REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

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AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7966, 7990 & 8020**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** MAR 15 2017

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1:35 p.m.

AMENDED DECISION

CASANOVA, *J.*:

Submitted before this Court are the following:

1. respondent Commissioner of Internal Revenue (CIR)'s **Motion for Partial Reconsideration (Re: Decision dated 20 April 2016)**, filed on May 5, 2016, with petitioner's **Comment/Opposition** filed on May 23, 2016;

2. respondent Commissioner of Customs' (COC) **Motion for Partial Reconsideration**, filed on May 6, 2016, with petitioner's **Comment/Opposition (to the Commissioner of Custom's** [*sic*] **Motion for Partial Reconsideration of the Decision dated 20 April 2016)** filed on May 30, 2016; and

3. petitioner's **Motion for Partial Reconsideration of Decision and to Reopen the Case for Presentation of Evidence**, filed on May 6, 2016, with respondent CIR's **Comment/Opposition (Re: Motion for Partial Reconsideration of Decision and to Reopen the Case for**

Presentation of Evidence) filed on May 30, 2016 and respondent COC's **Opposition (To Petitioner's Motion for Partial Reconsideration and to Reopen the Case for Presentation of Evidence)** filed, through registered mail, on June 13, 2016.

On hindsight, this Court promulgated its Decision[1] on April 20, 2016 for the present consolidated cases, the *fallo* of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the Petitions for Review in CTA Case Nos. 7990 and 8020, respectively, are **GRANTED**.
>
> Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **Seventy Million Nine Hundred Thirty-Six Thousand Seven Hundred Eighty-Eight Pesos and Eight Centavos (₱70,936,788.08)**, representing the specific tax paid for the importation of Jet A-1 aviation fuel stated below and computed as follows:

CTA Case No.	Date of payment	Amount
7990	November 9, 2007	23,701,965.00
8020	January 4, 2008	47,234,823.08
TOTAL		**₱ 70,936,788.08**

> On the other hand, the Petition for Review filed in CTA Case No. 7966 is hereby **DENIED** for lack of merit
>
> **SO ORDERED**."

Aggrieved, the parties filed their respective Motions for Reconsideration.

On August 5, 2016, this Court issued a Resolution[2] granting petitioner's Motion to Reopen the Case for Presentation of Evidence while holding in abeyance the determination of the parties' respective Motions for Partial Reconsideration. Thus, the case was set for hearing on September 7, 2016 for the presentation of petitioner's additional

[1] Docket (Vol. IV), pp. 1928-1956
[2] *Ibid.*, pp. 2148-2152

evidence to prove that it duly filed an administrative claim for refund with the Commissioner of Internal Revenue (CIR) in CTA Case No. 7966.

During the said hearing, petitioner recalled its witness, Mr. Edwin J. Segundo, former Supervisor of its Fuel Management Division, to prove, among others, that petitioner's original receiving copy of its Written Claim for Refund dated July 30, 2009 with the CIR has been lost and/or destroyed without bad faith on its part. Mr. Segundo, further, testified that the photocopy of the Written Claim for Refund marked as Exhibit "I" (CTA Case No. 7966) is a true and faithful reproduction of the original letter.

Thereafter, on September 9, 2016, petitioner filed its Petitioner's Formal Offer of Evidence[3]. It offered the Judicial Affidavit of Mr. Edwin J. Segundo and his signature as Exhibits "LLL" and "LLL-1" and, a copy of the Written Claim of Refund dated July 30, 2009 with a stamp of receipt by the Bureau of Internal Revenue on August 4, 2009 as Exhibit "MMM".

On November 11, 2016, this Court issued a Resolution admitting Exhibits "LLL", "LLL-1" and "MMM" as petitioner's supplemental evidence. This Court, further, ordered the parties to submit their Memoranda within thirty (30) days upon receipt of the foregoing Resolution.

On December 15, 2016, respondent Commissioner of Customs (COC) submitted his Memorandum, while petitioner filed its Supplemental Memorandum for Petitioner on December 16, 2016. Respondent CIR, on the other hand, failed to file his Memorandum as per Records Verification dated January 11, 2017. Thus, in a Resolution dated January 27, 2017, this Court deemed the pending Motions for Partial Reconsideration submitted for resolution.

This Court deems it best to first address respondent COC and CIR's Motions for Partial Reconsideration.

Basically, in their respective Motions, the *crux* of respondents' arguments revolve around the adequacy of the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) certifications and the significance of the Authority to Release Imported Goods (ATRIGs) in sustaining petitioner's exemption from excise taxes. In

[3] *Id.*, pp. 2189-2193

disputing the Air Transportation Office (ATO) certifications, respondent COC cited Republic Act (RA) No. 776[4], which created, among others, the Civil Aeronautics Administration (CAA) who is tasked to administer all laws relating to civil aviation in the Philippines.[5] In this regard, respondent COC claims that nowhere in the powers and duties[6] granted to the CAA[7] does it provide the power to issue certification concerning the availability or non-availability of aviation fuel, such as Jet A-1 fuel.

