REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 9979**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 20 2022 1:50 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Philippine Airlines, Inc. (PAL) on November 26, 2018, seeking for a refund or issuance of a tax credit certificate (TCC) in the amount of ₱5,847,417.35 allegedly representing the excise taxes on importations of cigarettes, liquor and wine, paid under protest by petitioner on November 25, 2016.[1]

THE PARTIES

Petitioner, Philippine Airlines, Inc. (PAL) 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.[2] It is duly registered as a Value-Added Tax (VAT) taxpayer.[3]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with assessment and collection of all national revenue taxes, fees, charges, including excise taxes paid on

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[1] Petition for Review; Docket Vol. I, pp. 10-24; Joint Stipulation of Facts and Issues (JSFI), Nature of the Case, Docket Vol. II, p. 872.
[2] JSFI, Admitted Facts, par. 2; Docket Vol. II, pp. 872-873.
[3] *Id*, Admitted Facts, par. 3, Docket Vol. II, p. 873.

wines, liquors, and cigarettes under Section 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent CIR holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally 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 Between the Philippines and Other Countries."[5] Section 13 of PD No. 1590 provides for petitioner's exemption from the payment of all taxes, duties and other fees and charges of any kind or nature on all importations of commissary and catering supplies, among others, and other articles, supplies or materials it imported for petitioner's use in its transport and non-transport operations, as well as other activities incidental thereto.[6]

Petitioner claims that it customarily imports various cigarettes and alcohol products constituting its commissary and catering supplies for use in its various transport operation.[7]

During the year 2014, petitioner imported various cigarettes and alcohol products for use in its transport operations.[8] According to petitioner, said products were not locally available in reasonable quantity, quality or price.[9]

In five (5) separate Memoranda[10] of Meriam B. Avena, Customs Operations Officer III, Warehousing Assessment Unit of the BOC, captioned as "Billing of Excise Tax Due on Philippine Airlines

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[4] Par. 2, The Parties, Petition for Review, Docket Vol. I, p. 10; admitted by respondent per par. 1, Answer, Docket Vol. I, p. 155.
[5] JSFI, Admitted Facts, par. 4, Docket Vol. II, p. 873.
[6] *Id*, Admitted Facts, par. 5, Docket Vol. II, p. 873.
[7] Par. 12, Statement of Facts, Petition for Review, Docket Vol. I, p. 14.
[8] Various Informal Import Declaration and Entry (Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24"; Docket Vol. II, pp. 1305-1353); Bill of Lading/Air Waybill (Exhibits "P-5", "P-5.1", "P-5.2", "P-5.3", "P-5.4", "P-5.5", "P-5.6", "P-5.7", "P-5.8", "P-5.9", "P-5.10", "P-5.11", "P-5.12", "P-5.13", "P-5.14", "P-5.15", "P-5.16", "P-5.17", "P-5.18", "P-5.19", "P-5.20", "P-5.21", "P-5.22", "P-5.23", "P-5.24"; Docket Vol. II, pp. 1355-1379); BIR Form No. 1918 or the Authority to Release Imported Goods (Exhibits "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24"; Docket Vol. II, pp. 1380-1404).
[9] Par. 13, Statement of Facts, Petition for Review, Docket Vol. I, p. 14.
[10] Exhibits "P-7", "P-7.1", "P-7.2", "P-7.3", "P-7.4"; CTA Docket Vol. II, pp. 1405-1409.

Importables" dated March 30, 2015 and November 3, 2015, petitioner was billed of the following excise taxes due on its importations of wine, liquor and tobacco, *viz.:*

Exhibits	Date of Memorandum	Excise Tax Due
"P-7"	March 30, 2015	₱1,169,144.48
"P-7.1"	March 30, 2015	1,036,800.00
"P-7.2"	March 30, 2015	846,748.80
"P-7.3"	March 30, 2015	1,617,363.36
"P-7.4"	November 3, 2015	1,177,360.71
TOTAL		₱5,847,417.35

Petitioner paid the amounts indicated in the aforesaid billings as evinced by copies of the Official Receipt issued by the BOC dated November 25, 2016.[11] Petitioner paid said amounts under protest per its five (5) Letters to the BOC all dated November 25, 2016.[12]

On November 23, 2018, petitioner filed with respondent its claim for refund or tax credit of excise taxes paid under protest on November 25, 2016 amounting to ₱5,847,417.35, pertaining to its importations of cigarettes and alcohol products.[13]

