REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1299
(CTA Case No. 8130)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 03 2016 3:48 p.m.

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DECISION

UY, *J*.:

This Petition for Review filed on April 14, 2015 before the Court of Tax Appeals *En Banc* by Philippine Airlines, Inc., seeks the setting aside of the Decision dated December 1, 2014 and Resolution dated March 20, 2015, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8130, entitled, *"Philippine Airlines, Inc., Petitioner, vs. Commissioner of Internal Revenue and Commissioner of Customs, Respondents,"* the dispositive portions of which respectively read as follows:

Decision dated December 1, 2014:

> "**WHEREFORE,** the Petition for Review dated July 5, 2010 filed by Philippine Airlines, Inc. is hereby **DENIED**, for lack of merit.

SO ORDERED."

Resolution dated March 20, 2015:

"**WHEREFORE,** the Motion for Partial Reconsideration dated December 19, 2014 filed by petitioner Philippine Airlines, Inc. is hereby **DENIED,** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Philippine Airlines, Inc. is a domestic corporation, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended.

Co-respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) tasked to assess and collect customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended, on the basis of the delegated authority of respondent CIR through an Authority to Release Imported Goods (ATRIG) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC of 1997, as amended.

From March to November 2007, petitioner's importations of assorted liquors, cigarettes, and wines arrived in Manila through the South Harbor and Ninoy Aquino International Airport, which were covered by various Informal Import Declarations and Entries, Air Waybills/Bills of Lading, and Authorities to Release Imported Goods. Meanwhile, on February 8, 2007 and June 11, 2008, petitioner received assessments on its alleged liability to pay excise taxes in the respective amounts of ₱4,121,453.10 and ₱2,820,037.11.

On July 7 and 18, 2008, petitioner paid under protest the assessed amounts of ₱4,121,453.10 and ₱2,820,037.11, respectively. Subsequently, it formally protested the said assessments and collections in its letters dated July 18, 2008 and July 25, 2008.

On March 5, 2009, petitioner filed its administrative claim for refund with respondent CIR in the amounts of ₱4,121,453.10 and ₱2,820,037.11, representing the assessed and collected excise taxes paid under protest over the importations covered.

On July 7, 2010, petitioner filed a Petition for Review with the Court in Division, entitled ***"Philippine Airlines, Inc., petitioner, v. Commissioner of Internal Revenue and Commissioner of Customs, respondents",*** citing, as ground, respondent CIR's failure to act on its claim for refund. The case was docketed as CTA Case No. 8130.

In respondent CIR's Answer filed on August 12, 2010, the CIR argues that petitioner is not entitled to the refund sought, invoking Republic Act (RA) No. 9334, which imposed the payment of excise taxes on imported articles, thereby repealing Presidential Decree (PD) No. 1590, which provided the exemption on the payment of excise taxes on articles imported by petitioner. Furthermore, according to respondent CIR, to be entitled, petitioner must sufficiently prove compliance with all pertinent laws and regulations, including Letter of Instruction (LOI) No. 684 on the release of its importation without payment of taxes.

In co-respondent COC's Answer filed on August 31, 2010, the COC merely echoes the respondent CIR's position that petitioner is not entitled to tax refund for excise tax payments on the subject importations as it is not exempt from excise tax either under its franchise (PD No. 1590) or under RA No. 9334. He also states as did his co-respondent CIR, that petitioner must prove compliance with LOI No. 684.

After the pre-trial conference in CTA Case No. 8130, petitioner presented its witnesses, namely: Joseph Brian T.L. Tan, Ma. Evelyn L. Taghap, and Cheryl V. Capinpin.

