise Taxes Paid (Php)
Dec. 3, 2008	J&B Rare Scotch	12459 (Exh. "DD")	079-3214587-5 (Exh. "DD-1")	00031884 (Exh. "MM")	92,001.06

[7] Exhibit "Q".
[8] Exhibit "R".
[9] Exhibit "AA".
[10] Exhibit "BB".
[11] Exhibit "CC".

	Whisky; Gordon Gin				
Dec. 4, 2008	J&B Rare Scotch Whisky	12474 (Exh. "EE")	079-3214590-1 (Exh. "EE-1")	00026159 (Exh. "NN")	105,814.80
Feb. 4, 2009	Piper Heidsieck	679 (Exh. "FF")	079-3214710-2 (Exh. "FF-1")	00031885 (Exh. "OO")	252,192.60
Feb. 6, 2009	Camus VSOP Cognac Elegance	694 (Exh. "GG")	079-3209953-5 (Exh. "GG-1")	00031886 (Exh. "PP")	236,911.61
Feb. 14, 2009	Lindemans Premier Chardonnay; Lindemans Premier Shiraz Cabernet; Penfolds Chardonnay; Penfolds Shiraz Cabernet	1328 (Exh. "HH")	079-3192988-1 (Exh. "HH-1")	00031879 (Exh. "QQ")	104,549.40
Feb. 27, 2009	Martini Sweet/Dry Vermouth	1679 (Exh. "II")	079-3286525-4 (Exh. "II-1")	00032077 (Exh. "RR")	4,891.20
Mar. 22, 2009	Carlos I Brandy	2500 (Exh. "JJ")	079-3214826-6 (Exh. "JJ-1")	00032074 (Exh. "SS")	355,661.35
					1,152,022.02

On June 23, 2009, Ms. Gilda L. Cinco, Acting Chief-WAU, wrote a letter addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse, assessing petitioner for excise tax on the above importations.[12]

On October 26, 2009, petitioner paid under protest to the BOC the amount of P1,152,022.02, representing the excise taxes on the above importations, as evidence by BOC Official Receipt No. 168546926.[13]

On the same day, petitioner wrote a letter address to Mrs. Silveria Salazar, Chief - Collection Division, Collection District III, BOC, to formally protest the assessment and collection of P1,152,022.02 representing excise taxes on the above importations.[14]

On November 6, 2009, petitioner filed with the District Collector of Customs of NAIA, a written protest dated November 4, 2009 against the assessment and collection of

[12] Exhibit "KK".
[13] Exhibit "LL".
[14] Exhibit "TT".

P1,152,022.02 representing excise taxes on the above importations.[15]

On January 28, 2010, petitioner filed an administrative claim for refund with respondent CIR for the refund of the amount of P1,152,022.02, representing its excise tax paid on October 26, 2009 through the BOC, on the above importations.[16]

Due to respondent's inaction and in observance of the statutory period of two (2) years within which to file a judicial claim for refund, petitioner filed this instant Petition for Review on October 26, 2011.

On December 12, 2011, respondent CIR filed her Answer[17] and interposed special and affirmative defenses, alleging, among others, that petitioner is liable for excise tax as specified in Section 131 of the NIRC of 1997, as amended by RA No. 9334 and that petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. However, petitioner failed to present proof that they have filed an administrative claim for refund with the BOC, as no record was presented with the BIR. Furthermore, petitioner failed to present proof whether the excise taxes paid by petitioner were actually remitted by the BOC to the BIR.

On the other hand, respondent COC filed his Answer/Comment[18] on January 9, 2012, alleging, among others, that petitioner's importations are subject to excise taxes under Section 6 of RA No. 9334 and that PD No. 1590, granting tax exemptions to petitioner, has been amended by RA Nos. 8424 and 9334 to the extent that petitioner's importations of cigars and cigarettes, distilled spirits and wines are now subject to excise taxes.

On January 10, 2012, the Court issued a Notice of Pre-Trial Conference[19], setting the case for pre-trial on February 16, 2012. Respondent CIR filed her Pre-Trial Brief[20] on January 20, 2012 and Amended Pre-Trial Brief[21] on March 15,

[15] Exhibit "UU".
[16] Exhibit "VV".
[17] Docket, pp. 192-197.
[18] Docket, pp. 208-241.
[19] Docket, p. 244.
[20] Docket, pp. 245-249.
[21] Docket, pp. 296-300.