In view of the impending lapse of the two (2)-year prescriptive period, petitioner filed the Petition for Review on November 26, 2018.[14]

PROCEEDINGS BEFORE THE COURT

Summons dated December 19, 2018 was issued to respondent on December 21, 2018.[15]

Within the extended period,[16] respondent filed an Answer on March 15, 2019, with the following Special and Affirmative Defenses, *viz.*:

1. Petitioner is not entitled to a refund; petitioner is not exempt from the payment of excise tax as Section 13 of PD No. 1590 had already been expressly repealed by Republic Act (RA) No. 9334;

[11] Exhibits "P-8", "P-8.1", "P-8.2", "P-8.3", "P-8.4"; CTA Docket Vol. II, pp. 1410-1419.
[12] Exhibits "P-9", "P-9.1", "P-9.2", "P-9.3", "P-9.4"; CTA Docket Vol. II, pp. 1420-1424.
[13] Exhibit "P-2"; Docket Vol. II, pp. 1292-1302.
[14] Docket Vol. I, pp. 10-25.
[15] Docket Vol. I, p. 135.
[16] Resolution dated March 12, 2019 granting respondent's Motion for Additional Time to File Answer filed on March 5, 2019 thereby allowing respondent until March 21, 2019 within which to file Answer (Docket Vol. I, p. 154).

2. The judicial claim for refund should be dismissed on the ground of non-compliance with a condition precedent considering that the administrative claim for refund was filed on November 23, 2018 and the Petition for Review was filed on November 26, 2018; claim for refund is subject to administrative investigation/examination by respondent; the BIR must be given the opportunity to ascertain the veracity and validity of the claim as this is the substance of the doctrine of exhaustion of administrative remedies; and,

3. Claims for refund are construed strictly against the taxpayer and in favor of the government.

Petitioner's "Pre-Trial Brief" and "Respondent's Pre-Trial Brief" were both filed on June 3, 2019.[17] Pre-Trial Conference was held on June 6, 2019.[18]

The parties' Joint Stipulation of Facts and Issues, filed on June 21, 2019,[19] was approved in the Resolution dated July 8, 2019.[20] In the same Resolution, the pre-trial was deemed terminated. This Court issued the Pre-Trial Order on July 29, 2019,[21] and subsequently, the Amended Pre-Trial Order on October 22, 2019.[22]

During trial, petitioner presented the following as its witnesses, namely: (i) Susan S. Black;[23] (ii) Cheryl V. Capinpin;[24] and, (iii) Ruel Ryan O. Julian.[25]

Petitioner's formally offered exhibits in its Formal Offer of Evidence[26] filed on January 18, 2021 were admitted in the Resolution dated March 16, 2022.[27] In the same Resolution, both parties were ordered to file their respective memoranda within thirty (30) days from notice in view of respondent's Manifestation filed on February 22,

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[17] Docket Vol. I, pp. 508-519; 854-858.
[18] Docket Vol. I, pp. 863-867.
[19] Docket Vol. II, pp. 872-878.
[20] Docket Vol. II, p. 881.
[21] Docket Vol. II, pp. 890-897.
[22] Docket Vol. II, pp. 1008-1026.
[23] August 20, 2019 Minutes of Hearing; Docket Vol. II, pp. 931-933; Order dated August 20, 2019; Docket Vol. II, p. 934.
[24] September 24, 2019 Minutes of Hearing; Docket Vol. II, pp. 938-941; Order dated September 24, 2019; Docket Vol. II, pp. 942-943; November 14, 2019 Minutes of Hearing; Docket Vol. II, pp. 1027-1028; Order dated November 14, 2019; Docket Vol. II, pp. 1029-1030.
[25] October 22, 2019 Minutes of Hearing; Docket Vol. II, pp. 998-999; Order dated October 22, 2019; Docket Vol. II, pp. 1000-1001.
[26] The title of the pleading is Formal Offer of Evidence (With Motion to Set Commissioner's Hearing) filed on January 18, 2021 (Docket Vol. II, pp. 1254-1291). The motion to set commissioner's hearing was granted in the Court's Order dated March 9, 2021 (Docket Vol. II, p. 1551)
[27] Docket Vol. II, pp. 1568-1571.