In his Judicial Affidavit, Joseph Brian T.L. Tan declared that he is the Manager of petitioner's Company Materials Handling Division. From March 28 to November 10, 2007, petitioner imported several cases/packages of cigarettes, wines, liquors, and distilled spirits for its international flights. To secure the release of the said importation from the BOC's custody, petitioner paid under protest the amounts of ₱4,121,453.10 and ₱2,820,037.11 as excise taxes on July 7 and July 18, 2008, respectively. The witness claims that petitioner is exempt from the payment of excise taxes on the subject importation by virtue of its franchise under PD No. 1590. For this reason, petitioner filed a written claim for refund of the excise taxes paid under protest with respondent CIR, who failed to act on the same, hence, the Petition for Review before the Court in Division.

Another witness for the petitioner, Ma. Evelyn L. Taghap, testified that as the Manager of the Tax Services Division of petitioner, she is aware that petitioner, as a VAT-registered taxpayer, paid its income tax liability for fiscal year ending March 31, 2009. Petitioner accounted for VAT on its sale of goods, property, services and lease of property for the said fiscal year in accordance with Section 13 of PD No. 1590, as amended by RA No. 9337.

Petitioner's last witness, Cheryl V. Capinpin, the Manager of the latter's In-Flight Materials Purchasing Division, testified that based on the comparison of the prices of wine and alcoholic products imported by petitioner with the prices of the same products from one local supplier, that of the former is definitely cheaper. She further testified that the prices of the products imported by petitioner is definitely less given that local suppliers are required to pay taxes on its importation of cigarettes while the importation of the same items by petitioner is tax exempt under its franchise. In view thereof, she can safely conclude that the alcoholic and tobacco products imported by petitioner during fiscal year ending March 31, 2008 are not available locally at reasonable quantity and price.

Ms. Capinpin added that only one local supplier for wines and alcoholic products granted her request for a price list. Further, the cost of petitioner's imported products does not include transportation cost from place of origin to the Philippines, except for items originating from countries where PAL flights are not available.

After petitioner rested its case, both respondents waived the presentation of evidence in the absence of Report of Investigation in CTA Case No. 8130. Accordingly, after the parties submitted their respective memorandum, CTA Case No. 8130 was submitted for decision.

In the assailed Decision, the Court in Division denied the Petition for Review for lack of merit. Based on the Court in Division's factual findings, petitioner failed to comply with the third condition for the excise tax exemption under PD No. 1590, *i.e.*, that the imported liquors, wines and cigarettes must not be locally available in reasonable quantity, quality or price.

Aggrieved, petitioner filed on December 19, 2014 a Motion for Partial Reconsideration, which was denied by the Court in Division for lack of merit in the assailed Resolution.

On April 14, 2015, petitioner filed the instant Petition for Review before the Court *En Banc* on April 23, 2015.

Without necessarily giving due course to the instant Petition for Review, respondents were ordered by the Court *En Banc* to file their respective Comments thereon.[1] Thus, respondent CIR filed his Comment (Re: Petition for Review) on May 25, 2015,[2] while respondent COC filed his Comment on July 13, 2015.[3]

In the Resolution dated August 3, 2015,[4] the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective memorandum.

Respondent CIR filed a Manifestation on August 11, 2015,[5] stating that he is adopting the Comment to the Petition for Review as his Memorandum. In the same way, respondent COC filed a Manifestation and Motion on September 3, 2015,[6] praying that it be allowed to adopt its Comment as its Memorandum, which was granted by the Court *En Banc* in its Resolution dated September 7, 2015.[7] For its part, petitioner filed its Memorandum on September 10, 2015.[8]

Thereafter, the instant Petition for Review was submitted for decision on October 8, 2015.[9]

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[1] Resolution dated May 11, 2016, EB Docket, pp. 287 to 288.
[2] EB Docket, pp. 289 to 296.
[3] EB Docket, pp. 311 to 332.
[4] EB Docket, pp. 334 to 335.
[5] EB Docket, pp. 336 to 338.
[6] EB Docket, pp. 340 to 345.
[7] EB Docket, p. 346.
[8] EB Docket, pp. 347 to 362.
[9] EB Docket, pp. 364 to 365.

Hence, this Decision.