2012 while respondent COC filed his Pre-Trial Brief[22] on February 13, 2012. On the other hand, petitioner filed its Pre-Trial Brief[23] on February 14, 2012.

On April 4, 2012, the parties filed their Joint Stipulation of Facts and Issues[24], which the Court approved in a Resolution[25] dated April 11, 2012.

During trial, petitioner presented as witnesses Jonathan Castillo Lee[26], petitioner's Manager-Company Materials Handling Division, Ma. Evelyn L. Taghap[27], its Manager-Tax Services Division, and Cheryl V. Capinpin[28], petitioner's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department.

Thereafter, petitioner filed its Formal Offer of Exhibits with Motion for Re-marking[29] on March 13, 2013 and Manifestation with Supplemental Formal Offer of Evidence[30] on May 21, 2013, submitting Exhibits "A" to "JJJ-1", inclusive of sub-markings, which were admitted in the Resolution[31] dated July 26, 2013, and Resolution[32] dated November 28, 2013.

On September 2, 2013, respondent CIR manifested that she has no evidence to present.[33] Likewise, on October 16, 2013, respondent COC manifested that he will not be presenting evidence in this case.[34] Hence, this Court granted the parties thirty (30) days from October 16, 2013 or until November 15, 2013 to file their respective Memorandum.

On November 28, 2013, the case was submitted for decision[35], taking into consideration respondent CIR's Memorandum[36] filed on November 14, 2013 and petitioner's

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[22] Docket, pp. 251-255.
[23] Docket, pp. 258-268.
[24] Docket, pp. 478-484.
[25] Docket, p. 486.
[26] Minutes of the hearing held on May 28, 2012, docket, p. 490.
[27] Minutes of the hearing held on July 2, 2012, docket, p. 522.
[28] Minutes of the hearing held on November 19, 2012, docket, p. 626.
[29] Docket, pp. 663-718.
[30] Docket, pp. 946-950.
[31] Docket, pp. 997-999.
[32] Docket, pp. 1106-1108.
[33] Minutes of the hearing held on September 2, 2013, docket, p. 1046.
[34] Minutes of the hearing held on October 16, 2013, docket, p. 1055.
[35] Docket, pp. 1106-1108.
[36] Docket, pp. 1063-1079.

Memorandum[37] filed on November 15, 2013. Respondent COC failed to file his Memorandum despite notice.

ISSUES

The issues[38] as stated in the Joint Stipulation of Facts and Issues are as follows:

"(a) Whether or not petitioner PAL, under its franchise, Presidential Decree 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;

(b) Whether or not Republic Act No. 9334 amended, modified, or repealed PAL's exemption under its franchise, Pres. Decree 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;

(c) Whether or not PAL is entitled to a refund of the total amount of PHP1,948,175.07 specific taxes paid under protest to respondent Commissioner of Internal Revenue through the Commissioner of Customs as follows:

(1) PHP796,153.05 paid on 26 October 2009; and

(2) PHP1,152,022.02 paid on 26 October 2009

(d) Whether or not PAL has exhausted all administrative remedies before filing this Petition.

(e) Whether or not PAL has complied with the provisions of Section 204 (c) and 229 of the NIRC of 1997, as amended in the prescriptive

[37] Docket, pp. 1081-1105.
[38] Docket, pp. 482-483.

period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.

(f) Whether or not respondent Commissioner of Customs acted within the scope of his authority."

DISCUSSION/RULING

The Court shall address first the timeliness of the filing of petitioner's administrative and judicial claims for refund.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provides for the procedure governing the refund of erroneously paid taxes, *to wit*:

> "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."
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> "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." (*Emphasis supplied*)

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.

In the instant case, records show that petitioner paid excise taxes in the amounts of P796,153.05[39] and P1,152,022.02[40] to the BOC on October 26, 2009. Counting from October 26, 2009, petitioner had until October 26, 2011 to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim for refund filed on January 28, 2010[41] before respondent CIR and the judicial claim for refund filed on October 26, 2011 fell within the two-year prescriptive period.