2021[28] stating that she will no longer be presenting any witness in this case.[29]

Petitioner filed its Memorandum through electronic mail and via courier on April 22, 2022 and April 26, 2022, respectively,[30] while respondent failed to file her memorandum as per Records Verification dated April 26, 2022.[31]

This case was submitted for decision in the Resolution dated May 12, 2022.[32]

ISSUE

Whether or not petitioner is entitled to the refund of excise taxes paid on November 25, 2016 amounting to ₱5,847,417.35 for its various importations made on August 26, 2016 of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.[33]

PETITIONER'S ARGUMENTS

Petitioner argues that its importation of commissary and catering supplies are exempt from all taxes pursuant to its franchise as RA No. 9334 did not repeal PD No. 1590. In view of its tax exemption and considering that: (i) it paid its corporate income tax and VAT liabilities for the subject period of importation; (ii) the imported articles, supplies, or materials were intended to be used in its transport and non-transport operations and other activities incidental thereto; and, (iii) the imported articles, supplies, or materials were not locally available on reasonable quantity, quality, or price, petitioner is entitled to recover the excise taxes, which it paid under protest.

RESPONDENT'S ARGUMENTS

Respondent asserts that (i) petitioner is not entitled to a refund; (ii) petitioner is not exempt from the payment of excise tax as Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334; (iii) the judicial claim for refund should be dismissed on the

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[28] Docket Vol. II, pp. 1547 to 1549.
[29] The Manifestation was noted in the Court's Order dated March 9, 2021; Docket Vol. II, p. 1551.
[30] Docket Vol. II, pp. 1572-1590, 1591-1607.
[31] Docket Vol. II, p. 1610.
[32] Docket Vol. II, p. 1612.
[33] JSFI, Stipulated Issue, Docket Vol. II, p. 875.

ground of non-compliance with a condition precedent; and, (iv) claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

Timeliness of the administrative and judicial claim for refund or tax credit certificate

Before delving into the merits of petitioner's claim for refund or tax credit certificate, the Court shall determine the timeliness of the filing of petitioner's administrative and judicial claims.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide for the period within which a claim for refund of internal revenue taxes which are erroneously, illegally or wrongfully collected must be filed. Section 204 pertains to administrative claims for refund while Section 229 applies to judicial claims for refund, *viz.:*

> "Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may –
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> x x x
>
> (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." *(Boldfacing supplied)*
>
> "Section 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, 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.

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> **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." *(Boldfacing supplied)*

Based on the aforequoted provisions, the claimant must **first file an administrative claim with the CIR before filing its judicial claim with the courts**. Both claims must, however, be filed within the two (2)-year reglementary period counted from the date when the tax was erroneously, wrongfully or illegally paid.

In the present case, petitioner paid under protest the excise taxes on its importations on November 25, 2016. Thus, petitioner had two (2) years from November 25, 2016, or until November 26, 2018 *(November 25, 2018, the supposed last day of the two-year period fell on a Sunday; hence, the next working day - November 26, 2018 is the deadline to file a claim for refund)* within which to file its administrative and judicial claims for refund. The filing of petitioner's administrative claim for refund on November 23, 2018 and the present Petition for Review on November 26, 2018 fell within the two (2)-year prescriptive period. The Court has accordingly acquired jurisdiction to take cognizance of the present case.

PD No. 1590 as basis of petitioner's exemption from excise tax

Petitioner argues that its importation of commissary and catering supplies are exempt from all taxes pursuant to its franchise. Respondent counter-argues that petitioner is not exempt from the payment of excise tax as Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334.

This issue is not of first impression as it had been settled as far back as the year 2014 in ***Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*** *(2014 PAL case),*[34] where it was declared that Section 13 of PD No. 1590 was not revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334. The same ruling was re-echoed in the year 2017 in ***Commissioner of Internal***

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[34] G.R. Nos. 212536-37, August 27, 2014.

Revenue and Commissioner of Customs vs. Philippine Airlines, Inc. *(2017 PAL case),*[35] the pertinent portion of which reads:

> "This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.
>
> In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.,* the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:
>
>> It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>>
>> **Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334**. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc [GR. No. 180066, July 7, 2009, 609 Phil. 695]:*
>>
>>> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
>>
>> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA en banc, borrowing from the same *Commissioner of Internal Revenue* case:
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>>> While it is true that Sec. 6 of RA 9334 as previously quoted states that 'the provisions of any special or general law to the contrary notwithstanding,' such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x

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[35] G.R. Nos. 215705-07, February 22, 2017.

