REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AIR PHILIPPINES CORPORATION (APC), Petitioner,	CTA Case Nos. 7872, 7883, 7922, 7929 & 7952
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: APR 01 2016 2:30 p.m.

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DECISION

***Facbon-Victorino, J.*:**

The present case is a consolidation of five (5) Petitions for Review filed by Air Philippines Corporation(APC) for the refund of the aggregate amount of ₱73,769,349.40, allegedly representing specific taxes paid under protest, on its importation of Jet A-1 aviation fuel for the period covering January to July 2007, broken down as follows:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
7872	January 18, 2007[1]	₱ 11,763,161.00
7883	February 12, 2007[2]	₱ 11,812,721.00
7922	March 14, 2007[3]	₱ 11,799,700.00
7929	April 10, 2007[4]	₱ 17,683,884.00
7952	July 14, 2007[5]	₱ 20,709,883.40
	TOTAL	**₱73,769,349.40**

[1] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[2] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[3] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[4] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[5] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.

Petitioner Air Philippines Corporation is a domestic corporation with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[6] It is engaged in the business of air transportation of passengers and cargo to and from points within and outside the Philippines, pursuant to Republic Act (RA) No. 8339[7], as amended by RA No. 9215[8].

On the other hand, respondent Commissioner of Internal Revenue (CIR) is vested with the authority to assess and collect all national internal revenue taxes, fees, and charges, including excise tax on Jet A-1 aviation fuel imposed under Section 148(g) of the National Internal Revenue Code (NIRC), as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC), is delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful charges from imported articles, including excise tax of ₱3.67 per liter on imported Jet A-1 fuel imposed under Section 148(g) of the NIRC of 1997. He holds office at the Port Area, Manila.

Pursuant to its franchise, specifically, Section 11 of RA No. 8339, as amended, petitioner is entitled to the same tax-exemption privileges granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[9], it reads, thus:

> "SEC. 11. *Tax Provisions*. – The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.

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[6]Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7872, docket, p. 338; Par. 1, Facts, JSFI, CTA Case No. 7883, docket, p. 310; Par. 1, Stipulation of Facts, JSFI, CTA Case No. 7922, docket, p. 387; Par. 1, Stipulation of Facts, JSFI, CTA Case No. 7929, docket, p. 177; Par. 1, Stipulation of Facts, JSFI, CTA Case No. 7952, docket, p. 185.

[7]An Act Granting Air Philippines Corporation (Air Philippines), a Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services.

[8] An Act Amending Republic Act No. 8339, Entitled "An Act Granting Air Philippines Corporation (Air Philippines), a Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services".

[9] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and other Countries.

> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.**
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation." *(Emphasis supplied)*

Under Section 13 of PD No. 1590, PAL has the option to pay the lower of (a) basic corporate income tax of thirty percent (30%) based on its net taxable income or (b) franchise tax of two percent (2%) based on its gross revenues, in lieu of all other taxes, duties and fees, thus:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or 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:

(1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies or materials; provided, that such articles or supplies or materials are imposed for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price;

xxx xxx xxx"

On November 1, 1985, Letter of Instructions (LOI) No. 1483 withdrew PAL's tax exemption privilege **with respect**

to its purchase of domestic petroleum products for use in its domestic operations.

On January 29, 1999, BIR Ruling No. 013-99 was issued confirming PAL's stance that petroleum products purchased or imported by it from abroad for use in its domestic operations are not subject to tax, to wit:

> "In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations."

The foregoing BIR Ruling was confirmed by then Secretary of Finance Edgardo B. Espiritu in his Letter-Decision dated September 8, 1999, in this wise:

> "I confirm BIR Ruling No. 013-99, dated January 29, 1999, which confirms PAL's exemption from specific and ad valorem taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights."

On October 23, 2000, BIR Ruling No. 048-2000 was issued affirming petitioner's position that it shall be exempt from all taxes imposed by the Tax Code on its importation of petroleum products. The pertinent portion of the said BIR Ruling reads:

> "xxx (O)n June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a consideration, the dispositive portion of which states:
>
> > 'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of

> petroleum products from abroad for use in its domestic operations, is hereby reinstated.
>
> In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.'
>
> On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations and purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.
>
> In reply, please be informed that **pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL) and the letter-decision dated June 28, 2000 of the Secretary of Finance**, pertinent portions of which are heretofore quoted, **APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products** which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations." *(Emphasis supplied)*

However, on January 29, 2003, respondent issued BIR Ruling No. 001-2003 addressed to petitioner, Philippine Airlines, Cebu Air, Inc., and Pacific Airways Corporation stating that their importation and purchases of petroleum products from abroad would no longer be exempt from all taxes imposed by the Tax Code, it appearing that aviation gas, fuel and oil use in domestic operation were locally available in reasonable quantity, quality and price as certified to by the Department of Energy on December 20, 2002. The relevant portion of the BIR Ruling No. 001-2003 reads as follows:

> "**In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this**

Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. **Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.**

This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter." *(Emphasis supplied)*

On account of the foregoing BIR Ruling, respondent CIR, acting through respondent COC, started to assess petitioner of specific taxes on its importations of Jet A-1 fuel used for its domestic operations.