THE ISSUES

Petitioner raises a sole issue for the Court *En Banc's* resolution, to wit:

> "WHETHER THE THIRD DIVISION ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND OF ERRONEOUSLY PAID EXCISE TAX ON ITS IMPORTATION OF COMMISSARY SUPPLIES IN THE AGGREGATE AMOUNT OF ₱6,941,490.21."[10]

Petitioner's arguments:

Petitioner argues that it sufficiently established that the subject imported liquors, wines, and cigarettes are not locally available in reasonable quantity, quality or price. According to petitioner, its submission of the Judicial Affidavit of its personnel in charge of purchase of in-flight commissary and catering supplies, coupled with a comparative price list of the imported products, is sufficient to establish that said imported goods are not locally available in reasonable quality, quantity or price; and to require more evidence of non-availability of the goods would be contrary to this Court's earlier rulings establishing the criteria for entitlement to the tax exemption under prevailing laws.

Moreover, petitioner stresses that respondent CIR previously admitted that the cost of importing the commissary supplies is always cheaper than purchasing them locally in his Memorandum dated April 25, 2014. Petitioner points out that pursuant to Section 26, Rule 130 of the Rules on Evidence, admissions made by a party as to a relevant fact may be given in evidence against him.

Allegedly, a fact that is admitted by the adverse party cannot be challenged as a judicial admission, and is a waiver of proof and the production of evidence is dispensed with; and thus, with the admission of respondent CIR, the presentation of a comparative price list is no longer necessary and is merely superfluous.

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[10] EB Docket, p. 10.

Hence, petitioner is of the view that it has sufficiently justified and proven its entitlement to the excise tax refund in the aggregate amount of ₱6,941,490.21, representing erroneously paid excise taxes.

Respondents' counter-arguments:

Respondent CIR counters that petitioner failed to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality and price; and that no independent and credible evidence was presented to prove this matter. According to respondent CIR, it is highly self-serving for petitioner's own employee, Cheryl Capinpin, to certify that the imported products are not locally available in reasonable quantity, quality and price; and her study on prices is not comprehensive in nature.

Moreover, respondent CIR points out that petitioner's witness merely stated that in case of cigarettes, there are no local suppliers or dealers big enough to supply the various foreign brands of cigarettes that petitioner is importing and that if ever there are, their selling prices would definitely be higher than petitioner's cost of importing the cigarettes.

Lastly, respondent CIR stresses that it is incumbent upon petitioner to prove that it is entitled to the refund sought; that failure to prove the same is fatal to its claim for tax refund; and that it is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax.

For his part, co-respondent COC primarily argues that the Court in Division did not err in denying petitioner's claim for refund of excise taxes, considering that petitioner failed to sufficiently and satisfactorily establish that the subject imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality or price. He further submits that the exemption granted to petitioner is not unconditional; and that there must first be compliance with certain conditions, among which, that the imported articles or supplies are not locally available in reasonable quantity, quality, or price.

Co-respondent COC emphasizes that a cursory perusal of Ms. Capinpin's testimony reveals that it is self-serving, unsubstantiated, and biased in favor of petitioner. Relative thereto, it is pointed out that, in fact, from her testimony, it appears that petitioner did not even exert much effort in canvassing the local prices of liquors, wines and cigarettes; and that neither did petitioner attempt to conduct a thorough, comprehensive, and unbiased study on the availability, quantity and price of imported liquors, wines and cigarettes *vis-à-vis* its local availability, quantity and prices.

Allegedly, for wines and liquors, petitioner admitted that it only obtained the price quotations from the Philippine Wine Merchants, and from nobody else; and that note should be taken of the fact that petitioner did not even present proof that it indeed made such requests to other local wine merchants, and to Duty Free Philippines, in order to obtain their price quotations.

Moreover, co-respondent COC claims that the wines or liquors being compared by petitioner are not actually identical products or brands of wines; and thus, absent any showing that they are identical products of the same volume, it would be at the height of unfairness to compare their respective prices, and conclude that the imported ones are cheaper than those locally available.