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> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted 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 other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue.* In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. x x x

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL),* this Court, echoing the ruling in the abovecited case of *CIR v. PAL,* held that:

> In other words, **the franchise of PAL remains the governing law on its exemption from taxes.** Its payment of either basic corporate income tax or franchise tax - whichever is lower - shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, 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.

On July 1, 2005, Republic Act No. 9337 (RA *9337)* took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

> **SEC. 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**.

Thus, this Court held in the abovecited PAL consolidated cases:

> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions

> of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed."

Indubitably, notwithstanding the enactment and effectivity of RA No. 9334, amending Section 131 of the NIRC of 1997, petitioner's tax exemptions as provided in Section 13 of PD No. 1590 subsist.

The Court calls the attention of respondent's counsels, Atty. Sylvia R. Alma Jose and Atty. Marionn Phillbee M. Tejada, to be mindful of their professional responsibility of keeping themselves abreast of the latest laws and jurisprudence. Parenthetically, it is disturbing to note that respondent's counsels proffer arguments refuting petitioner's tax exemption when such issue has long been settled in the *2014 PAL case*. The pronouncement of the Supreme Court case in ***Spouses Williams v. Atty. Enriquez***,[36] should serve as a fitting reminder on what is expected of lawyers in their dealings with the Court and clients, *viz.*:

> "As pointed out by the Investigating Commissioner, Canon 5 of the Code of Professional Responsibility requires that **a lawyer be updated in the latest laws and jurisprudence. Indeed, when the law is so elementary, not to know it or to act as if one does not know it constitutes gross ignorance of the law.** xxx Implicit in a lawyer's mandate to protect a client's interest to the best of his/her ability and with utmost diligence is the duty **to keep abreast of the law and legal developments**, and participate in continuing legal education programs. Thus, in championing the interest of clients and defending cases, a lawyer must not only be guided by the strict standards imposed by the lawyer's oath, but should likewise **espouse legally sound arguments for clients, lest the latter's cause be dismissed on a technical ground. Ignorance encompasses both substantive and procedural laws.**" *(Citations omitted; Boldfacing supplied)*

Conditions to exempt petitioner from excise taxes on its importation of commissary and catering supplies

As elucidated in the *2014 PAL case* and *2017 PAL case*, petitioner remains exempt from taxes, duties, royalties, registration fees, licenses and other fees and charges, provided that petitioner pays corporate income tax as granted in its franchise agreement. In addition to the payment of the corporate income tax, Section 13(b)(2) of PD No. 1590 lays down other conditions that petitioner must comply

[36] A.C. No. 6353, February 27, 2006.

with to avail of the exemption on payment of excise taxes for its imported commissary and catering supplies.

Section 13 of PD No. 1590 reads:

> "SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] 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:
>
>> 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**[.]" (Boldfacing supplied)

Thus, in order for petitioner to be exempt from excise tax on its importations of tobacco and alcohol products, it must show compliance with the following conditions:

1. Petitioner paid the corporate income tax;

2. Petitioner imported the commissary and catering supplies for use in its transport/non-transport operations and other incidental activities; and,

3. The commissary and catering supplies were not locally available in reasonable quantity, quality or price.[37]

A scrutiny of the records discloses that petitioner filed its Annual Income Tax Return (ITR) for taxable year (TY) 2014 on April 15, 2015,[38] and its amended ITR for the same period on August 4, 2015.[39] The original and amended ITRs both show that petitioner had an Income Tax Due of ₱186,408,979.00 for the period.[40] After applying petitioner's tax credits against its ₱186,408,979.00 Income Tax Due, petitioner still had Tax Overpayment in the amount of ₱707,400,852.00 as shown in its amended ITR for TY 2014.[41] Considering petitioner's payment of its tax due for TY 2014, petitioner has clearly **fulfilled the first condition**.

Petitioner also proved that the imported supplies were intended for its operations. The imported articles were described as *"Inflight Materials"* under the column "Description of Articles" in the various Informal Import Declaration and Entry.[42] The various BIR Form No. 1918 known as the Authority to Release Imported Goods (ATRIG) issued by the BIR[43] also disclose that the articles will be used exclusively for *"International Inflight Consumption Only."* Thus, petitioner **complied with the second condition** for exemption from excise tax.