From January to July 2007, petitioner imported Jet A-1 fuel for its domestic operations and paid under protest specific taxes assessed by the Collector of Customs of the Port of Batangas, Batangas City, the details of which are as follows:

Date of Importation	Date of Payment under protest	Amount Paid	Official Receipt No.
January 18, 2007[10]	February 16, 2007	₱11,763,161.00	Equitable PCIB OR No. 181911C[11]
February 12, 2007[12]	March 16, 2007	₱11,812,721.00	Equitable PCIB OR No. 182294C[13]
March 14, 2007[14]	April 18, 2007	₱11,799,700.00	Equitable PCIB OR No. 240153C[15]
April 10, 2007[16]	May 16, 2007	₱17,683,884.00	Equitable PCIB OR No. 240439C[17]
July 14, 2007[18]	July 31, 2007	₱20,709,883.40	Equitable PCIB OR

[10] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[11] Exhibit "I" (CTA Case No. 7872), docket, p. 855.
[12] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[13] Exhibit "I" (CTA Case No. 7883), docket, p. 1360.
[14] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[15] Exhibit "I" (CTA Case No. 7922), docket, p. 856.
[16] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[17] Exhibit "I" (CTA Case No. 7929), docket, p. 857.
[18] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.

			No. 241423C[19]

Subsequently, petitioner filed with the District Collector of Customs of the Port of Batangas formal written protests for the refund of the specific taxes paid under protest on the following dates:

CTA Case No.	Date of Importation	Date of Payment Under Protest	Date of Filing of Protest with COC
7872	January 18, 2007[20]	February 16, 2007[21]	February 21, 2007[22]
7883	February 12, 2007[23]	March 16, 2007[24]	March 30, 2007[25]
7922	March 14, 2007[26]	April 18, 2007[27]	April 27, 2007[28]
7929	April 10, 2007[29]	May 16, 2007[30]	May 30, 2007[31]
7952	July 14, 2007[32]	July 31, 2007[33]	August 31, 2007[34]

Due to respondent COC's failure to act on the said protests and in order to toll the running of the two-year prescriptive period within which to file a claim for refund under Section 204(C) of the NIRC of 1997, as amended, petitioner filed written claims for refund with respondent CIR for the specific taxes paid, on the following dates:

CTA Case No.	Date of Importation	Date of Filing Written Claim for Refund with CIR	Amount Claimed
7872	January 18, 2007[35]	February 2, 2009[36]	₱11,763,161.00
7883	February 12, 2007[37]	March 4, 2009[38]	₱11,812,721.00
7922	March 14, 2007[39]	April 2, 2009[40]	₱11,799,700.00
7929	April 10, 2007[41]	April27, 2009[42]	₱17,683,884.00
7952	July 14, 2007[43]	July 3, 2009[44]	₱20,709,883.40

[19]Exhibit "I" (CTA Case No. 7922), docket, p. 858.
[20] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[21]Exhibit "I" (CTA Case No. 7872), docket, p. 855.
[22] Exhibit "K" (CTA Case No. 7872), docket, pp. 868-877.
[23] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[24]Exhibit "I" (CTA Case No. 7883), docket, p. 1360.
[25] Exhibit "K" (CTA Case No. 7883), docket, pp. 878-887.
[26] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[27]Exhibit "I" (CTA Case No. 7922), docket, p. 856.
[28] Exhibit "K" (CTA Case No. 7922), docket, pp. 900-909.
[29] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[30]Exhibit "I" (CTA Case No. 7929), docket, p. 857.
[31] Exhibit "K" (CTA Case No. 7929), docket, pp. 923-932.
[32] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.
[33]Exhibit "I" (CTA Case No. 7922), docket, p. 858.
[34] Exhibit "K" (CTA Case No. 7952), docket, pp. 933-943.
[35] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[36] Exhibit "L" (CTA Case No. 7872), docket, pp. 969-977.
[37] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[38] Exhibit "L" (CTA Case No. 7883), docket, pp. 978-987.
[39] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[40] Exhibit "L" (CTA Case No. 7922), docket, pp. 988-997.
[41] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[42] Exhibit "L" & "L-1"(CTA Case No. 7929), docket, pp. 1030-1039.
[43] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.
[44] Exhibit "L" (CTA Case No. 7952), docket, pp. 1040-1049.

For the same reasons, petitioner filed five separate Petitions for Review with the Court on the following dates:

CTA Case No.	Amount of Claim Involved	Date of Payment Under Protest	Date of Expiration of Two-Year Prescriptive Period	Date of Filing of Petition
7872	₱11,763,161.00	February 16, 2007[45]	February 16, 2009	February 13, 2009[46]
7883	₱11,812,721.00	March 16, 2007[47]	March 16, 2009	March 16, 2009[48]
7922	₱11,799,700.00	April 18, 2007[49]	April 18, 2009	April 17, 2009[50]
7929	₱7,683,884.00	May 16, 2007[51]	May 16, 2009	May 15, 2009[52]
7952	₱20,709,883.40	July 31, 2007[53]	July 31, 2009	July 24, 2009[54]

In her Answer[55] in CTA Case No. 7872, respondent CIR argues that petitioner is primarily impugning the validity of the DOE Certification dated December 20 2002 upon which BIR Ruling No.001-2003 was based. Hence, the action for refund is second only to its quest to declare the DOE Certification of December 20, 2002 invalid. That being the case, petitioner should have first exhausted administrative remedies available under Department Circular No. 2002-07-0042, issued pursuant to Section 5(K) of R.A. 7638, or the Department of Energy Act of 1992, but failed. Petitioner also failed to question BIR Ruling No. 001-2003 dated January 29, 2003 with the Office of the Secretary of Finance before resorting to this Court as required under Section 4 of the NIRC, as amended[56]. For the said lapses, this Petition for Review should be deemed prematurely filed, hence, should be dismissed.

Also in assailing the DOE Certification dated December 20, 2002, petitioner is actually asking the Court to override the factual finding of the DOE Secretary, the very evil which the rule on exhaustion of administrative remedies seeks to arrest.