He also alleges that as to the prices of cigarettes, petitioner, through Ms. Capinpin, acknowledged that they did not compare the prices of imported cigarettes against the prices in the local market; and that she likewise concluded, without any solid back-up, that the local prices of the same products would be more expensive, and that no local supplier of the same brand of imported cigarettes could provide petitioner's requirements on a regular basis. Instead, Ms. Capinpin, allegedly just simply assumed and concluded, *sans* any factual basis, that petitioner's required volume of commissary supplies could not be met by any local suppliers; and no effort was exerted by petitioner to obtain the price quotations of cigarettes from local suppliers, neither was there any showing of an attempt on its part to secure the price quotations of cigarettes from local suppliers.

Co-respondent COC also states that while the comparative table testified to by its witness, Ms. Capinpin, at first glance, appears to show the comparative local prices of the subject imported products of petitioner, the fact that petitioner only tried to secure from Philippine Wine Merchants only, a local source, of such liquors and wines, and not even one local supplier of cigarettes, belies petitioner's assertion that it has established that there is no local supplier capable of supplying its required commissary.

Thus, co-respondent COC is convinced that there is no doubt that petitioner failed to sufficiently establish its compliance with all the requirements set forth under Section 13 of P.D. No. 1590, to be entitled to claim tax refund.

He further asserts that petitioner failed to present any new matters or issues before the Court *En Banc*; and that the arguments raised by petitioner in the instant Petition for Review are mere repetitions of the arguments it raised in its Motion for Partial Reconsideration of the Decision dated December 1, 2014, which have already been passed upon and decided by the Court in Division.

Finally, it is allegedly well-settled that tax refunds and exemptions are strictly construed against the entity claiming the exemption; and hence, the burden of proof is upon him who claims the exemption in his favor and the failure to sustain the burden is fatal to the claim for refund.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

Petitioner failed to establish that the imported articles, supplies or materials are not locally available in reasonable quantity, quality, or price.

Section 13(b)(2) of PD No. 1590 states the conditions which must be complied with by petitioner in order for its imported supplies to be considered exempt from excise tax, to wit:

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

Based on the foregoing provision, to exempt petitioner from paying taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies, petitioner must establish that:

1. It paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies or materials are imported for PAL's use in its transport and non-transport operations and other activities incidental thereto; and

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

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In this case, the crux of the controversy lies with petitioner's failure to comply with the third requisite as found by the Court in Division. Specifically, the issue is whether petitioner was able to satisfactorily establish that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price.

Petitioner contends that the sworn testimony of its witness, Cheryl V. Capinpin, as well as the Pricelist, sufficiently established by preponderance of evidence that it is entitled to exemption from payment of excise tax on its importation of liquor, wines and cigarettes as commissary supplies.

We are not convinced.

In her Judicial Affidavit dated March 12, 2012,[11] Cheryl V. Capinpin, the Manager of the In-Flight Materials Purchasing Division, Catering & In-Flight Materials Purchasing Sub-Department of petitioner, stated that petitioner imports alcoholic products because the importation of the said products is cheaper than buying the same locally, and in the case of cigarettes, there are no local suppliers or dealers big enough to supply the various foreign brands of cigarettes it is importing, and if ever there are said local dealers, their selling prices would definitely be higher.

On cross-examination,[12] she stated that they did their best to obtain comparison from local sources, but it was only Philippine Wine Merchants who submitted their quotation. However, when asked to name the other local wine merchants or dealers, she merely referred to Duty Free Philippines. Upon further prodding, she revealed that with regard to cigarettes, "It was only Duty Free Philippines that we visited to look at the prices on the racks to see if their prices are effective versus our prices that we get from our importer."[13] In fact, aside from Duty Free Philippines, she did not try to obtain prices from other local suppliers.