This Court does not agree.

It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497[8], are not, by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same. As correctly pointed out by petitioner, perusal of the charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel. In fact, Section 35 (a) of RA No. 9497, which essentially reiterated Section 32 (1) of RA No. 776, as amended, states that the CAAP is vested with "authority to take charge of the technical and operational phase of civil aviation matters" which, naturally, include aircraft fuel and oil.

Also, the 1st Indorsement dated August 31, 2007[9], October 23, 2007[10], and January 3, 2008[11], respectively, issued by the Department of Finance, categorically states that "[t]he ATO certification is deemed sufficient for purposes of the tax exemption *x x x*". Furthermore, as to which office should certify the availability/non-availability of aviation jet A-1 fuel, the said indorsements state, "*x x x* addressed to the Department of Transportation and Communications and its attached agencies, the Civil Aeronautics Board and the Air Transportation Office,

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4 "AN ACT, TO REORGANIZE THE CIVIL AERONAUTICS BOARD AND THE CIVIL AERONAUTICS ADMINISTRATION TO PROVIDE FOR THE REGULATION OF CIVIL AERONAUTICS IN THE PHILIPPINES AND AUTHORIZING THE APROPRIATION OF FUNDS THEREFOR" dated June 20, 1952

5 Section 26, *Ibid.*

6 Section 32, *Id.*

7 The aforementioned powers and duties of the CAA were transferred to the ATO, which were then assumed by the CAAP

8 "AN ACT CREATING THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES, AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, AND FOR OTHER PURPOSES" dated March 4, 2008

9 Exhibit "E" (CTA Case No. 7966)

10 Exhibit "E" (CTA Case No. 7990)

11 Exhibit "E" (CTA Case No. 8020)

as it relates principally to the availment by the airline concerned of incentives for its operation pursuant to the exercise by these agencies of general supervision and regulation of air carriers." Thus, in view of the foregoing, this Court believes that the ATO/CAAP has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel.

With regard to the subject ATRIGs, albeit being claimed by respondent CIR as "self-serving, in as much as it was the [*claimant*] that provided the said information"[12], this Court cannot acquiesce to such statement bearing in mind the tedious verification process that an ATRIG certificate undergoes, wherein the details of each importation are required to be indicated including the intended use thereof and destination of the shipment, before being the same is issued.[13]

While it is true that, standing alone, the ATRIG certificate will not adequately prove that the imported Jet A-1 fuel will actually be used for petitioner's domestic operations, nonetheless, if the presentation of the said ATRIG is corroborated by other documentary and testimonial evidence, as in the present cases, then they may be considered as proof, to the satisfaction of this Court, that the imported aviation fuel was, indeed, used in petitioner's transport operations and other activities incidental thereto. As held in the assailed Decision:

> "Moreover, as to whether or not the subject imported articles are imported for the use of the petitioner in its transport operations and other activities incidental thereto, the uncontroverted certifications from the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) and the testimony of its witnesses sufficiently prove that the importation of the subject aviation fuel is to be used in its operation. Even respondent's witness, Mr. Saturnino B. Dela Cruz, the Assistant Director General I of the Flight Standards Inspectorate Service of the CAAP, interposed 'no objection' to airline companies' request to import aviation fuel as they themselves represent that they need it for their operations. In the same vein, the Authority to Release Imported Goods

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[12] At page 4 of respondent CIR's Motion for Partial Reconsideration (Re: Decision dated 20 April 2016), citing the case of Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566, October 2, 2015

[13] *See* Revenue Memorandum Order No. 35-02 "Prescribing the Guidelines and Procedures in the Processing and Issuance of AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) for Excise and Value-Added Tax Purposes", dated October 28, 2002

> (ATRIG) covering importations of Jet A-1 aviation fuel further states that such fuel is to be utilized exclusively for the flight operations of the importing airline company."[14] *(Citations omitted)*

That having been settled, this Court shall now proceed with petitioner's Motion for Partial Reconsideration.

In its Motion, petitioner prays for the reconsideration of the denial of its Petition for Review in CTA Case No. 7966. It mainly argues that the Best Evidence Rule does not apply when the subject of inquiry is not the contents of a document. Petitioner cited the case of *People of the Philippines vs. Genaro Cayabyab y Fernandez*[15], wherein the Supreme Court opined that the production of the original document may be dispensed with if the opponent does not bona fide oppose the contents of the document and no other useful purpose will be served by requiring production thereof. Henceforth, petitioner claims that when respondents stipulated in open court, during the September 7, 2016 hearing, that petitioner through its legal department had filed the Written Claim for Refund (Exhibit "MMM")[16], the Court's reason for denying its claim for refund in CTA Case No. 7966 in the amount of ₱35,470,143.00 already ceased to exist.