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[45]Exhibit "I" (CTA Case No. 7872), docket, p. 855.
[46]Exhibit "DD" & "DD-1" (CTA Case No. 7872), docket, pp. 1-13.
[47]Exhibit "I" (CTA Case No. 7883), docket, p. 1360.
[48]Exhibit "DD" & "DD-1" (CTA Case No. 7883), docket, pp. 1-13.
[49]Exhibit "I" (CTA Case No. 7922), docket, p. 856.
[50]Exhibit "DD" & "DD-1" (CTA Case No. 7922), docket, pp. 1204-1213.
[51]Exhibit "I" (CTA Case No. 7929), docket, p. 857.
[52]Exhibit "DD" & "DD-1" (CTA Case No. 7929), docket, pp. 1214-1224.
[53]Exhibit "I" (CTA Case No. 7922), docket, p. 858.
[54]Exhibit "DD" & "DD-1" (CTA Case No. 7922), docket, pp. 1229-1239.
[55] CTA Case No. 7872, docket, pp. 82-88.
[56]Sec. 4.*Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner; subject to review by the Secretary of Finance. xxx

In her Answers in CTA Case Nos. 7883[57], 7922[58], 7929[59] and 7952[60], respondent CIR reiterates her stance. In addition thereto, she claims that the amounts of ₱11,812,721.00[61], ₱11,799,700.00[62], ₱17,683,884.00 and ₱60,166.00[63], and ₱20,709,883.40[64], allegedly paid under protest by petitioner on March 16, 2007, April 18, 2007, May 16, 2007, June 7, 2007, and July 31, 2007, respectively, are not properly documented. Further, petitioner who must first establish its right or entitlement to the refund sought as failure to discharge this burden is fatal to its claim. Petitioner must likewise show compliance with the prescriptive period for claiming tax refund/credit under Sections 204(C) and 229 of the NIRC of 1997.

In his Answer[65] in CTA Case No. 7872 filed on April 2, 2009, respondent COC raises essentially the same grounds as his co-respondent CIR for the denial of petition. He also points out that the issuance of BIR Ruling No. 001-2003 did not alter or amend the franchise of petitioner as it merely stated the two conditions that must concur to qualify for tax exemption set forth in Section 13(2) of PD 1590, to wit:

1. the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and

2. in the case of importations that they are <u>not locally available</u> in reasonable quantity, quality, or price.

He further claims that petitioner was unable to show that the amount of ₱11,763,161.00 as specific tax on the importation of 3,213,159 liters of Jet A-1 on February 16, 2007 were erroneously or illegally collected or that it was properly documented in accordance with Section 229 of the

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[57] CTA Case No. 7883, docket, pp. 71-76.
[58] CTA Case No. 7922, docket, pp. 89-94.
[59] CTA Case No. 7929, docket, pp. 108-114.
[60] CTA Case No. 7952, docket, pp. 122-128.
[61] CTA Case No. 7883, Par. 5, Special and Affirmative Defenses, Answer, docket, p. 74.
[62] CTA Case No. 7922, Par. 5, Special and Affirmative Defenses, Answer, docket, p. 92.
[63] CTA Case No. 7929, Par. 5, Special and Affirmative Defenses, Answer, docket, p. 111.
[64] CTA Case No. 7952, Par. 5, Special and Affirmative Defenses, Answer, docket, p. 125.
[65] CTA Case No. 7872, docket, pp. 90-97.

NIRC, as amended. Above all, the presumption that taxes paid and collected are in accordance with law also bars the refund prayed for.

On the other hand, respondent COC in his Answers in CTA Case Nos. 7883[66] and 7929[67] cites lack of cause of action on the part of petitioner as ground for their denial. While the petitioner claimed that the cases are for refund, they are virtually actions assailing the validity of BIR Ruling No. 001-2003. Further, the BOC was merely a collection agent of the BIR by virtue of the pertinent endorsement letters. Moreover, the BOC has no jurisdiction over petitioner's protests lodged with the Collector of Customs of the Port of Batangas.

Respondent COC sees BIR Ruling No. 001-2003 as valid as it did not alter or amend petitioner's franchise. It simply lays down the parameters for the exemption from taxes set forth in Section 13 of PD No. 1590, as amended by Letter of Instruction No. 1483.

Moreover, the Certification of December 20, 2002, stating that aviation gas, fuel and oil are locally available in reasonable quantity, quality and price, is presumed to have been regularly issued by the DOE. And by reason of such Certification, the second condition for petitioner's exemption from taxes on its importation of Jet A-1 fuel appears to be wanting. In any event, the CTA has no jurisdiction to pass upon the validity of the said Certification. The CTA is not the proper forum to assail the administrative finding of the DOE.

Also due to petitioner's failure to question the BIR Ruling before the Secretary of Finance within thirty (30) days from receipt thereof pursuant to Revenue Memorandum Circular No. 44-2001, the said ruling became final depriving the CTA of competence to review it via the present petitions.

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[66]CTA Case No. 7883, docket, pp. 102-112.
[67] CTA Case No. 7929, docket, pp. 128-137.

In his separate Answer[68] in CTA Case No. 7922, respondent COC merely cites the same ground to deny the petition.

The same is true in his Answer[69] in CTA Case No. 7952. He however adds that contrary to petitioner's claim, it is not the Air Transportation Office (ATO) but the Energy Regulatory Board, an office under the Department of Energy that has authority to determine the availability or non-availability of aviation fuel in reasonable quantity, quality or price.

After the Pre-Trial Conferences separately conducted in the five cases, the parties filed their Joint Stipulations of Facts and Issues for the said cases which were eventually consolidated at the instance of petitioner in the Resolutions dated July 19, 2010[70] and August 12, 2010[71].

Trial ensued during which petitioner presented as witnesses (1) Marides C. Canillo – its Financial Planning and Analysis Manager, (2) Mr. Edwin J. Segundo – its Supervisor of the Fuel Department, (3) Atty. Jonathan Andrew D. Lim – its Senior Legal Counsel, (4) Independent Certified Public Accountant (ICPA) Myra Celeste O. Dabalos, (5) Atty. Antero Jose M. Caganda – Senior Partner at the Zambrano and Gruba Law Offices; (6) Jennifer I. Sedigo – its Financial Reporting Manager of Accounting, (7) Expert witness Mario V. Tiaoqui – Former Secretary of the DOE, and (8) Atty. John Voltaire A. Almeda – Legal Counsel of its Legal Department.

Witness **Marides C. Canillo**, by way of a Judicial Affidavit testified that as the Financial Planning and Analysis Manager of petitioner, she prepares, reviews and analyzes the financial reports and statements, annual budget, revenues, expenses and tax liabilities of petitioner to various government and regulatory bodies, including the filing of petitioner's various income tax returns with the BIR. For the calendar year 2007, petitioner paid the minimum corporate

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[68] CTA Case No. 7922, docket, pp. 99-107.
[69] CTA Case No. 7952, docket, pp. 135-149.
[70] CTA Case No. 7883, docket, pp. 366-367.
[71] CTA Case No. 7872, docket, pp. 393-394.

income tax of ₱3,450,937.93 as indicated in Item 25 of its 2007 Annual Income Tax Return filed with the BIR.

Witness **Edwin J. Segundo** declared in his Judicial Affidavit that as Supervisor of petitioner's Fuel Department, he coordinates with the suppliers of Jet A-1 fuel on petitioner's fuel requirements for its operation, schedule of fueling of aircraft. He also validates and recommends payment of billings and keeps all documents covering petitioner's procurement of aviation fuel either through importation or local purchases.

He further declared that petitioner imported several liters of Jet A-1 aviation fuel on different dates, which arrived at the Port of Pinamucan, Batangas City. For such importations, petitioner paid under protest the assessed excise taxes. Thereafter, petitioner timely filed its protest letters with the District Collector of Customs and written claims for refund with respondent CIR before filing Petitions for Review with the CTA. The cost comparison of imported fuel imported against fuel purchase in the domestic market for the months of January to July of 2007 made by petitioner revealed that the DOE Certification dated December 20, 2002 saying that aviation fuel for use in domestic operation of domestic airline companies is locally available for a reasonable price is erroneous.

Atty. Jonathan Andrew D. Lim, corroborated the testimonies of the two foregoing witnesses[72] adding that as Senior Legal Counsel of petitioner's Legal Department, he believes that petitioner is exempt from the payment of excise tax on its importation of Jet A-1 fuel on the following grounds, to wit, (1) by virtue of Section 15, RA No. 8399, in relation to Section 13 of PD No. 1590, (2) DOE Certification of December 20, 2002 is incorrect, (3) the exemptions granted under a legislative franchise cannot be revoked by a mere BIR ruling and, (4) an Administrative Ruling is merely advisory, hence, not conclusive.

Further, he claimed that petitioner never requested for the 2003 BIR Ruling neither was it notified about this tax

[72] Exhibit "CCC".

burden prior to its promulgation by the BIR. He clarified however that the 2003 BIR Ruling was conditional and the tax burden shall be imposed only if there is locally available aviation fuel in reasonable quantity, quality and price. To counter the BIR Ruling, he identified several Certifications issued by the Air Transportation Office (now Civil Aviation Authority of the Philippines) that Jet A-1 fuel is not locally available in reasonable quantity, quality and price.

In her Judicial Affidavit, **ICPA Myra Celeste O. Dabalos** stated that she examined the documents and schedules submitted to her by petitioner to determine whether Jet A-1 fuel was locally available at a reasonable price from the period January to July 2007. Her verification/comparison of cost of importation of Jet A-1 fuel per liter for the period January to July 2007 showed that the cost of importation was consistently lower than the cost when locally purchase from Petron Corporation or Pilipinas Shell Petroleum Corporation during the same period. She concluded that the aviation Jet A-1 fuel for the period January to July 2007 was not locally available at reasonable price based on the price quotations of Shell and Petron.

For his part, **Attorney Antero M. Caganda**, through his Judicial Affidavit[73] admitted that petitioner was a client of Zambrano and Gruba Law Offices where he was a Senior Partner. He personally supervised the handling of the present case. In relation thereto, he wrote a letter[74] to the DOE requesting for the breakdown of Jet A-1 fuel importation data for the years 2001 to 2010 to which the DOE sent a letter reply[75] dated June 6, 2011 containing a table report on the importation of airline companies of Jet A-1 fuel for the years 2001 to 2010.

Witness **Jennifer I. Sedigo** testified[76] that as petitioner's Financial Reporting Manager of Accounting she prepares and analyzes the financial reports, financial statements, revenues, expenses and tax liabilities of petitioner to various government and regulatory bodies, such as the BIR, including the filing of petitioner's various

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[73] Exhibit "OOO".
[74] Exhibit "MMM".
[75] Exhibit "NNN".
[76] Exhibit "SSS".

tax returns. Allegedly, petitioner paid its annual income tax for taxable year 2007.

Petitioner likewise presented as expert witness, Former Secretary of DOE **Mario V. Tiaoqui,** who heavily leaned on his more than 30 years in the petroleum industry claiming that he had the knowledge, experience and expertise on matters concerning the petroleum industry. According to him, local supply and local domestic refinery production had been considered by the DOE and oil companies as one and the same, thus, any imported product was deemed different from locally available supply or one that had been processed and produced in the country by local refineries. The phrase "not locally available" under Section 13 of PD No. 1590 would refer to that which was not refined or processed in the Philippines.

The witness confirmed that no written or specific definition of local available supply exists and that total supply is composed of local supply plus imported fuel and once imported, the aviation fuel is deemed available to the consumers.

The witness also elaborated that despite the Oil Deregulation Law, the DOE is still in the best position to certify whether there is enough supply of aviation fuel in the country as it monitors the supply and demand of petroleum products. Any importation of Jet A-1 fuel by any airline company is for its own use and not for sale to the public.