As for the documentary evidence on record, petitioner submitted a Price List from Philippine Wine Merchants[14] and a Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies.[15] However, as

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[11] Exhibit "TTT," Docket (CTA Case No. 8130, Volume 2), pp. 633 to 654.
[12] Transcript of Stenographic Notes (TSN) dated May 7, 2012, pp. 12 to 17.
[13] TSN dated May 7, 2012, pp. 16 to 17.
[14] Exhibit "TTT-2," Docket (CTA Case No. 8130, Volume 2), p. 1029.
[15] Exhibit "TTT-1," Docket (CTA Case No. 8130, Volume 2), pp. 1022 to 1028.

openly admitted by Ms. Capinpin in her Judicial Affidavit, the comparative price list does not include any local prices for cigarettes.[16]

A careful review of the foregoing evidence presented by the petitioner shows that it is inadequate to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and is insufficient to establish its claim for a tax refund. A sweeping conclusion that there is no local supplier for cigarettes can cope with petitioner's demand, or provide a reasonable price therefor is not the type of evidence that can successfully support a claim for tax refund. Likewise, non-specific and undocumented allegations that it made efforts to secure price lists from local suppliers to determine whether the imported articles were in fact, locally unavailable in reasonable quantity, quality or price, cannot convince this Court to act favorably on petitioner's claims.

Contrary to petitioner's contention, there was no judicial admission in this case.

Petitioner posits that respondent CIR already admitted that the cost of importing the commissary supplies is always cheaper than purchasing them locally in its Memorandum dated April 25, 2014. Thus, according to petitioner, with the admission of respondent CIR, the presentation of a comparative price list is no longer necessary and is merely superfluous.

We disagree.

For easy reference, quoted is the portion in respondent CIR's Memorandum dated April 25, 2014, being referred to by petitioner, to wit:

> "As to the reasonableness of the price, petitioner misguidedly seems to equate reasonableness which (sic) cheaper price. This should not be the case as such rationalization has no basis in fact and in law. Petitioner's quoted importations will forever be cheaper because it is the base international price. On the other hand, the local suppliers will also pad other factors to their prices such as the taxes/duties and their profit margin. In other words,

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[16] TSN dated May 7, 2012, p. 17.

> petitioner's direct importations will always be 'cheaper' over the locally available products.
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> However, **the fact that prices from abroad are cheaper does not make the locally available products' price 'unreasonable'. Respondent submits that local prices ARE STILL REASONABLE as defined in both the legal and economic sense.** Black's law Dictionary defines 'reasonable price' as the 'decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit. **A reasonable price is not necessarily the lowest price** (emphasis and underscoring supplied). The Business Dictionary defines the same as 'high enough to cover a seller's cost and a reasonable margin, but not high enough for the seller to realize monopolistic profit.'
>
> Finally, if petitioner's interpretation were sustained, it would be an exercise in futility because PAL's price quotations from abroad will always be cheaper. This is because such do not have the excise tax component as well as importation cost that local suppliers have to pad to their prices. Thus, it is an absolute certainty that these products manufactured abroad will be cheaper there perpetually. So, all petitioner has to do is quote manufacturer's prices abroad, a price no local supplier can beat, and it can then convert its conditional exemption to absolute. Truly, the legislature did not contemplate such a ridiculous result. To reiterate, **a cheaper price does not make the higher price lose its reasonableness.**"

A cursory reading of the foregoing would reveal that what respondent is ultimately pointing out is that a "cheaper" price should not be equated with a "reasonable" price, since they are not the same.

The term "admission" embraces any statement of fact made by a party which is against his interest or unfavorable to the conclusion for which he contends or inconsistent with the facts alleged by him.[17] In this case, however, respondent's statement to the effect that "cheaper" should not be equated with "reasonable" cannot be considered as a judicial admission against the interest of respondent.

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[17] Philippine Law Dictionary, Third Edition, ©1988, p. 35, citing *Gomez v. Lituania*, 65 OG 7592.

Neither should that said statement be considered unfavorable to the conclusion for which he contends; nor is the same statement inconsistent with the facts alleged by him. These must be so because there is some merit in the said statement, and thus, do not contravene respondent's stand in assailing petitioner's claim for refund.

The determination of reasonableness is made on the particular facts and circumstances of each case.[18] What is a just and reasonable rate is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment.[19] Having this principle in mind, to say that a cheaper price is the same as a reasonable price is indeed not accurate. In other words, determining a reasonable price entails a lot more than merely looking whether the price is lesser compared to other items.

In any event, as earlier discussed, petitioner has failed to discharge the burden of proof, as the evidence it presented before the Court in Division was severely inadequate to support its claim for a tax refund.

It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[20] Accordingly, the law relied upon is not only construed in *strictissimi juris* against the taxpayer, but also the proofs presented entitling a taxpayer to an exemption are *strictissimi* scrutinized.[21]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated December 1, 2014 and the assailed Resolution dated March 20, 2015 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[18] *Rivera vs. Solidbank Corporation*, G.R. No. 163269, April 19, 2006.
[19] *Republic of the Philippines, Represented by Energy Regulatory Board vs. Manila Electric Company, etseq.*, G.R. Nos. 141314 and 141369, November 15, 2002.
[20] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[21] *M.E. Holding Corporation vs. Court of Appeals, et al.*, G.R. No. 160193, March 3, 2008.

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA EB No. 1299** (CTA CASE No. 8130)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, *Respondents.*	Promulgated: OCT 03 2016 3:48 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I manifest my dissent in the *ponencia* which denies the Petition for Review for lack of merit which thereby affirms the assailed Decision dated December 1, 2014 and the assailed Resolution dated March 20, 2015 of the Third Division of this Court.

Records disclose that albeit petitioner's submission of a Price List from Philippine Wine Merchants and a Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, the *ponencia* nonetheless ruled that the same are inadequate to prove that the imported supplies were not locally available in reasonable quantity, quality or price.

With the exception of cigarettes which the witness of petitioner admitted to be not included in the comparative price list, I submit that the aforesaid pieces of evidence are sufficient to prove that the cost of importing the imported supplies, *i.e.* liquors & wines, is lower than purchasing them locally.

This issue is not of first impression. In my Dissenting Opinion in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*,[1] I made the following extensive discussion on this matter, *viz*:

> "Pursuant to the afore-quoted provision, in order to claim exemption from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:
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> 1. Its corporate income tax and VAT liabilities for the subject period of importation had been paid;
> 2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and,
> 3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.
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> I concur with the findings of the *ponencia* that petitioner had complied with the first and second requisites. With regard to the third requisite, I submit that petitioner likewise complied and proved that some of its imported articles were not locally available in reasonable quantity, quality or price, contrary to the conclusion in the *ponencia*.
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> Truth be told, the issue involved in the case is not of first impression, the same issue was raised in earlier cases before the CTA where the very same parties in this case are involved, albeit relating to different taxable years. In the said cases, the Court granted PAL's claim for refund of taxes, duties, charges, royalties or fees it paid on the importation of its commissary and catering

[1] CTA Case No. 8362, January 4, 2016.

supplies upon showing that said supplies were not locally available in reasonable quantity, quality or price by presenting the following pieces of evidence:

Case Number	Evidence Presented	Ruling
CTA Case No. 7677, 7685 and 7746 [(Decision and Amended Decision) affirmed with modifications in CTA EB 954 & 1046, October 14, 2014]	1. Affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight Sub-department; **2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;** 3. Invoices issued to PAL for its purchase of the subject articles; **4. Philippine Wine Merchants' Price List for 2005 and 2006; and,** 5. Monthly Philippine Dealing Systems rates for the year 2005-2006.	The claim for refund was partially granted. The Court emphasized that imported articles are not locally available in reasonable quantity, quality or price provided that sales invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence are presented to prove such fact.
xxx	xxx	xxx
xxx	xxx	xxx
CTA Case Nos. 7665 and 7713 (affirmed in CTA EB Nos. 920 and 922, September 9, 2013	1. Testimony of Mr. Andy Y. Li, Vice-President-Corporate Logistics and Services Department of petitioner. In his testimony, Mr. Li stated that importation of the subject articles was cheaper for petitioner than if it purchased the same locally. This is further supported by a copy of its letter	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590.