To prove its compliance with the third condition, petitioner presented as witness, Ms. Cheryl V. Capinpin, its Manager of In-flight and Commissary Materials, Purchasing Division. Her testimony was offered to prove, among others, that the imported alcohol and tobacco

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[37] Commissioner of Internal Revenue vs. Philippines Airlines, Inc., G.R. Nos. 212536-37, August 27, 2014; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9913, July 29, 2021.
[38] Exhibit "P-11a"; Docket Vol. II, p. 1434.
[39] Exhibit "P-11"; Docket Vol. II, p. 1426.
[40] Exhibit "P-11" and "P-11a"; Docket Vol. II, pp. 1426 and 1434.
[41] Exhibit "P-11"; Docket Vol. II, p. 1426.
[42] Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24"; Docket Vol. II, pp. 1305-1353.
[43] Authority to Release Imported Goods; Exhibits "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24"; Docket Vol. II, pp. 1380-1404.

products were not locally available in reasonable quantity and price.[44] Petitioner also offered in evidence the following documentary exhibits:

Document	Purpose of Offer
Absolute Sales Price List[45]	To prove that local prices of alcohol products are higher than prices of imported alcohol products during the importation period.
Future Trade Price List[46]	-do-
BIR Revenue Memorandum Circular No. 90-2012[47]	To prove that local prices set by the BIR for cigarettes and alcohol products are higher than prices of imported cigarettes and alcohol during the importation period.
Various Invoices issued to petitioner by its suppliers[48]	To prove that the costs of imported articles are cheaper than those purchased locally.
Judicial Affidavit of Ms. Cheryl V. Capinpin dated 31 May 2019[49]	Offered to prove, among others, that the subject cigarettes and alcohol products are not locally available in reasonable quantity and price, thereby exempting it from the payment of excise taxes under PD No. 1590
Supplemental Judicial Affidavit of Ms. Cheryl V. Capinpin dated 16 October 2019[50]	Offered to prove, among others, that the subject cigarettes and alcohol products are not locally available in reasonable quantity and price, thereby exempting it from the payment of excise taxes under PD No. 1590

The Court, however, finds the foregoing evidence **insufficient to prove the third condition**.

During the hearing held on November 14, 2019, Ms. Capinpin revealed that their conclusion relative to the price comparison of local market price of alcohol products and the price of imported products is merely based on the information gathered from the two (2) suppliers, *viz.:*

> "JUSTICE MANAHAN:
> So, for the understanding of this Court what you are trying to compare are the prices of this alcohol product and tobacco

[44] Submission filed by petitioner on June 3, 2019; Docket Vol. I, pp. 526-528; Submission filed by petitioner on October 17, 2019; Docket Vol. II, pp. 957-959.
[45] Exhibit "P-22"; Docket Vol. II, pp. 1482-1484.
[46] Exhibit "P-23"; Docket Vol. II, pp. 1485-1490.
[47] Exhibit "P-24"; Docket Vol. II, pp. 1491-1511.
[48] Exhibits "P-27", "P-28", "P-29", "P-30", "P-30-a", "P-31", "P-32", "P-32-a", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-42-a", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-50-a", "P-50b"; Docket Vol. II, pp. 1515 to 1543.
[49] Exhibit "P-52"; Docket Vol. I, pp. 529-540.
[50] Exhibit "P-53"; Docket Vol. II, pp. 960-965.

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products appearing in the RMC, which is the net retail price and the price provided by your other suppliers, which already reflect whatever incidental expenses that are factored in by anybody selling including the profit margin? So, **you are comparing the pricing of the RMC issued by the BIR, which turned as net retail price with your suppliers abroad, with the imported price**?

MS. CAPINPIN:
A. **Yes, your Honors. Because that is the acquisition cost that we pay based on the product value as per the sales invoice**.

ATTY. TEJADA:
No re-cross, your Honors.

JUSTICE FABON-VICTORINO:
Ms. Witness, the basis of your comparison, it appears to me, that the RMC pricing issued by the BIR and other suppliers (Paused) By other suppliers, what do you mean by other suppliers?

MS. CAPINPIN:
A: Other suppliers to me, your Honors, mean other supplies available, who offer the same products in the local market.

JUSTICE FABON-VICTORINO:
What are these suppliers?

MS. CAPINPIN:
A: **There is a table of comparison, your Honors. We have suppliers for the alcohol beverages**, but *(Interrupted)*

JUSTICE FABON-VICTORINO:
Yes. We shall forget this product. What I am after is who or what are these suppliers? Who are these suppliers you are telling us, which is supposed to be the basis of your price comparison.

MS. CAPINPIN:
A: These are the suppliers *(Interrupted)*

JUSTICE FABON-VICTORINO:
Did you actually conduct a survey from the suppliers, to come up with this conclusion?

MS. CAPINPIN:
A: Yes, your Honors we asked *(Interrupted)*

JUSTICE FABON-VICTORINO:
Yes. So, who are these suppliers?

MS. CAPINPIN:
A: These are the suppliers for the alcohol beverages. They are the suppliers of alcohol beverages.

JUSTICE FABON-VICTORINO:
Yes. Can you name them?

MS. CAPINPIN:
A: **One of them is Future Trade International**.

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JUSTICE FABON-VICTORINO:
Future Trade International.

MS. CAPINPIN:
A: Yes, your Honors.

JUSTICE FABON-VICTORINO:
This has store in the Philippines?

MS. CAPINPIN:
A: Yes, your Honors.

JUSTICE FABON-VICTORINO:
And another?

MS. CAPINPIN:
A: **Absolute Sales Corporation**, your Honors.

JUSTICE FABON-VICTORINO:
Absolute?

MS. CAPINPIN:
A: Absolute Sales.

JUSTICE FABON-VICTORINO:
Alright. What else?

MS. CAPINPIN:
A: **In this presentation, your Honors, we basically have two suppliers for the alcohol beverages**.

JUSTICE FABON-VICTORINO:
So, only two?

MS. CAPINPIN:
A: Only two, your Honors.

JUSTICE FABON-VICTORINO:
Only two. You are telling us that with only two suppliers, you can already reach a conclusion that this is supposed to be the prevailing price in the market.

MS. CAPINPIN:
A: Your Honors, based on previous purchases that we did, we also asked from local suppliers. But for this particular case, when we asked for the retail prices from the local source, they did not provide us with the produce price.

JUSTICE FABON-VICTORINO:
So, in short, **you based your conclusion from the information gathered from merely two suppliers.**

MS. CAPINPIN:
A: For this particular, **yes**."[51] *(Boldfacing supplied)*

Petitioner's comparison of price based on the invoice provided by its suppliers *vis-à-vis* the pricing indicated in Revenue Memorandum Circular (RMC) No. 90-2012 is misplaced. Suffice it to say that RMC 90-2012 was based on the **2010 price survey** of products conducted by the BIR, and that the figures reflected therein cannot be considered as valid basis for a price comparison of products in the year 2014.

Also, the Court cannot simply rely on the product price lists from two (2) dealers *(i.e., Absolute Sales Corporation, and Future Trade International),* and the testimony of petitioner's witness which was merely based thereon. The price lists from the said dealers can hardly represent the prevailing market price of the local products in 2014 for the entire country *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same year.

In the earlier case of ***Philippine Airlines, Inc. vs. Commissioner of Internal Revenue***,[52] this Court in Division declared the following:

> "The Court, however, cannot simply rely on the product price lists from two (2) dealers, and the testimonies merely based thereon. It is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country.
>
> With the lack of corroborating evidence to prove that the price lists of Absolute Sales Corporation and Future Trade International represent the local market prices for the subject alcohol products in 2013 *vis-a-vis* the totality of local suppliers who are engaged in selling similar products in the same year, this Court cannot conclude that petitioner's comparison of the prices of its imported alcohol products with that of the said dealers is deemed sufficient. Likewise, 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 2013 with that of the said price survey. Simply put, with the evidence presented by petitioner, the Court cannot determine, with certainty, whether the cost of importing alcohol is lower than purchasing them locally."

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[51] November 14, 2019 Transcript of Stenographic Notes, pp. 13-16.
[52] CTA Case No. 9913, July 29, 2021.

As regards petitioner's importation of tobacco products, petitioner failed to present the price lists of tobacco products which indicate the products' local market prices. The testimony of Ms. Capinpin, standing alone, and *sans* any supporting evidence through which the Court can verify or ascertain whether the imported tobacco products were indeed not locally available in reasonable quantity, quality or price, is insufficient to prove petitioner's compliance with the third condition.

In sum, petitioner failed to prove by preponderant evidence that the imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation. In view of petitioner's failure to fulfil all the conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590, the Court finds no basis to grant its present claim for refund or issuance of tax credit certificate.

Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the party claiming the same. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[53] Petitioner's failure to discharge this burden is fatal to its cause.

WHEREFORE, premises considered, the present Petition for Review filed on November 26, 2018 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

[53] Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue, G.R. No. 154028. July 29, 2005.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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.

ROMAN G. DEL ROSARIO
Presiding Justice