Petitioner's last witness **Atty. John Voltaire A. Almeda** testified[77] that the DOE, through its then Secretary Raphael P.M. Lotilla, had recognized the authority of the ATO on matters relating to importation of aviation fuel for domestic operations *vis-à-vis* a claim for tax and duty exemption.

After petitioner rested or on February 10, 2014,[78] it filed an Urgent Omnibus Motion (To Re-Open Proceedings,

[77] Exhibit YYY".
[78] Docket, pp. 1456-1464.

Re-Mark Exhibits and File Supplemental Offer) which the Court granted in its Resolution[79] dated May 20, 2014.

On April 4, 2014, petitioner filed a Manifestation and Request for Admission[80] of the February 27, 2014 Decision of the Regional Trial Court (RTC) of Pasay City in Civil Case No. R-PSY-10-03889-CV, entitled *Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*. In her Comment[81], respondent CIR admitted the existence of the Decision but not the correctness of its contents, relevancy, materiality and probative value. The parties' submissions were noted by the Court in its Resolution[82]of June 19, 2014.

In separate Resolutions, the Court admitted Exhibits "ZZZ"[83] and "CCC" and "CCC-1"[84] separately offered in evidence by petitioner on September 1, 2014 and June 11, 2014, respectively.

Respondent CIR did not present any evidence[85] while respondent COC was deemed to have waived presentation of his own for failure of his counsel to appear, despite notice. Hence, on April 1, 2015, the consolidated cases were submitted for Decision.

STATEMENT OF ISSUES

The parties raised several issues in the five (5) Petitions for Review which can be summarized into two main issues, to wit:

1. WHETHER THE COURT HAS JURISDICTION OVER THE CONSOLIDATED CASES; and

2. WHETHER PETITIONER IS ENTITLED TO REFUND/CREDIT IN THE AGGREGATE AMOUT

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[79] Docket, pp. 1530-1531.
[80]Docket, pp. 1469-1472.
[81] Docket, pp. 1526-1527.
[82]Docket, pp. 1541-1542.
[83] Docket, pp. 1564-1565.
[84] Docket, pp. 1536-1539.
[85] Minutes of the Hearing, February 2, 2015, docket, p. 1569.

OF ₱73,769,349.40, ALLEGEDLY REPRESENTING SPECIFIC TAXES PAID UNDER PROTEST ON ITS IMPORTATION OF JET A-1 FUEL FOR ITS DOMESTIC FLIGHT OPERATIONS IN 2007.

PETITIONER'S ARGUMENTS

Petitioner contends that it is entitled to tax exemption under Section 11 of RA No. 8339, as amended, in relation to Section 13 of PD No. 1590, since it was able to satisfy the two conditions for availment of tax exemption on importation of aviation fuel for domestic operations, i.e., that the Jet A-1 fuel it imported on several occasions in 2007 was used in its own operations, and that it was not locally available in reasonable quality, quantity and price at the time of importation.

Moreover, BIR Ruling No. 001-2003 dated January 29, 2003 which revoked its exemption from specific tax on its importation of petroleum products for use in its domestic operations was erroneous and void as it was based on baseless DOE Certification. Besides, it was able to prove that there was no locally available aviation fuel in reasonable quantity, quality and price at the time the 2002 DOE Certification was issued and during the period the importations were made.

More importantly, it was able to establish, through sufficient and competent evidence, that its administrative and judicial claims for refund/tax credit were valid and proper.

RESPONDENT CIR'S ARGUMENTS

Respondent CIR, on the other hand, argues that the Court has no jurisdiction to determine the validity of either DOE Certification dated December 20, 2002 or BIR Ruling No. 001-2003. Petitioner's claims for refund are second only to its primary objective which is to nullify the two (2) issuances. Further, the petitions are also premature as they

were elevated to the CTA without petitioner exhausting available administrative remedies. And even assuming that the nullification would merely be a consequence of a tax refund, it should be considered a collateral attack on a presumably valid administrative issuance and should not be allowed.

Petitioner was also unable to prove that the imported aviation fuel was not locally available in reasonable quantity, quality and price during the covered period. According to respondent CIR reasonable price is not necessarily the lowest price, as long as it is reasonable both in the legal and economic sense.

RESPONDENT COC'S ARGUMENTS

In addition to the foregoing grounds, respondent COC claims that petitioner has no cause of action against him. The CTA also has no jurisdiction to pass upon the validity of the 2002 DOE Certification and the subject BIR Ruling.

Further, he clarifies that it is not the Air Transportation Office but the Energy Regulatory Board, an office under the Department of Energy, that determines whether there is sufficient supply of petroleum products available for local consumption.

Finally, petitioner is not entitled to a refund sought as it failed to show that the amounts it paid as specific taxes on the importation of Jet A-1 fuel were erroneously or illegally collected.

THE COURT'S RULING

It is imperative for the Court to first determine its competence to take cognizance of the five Petitions for Review before addressing petitioner's entitlement to refund/ tax credit sought.

Jurisdiction of the

Court of Tax Appeals

As a highly specialized Court, the CTA can only take cognizance of matters that are evidently within its jurisdiction[86] as conferred in Republic Act No. 1125, as amended by Republic Act No. 9282, which provides in part as follows:

> SEC. 7.*Jurisdiction.*– The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx*(Emphasis supplied)*

Clearly, the alleged inactions by respondent CIR on the formal claims for refund of internal revenue taxes, fees or other charges fall within the Court's authority.