	addressed to Atty. Oscar C. Ventanilla, Jr., which contained **a tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally, invoices issued to PAL for its purchase of the subject articles and Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of the claim for refund**; and, 2. The letter also contains that Duty-Free Philippines does not have wines that meet petitioner's price budget and required quality. In addition, the average price difference of the cost of imported wines, liquors and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by petitioner.	
CTA Case No. 8153, January 17, 2013 (affirmed in CTA EB Nos. 1029, 1031 and 1032, April 30, 2014.	1. Judicial Affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Materials Purchasing Subdepartment; 2. **Table of Comparison Between Cost of**	The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on wines and liquors fully complied with the requirements

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	Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 3. **Philippine Wine Merchants' January 11, 2007 Price List,** 4. Monthly PDS rates for the year 2007-2008, 2008- 2009, and 2009-2010; 5. Bureau of Customs Official Receipt No. 15545075775; and, 6. Authority to Release Imported Goods issued on various dates for the said importation of liquors and cigarettes.	under PD 1590. The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a pricelist of local dealers or suppliers.
CTA Case No. 7935, December 20, 2012	1. Judicial Affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Sub-department of Philippines Airlines, Inc.; 2. **Tabulation made by Mr. Victor Santos comparing the cost of importing the subject articles and the cost of purchasing them locally;** 3. Invoices issued to PAL for its purchase of the subject articles; 4. **Philippine Wine Merchants' Price List for 2005 and 2006**; 5. **Duty Free Philippines' Price List for 2005**	The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on certain wines and liquors supported only by invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documents complied with the requirements under PD No. 1590.

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CTA Case No. 8236, December 18, 2013	1. Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department; **2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;** 3. Sales Invoices issued by foreign suppliers; 4. **Philippine Wine Merchants Price List for 2008**; 5. Monthly Philippine Dealing System Rates for fiscal years 2008, 2009 and 2010; and, 6. Letters of Ms. Marianne C. Raymundo with the subject Booking Rates for the months of January, July, September and October 2008.	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590. The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a pricelist of local dealers or suppliers.
xxx	xxx	xxx

In the listed cases, the comparison between **the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with the local prices reflected in the Philippine Wine Merchants' Price List and/or Duty Free Philippines Retail Prices was enough for the Court to rule that the cost of importing the imported articles is lower than purchasing them locally and accordingly granted the claim for refund**.

In this case, record shows that petitioner likewise presented the various commercial and sales invoices, IIDE, the ATRIG, the

> Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies and the local prices reflected in the Philippine Wine Merchants' Price List, Duty Free Philippines Retail Prices and Future Trade International Travel Retail Price as of February 2009. A comparison of the prices shows that the cost of importing wines and liquor is lower than purchasing them locally, to wit:
>
> xxx xxx xxx
>
> In sum, petitioner has sufficiently proven its exemption from the payment of excise taxes on its importation of wines and liquor in the amount of P2,514,774.48, computed as follows: xxx"

In fact, in *Republic of the Philippines, represented by the Commissioner of Customs v. Philippine Airlines, Inc.*[2] the Supreme Court sustained the factual findings of the CTA in its Decision in CTA Case Nos. 7665 and 7713.[3] Parenthetically, the CTA in that case declared that the imported articles are not locally available in reasonable quantity, quality or price as it takes into account the following documents, *namely:* **a letter containing the tabulation of comparison of cost of importing the articles and the cost of purchasing them locally, the invoices issued to PAL for its purchase of subject articles, and the pricelist of Duty- Free Philippines.** In sustaining the CTA, the Supreme Court has this to say:

> "As to the issue of PAL's noncompliance with the conditions set by Section 13 of P.D. 1509 for the imported supplies to be exempt from excise tax, it must be noted that these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. **Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.**"[4] (*Boldfacing supplied*)

Philippine Airlines, Inc.'s (PAL) submission of the Philippine Wine Merchants' Pricelist and comparison of the same with the cost of importation is sufficient for the Court to grant PAL's claim for refund

[2] G.R. Nos. 209353-54 and 211733-34, July 6, 2015.

