REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	CTA CASE NOS. 8529 & 8590
-versus-	Members: BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: OCT 27 2015 10:35 a.m.

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DECISION

***Fabon-Victorino, J.*:**

The instant consolidated Petitions for Review[1], the first dated August 17, 2012 and the other dated December 20, 2012, separately filed by petitioner Philippine Airlines, Inc. (PAL) are for the refund of specific taxes it paid under protest on importations of assorted liquor, wine and cigarettes for international flight consumption, detailed as follows:

CTA Case No.	Date of Payment	Amount of Claim
8529	August 18, 2010	₱3,077,289.44
8590	December 28, 2010	₱2,348,287.34

Petitioner is a domestic corporation, with office address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[2]

[1] See Resolution dated April 5, 2013, CTA Case No. 8590, docket p. 253.
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 8529, docket, p. 771.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is tasked to assess and collect all national internal revenue taxes, fees and charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent is the Commissioner of the Bureau of Customs (BOC), authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful revenues on imported articles, including excise taxes on wines, liquors and cigarettes under Sections 142 and 145 of the NIRC of 1997, as amended. He holds office at the G/F OCOM Bldg., Bureau of Customs, Port Area, Manila.

On June 11, 1978, petitioner was granted a franchise to operate air transport services domestically and internationally under Presidential Decree (PD) No. 1590, also known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries".

On January 1, 2005, Republic Act (RA) No. 9334, otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect. Section 6 thereof provides:

> "SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
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> > 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* -
> >
> > (A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before

the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be

> exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.
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> x x x x x x x x x
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> (B) *Rate and Basis of the Excise Tax on Imported Articles.* - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

On February 3, 2005, CIR Guillermo L. Parayno, Jr. sent a letter to Collector of Customs (COC) George M. Jereos calling the latter's attention to BOC's failure to collect excise tax on all importations of alcohol and tobacco products destined for Duty Free Philippines (DFP) and the Freeport Zone.[3]

Acting on the said letter, COC George M. Jereos issued a Memorandum on February 4, 2005 directing BOC officers and personnel to collect excise tax due on imported alcohol and tobacco products, including those for Duty Free Philippines and Freeport Zones pursuant to RA No. 9334.[4]

On March 1, 2005, Customs Memorandum Order (CMO) No. 13-2005 entitled "Immediate Collection at the Port of Discharge of Duties, Taxes, and Other Charges, Including

[3] Par. 6, Stipulation of Facts, JSFI, CTA Case No. 8529, docket, p. 772.
[4] Par. 7, Stipulation of Facts, JSFI, CTA Case No. 8529, docket, pp. 772-773.

Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free Port Zones was issued pursuant to RA No. 9334 and BIR Regulation No. 12-2004."[5]

Paragraph IV of the said CMO entitled "Operational Provisions" required the accomplishment of consumption entries instead of the previously required warehousing entries, for the clearance of imported cigarettes and liquors, to wit:

> "In lieu of the warehousing entry required under Customs Administrative Order No. 1-97 and Customs Memorandum Order Nos. 17-97 and 17-97A, all shipments of cigar and cigarettes, distilled spirits, wines and liquors destined for duty-free shops and free-port zones shall be covered by consumption entries filed at the Port of Discharge following the procedures for cargo clearance under CAO Nos. 295 and 5-2001, CMO Nos. 3-2000 and 37-2001 and other existing customs rules and regulations."

On April 4, 2005, petitioner assailed BOC's action to collect taxes on its importations and the COC's refusal to release its imported items unless the taxes and duties were first paid. In addition, petitioner requested for the release of its imported two pallets of cigarettes for its commissary supplies.[6]

On July 1, 2005, RA No. 9337 took effect, expressly and specifically amending petitioner's franchise, PD No. 1590, and subjecting it to value-added tax (VAT) registration and payment.[7]

On various dates in 2009, petitioner's importations of assorted cigarettes, liquor and wines arrived in Manila through the following ports of entry, covered by various Informal Import Declaration and Entry (IIDE), Air Waybills

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[5] Par. 8, Stipulation of Facts, JSFI, CTA Case No. 8529, docket, p. 773.
[6] Petition for Review, CTA Case No. 8529, docket, p. 10; Petition for Review, CTA Case No. 8590, docket, p. 12.
[7] Par. 9, Stipulation of Facts, JSFI, CTA Case No. 8529, docket, p. 773.

(AWB)/Bills of Lading (BL), and Authority to Release Imported Goods (ATRIG), detailed as follows:

Port of Entry	Arrival Date	IIDE No.[8]	AWB/BL[9]	ATRIG No.[10]	Excise Taxes Paid
South Harbor	2/1/2009	1289	D0901/5264	00030397	₱ 183,603.42
NAIA	4/9/2009	3066	079-9071-7476	00037756	118,749.74
NAIA	5/7/2009	3694	074-3269-8326	00038314	9,405.92
North Harbor	6/17/2009	6074	TVS-XO-0496949	00038308	25,866.28
NAIA	5/21/2009	4353	079-3214-9235	00037754	1,114,588.32
NAIA	5/26/2009	4422	079-3214-9331	00037755	602,558.11
NAIA	5/27/2009	4418	079-3286-7063	00037760	82,889.67
South Harbor	6/14/2009	6065	KKLULEH903040	00038310	174,249.00
NAIA	7/4/2009	6129	079-3258-0940	00038307	73,368.00
NAIA	8/7/2009	6969	079-3286-7446	00043110	83,736.18
NAIA	8/12/2009	6983	079-3289-0594	00043614	502,460.00
NAIA	10/28/2009	9454	079-3289-1714	00044033	105,814.80
TOTAL					**₱3,077,289.44**

Also on various dates in 2007, 2009 and 2010, petitioner's importations of similar articles arrived in Manila through NAIA, with the following details:

Port of Entry	Arrival Date	IIDE No.[11]	AWB/BL[12]	ATRIG No.[13]	Excise Taxes Paid
NAIA	4/16/2007	3643	079-2790-6443	00046496	₱ 6,400.80
NAIA	10/11/2009	9021	079-2976-0824	00007279	7,801.74
North Harbor	10/31/2009	10099	004-20471/1	00046499	27,629.89
North Harbor	11/4/2009	9553	FRX-PH-909-053/H01	00044956	183,420.00
NAIA	11/28/2009	10137	079-3316-1203	00044953	21,093.30
NAIA	12/5/2009	10848	079-3289-2495	00044952	366,825.60
NAIA	12/13/2009	10887	079-3348-3273	00044955	28,217.76
South Harbor	12/4/2009	11612	0910/1989	00046459	183,420.00
NAIA	12/8/2009	10854	079-3289-2506	00044954	320,972.40
NAIA	12/28/2009	11652	079-3289-2790	00045853	59,079.93
NAIA	12/29/2009	11661	160-5199-8671	00046497	9,405.92

[8] Exhibits "D-1", "D-2", "D-3", "D-4", "D-5", "D-6", "I-1", "I-2", "I-3", "I-4", "I-5", and "I-6".
[9] Exhibits "D-1-a", "D-2-a", "D-3-a", "D-4-a", "D-5-a", "D-6-a", "I-1-a", "I-2-a", "I-3-a", "I-4-a", "I-5-a", and "I-6-a".
[10] Exhibits "D-1-b", "D-2-b", "D-3-b", "D-4-b", "D-5-b", "D-6-b", "I-1-b", "I-2-b", "I-3-b", "I-4-b", "I-5-b", and "I-6-b".
[11] Exhibits "N-1", "N-2", "N-3", "N-4", "N-5", "N-6", "N-7", "S-1", "S-2", "S-3", "S-4", "S-5", "S-6", and "S-7".
[12] Exhibits "N-1-a", "N-2-a", "N-3-a", "N-4-a", "N-5-a", "N-6-a", "N-7-a", "S-1-a", "S-2-a", "S-3-a", "S-4-a", "S-5-a", "S-6-a", and "S-7-a".
[13] Exhibits "N-1-b", "N-2-b", "N-3-b", "N-4-b", "N-5-b", "N-6-b", "N-7-b", "S-1-b", "S-2-b", "S-3-b", "S-4-b", "S-5-b", "S-6-b", and "S-7-b".

NAIA	1/15/2010	100	079-3289-3000	00046328	516,040.00
NAIA	3/12/2010	2108	079-3289-3965	00006365	434,560.00
North Harbor	7/15/2010	5748	FRX-PH-006-050/H01	00011795	183,420.00
TOTAL					**₱2,348,287.34**

On March 26, 2010 and September 7, 2010, BOC Acting Chief of Warehousing Assessment Unit (WAU) Gilda L. Cinco submitted to the Chief Collector of the Collection Division of the NAIA Customhouse Silveria Salazar an assessment on petitioner's importations pursuant to CMO No. 13-2005 and Revenue Regulations No. 3-2006.[14]

In view thereof, petitioner paid the following specific taxes under protest:

CTA CASE NO.	**DATE OF PAYMENT**	**AMOUNT**
8529	August 18, 2010	₱2,054,771.79
		₱1,022,517.65
8590	December 28, 2010	₱ 641,389.09
		₱1,706,898.25

Subsequently, petitioner filed administrative claims for refund with respondent CIR[15], through the BOC, on the following dates:

CTA Case No.	**Date of Payment**	**Amount**	**Date of Filing with the BIR**
8529	August 18, 2010	₱2,054,771.79	February 22, 2011
		₱1,022,517.65	
8590	December 28, 2010	₱ 641,389.09	February 22, 2011
		₱1,706,898.25	

Due to respondent CIR's inaction, petitioner filed with the Court two Petitions for Review on August 17, 2012[16] and December 21, 2012[17], respectively docketed as CTA Case Nos. 8529 and 8590.

[14] Exhibits "A", "F", "K", and "P".
[15] Exhibits "E", "J", "O", and "T", CTA Case No. 8529, pp. 385-394, 420-429, 464-473, and 508-517.
[16] CTA Case No. 8529, docket, pp. 6-22.
[17] CTA Case No. 8590, docket, pp. 8-24.

In her Answer filed in CTA Case Nos. 8529[18] and 8590,[19] respondent CIR essentially argues that the burden of proof is upon the petitioner who must prove its claim for refund based on a highly disfavored tax exemption. Petitioner must also establish compliance with Section 229 of the National Internal Revenue Code (NIRC), as amended, which governs claims for refund of erroneously or illegally collected taxes.

Further, PD 1590, which granted petitioner's franchise and tax exemption had been repealed by Republic Act (RA) No. 9334 which took effect on July 26, 2004. Section 6 thereof amended Section 131 of the NIRC which states, thus: "The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon."

Section 10 of the same law likewise provides that all laws, decrees, ordinances, rules and regulations, executive or administrative orders and such other presidential issuances as are inconsistent with any of the provisions of RA No. 9334 are repealed, amended, or otherwise modified accordingly.

More importantly, petitioner was unable to substantiate its claim that it falls under the exemption, that the subject importation of commissary and catering supplies is for the use of petitioner in its transport and non-transport operations and other activities incidental thereto.

The other respondent COC states that all importations of alcohol and tobacco products into the Philippines are excise taxable under RA No. 9334. He concurs with co-respondent CIR that RA No. 9334 amending PD 1590 revoked petitioner's alleged excise tax exemption. Moreover, any exemptions from payment of tax must be explicitly provided by law which is clearly not so in PD 1590.

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[18] Answer dated October 29, 2012, CTA Case No. 8529, docket, pp. 192-205, filed on October 30, 2012.
[19] Answer dated January 24, 2013, CTA Case No. 8590, docket, pp. 190-195, filed on January 24, 2013.

Besides, the excise tax being imposed is not upon petitioner's business itself, but upon the facilities used in the transaction of its business. Since under PD 1590, the tax exemption is only on the business itself, the subject importations cannot claim exemption from excise tax, being in the nature of facilities used in the transaction of the business, separate and distinct from the business itself.

Section 6 of RA 9334 also clearly and specifically states that 'the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, **even if** destined for tax and duty-free shops shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon'. Therefore, items intended for free-ports and duty-free shops are no longer exempted from being levied applicable taxes.

Petitioner's reference to Letter of Instruction No. 684 (LOI 684) allegedly indicating that its importation of commissary and catering supplies were allowed informal entry free of duty is likewise flawed. LOI 684 issued on April 4, 1978 pertains to the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil for its use which shall be allowed informal entry free of duty and released immediately subject to presentation within fifteen (15) days from the date of release, of a statement under oath stating that: (a) such articles or supplies are not locally available in reasonable quantity, quality and price; and (b) that such articles are necessary for or incidental to the operation of petitioner and its other business activities.

Under LOI 684, petitioner's imported consumable items for its catering and food services shall be transferred directly and immediately to the BOC's bonded warehouse, and may be withdrawn by accomplishing a requisition slip. The consumable items so withdrawn shall be properly accounted for by presentation of proof of *actual use* in the airline's operations. Petitioner however, has not shown compliance with the cited requirements to enjoy tax exemption privileges under LOI 689 which yielded to the legislative intent of RA 9334, which removed petitioner's tax exemption for the subject importations.

Anent BIR Ruling dated April 13, 1994 cited by petitioner in support of its alleged tax exemption, the same is simply not conclusive upon respondent COC as it only pertains to petitioner's exemption from payment of documentary stamp tax (DST) on bank notes/documents on certain loans, and not on matters subject of these cases.

Petitioner's invocation of the Department of Justice Opinion No. 44 dated June 17, 1996, which allegedly construed the meaning of *'in lieu of all taxes,'* is likewise misplaced as it is about petitioner's exemption from payment of filing fees relative to its application for an increase of its authorized capital stock from P5 Billion to P10 Billion and not petitioner's exemption from payment of excise taxes on its importations of liquor, cigarette and wine.

Finally, PD 1590 granting petitioner its airline franchise and its alleged tax exemption was issued when the government still owned it, albeit partly, and was the country's flag carrier. Petitioner is now privately owned, thus, no longer entitled to tax exemption.

After the pre-trial was terminated on July 2, 2013[20], petitioner commenced presentation of its evidence. It called to the witness stand its first witness **Jonathan R. Castillo Lee**, the Manager for Company Materials Handling Division and Manager for Company Materials Handling Division in the year 2008. He testified that part of his responsibilities was to make sure the timely release of petitioner's importation of catering and commissary supplies from different cargo warehouses. This included the filing of proper importation documents and coordination with various offices and government agencies for the release of the imported goods.

He further testified that petitioner paid under protest the assessments for excise taxes for its importations of alcohol and tobacco products for use as commissary and catering supplies in its international flights. The payment was made under protest because petitioner was exempt from excise taxes for these importations under its charter, PD 1590, specifically Section 13 thereof which provided that

[20] CTA Case No. 8529, docket, pp. 797-803.

petitioner's importations of commissary and catering supplies were exempt from payment of excise taxes if such importation would be for use in petitioner's operations, and if the imported goods are not locally available in reasonable quantity, quality, or price.

On various occasions, petitioner protested this imposition of excise tax on the subject importations. Within the two (2)-year prescriptive period under the NIRC, as amended, petitioner applied for the refund of the excise tax it paid under protest. However, respondents failed to act on them. This prompted petitioner to file the subject Petitions for Review with the Court on August 17, 2012 and December 21, 2012, which were docketed as CTA Case Nos. 8529 and 8590, respectively.

The Manager of the In-Flight Materials Purchasing Division, Corporate Logistics and Services Department of petitioner since November 16, 2008 **Cheryl V. Capinpin**[21], testified that she was formerly the Supervisor of In-Flight Materials Purchasing Division and as such, she was in charge of procuring foreign and local materials, supplies, equipment and services for petitioner's In-flight operations. Thus, she knew that the subject importations being subject to excise tax were intended for petitioner's consumption during its operations of international flights.

Based on the comparison of the prices of wine and alcohol products imported by petitioner with the prices of the same products from local suppliers, such as Philippine Wine Merchants, Duty Free Philippines, Future Trade International, and the price surveys conducted by the BIR, she concluded that the locally sourced wine and alcohol products were more expensive if locally procured. She however admitted that the BIR price survey was conducted in 2003 and 2010 only while the subject importations occurred in 2009. Also, at the time of the importation, the BIR price survey was not a factor since she became aware of it only when she filed her Supplemental Judicial Affidavit for purposes of this case.

[21] Exhibit "TTT", docket, pp. 633-654

On the tobacco importation, the cost of petitioner's imported tobacco would be less as it would not pay taxes thereon being tax-free under its franchise, while the cost of the same product from local suppliers would be higher due to taxes imposed thereon.

She testified further that local suppliers and dealers had a limited range of alcohol products, worse, did not carry products imported by petitioner. Hence, she concluded that the products imported by petitioner during the subject period were not available locally at reasonable quantity and price. Even if petitioner would buy in bulk from the local suppliers with considerable discount, the price of imported products would still be cheaper.

The witness admitted that the comparative pricelist she showed to the Court was prepared only on May 17, 2013 for her presentation in court and not on or about the time of the subject importations. For purposes of the subject importation, petitioner only made internal costing and canvassing of cost both of which were not submitted to the Court. Further, the price or cost of the imported articles of petitioner did not include any excise taxes that might possibly be imposed on the products, thus lower than those locally sourced wherein the excise tax was already incorporated in the price or cost of the products. Other expenses in relation to importation such as freight, handling, and shipping cost were likewise not included in the comparative survey submitted to the Court.

The conversion rate used by petitioner to determine the price for its importations were provided by the Financial Services Department of petitioner, sourced from the Bangko Sentral ng Pilipinas (BSP). The said rates were based on the monthly average and not the prevailing rate of exchange on the actual date of the importation.

The witness emphasized that to be competitive with the other international airlines, petitioner must carry and serve foreign brands of alcohol and tobacco during international flights. Thus competition and availability of these imported products locally were factored in for purposes of importation.

Another reason for petitioner's importation is the fact that the required volume of products for international flights could not be met by the local suppliers based on the canvas conducted by petitioner.

Corollary to the foregoing, she requested the National Tobacco Administration (NTA) for the retail prices of local cigarette brands however she was informed that it had no data on the matter for the pertinent taxable years 2005 to 2013.

To allow tax exemption on the imported wine, liquors, cigarettes and tobaccos, it must be shown that they are not available locally in reasonable price. Reasonable price, the witness admitted, does not necessarily mean cheaper but that price that will give the importer such as petitioner a profit margin from selling the products. Unfortunately, petitioner is yet to set a standard to determine if the price of locally available imported alcohol and tobacco products is reasonable.

Myra Celeste O. Dabalos, the Court-commissioned Independent Certified Public Accountant (ICPA) testified that her examination of petitioner's documents in support of the instant claim for refund revealed that the total amount of excise taxes for refund is supported by official receipts issued by the Bureau of Customs (BOC) proving that the amount paid under protest was remitted to the government. She included in her ICPA Report dated October 7, 2013, and the Final Report dated October 21, 2013 submitted to the Court that petitioner's purchase price of alcohol and tobacco products from sellers abroad, if exclusive of excise taxes, was consistently lower than the purchase price of the same products from local sellers. However, she admitted that she is not an expert on the matter, and was not authorized under her commission to verify the prices of these products.

The last witness presented was **Ma. Evelyn L. Taghap**, petitioner's Manager for Tax Division since 1999. Among her responsibilities is to ensure that petitioner fulfils all its tax obligations, pursuant to its charter, PD 1590, and under the Tax Code, including the filing of the requisite tax returns and payment of taxes on time.

Based on the BIR-issued Certificates of Registration of petitioner, its tax liabilities include payment of its annual registration fee, income tax, value-added tax, excise taxes on petroleum products, and withholding taxes. However, the said Certificates of Registration do not include excise taxes on importation of alcohol and tobacco products subject of the present petition. Any changes or updates in petitioner's registered activities or tax type or liabilities are reflected in the Certificate of Registration. In fact, petitioner's Certificate of Registration had been amended several times to accurately reflect the changes in its tax information. To effect any amendment, petitioner would surrender the original of its Certificate of Registration to the BIR Large Taxpayers Division for issuance of the amended Certificate.

At the time of the subject importations, the Certificate of Registration only reflected that petitioner was liable for registration fee, corporate income tax, and value-added tax, for which the corresponding tax returns have been filed, and the pertinent taxes paid. Petitioner paid its tax obligations for the relevant years when the subject importations were made.

Respondent COC opted not to present any evidence,[22] as did respondent CIR.[23]

STATEMENT OF ISSUES

The parties submitted the following issues[24] for this Court's consideration:

1. Whether petitioner is entitled to a refund of excise taxes paid under protest for its importation of alcohol and tobacco products in the aggregate amount of ₱5,425,576.78 pursuant to its tax exemption privilege under its franchise, PD No. 1590; and

2. Whether petitioner has exhausted all administrative and judicial remedies, and complied with the

[22] See Manifestation And Motion dated May 12, 2014, docket pp. 1446-1448.
[23] See Manifestation And Motion To Cancel Hearing dated September 12, 2014, docket pp. 1486-1489.
[24] Stipulation of Issues, JSFI, CTA Case No. 8529 docket, p. 773.

requirements for filing claim for refund under the provisions of the NIRC of 1997, as amended.

RULING OF THE COURT

As in other refund cases, the timeliness of the filing of the claim for refund shall first be determined. In relation thereto, Sections 204 and 299 of the NIRC, as amended, provide:

> "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)*
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been**

duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Hence, both the administrative and the judicial claims for refund must be filed within two (2) years from the payment of tax.

The relevant dates relative to the filing of petitioner's administrative and judicial claims for refund are summarized as follows:

CTA Case No.	Amount (in Peso)	Date of Payment	Date Filed with the BIR	Date of Filing of Petition for Review	Expiration of 2-Year Prescriptive Period
8529	2,054,771.79	August 18, 2010[25]	February 22, 2011[26]	August 17, 2012	August 18, 2012
	1,022,517.65	August 18, 2010[27]			
8590	641,389.09	December 28, 2010[28]	February 22, 2011[29]	December 21, 2012	December 28, 2012
	1,706,898.25	December 28, 2010[30]			

Evidently, both the administrative and judicial claims for refund were seasonably filed by petitioner.

[25] Exhibit "C".
[26] Exhibits "E" and "J".
[27] Exhibit "H".
[28] Exhibit "M".
[29] Exhibits "O" and "T".
[30] Exhibit "R".

But is petitioner entitled to the refund of excise taxes paid under protest for its importation of alcohol and tobacco products?

In support of its claim for refund, petitioner argues that under PD No. 1590, specifically Section 13 thereof, it is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

To wipe out the contention, both respondents CIR and COC stress that the legislative intent is to subject petitioner's importations of cigars and cigarettes, distilled spirits and wines to all applicable taxes, duties and charges, including excise tax, as categorically stated in Section 131 of the NIRC of 1997, as amended by RA No. 9334.

In this regard, the Supreme Court, in sustaining the ruling of this Court, held that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590. The Supreme Court elucidated on the matter as follows:

> "It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*:
>
>> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a

> private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding,*" <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed</u>. x x x
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by [RA] 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general - the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case."[31]

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[31] Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., G.R. Nos. 212536-37, August 27, 2014.

Thus, the exemption granted to petitioner under PD No. 1590 subsists, notwithstanding the passage of RA 9334.

But to be entitled to tax exemption under its franchise that will result in the grant of the refund sought, petitioner must first show compliance with the requirements set forth under Section 13 of PD No. 1590 which reads as follows:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency**, now or in the future, including but not limited to the following:
>
> 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 transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.**" *(Emphasis supplied)*

Thus, for petitioner to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, it must prove the following:

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

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.

Evidence show that petitioner complied with the first requisite. It paid its corporate income tax and VAT liabilities for the subject period of importation as shown in Annual Income Tax Returns for fiscal years ending March 31, 2008[32], March 31, 2009[33], March 31, 2010[34], and March 31, 2011[35]. Petitioner also proved that it is a VAT-registered entity and that it accounted for and paid VAT on its sales/receipts as evidenced by its BIR Certificates of Registration[36], Payment Form No. 0605[37], and Quarterly VAT Returns for fiscal years 2008[38], 2009[39], 2010[40], and 2011.[41]

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32 Exhibit "OO".
33 Exhibit "OO-1".
34 Exhibit "OO-2".
35 Exhibit "OO-3".
36 Exhibits "MM" and "MM-1".

Petitioner as well satisfied the second requisite – that the imported liquors, wines and cigarettes were for its use in its transport and non-transport operations and other incidental activities. On the matter, petitioner presented ATRIGs issued by the BIR, which expressly state that the shipment to be released will be used "exclusively for international inflight consumption". Further, under the column "Description of Articles" of the Informal Import Declaration and Entry documents submitted by petitioner, the imported articles were described as "Inflight Materials".

For the third requisite, petitioner presented as evidence the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[42], Revised Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies,[43] the Philippine Wine Merchants (PWM) Price List for the years 2007[44], 2009[45], and 2010[46], the Duty Free Philippines 2009 Retail Prices[47], the Monthly Philippine Dealing System (PDS) rates for the years 2007-2013[48], and the various letters of petitioner's Vice President for Financial Services, Marianne C. Raymundo with attached booking rates.[49]

However, the Table of Comparison[50] and the Revised Table of Comparison,[51] presented by petitioner proved lethal to its cause. The imported brands used by petitioner in its international flights were not even mentioned in the price list of Philippine Wine Merchants (PWM) and Duty Free Philippines.

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[37] Exhibits "NN", "NN-1", "NN-2", "NN-3", and "NN-4".
[38] Exhibit "PP".
[39] Exhibit "PP-1".
[40] Exhibits "PP-2", "PP-3", and "PP-4".
[41] Exhibit "PP-5".
[42] Exhibit "X".
[43] Exhibit "X-1".
[44] Exhibit "Y".
[45] Exhibit "Z".
[46] Exhibit "AA".
[47] Exhibit "BB".
[48] Exhibit "CC".
[49] Exhibits "DD", "EE", "FF", "GG", "HH", "II", and "JJ".
[50] Exhibit "X", Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, docket pp. 623-632.
[51] Exhibit "X-1", Revised Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, docket pp. 868-886.

While petitioner presented documents that would allegedly prove that the imported wines and liquors were not locally available in reasonable quantity, quality or price at the time of importation, it did not do the same insofar as its imported cigarettes were concerned.

Witness Cheryl V. Capinpin, who testified on the matter via her Judicial Affidavit dated May 17, 2013[52], did not include any comparison of the prices of local and imported tobacco. She conveniently concluded that since petitioner was exempted from payment of excise taxes, its imported cigarettes would be cheaper than those from the local suppliers who were to pay taxes for their importations of the same products. She testified as follows:

> 25. Q. In the column 'Product Imported' of Exhibit 'X', the products pertain to alcohol products only. Can you tell whether there is similar comparative table for PAL's imported tobacco products?
>
> A. No. there is no comparative table to document the importation costs and costs of locally purchasing the tobacco products, or more particularly the foreign branded cigarette products, needed by PAL for use in its international flights.
>
> 26. Q. Would you know, if ever, why this is so?
>
> A. Yes, because there are no local suppliers that could supply PAL with the foreign brands of cigarettes at reasonable prices. The importation cost is cheaper than the local purchase price of such foreign branded cigarettes.
>
> 27. Q. What is your basis if, any, in stating that the selling price of local suppliers of foreign brand cigarette products will be

[52] Docket pp. 518-541.

more expensive than PAL's importation costs?

A. My basis in saying this is the exemption of PAL from payment of excise taxes on its importation of commissary and catering supplies. This has always been PAL's guiding principle in making such importations.

The local suppliers of tobacco products do not enjoy the same tax exemption privilege as PAL; therefore, it is logical to conclude that their importations of foreign brand cigarette products are subject to excise taxes, custom duties and other import processing fees. The value alone of these taxes, duties and fees will account for the price difference.

The local suppliers will add its incurred importation costs (i.e. taxes, duties and fees) to the purchase price they got from their foreign supplier. This will constitute as part of their selling price to PAL. Definitely, this amount will be higher or more expensive than if PAL directly imported the tobacco products from the foreign supplier."[53]

In other words, without any supporting and verified data, petitioner assumed that the imported cigarettes would not be locally available in reasonable quantity and quality, and would be more expensive if sourced from local suppliers. Without any evidence such assumption has no leg to stand on. This is notwithstanding her declaration in her Supplemental Judicial Affidavit dated August 1, 2013[54]. In fine, petitioner failed to present sufficient evidence to prove that the imported tobacco products were not locally available in sufficient quantity, quality, or price at the time of importation.

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[53] Exhibit "KK", CTA Case No. 8529, docket, p. 526-527.
[54] Exhibit "KK-2", docket pp. 854-867.

The BIR Price Survey as well deserves scant consideration. Most of the items cited therein are not among those imported by petitioner as testified to by petitioner witness Cheryl Capinpin. [55]

More importantly, BIR Price Survey provided the products' price data for the years 2003 and 2010 and did not cover the year 2009 when the subject importation occurred[56].

It is therefore safe to conclude that when the subject importations were made in 2009, petitioner did not have any data, reliable or otherwise, on the price and availability of the subject imported items. In fact, petitioner's witness Cheryl Capinpin confirmed this fact in open court. She clarified that Exhibit X or the original Table of Comparison was prepared at the time she executed her Judicial Affidavit on May 17, 2013 or long after the fact,[57] hence, it was just an afterthought.

Further, the witness also admitted in open court that petitioner had nothing to show that it conducted internal canvassing pertaining to the local availability of the subject imported products.[58]

For failure to satisfy all the requisites for the claimed entitlement, these consolidated Petitions for Review must fail.

Well-settled is the rule that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven.[59]

[55] Exhibit "KK-2", docket, p. 865.
[56] Transcript of Stenographic Notes dated November 7, 2013, pp. 24-26.
[57] TSN, October 24, 2013, p. 16.
[58] Transcript of Stenographic Notes dated October 24, 2013, pp. 30-31.
[59] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

WHEREFORE, the instant Petitions for Review dated August 17, 2012 and December 20, 2012, filed by Philippine Airlines, Inc., are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

Ma. Belen S

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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