Contrary to petitioner's theory, the CTA has the authority to rule on the validity of a particular administrative

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[86]*Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

rule or regulation as long as it is within its appellate jurisdiction as held by the Supreme Court in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*[87], in this wise:

> Evidently, *City of Manila* can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes British American Tobacco to the effect that **it is now within the power of the CTA**, through its power of certiorari, **to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based**.*(Emphasis supplied)*

The aboved legal precept was echoed in the case of *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[88], where the Final Arbiter ruled, thus:

> **We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals**. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>
> **Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court**, thus: xxx (*Emphasis supplied*)

[87] G.R. No. 210987, November 24, 2014.
[88] G.R. No. 198756, January 13, 2015.

Taking the foregoing into consideration, this Court has jurisdiction to rule on the validity of the assailed BIR Ruling No. 001-2003. And even *sans* this issue of the validity of the said BIR Ruling, the CTA has jurisdiction to determine the propriety of the present claims for refund/tax credit.

Timeliness of the filing of the Petitions for Review

Sections 204(C) and 229 of the NIRC of 1997, as amended, pertinently provides:

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

Thus, a claim for refund in the administrative and judicial levels must be lodged within two years from the payment of the tax. In other words, both the administrative claim with the CIR and the Petitions for Review before the Court must be filed within the two-year prescriptive period.

The dates of filing of petitioner's administrative and judicial claims for refund and the expiration of the two-year prescriptive period for filing the same, are summarized as follows:

CTA Case No.	Date of Payment of Specific Tax	Date of Expiration of the 2-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
7872	February 16, 2007	February 16, 2009	February 21, 2007[89]	February 13, 2009[90]
7883	March 16, 2007	March 16, 2009	March 30, 2007[91]	March 16, 2009[92]
7922	April 18, 2007	April 18, 2009	April 27, 2007[93]	April 17, 2009[94]
7929	May 16, 2007	May 16, 2009	May 30, 2007[95]	May 15, 2009[96]
7952	July 31, 2007	July 31, 2009	August 31, 2007[97]	July 24, 2009[98]

[89] Exhibit "K" (CTA Case No. 7872), docket, pp. 868-877; February 2, 2009 with the BIR.
[90] Exhibit "DD" & "DD-1" (CTA Case No. 7872), docket, pp. 1-13.
[91] Exhibit "K" (CTA Case No. 7883), docket, pp. 878-887; March 4, 2009 with the BIR.
[92] Exhibit "DD" & "DD-1" (CTA Case No. 7883), docket, pp. 1-13.
[93] Exhibit "K" (CTA Case No. 7922), docket, pp. 900-909; April 2, 2009 with the BIR.
[94] Exhibit "DD" & "DD-1" (CTA Case No. 7922), docket, pp. 1204-1213.
[95] Exhibit "K" (CTA Case No. 7929), docket, pp. 923-932, April 27, 2009 with the BIR.
[96] Exhibit "DD" & "DD-1" (CTA Case No. 7929), docket, pp. 1214-1224.
[97] Exhibit "K" (CTA Case No. 7952), docket, pp. 933-943; July 3, 2009 with the BIR.
[98] Exhibit "DD" & "DD-1" (CTA Case No. 7922), docket, pp. 1229-1239.

Evidently, petitioner's administrative and judicial claims for refund/tax credit were both seasonably filed.

Petitioner's Entitlement to the Tax Refund

Section 229 of the NIRC of 1997, as amended, provides that a taxpayer may recover any national internal revenue tax that has been erroneously paid or illegally collected, any penalty claimed to have been collected without authority, or any sum that has been excessively or in any manner wrongfully collected. In case of refund of erroneously paid or illegally collected taxes, the burden of proof to establish the factual basis of the claim for tax credit or refund lies with the claimant.[99] Moreover, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[100]

To determine whether the alleged taxes have been erroneously paid by petitioner, it must be ascertained first whether under PD No. 1590 it is exempt from specific tax on its importations of Jet A-1 fuel for domestic operations.

Petitioner's franchise, RA No. 8339, as amended by RA No. 9215, specifically Section 11 thereof provides that petitioner is entitled to the same tax-exemption privileges currently enjoyed by PAL under the latter's franchise, to wit:

> SEC. 11.*Tax Provisions*. – The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto***

[99]*Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997.
[100]*Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531,March 25, 2015.

> **part hereof and shall operate equally in favor of the grantee.**
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation. *(Emphasis supplied)*

On the other hand, Section 13 of PD No. 1590 (PAL's franchise) partly provides:

> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or 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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; xxx *(Emphasis supplied)*

Thus, for PAL to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all its importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

Thus, to be exempt from the payment of the subject excise taxes, petitioner must show that it has complied with the cited requisites.

First Requisite:
Basic Corporate Income Tax

or Franchise Tax must be paid

Evidence shows that petitioner filed its Annual Income Tax Return for calendar year 2007[101] on April 11, 2008, indicating payment of the appropriate tax. Hence, the first requisite is deemed satisfied.

Second Requisite:
Imported Jet A-1 fuel must be for Use in its Transport and Non-transport Operations

To prove the importations of Jet A-1 fuel, petitioner submitted its Bills of Lading[102], Commercial Invoices[103], and Import Entry and Internal Revenue Declarations[104]. As to whether such imported Jet A-1 was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner's Supervisor of its Fuel Department Edwin Segundo confirmed that petitioner imported the subject Jet A-1 fuels for use in its domestic flight operations as evidenced by the corresponding Authority to Release Imported Goods (ATRIG) issued thereto, to wit:

Date of importation	ATRIG No.	Statements found in the ATRIG
January 18, 2007	2000-00089434[105]	"please be informed that **according to the documents submitted by abovementioned importer**, <u>the shipment to be released at the Port of Batangas consisting of the above described articles, will be used exclusively for daily domestic flight operation</u>" *(Emphases supplied)*
February 12, 2007	2000-00089979[106]	"please be informed that **according to the**

[101]Exhibit "Q" (CTA Case Nos. 7872, 7883, 7922, & 7952), docket, pp. 1104-1127.
[102]Exhibits "M" (CTA Case No. 7872), "M" (CTA Case No. 7883), "M" (CTA Case No. 7922), "M" (CTA Case No. 7929) and "M" (CTA Case No. 7952), docket, pp. 1080-1084.
[103]Exhibits "N" (CTA Case No. 7872), "N" (CTA Case No. 7883), "N" (CTA Case No. 7922), "N" (CTA Case No. 7929) and "N" (CTA Case No. 7952), docket, pp. 1085-1093.
[104]Exhibits "I-1" (CTA Case No. 7872), "I-1" (CTA Case No. 7883), "I-1" (CTA Case No. 7922), "I-1" (CTA Case No. 7929) and "I-1" (CTA Case No. 7952), docket, pp. 859-863.
[105] Exhibit "J" (CTA Case No. 7872), docket, p. 864.

		documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, will be used exclusively for daily domestic flight operation"*(Emphases supplied)*
March 14, 2007	2000-00090825[107]	"please be informed that **according to the documents submitted by abovementioned importer**, the shipment to be released at the Port of Batangas consisting of the above described articles, will be used exclusively for Domestic flight operation"*(Emphases supplied)*
April 10, 2007	2000-00091612[108]	"please be informed that **according to the documents submitted by abovementioned importer**, the shipment to be released at the Port of Batangas consisting of the above described articles, will be used exclusively for domestic flight operation"*(Emphases supplied)*
July 14, 2007	2000-00094132[109]	"please be informed that **according to the documents submitted by abovementioned importer**, the shipment to be released at the Port of Batangas consisting of the above described articles, will be used exclusively for domestic flight" *(Emphases supplied)*

However, the information in the ATRIGs that the imported Jet A-1 fuel shall be used for petitioner's transport operations, came from petitioner itself, hence, self-serving.

[106] Exhibit "J" (CTA Case No. 7883), docket, p. 1375.
[107] Exhibit "J" (CTA Case No. 7922), docket, p. 865.
[108] Exhibit "J" (CTA Case No. 7929), docket, p. 866.
[109] Exhibit "J" (CTA Case No. 7952), docket, p. 867.

Standing alone and without any other evidence to substantiate the claim that the imported Jet A-1 fuel was actually used for its transport and non-transport operations, the said self-serving declaration is without any weight or probative value.

To be sure, the Court cannot simply adopt petitioner's assertion unsupported by any evidence that the imported Jet A-1 fuel were actually utilized for its transport and non-transport operations. A legal and valid conclusion cannot be made to rest on mere or bare allegations of the witnesses. In fine, petitioner failed to satisfy the second requisite.

Third Requisite:
The imported articles must not be locally available in reasonable quantity, quality or price

Petitioner must also establish that the imported Jet A-1 fuel at the time of importations was not locally available in reasonable quantity, quality or price. In these consolidated cases, it appears that both parties concede that the quality of Jet A-1 fuel is universally similar as there is no issue raised as to quality.

As to whether the imported Jet A-1 fuel was locally available in reasonable quantity at the time of importations, petitioner presented the following Bills of Lading covering the subject importations and the supporting ATO Certifications issued by the Air Transport Office through the Officer-in-Charge Manuel V. Villegas and its Assistant Secretary, Nilo C. Jatico:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved	Bills of Lading Number	Date of ATO Certifications
7872	January 18, 2007	₱11,763,161.00	52178[110]	January 25, 2007[111]
7883	February 12,	₱11,812,721.00	52658[112]	February 16, 2007[113]

[110] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[111] Exhibit "O" (CTA Case No. 7872), docket, p. 1094.
[112] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[113] Exhibit "O" (CTA Case No. 7883), docket, p. 1095.

	2007			
7922	March 14, 2007	₱11,799,700.00	53279[114]	March 20, 2007[115]
7929	April 10, 2007	₱17,683,884.00	53876[116]	April 17, 2007[117]
7952	July 14, 2007	₱20,709,883.40	507710-00000269[118]	July 17, 2007[119]

The ATO Certifications state that the imported Jet A-1 fuels under the afore-mentioned Bills of Lading were not locally available in reasonable quantity, quality and price and were necessary for or incidental to the operation of petitioner Air Philippines Corporation. The significant portion of the said ATO Certification reads as follows:

> "This is to certify that this office interposes no objection for the importation of Jet A-1 (aviation fuel) under B/L No. 52178 which are not locally available (in reasonable quantity, quality and price) and are necessary/incidental for the operation of Air Philippines."

Petitioner likewise presented the following Indorsements issued by Undersecretary Gaudencio A. Mendoza Jr. of the Legal/Revenue Operations Group of the Department of Finance, stating that the Certification issued by the ATO was deemed sufficient for purposes of the tax exemption:

CTA Case No.	Date of Importation	Bills of Lading Number	Date of 1st Indorsement
7872	January 18, 2007	52178[120]	February 12, 2007[121]
7883	February 12, 2007	52658[122]	March 1, 2007[123]
7922	March 14, 2007	53279[124]	March 27, 2007[125]
7929	April 10, 2007	53876[126]	April 25, 2007[127]
7952	July 14, 2007	507710-00000269[128]	July 24, 2007[129]

[114] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[115] Exhibit "O" (CTA Case No. 7922), docket, p. 1096.
[116] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[117] Exhibit "O" (CTA Case No. 7929), docket, p. 1097.
[118] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.
[119] Exhibit "O" (CTA Case No. 7952), docket, p. 1098.
[120] Exhibit "M" (CTA Case No. 7872), docket, p. 1080.
[121] Exhibit "P" (CTA Case No. 7872), docket, p. 1099.
[122] Exhibit "M" (CTA Case No. 7883), docket, p. 1081.
[123] Exhibit "P" (CTA Case No. 7883), docket, p. 1100.
[124] Exhibit "M" (CTA Case No. 7922), docket, p. 1082.
[125] Exhibit "O" (CTA Case No. 7922), docket, p. 1101.
[126] Exhibit "M" (CTA Case No. 7929), docket, p. 1083.
[127] Exhibit "O" (CTA Case No. 7929), docket, p. 1102.
[128] Exhibit "M" (CTA Case No. 7952), docket, p. 1084.
[129] Exhibit "O" (CTA Case No. 7952), docket, p. 1103.

The same Indorsements further state that it is the Department of Transportation and Communications and its attached agencies, such as the Civil Aeronautics Board and the Air Transportation Office, which should certify as to the availability/non-availability of Jet A-1 fuel. The pertinent portion of the Indorsements is quoted hereunder:

> "The ATO certification is deemed sufficient for purposes of the tax exemption in view of the within letter dated 16 November 2006 of Secretary Raphael P.M. Lotilla of the Department of Energy, informing that the issue as to which office should certify the availability/non-availability of aviation jet A-1 fuel may be addressed to the Department of Transportation and Communications and its attached agencies, the Civil Aeronautics Board and the Air Transportation Office, as it relates principally to the availment by the airline concerned of incentives for its operations pursuant to the exercise by these agencies of general supervision and regulation of air carriers."

However, DOE Certification dated December 20, 2002, which was the basis of BIR Ruling No. 001-2003 indicates that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.

Well-established is the rule that factual findings of administrative agencies are generally accorded respect by the courts, if such findings are supported by substantial evidence.[130]

In the cases at bar, the DOE, being the government agency responsible in the administration of the energy sector, is in the best position to determine whether the total supply is enough for total demand.

Per Report[131] dated April 14, 2011 entitled Supply Demand Balance, 2001-2010 in Thousand Barrels (MB),

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[130] *Pagtalunan vs. Manlapig, et al.*, G.R. No. 155738, August 9, 2005.
[131] Exhibit LLL.

prepared by one Glendalyn Dela Cruz of the DOE, the supply of Jet A-1 fuel for the years 2001-2010 was constantly higher than the demand. For the DOE, local available supply includes locally produced and imported.

It cannot be denied that one of the functions of the DOE is to determine the availability of Jet A-1 fuel in the Philippines. The pure opinion of an alleged expert witness is insufficient to controvert or overturn the official data that petitioner itself secured from the DOE. The testimony of an expert witness, although merits attention, is not conclusive upon the courts, but must be weighed and its probative value determined *viz-a-viz* the other proofs adduced during the trial.[132] In the instant case, no other evidence was adduced to show that "locally available supply" did in fact exclude imported Jet A-1 fuel. Moreover, petitioner did not even present evidence and/or question the DOE official responsible for the research, the result thereof and preparation of the said table reflecting the data gathered.

Significantly, this issue had been settled in previous Court of Tax Appeals' decisions such as in *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*[133]. The Court explained its observation in the following fashion:

> "It is the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. The exemption is when it is shown that the word is intended to be given a different or restricted meaning.

[132] *United States vs. Trono, et al.,* G.R. No. 1344, January 19, 1904.
[133] CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, and 7518, October 22, 2014.

> To clarify, locally available should be taken in the plain, ordinary and common usage. Petitioner's theory that this should exclude importations is incorrect. The term 'locally available supply', taken in its ordinary sense is the supply which is available to petitioner within the Philippines, be it imported or domestic production. Petitioner is also incorrect in saying that this interpretation will contribute to a condition that prevents it from using the same tax exemption."

All said, the Court must give due respect and yield to DOE's official interpretation of "locally available supply", which includes both local production and importations, absent more evidence to the contrary. Consequently, petitioner failed to prove that its imported Jet A-1 fuel was not locally available in reasonable quantity.

As regards the question of whether at the time of importation, the imported Jet A-1 fuel of petitioner was locally available in reasonable price, petitioner presented as evidence a document denominated as *Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 and the Cost of Domestic Purchases of Locally Available Turbo Jet Fuel or Jet A-1 for the Period February to October 2008 Using the Price Quotation Issued to the Company by Pilipinas Shell Petroleum Corporation*,[134] which shows the comparison between the prices of Jet A-1 fuel if imported and if domestically purchased.

A perusal of such document shows that even if the specific taxes and customs duties are not considered as part of the local price of Jet A-1 fuel, the total cost of purchasing it locally would still be greater than the total cost of its importation.[135] However, since petitioner was not able to prove that its imported Jet A-1 fuel was not locally available in reasonable quantity, its claim for refund in the total amount of ₱73,769,349.40 must be denied.

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[134] Exhibit "UUU".
[135] Exhibit "UUU" under item "Difference (Savings)", (a), (b), (d), (e), (f), and (g), under column "Total Cost".

Anent petitioner's prayer to declare BIR Ruling No. 001-2003 null and void, suffice it to say that said ruling did not impose a tax burden on petitioner but merely interpreted the tax privileges and exemption given to it under PD No. 1590. Besides, petitioner has not shown any proof that it sought reconsideration/review of said BIR Ruling with the Secretary of Finance as required under Section 3[136] of Revenue Memorandum Circular (RMC) No. 44-2001. Clearly, petitioner failed to exhaust administrative remedies available under the law.

Finally, claims for tax refund are in the nature of tax exemption. As such, the same must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. Petitioner having failed to sufficiently comply with the legal requirements for entitlement for the tax refund sought, this Court is left with no choice but to deny the Petition.

WHEREFORE, the instant Petitions for Review are hereby **DENIED,** for insufficiency of evidence.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[136]Section 3. *Rulings Adverse to the Taxpayer.* — A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must: xxx

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.

LOVELL R. BAUTISTA
Chairperson

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 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