[3] Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7665 & 7713, April 17, 2012.

[4] Note 4, *supra.*

of excise taxes paid on the importation of imported articles used in its commissary and catering supplies. In addition thereto, PAL was able to substantiate its purchases of imported articles through the invoices issued to it. Besides, the CIR and COC did not even bother to present any evidence or witness to disprove the contention of PAL that it was cheaper to import the said articles than buy them locally.

In sum, PAL has sufficiently proven its exemption from the payment of excise taxes on its importation of wines and liquors in the amounts of **₱1,176,673.11** and **₱2,820,037.11** for specific taxes paid under protest on July 7, 2008 and July 18, 2008, respectively or in the total amount of **₱3,996,710.22**:

07 July 2008:

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Air Waybill/Bill of Lading No.	Authority to Release Imported Goods (ATRIG)	Excise Taxes
NAIA	28 March 2007	Various Wines	3203	079-3013-5464	00091405	103,001.90
NAIA	27 April 2007	Camus Cognac VSOP Elegance	4168	079-3004-9880	00092248	146,313.22
NAIA	27 April 2007	Camus Cognac XO Superieur	4167	079-3004-9876	00092253	31,352.83
NAIA	28 April 2007	JW Black Label Gordon Gin	4184	079-2900-2584	00092250	568,759.96
NAIA	28 April 2007	Camus Cognac XO	4169	079-3004-9891	00092252	54,867.46
NAIA	01 July 2007	Chivas Regal 750ml x 12 43% Jack Daniels 750ml x 12 40%	7124	079-2900-3575	00093821	272,377.74
Total						**₱1,176,673.11**

18 July 2008

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Air Waybill/Bill of Lading No.	Authority to Release Imported Goods (ATRIG)	Excise Taxes
South Harbor	13 October, 2007	Vin de Table Blanc PAL Vin de Table Rouge PAL	11714	0709-2598	00000809	172,377.45
South Harbor	20 October, 2007	Vin de Table Blanc Vin de Table Rouge	11760	D0710/2647	00007607	172,377.45
South Harbor	10 November, 2007	Vin de Table Blanc PAL Vin de Table Rouge PAL	12314	D0710/2771	00007608	172,377.45
NAIA	26	Lindemans	10224	079-3070-	00000815	

	September, 2007	Premier Chardonnay Penfolds Shiraz Cabernet Penfolds Chardonnay		8451		68,356.58
NAIA	24 October, 2007	Lindemans Premier Chardonnay Penfolds Chardonnay Lindemans Premier Shiraz Penfolds Shiraz Cabernet	11712	079-3070-8462	00000810	98,076.83
NAIA	10 October, 2007	Asti Cinzano Amarula	11120	079-2999-0785	00000887	106,785.47
NAIA	13 October, 2007	Royal Salute 700ml	10285	079-2999-0450	00000814	87,787.93
NAIA	12 October, 2007	Camus VSOP Cognac Elegance Camus Cognac XO	11122	079-3005-4205	00000812	201,180.68
NAIA	13 October, 2007	Piper Heidsieck Remy Martin VSOP	11151	079-2999-0855	00000804	1,013,734.37
NAIA	08 October, 2007	Reposado Tequila 750ml	11110	079-2999-0494	00000813	97,977.60
NAIA	13 October, 2007	Ballantines 700ml 17 YO Ballantines 700ml 21 YO Chivas Regal 750ml 12	11152	079-2999-0811	00000803	629,005.30
Total						**₱2,820,037.11**

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review filed by PAL and **REVERSE** and **SET ASIDE** the Decision dated December 1, 2014 and the Resolution dated March 20, 2015 promulgated by the Third Division of this Court in CTA Case No. 8130.

ROMAN G. DEL ROSARIO
Presiding Justice