The Court will now determine whether petitioner is entitled to a tax refund in the total amount of P1,948,175.07 (P796,153.05 and P1,152,022.02), arising from the payment of excise taxes on its importation of liquors and wines.

Petitioner argues, among others, that RA No. 9334 did not amend nor repeal petitioner's franchise, PD No. 1590, therefore, it remains exempt from the payment of excise taxes on all its importations of cigarettes, liquor, and wine constituting its commissary and catering supplies for international flight consumption. Section 24 of PD No. 1590 specifically provides for the requirement to constitute a valid modification, amendment or repeal of petitioner's franchise and RA No. 9334 is not the special law or decree contemplated by Section 24 of PD No. 1590 which would "specifically modify, amend, or repeal this franchise (PD No. 1590) or any section or provision thereof."

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[39] Exhibit "R", BOC Official Receipt No. 168546987, docket, p. 952.
[40] Exhibit "LL", BOC Official Receipt No. 168546926, docket, p. 827.
[41] Exhibits "CC" and "VV".

Petitioner alleges that it is entitled to the refund sought having complied with the provisions of Section 13 of PD No. 1590, *to wit*: (a) it paid the corporate income tax for the years involved, as well as value-added tax (VAT) for the same years; (b) the products involved were imported by petitioner for use in its international flights, as shown in petitioner's IIDE and ATRIGs, which expressly states that the shipment to be released will be used "exclusively for international inflight consumption"; and (c) the commissary and catering supplies imported are not locally available in reasonable quantity, quality or price as established by the uncontroverted testimony of petitioner's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department, Ms. Cheryl V. Capinpin.

Respondent CIR counter-argues that Section 131 of the NIRC of 1997, as amended by RA No. 9334, expressly withdrew the conditional tax exemption granted to petitioner. 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 by employing the clear and all-encompassing phrase "[t]he provision of any special or general law to the contrary notwithstanding" in subjecting the importation of cigars, cigarettes and liquor to excise taxes.

Respondent CIR also contends that assuming that Section 13 of PD No. 1590 was not amended by RA No. 9334, petitioner failed to prove that the commissary supplies are not locally available in reasonable quantity, quality or price.

The issue as to whether Section 13 of PD No. 1590 was amended by RA No. 9334 is not a novel one.

In a number of cases[42] involving the same parties and issues but different taxable years, this Court has consistently ruled that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590, consequently, petitioner remains to be exempt from payment

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

of excise taxes on all its importations of cigarettes, liquor, and wine for its commissary and catering supplies for international in-flight consumption. However, to be entitled to such exemption, petitioner must comply with the requirements provided under Section 13 of PD No. 1590 as amended by RA No. 9337, *i.e.*, petitioner is obliged to pay the corporate income tax and VAT, in lieu of all other taxes, including excises taxes on importation of commissary and catering supplies, provided that such articles, supplies or materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price.

Section 6 of RA No. 9334 provides:

> "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-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*)

There is nothing in the above-quoted provision which would show that the exemptions granted to petitioner under PD No. 1590 are already repealed.

In *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*[43], this Court explained why there was no repeal, *to wit*:

> "While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are 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.
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> Equally noteworthy is the fact that Republic Act [sic] No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the

[43] CTA EB Case Nos. 920 & 922, September 9, 2013 (CTA Case Nos. 7665 & 7713, April 17, 2012).

> 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.
>
> Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise."

Moreover, Section 24 of PD No. 1590 provides:

> "Section 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Pursuant to the above provision, petitioner's franchise is subject to modification, amendment or repeal provided that there is a special law or decree specifically modifying, amending or repealing PD No. 1590 or any section or provision thereof.

A careful reading of RA No. 9334 shows that there is nothing in the said law specifically modifying, amending or repealing the tax exemption of petitioner under Section 13 of PD No. 1590.

The Court shall now proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise.

Section 13 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 percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport 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*)

Congress later passed RA No. 9337 in 2005, amending the above provision. Section 22 thereof states as follows:

"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**." (Emphasis supplied)

Thus, in order to be exempted from paying all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, petitioner must prove that:

1. it paid its corporate income tax and VAT liabilities for the subject period of importation;

2. the articles, supplies or materials are imported for the use of the petitioner 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.

In this case, petitioner submitted in evidence its Annual Income Tax Return for fiscal year ending March 31, 2008[44] and March 31, 2009[45]. Petitioner also proved that it is a VAT-registered entity and that it accounted for the VAT on its sales/receipts for the fiscal year ended March 31, 2008 and March 31, 2009, as evidenced by its Certificate of Registration[46] dated December 18, 2007, Certificate of Registration[47] dated August 4, 2004, Payment Form No.

[44] Exhibit "BBB".
[45] Exhibit "CCC".
[46] Exhibit "DDD".
[47] Exhibit "DDD-1".

0605[48], and VAT Returns[49] for the fiscal year ended March 31, 2008 and March 31, 2009.

The Authority to Release Imported Goods (ATRIGs) issued by the CIR and addressed to the COC, provided that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption".[50]

To support the claim that the imported alcoholic products were not locally available in reasonable quantity, quality, or price, petitioner presented Ms. Cheryl V. Capinpin, petitioner's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department, testifying by way of Judicial Affidavit[51] that importing said alcoholic products was cheaper for petitioner than buying the products locally.

In order to corroborate the foregoing testimony, petitioner submitted in evidence the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[52], Sales Invoices issued by foreign suppliers[53], Philippine Wine Merchants Price List for 2007[54], 2008[55] and 2009[56], Duty Free Philippines 2009 Retail Prices[57], Future Trade International Travel Retail (Airlines) Price List as of February 2009[58]; Monthly Philippine Dealing System Rates for the year 2007 to 2010[59] and Booking Rates for August 2007 and February 2009[60].

A perusal of the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and

[48] Exhibits "EEE" and "FFF".
[49] Exhibits "GGG-1" to "GGG-4" and "HHH-1" to "HHH-4".
[50] Exhibits "S" to "Z" and "MM" to "SS".
[51] Exhibit "JJJ".
[52] Exhibit "A".
[53] Exhibits "I-2", "J-2", "K-2", "L-2", "M-2", "O-2", "P-2", "DD-2"; "EE-2", "FF-2", "GG-2", "HH-2", "II-2" and "JJ-2".
[54] Exhibit "B".
[55] Exhibit "B-1".
[56] Exhibit "B-2".
[57] Exhibits "C" and "C-1".
[58] Exhibits "D" and "D-1".
[59] Exhibit "E".
[60] Exhibits "F" and "F-1".

Catering Supplies[61] shows that the cost of importing liquors is indeed lower than purchasing them locally.

Petitioner likewise submitted in evidence BOC Official Receipt Nos. 168546987[62] and 168546926[63] and the ATRIGs[64] issued on various dates for the subject importation of liquors and wines. The said BOC Official Receipts indicate that on October 26, 2009, petitioner paid to the BOC the total amount of P1,948,175.07 (P796,153.05 and P1,152,022.02), representing petitioner's excise tax payable on its importation of liquors and wines as stated in the ATRIGs.

After a careful evaluation of the evidence adduced by petitioner, this Court finds that petitioner was able to substantially prove that it paid its basic corporate income tax and value-added tax liabilities for the fiscal year ending March 31, 2008 and March 31, 2009; that the articles imported by petitioner for its commissary and catering supplies, consisting of liquors and wines, were intended to be used in its transport and non-transport operations and other activities incidental thereto; and that the imported articles were not locally available at reasonable quantity, quality or price. Thus, the petitioner fully complied with the requirements of PD No. 1590.

It is true that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[65] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[66] Nevertheless, in this case, petitioner was able to discharge such burden of proof. Thus, the instant claim for refund of petitioner's erroneously paid excise tax in the amount of P1,948,175.07 should be granted.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED** to **REFUND** to petitioner the total amount of P1,948,175.07,

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[61] Exhibit "A".
[62] Exhibit "R".
[63] Exhibit "LL".
[64] Exhibits "S" to "Z" and "MM" to "SS".
[65] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[66] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc. and Court of Appeals*, G.R. No. 127105, June 25, 1999.

representing petitioner's erroneously paid excise taxes on October 26, 2009.

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