This Court finds merit in petitioner's arguments.

Parenthetically, in offering documentary evidence, Section 3[17] of Rule 130 of the Rules of Court, otherwise known as the Best Evidence Rule, requires that the original document must be produced. Documents shall not be admissible in evidence until the original copies

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[14] At page 24 of the Decision dated April 20, 2016
[15] G.R. No. 167147, August 3, 2005
[16] Previously formerly offered as Exhibit "I" (CTA Case No. 7966)
[17] "**SEC. 3. *Original document must be produced; exceptions.***—When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office."

of said documents are offered or presented for verification, save for certain exceptions provided for by law.

In this regard, this Court stresses that the primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court;[18] it acts as an insurance against fraud and the Rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.[19] However, the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the terms of a writing are in issue.[20] **Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.** Any other substitutionary evidence is likewise admissible without need to account for the original[21]

In the present cases, petitioner's claim for refund in CTA Case No. 7966 was denied due to non-exhaustion of administrative remedies - a condition *sine qua non* before this Court can take cognizance of refund cases. By merely presenting and offering a photocopy of its administrative claim for refund as evidence during the trial, which, expectedly, was denied admission by this Court, petitioner failed to sufficiently prove that it filed an administrative claim for refund with the BIR.

Nevertheless, the stipulation made by the parties during the September 7, 2016 hearing was enlightening. The parties stipulated that petitioner indeed filed an administrative claim for refund with the BIR in CTA Case No. 7966, an excerpt of the Minutes of the Hearing reads, *to wit*:

"ATTY. SOLIMAN:
Your Honors, because one of the cross-examination question*[sic]* of the respondent is with regard to the filling

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[18] Lempert and Saltzburg, A Modern Approach to Evidence, (American Casebook Series), Second Edition, 1982, p. 1007
[19] Lempert and Saltzburg, *Supra*
[20] Heirs of Margarita Prodon vs. Heirs of Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez, Jr., G.R. No. 170604, September 2, 2013
[21] Skunac Corporation and Alfonso F. Enriquez vs. Roberto S. Sylianteng and Caesar S. Sylianteng, G.R. No. 205879, April 23, 2014

of the written claim for refund, so we would like to establish that.

ATTY. BABARAN:
Your Honors, it was already stated in the testimony.

JUSTICE CASTAÑEDA:
If you are willing to stipulate, they don't need to present anymore, that their Legal Department did file, is going to testify that they did file because anyway, the document has been lost.

ATTY. BABARAN:
That the Legal Department filed the claim for refund, Your Honors?

JUSTICE CASTAÑEDA:
Yes, because on the cross, that's part of this testimony. Can we ...

JUSTICE MANALASTAS:
The testimony will be, they did file?

ATTY. SOLIMAN:
Yes, Your Honor.

ASSOC. SOL. DUMPIT-LIPIT:
That will be the only purpose?

ATTY. BABARAN:
If that's the only purpose, Your Honors, anyway, the photocopy... they failed to establish... they failed to present the original then we can stipulate, Your Honors, that the Legal Department filed the written claim, Your Honors.

JUSTICE CASTAÑEDA:
They have the photocopy anyway.

ASSOC. SOL. DUMPIT-LIPIT:
For that purpose only, Your Honors.

JUSTICE CASTAÑEDA:
All right, for that purpose only. Is there still any need to present additional *ano*...

ATTY. SOLIMAN:
That's okay, Your Honors.

JUSTICE CASTAÑEDA:
That's being so stipulated, please note that. *x x x*."[22]

As such, to this Court's mind, a valid stipulation of fact constitutes a deliberate and clear statement which qualifies as an admitted fact. Such stipulation constitutes as a waiver of proof and the production of evidence is dispensed with. Henceforth, in view of the foregoing stipulation made by the parties, the issue of petitioner's failure to file an administrative claim for refund with the BIR already ceased to exist.

WHEREFORE, premises considered, respondent CIR's Motion for Partial Reconsideration (Re: Decision dated 20 April 2016) and respondent COC's Motion for Partial Reconsideration are both **DENIED** for lack of merit. On the other hand, petitioner's Motion for Partial Reconsideration of Decision is hereby **GRANTED**. Accordingly, the Decision dated April 20, 2016 is amended to read as follows:

"**WHEREFORE**, in view of the foregoing, the Petitions for Review are **GRANTED**.

Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **One Hundred Six Million Four Hundred Six Thousand Nine Hundred Thirty-One Pesos and Eight Centavos (₱106,406,931.08)**, representing the specific taxes paid for the importation of Jet A-1 aviation fuel stated below and computed as follows:

CTA Case No.	Date of payment	Amount
7966	September 7, 2007	35,470,143.00
7990	November 9, 2007	23,701,965.00
8020	January 4, 2008	47,234,823.08
TOTAL		**₱ 106,406,931.08**

[22] Transcript of Stenographic Notes dated September 7, 2016, pp. 24-25

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice