REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF CUSTOMS,
Petitioner,

CTA EB No. 1622
(CTA Case Nos. 7966, 7990 & 8020)

- versus -

AIR PHILIPPINES CORPORATION,
Respondent.

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1623
(CTA Case Nos. 7966, 7990 & 8020)

- versus -

Present:

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

AIR PHILIPPINES CORPORATION (APC),
Respondent.

Promulgated:
AUG 23 2018 4:40pm

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* are consolidated *Petitions for Review* separately filed by the Commissioner of Customs (COC) and the Commissioner of Internal Revenue (CIR) on April 17, 2017, and on

March 28, 2017, respectively, against Air Philippines Corporation (APC),[1] both praying for the reversal, reconsideration and setting aside of the Decision dated April 20, 2016[2] and Amended Decision dated March 15, 2017[3] promulgated by the Second Division of this Court (Court in Division) in the consolidated cases, docketed as CTA Case Nos. 7966, 7990 & 8020, entitled *"**Air Philippines Corporation, Petitioner, versus Commissioner of Internal Revenue and Commissioner of Customs, Respondents**"*, the dispositive portions of which respectively read:

Decision dated April 20, 2016:

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

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

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

Amended Decision dated March 15, 2017:

> "**WHEREFORE**, premises considered, respondent CIR's Motion for Partial Reconsideration (Re: Decision

[1] EB Docket (CTA EB No. 1622) – Vol. I, pp. 8 to 85; EB Docket (CTA EB No. 1623), pp. 1 to 31.
[2] EB Docket (CTA EB No. 1622) – Vol. I, pp. 88 to 116; EB Docket (CTA EB No. 1623), pp. 34 to 62.
[3] EB Docket (CTA EB No. 1622) – Vol. I, pp. 118 to 127; EB Docket (CTA EB No. 1623), pp. 63 to 72.

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

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

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

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

SO ORDERED.'

SO ORDERED."

THE FACTS

Petitioner CIR is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of ₱3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner COC is the Commissioner of the Bureau of Customs (BOC), delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG) (BIR Form No. 1918), to assess and collect customs duties and all other lawful revenues from imported articles, including the excise tax of ₱3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the NIRC, with principal office at the Port Area, Manila.

On the other hand, respondent APC is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.

The Department of Energy issued a Certification dated December 20, 2002 (2002 DOE Certification) stating that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price.

On January 29, 2003, petitioner CIR issued BIR Ruling No. 001-02, addressed to respondent APC, Philippine Airlines, Inc. (PAL), Cebu Air, Inc., and Pacific Airways Corporation, the pertinent portion of which reads:

> "x x x In 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 tax 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 rulings that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

On the basis of the foregoing, petitioner CIR, acting through petitioner COC, assessed respondent APC for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

Thus, for the following importations during the period of August to December 2007, respondent APC paid the corresponding specific taxes under protest, and filed its claims for refund, detailed as follows:

Import Entry Internal Revenue Declaration No.	Date of Payment	Official Receipt No.	Quantity of Jet A-1 fuel imported	Date of filing the claim for refund with the BIR
81802305	09/07/2007	242145c	9,664,889 liters	-
83807631	11/09/2007	137651c	6,458,301 liters	10/14/2009
83837656	01/04/2008	138622c	12,870,524 liters	12/23/2009

To avoid the lapse of the two-year prescriptive period provided under Section 229 of the NIRC, as amended, respondent APC filed three (3) *Petitions for Review* on August 28, 2009 (docketed as CTA Case No. 7966), November 6, 2009 (docketed as CTA Case No. 7990), and January 4, 2010 (docketed as CTA Case No. 8020) for the refund of the above-mentioned specific taxes paid.

Petitioner COC interposed special and affirmative defenses in the *Answers* filed on September 14, 2009 (for CTA Case No. 7966), December 1, 2009 (for CTA Case No. 7990), and January 26, 2010 (for CTA Case No. 8020), respectively, to wit: that respondent APC failed to exhaust administrative remedies before seeking relief from the Court in Division, and that it failed to appeal the issuance by the BIR of BIR Ruling No. 001-2003 dated January 29, 2003, to the Secretary of Finance, pursuant to Section 4 of the NIRC of 1997. Allegedly, respondent APC's resort to the petition is unavailing because it seeks to reverse petitioner's actions that are only results of prior factual determinations of another government agency. In an action for refund, the burden of proof is allegedly on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. If it were true that respondent APC paid specific taxes to the BOC, the latter merely acted as a collection agency that does not have any power and jurisdiction to adjudicate any issue arising from any tax impositions and other rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions. Hence, respondent APC cannot maintain a cause of action against it.

Petitioner CIR likewise filed his *Answers* to respondent APC's *Petitions* on September 16, 2009 (for CTA Case No. 7966), November 24, 2009 (for CTA Case No. 7990), and March 1, 2010 (for CTA Case No. 8020), and raised the following special and affirmative defenses for the said cases, to wit: the *Petitions for Review* should not be given due course as respondent APC failed to exhaust administrative remedies before elevating the same to the Court in Division. Allegedly, BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the NIRC of 1997. In effect, respondent APC is asking the Court in Division to override the factual determination made by the Secretary of the Department of Energy, in order for respondent APC to claim for refund. However, respondent APC's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; and the amounts of ₱35,470,143.00, ₱23,701,965.00, ₱47,234,823.08, representing specific taxes being claimed by respondent APC which were allegedly paid under protest on September 7, 2007, November 9, 2007, and January 4, 2008, respectively, were allegedly not properly documented. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit. Hence, respondent APC must show that it has complied with the provisions of Sections 204(C) and 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

In addition to the foregoing, petitioner CIR also avers in his *Answer* in CTA Case No. 8020, the following: that BIR Ruling No. 001-2003 is a valid interpretation of the provisions of the NIRC of 1997. Unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid and in full force and effect. Allegedly, respondent APC was given thirty (30) days from its alleged receipt of said BIR Ruling or until February 28, 2003, within which to exhaust the remedy under Department Order No. 23-01 of the Department of Finance by filing before the Secretary of Finance a request for review, in writing and under oath, the same BIR Ruling. Respondent APC, however, slept on its right and allowed the period within which to present its side of the case to lapse. Allegedly, the rules and regulations issued by the administrative or executive officers, pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect or partake the nature of a statute. Ergo, respondent APC's claim for refund has no basis in fact and in law, and thus, the *Petition* should be dismissed for lack of cause of action; and that petitioner CIR was not given ample time to appropriately act on the refund being claimed.

Thereafter, the three (3) cases were separately set for Pre-Trial Conference on October 8, 2009, January 21, 2010 and April 16, 2010.

The parties filed their *Joint Stipulation of Facts and Issues* on March 26, 2010 in CTA Case No. 7990, which was approved by the Court in Division in the Resolution dated April 7, 2010.

On July 21, 2010, the Court in Division granted respondent APC's *Motion to Consolidate CTA Case No. 7990 with CTA Case No. 7966*. On the other hand, during the hearing held on July 27, 2010, CTA Case No. 8020 was consolidated with CTA Case No. 7966. Subsequently, petitioner COC filed his *Pre-Trial Brief* on August 17, 2010, while respondent APC's *Consolidated Pre-Trial Brief* was filed on September 13, 2010.

On January 20, 2011, the parties filed their *Joint Stipulation of Facts* on the consolidated cases.

The Court in Division then issued a Pre-Trial Order on February 18, 2011, which, among others, considered the pre-trial of the case terminated.

During trial, respondent APC presented, by way of Judicial Affidavit, the testimonies of its witnesses Atty. Jonathan Andrew D. Lim, Edwin J. Segundo, Myra Celeste O. Dabalos, Jennifer I. Sedigo, Atty. Antero Jose M. Caganda and Atty. Voltaire A. Almeda, as part of its testimonial evidence.

Respondent APC also adopted the testimony of Marides C. Canillo in CTA Case No. 7966 made prior to the consolidation of the cases *a quo*. It likewise presented the testimony in open court of Mario V. Tiaoqui.

In addition, Exhibits "A-(CTA Case No. 7966)" to "G-(CTA Case No. 8020)", "H-(CTA Case No. 7966)", "H-(CTA Case No. 7990)", "I-(CTA Case No. 7990)" to "K-3", "M", "Q" to "T", "U", "V", "V-1", "X" to "BB", "YY" to "HHH", and "JJJ", were admitted as part of the evidence for respondent APC in the Resolutions dated July 9, 2013, and

October 17, 2013 while Exhibits "H-(CTA Case No. 8020)", "I-(CTA Case No. 7966)", "L", "N", "N-1", "O" & "O-1", "P", "P-1", "T-1", "T-2", "W", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX" and "III" were denied admission.

Respondent APC also filed, on April 4, 2014, its request for admission of the issuance and genuineness of the February 27, 2014 Decision of the Regional Trial Court, Pasay City, Branch 114 in Civil Case No. R-PSY-10-03889-CV (*Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*). Petitioner COC admitted its existence pursuant to its *Comment (On Petitioner's Manifestation and Request for Admission dated April 4, 2014)* filed on April 23, 2014, subject to the qualification that the same is not yet final, as the same is still the subject of a *Notice of Appeal* filed on March 19, 2014. Petitioner CIR also adopted the comment filed by petitioner COC as per his *Manifestation* filed on April 25, 2014.

On the other hand, petitioners presented the testimonies of its witnesses, Saturnino B. Dela Cruz and Zenaida Y. Monsada. The Court in Division likewise admitted, as part of respondent COC's documentary evidence, Exhibits "1" to "6-a", and ordered both parties to file their respective memoranda, pursuant to the Resolution dated April 1, 2014.

The *Memorandum* for respondent APC was filed on June 10, 2014, while petitioners CIR and COC filed their *Memorandum* on May 7, 2014 and June 9, 2014, respectively.

In the Resolution dated June 17, 2014, the consolidated cases were submitted for decision by the Court in Division.

However, on October 31, 2014, respondent APC filed its *Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum*, which was denied by the Court in Division in the Resolution dated February 24, 2015.

On March 13, 2015, respondent APC filed its *Motion for Partial Reconsideration (on Court's Resolution dated 24 February 2015)*. In the Resolution dated June 15, 2015, the Court in Division granted the motion and gave respondent APC ten (10) days to submit a *Supplemental Memorandum*. Thus, the Resolution dated June 17, 2014, submitting the consolidated cases for decision was recalled and set aside.

Thereafter, the *Supplemental Memorandum* for respondent APC was filed on July 3, 2015. Considering the filing thereof, the consolidated cases were submitted anew for decision on August 5, 2015.

In the assailed Decision dated April 20, 2016 of the Court in Division,[4] the latter granted the *Petitions for Review* in CTA Case No. 7990 and 8020, but denied the *Petition for Review* in CTA Case No. 7966.

Consequently, the parties filed their respective motion for partial reconsideration of the assailed Decision. On May 5, 2016, petitioner CIR filed his *Motion for Partial Reconsideration (Re: Decision dated 20 April 2016)*;[5] on May 6, 2016, petitioner COC filed his *Motion for Partial Reconsideration*;[6] and on the same date, respondent APC filed its *Motion for Partial Reconsideration of Decision and to Reopen the Case for Presentation of Evidence*.[7]

In the Resolution dated August 5, 2016,[8] the Court in Division granted respondent APC's *Motion to Reopen the Case for Presentation of Evidence*, and thus, held in abeyance the respective Motions of the parties, until the presentation of respondent APC's additional evidence to prove its entitlement to the refund sought.

Thereafter, in the assailed Amended Decision dated March 15, 2017,[9] the Court in Division denied the motions for partial reconsideration of petitioners CIR and COC; but granted respondent APC's *Motion for Partial Reconsideration of Decision*. Thus, the Court in Division modified the assailed Decision, in that all of the refund claims of respondent APC were granted and ordered petitioners to refund the aggregate amount of ₱106,406,931.08 to the said respondent.

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[4] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 1928 to 1956; EB Docket (CTA EB No. 1622) – Vol. I, pp. 88 to 116; and EB Docket (CTA EB No. 1623), pp. 34 to 62.
[5] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 1957 to 1969.
[6] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 1973 to 2016.
[7] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 2034 to 2046.
[8] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 2148 to 2152.
[9] Division Docket (CTA Case No. 7966) – Vol. IV, pp. 2316 to 2325; EB Docket (CTA EB No. 1622) – Vol. I, pp. 118 to 127; and EB Docket (CTA EB No. 1623), pp. 63 to 72.

On March 28, 2017, petitioner COC filed his *Motion For Extension of Time To File Petition* with the Court *En Banc*,[10] praying that he be given an extension of fifteen (15) days from March 31, 2017 or until April 15, 2017, within which to file a petition for review. The Court *En Banc* granted the period prayed for by petitioner COC, but qualified the same as "final and non-extendible".[11] The case was docketed as **CTA EB No. 1622.**

On the same date, petitioner CIR filed his *Petition for Review* before the Court *En Banc*,[12] and such case was docketed as **CTA EB No. 1623.**

Petitioner COC filed his *Petition for Review* before the Court *En Banc* on April 17, 2017 in **CTA EB No. 1622**.[13]

The said two (2) *Petitions for Review* were consolidated by the before the Court *En Banc* on April 19, 2017.[14]

On May 3, 2017, the Court *En Banc* ordered respondent APC to file a *Consolidated Comment* on the said *Petitions for Review.*[15]

Respondent APC, however, filed, on May 24, 2017, a *Motion for Extension (Of Time To File Consolidated Comment to Commissioner of Internal Revenue's Petition for Review dated 24 March 2017 and Commissioner of Custom's Petition for Review dated 10 April 2017)*,[16] praying that it be given an extension of fifteen (15) days from May 26, 2017, or until June 10, 2017, within which to file its *Consolidated Comment*. Consequently, the Court *En Banc* granted the said *Motion for Extension* and gave respondent APC a final and non-extendible period of fifteen (15) days from May 26, 2017, or until June 10, 2017.[17]

The *Consolidated Comment* was filed by respondent APC on June 13, 2017.[18]

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[10] EB Docket (CTA EB No. 1622) – Vol. I, pp. 1 to 5.
[11] Minute Resolution dated March 30, 2017, EB Docket (CTA EB No. 1622) – Vol. I, p. 7.
[12] EB Docket (CTA EB No. 1623), pp. 1 to 31.
[13] EB Docket (CTA EB No. 1622) – Vol. I, pp. 8 to 85.
[14] Minute Resolution dated April 19, 2017, EB Docket (CTA EB No. 1622) – Vol. II, p. 913.
[15] EB Docket (CTA EB No. 1622) – Vol. II, pp. 915 to 916.
[16] EB Docket (CTA EB No. 1622) – Vol. II, pp. 917 to 920.
[17] Minute Resolution dated May 26, 2017, EB Docket (CTA EB No. 1622) – Vol. II, p. 923.
[18] EB Docket (CTA EB No. 1622) – Vol. II, pp. 924 to 951.

In the Resolution dated June 29, 2017,[19] the Court *En Banc* ordered the parties to file their respective *Memoranda*.

Petitioner COC, however, filed a *Manifestation* on August 11, 2017,[20] manifesting to the Court *En Banc* that he would adopt his *Petition for Review* as his *Memorandum* in the instant case, since the same has already fully discussed the issues at hand and sufficiently dealt with respondent APC's arguments on material points, and that a memorandum would only be a repetition of the arguments raised in the said *Petition*.

Respondent APC filed its *Memorandum* on August 14, 2017.[21]

On August 18, 2017, petitioner CIR filed a *Motion to Admit Attached Memorandum*,[22] praying to the Court *En Banc* that his attached *Memorandum*[23] be admitted.

In the Resolution dated September 11, 2017,[24] the Court *En Banc*: (1) noted petitioner COC's *Manifestation*; (2) granted petitioner CIR's *Motion to Admit Attached Memorandum*, thereby admitting the said *Memorandum*; and (3) deemed the consolidated cases submitted for decision.

Hence, this Decision.

GROUNDS FOR THE ALLOWANCE OF THE PETITION FOR REVIEW

Petitioner COC raises the following grounds for the allowance of the Petition for Review in CTA EB No. 1622, to wit:

"I.

> The CTA *Second Division* and *Special Second Division* seriously erred in giving due course to respondent's Petitions for Review, even if they were prematurely filed

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[19] EB Docket (CTA EB No. 1622) – Vol. II, pp. 983 to 984.
[20] EB Docket (CTA EB No. 1622) – Vol. II, pp. 985 to 987.
[21] EB Docket (CTA EB No. 1622) – Vol. II, pp. 991 to 1035.
[22] EB Docket (CTA EB No. 1622) – Vol. II, pp. 1066 to 1069.
[23] EB Docket (CTA EB No. 1622) – Vol. II, pp. 1071 to 1086.
[24] EB Docket (CTA EB No. 1622) – Vol. II, pp. 1088 to 1089.

due to respondent's failure to exhaust all available administrative remedies.

II.

The CTA Second Division and Special Second Division seriously erred in granting respondent's Petitions for Review and ordering petitioner and the CIR to refund in favor of respondent the aggregate amount of ₱106,406,931.08, notwithstanding the fact that respondent failed to prove its full compliance with the requisites for excise tax exemption, and ultimately, for refund thereof.

a. The ATRIGs and the testimonies of respondent's witnesses relative to the alleged use of the subject importations of Jet A-1 fuel cannot sufficiently establish its compliance with the second requisite for excise tax exemption.

b. The ATO Certifications cannot also establish respondent's compliance with the second requisite for excise tax exemption.

c. The ATO Certifications cannot sufficiently prove respondent's claims that there is no locally available supply of Jet A-1 fuel in reasonable quantity, quality or price.

d. There is locally available Jet A-1 fuel in reasonable quantity, quality or price during the period subject of respondent's importations, and, hence, an absence of the third requisite in order for respondent to be entitled to exemption from payment of excise tax under its franchise."[25]

For his part, petitioner CIR raises the following grounds in support of the Petition for Review in CTA EB No. 1623, to wit:

"I.

THE HONORABLE COURT ERRED IN RULING

[25] EB Docket (CTA EB No. 1622) – Vol. I, pp. 26 to 27.

THAT THE PETITIONER WAS ABLE TO PROVE THAT ITS INCOME TAX AND VAT LIABILITIES WERE PAID.

III. (should be II).

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO PROVE THAT THE JET A-1 FUEL WAS ACTUALLY USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS.

IV. (should be III.)

THE HONORABLE COURT ERRED IN RELYING ON THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES (CAAP) CERTIFICATION IN RULING THAT JET A-1 FUEL IS NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE.

V. (should be IV.)

THE HONORABLE COURT ERRED IN RULING THAT IN DETERMINING LOCALLY AVAILABLE SUPPLY, IMPORTATIONS ARE EXCLUDED."[26]

Petitioner COC's arguments:

Petitioner COC argues that the petitions for review were prematurely filed, as respondent APC failed to exhaust administrative remedies.

According to petitioner COC, the entries in the ATRIGs as to the alleged use of the subject importations, as declared by respondent APC, are at best, only self-serving declarations and thus, cannot sufficiently establish the existence of the second requisite for tax exemption under its charter, in relation to PD No. 1590.

Allegedly, the ATO cannot issue the subject certifications, as its charter does not vest the said office, and subsequently the CAAP, with the power to issue certifications on the availability or non-availability of aviation fuel; and that neither does the ATO, nor the CAAP, have data on, nor does it monitor, the volume or supply of aviation gas, fuel, and oil available in the country.

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[26] EB Docket (CTA EB No. 1622) – Vol. II, pp. 1072 to 1073.

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Furthermore, petitioner COC avers that incidental to the mandate of the DOE of monitoring the demand and supply, inventory, and price movement of oil and other petroleum products, is the authority to issue the corresponding certifications based on available data. Allegedly, the DOE Certification was issued on the basis of available data, as can be gleaned from the tenor of the certification, and it was issued by a proper authority, the DOE Secretary himself. It is this DOE Certification which is entitled to the *prima facie* presumption of the facts stated therein under Section 44, Rule 130 of the Rules of Evidence. Contrary to respondent APC's claim, it is the DOE, and not the CAAP, which has the express power and duty to certify as to the local availability of aviation fuel in the country.

Petitioner CIR's arguments:

Petitioner CIR argues that it is incumbent upon respondent APC to discharge the burden of proving entitlement thereto, which basically includes the fact of payment and their subsequent remittance to the BIR. In this regard, respondent APC did not present any certification from petitioner CIR's Revenue Accounting Division to prove actual remittance of the alleged payment.

The presentation of the ATRIGs is not sufficient to prove that the Jet A-1 Aviation Fuel were actually used by respondent APC in its transport and non-transport operations.

According to petitioner CIR, it is the DOE (not the CAAP, as the Court in Division held) which is in the best position to determine whether the total supply of fuel is enough for total demand; and the CAAP has nothing to do with monitoring fuel supply and demand.

Lastly, as regards petitioner CIR's argument that the Court in Division erred in ruling that importations are excluded in the determination of locally available supply, petitioner CIR contends that respondent APC's quoted importations will most likely be cheaper because it is the base international price. Allegedly, the local suppliers will also pad other factors to their prices, such as taxes/duties, transport costs and their profit margin. Thus, respondent APC's direct importations will always be "cheaper" over the locally available products; and imported fuel, at its quoted price, which is tax and duty-free cannot really be considered cheaper than locally-refined fuel that is priced with all costs, taxes and duties.

Respondent APC's counter-arguments:

Respondent APC counter-argues that petitioner COC's claim of exhaustion of administrative remedies is misplaced.

Respondent APC points out that it has sufficiently proven that Jet A-1 fuel was actually used for its transport and non-transport operations; and that the ATRIGs and testimony of respondent APC's witnesses are not self-serving by are sufficient to establish its compliance with the second requisite.

Also, respondent APC contends that it has sufficiently proven that the imported articles are not locally available in reasonable quantity, quality or price; that the ATO Certifications were properly given weight by the Court in Division; and that the DOE 2002 Certification cannot be relied upon because it was already declared null and void by the Pasay Regional Trial Court and the Court of Appeals, and is based on data from the years 2001 to 2002 only.

Moreover, the ICPA's findings and the testimony of Mario Tiaoqui sufficiently proved that there is no locally available supply of Jet A-1 fuel during the period subject of the case; that "locally available supply" excludes imported products; and that at the time of the subject importations, the difference between the cost of Jet A-1 fuel importation and cost of domestic purchase is significantly unreasonable.

Finally, respondent APC avers that both petitioners admitted the fact of filing of the written claim for refund (on the importation subject of CTA Case No. 7966).

THE COURT *EN BANC*'S RULING

For failure to file a motion for reconsideration of the assailed Amended Decision dated March 15, 2017 rendered by the Court in Division, the instant appeals of petitioners COC (CTA EB No. 1622) and CIR (CTA EB No. 1623) before the Court *En Banc* must be dismissed.

In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*,[27] the Supreme Court held as follows:

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[27] G.R Nos. 201530 and 201680-81, April 19, 2017.

"An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.

Section 1, Rule 8 of the Revised Rules of the CTA states:

> SECTION 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. **Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory.**

<u>The same is true in the case of an amended decision.</u> Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division.' As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*,[28] **an amended decision is a different decision, and thus, is a proper subject of a motion of reconsideration.**

In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.

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[28] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

> **Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court.** Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.
>
> As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons." *(Emphases and underscoring supplied)*

Considering therefore that there is no indication that petitioners COC and CIR filed a motion for reconsideration of the assailed Amended Decision in CTA Case Nos. 7966, 7990 and 8020, the latter has attained finality. Such being the case, petitioners COC and CIR may no longer question the merits of the case before the Court *En Banc*.

WHEREFORE, in light of the foregoing considerations, the consolidated *Petitions for Review* separately filed by petitioners COC and CIR in CTA EB 1622 and 1623, respectively, are hereby **DISMISSED,** for failure of petitioners to file a motion for reconsideration of the assailed Amended Decision dated March 15, 2017 (in CTA Case No. 7966, 7990 and 8020) before filing the same before this Court *En Banc*.

Accordingly, the Amended Decision dated March 15, 2017 rendered by the Court in Division in CTA Case Nos. 7966, 7990 & 8020 is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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