REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS, Petitioner,	CTA EB NO. 1704 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566)
- versus -	
AIR PHILIPPINES CORPORATION (APC), Respondent.	

x------------------------------------x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners,	CTA EB NO. 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
AIR PHILIPPINES CORPORATION, Respondent.	Promulgated: MAY 02 2019 11:29a.m.

x- -x

DECISION

Fabon-Victorino, J.:

In these consolidated Petitions for Review, the Commissioner of Customs (COC) and the Commissioner of

Internal Revenue (CIR) assail the Amended Decision[1] and Resolution[2] respectively dated May 8, 2017 and August 11, 2017, promulgated by the Court in Division in CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, and 7566, entitled *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*. The dispositive portion of the assailed Amended Decision and Resolution read as follows:

Assailed Amended Decision of May 8, 2017:

> **WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration of the Decision dated 02 October 2015** is hereby **GRANTED**. Accordingly, the Decision dated October 2, 2015 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 petitioner Air Philippines Corporation the aggregate amount Two Hundred Thirty-Five Million Six Hundred Thirteen Thousand One Hundred Thirty-Four Pesos and Forty-Seven Centavos (P235,613,134.47), representing the specific taxes paid under protest for the importation of Jet A-1 aviation fuel stated below and computed as follows:

CASE NO.	DATE OF IMPORT ENTRY	EXCISE TAXES PAID
7252	5/30/2003	29,176,500.00
	6/12/2003	14,588,250.00
	6/27/2003	14,588,250.00
	Subtotal	P58,353,000.00
	11/7/2003	11,670,600.00

[1] Docket, pp. 2276-2291.
[2] Docket, pp. 2382-2392.

7362	12/12/2003	21,494,389.94
	12/19/2003	21,494,389.94
	Subtotal	P42,988,779.88
7445	4/29/2004	14,790,905.57
	4/16/2004	14,790,905.56
	Subtotal	P29,581,811.13
7494	6/24/2004	14,827,258.75
	6/29/2004	14,827,258.75
	Subtotal	P29,654,517.50
7517	8/31/2004	14,800,180.00
	9/14/2004	14,800,180.00
	Subtotal	P29,600,360.00
7521	9/22/2004	17,031,376.34
7566	1/12/2005	16,732,689.72
	TOTAL	**P*235,613,134.57**

*with 0.10 rounding off difference compared to the subject claim

SO ORDERED.

SO ORDERED.

Assailed Resolution of August 11, 2017:

WHEREFORE, premises considered, respondents' respective Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

In his *Petition for Review*[3] filed on September 14, 2017, docketed as CTA EB No. 1704, the COC prays to set aside the assailed Amended Decision and Resolution and a new one be issued dismissing the consolidated Petitions for Review filed before the Court in Division, on jurisdictional ground.

On the other hand, the CIR, in his *Petition for Review*[4] filed on September 25, 2017 and docketed as CTA EB No. 1707, seeks for the total denial of respondent's claim for refund.

The Facts and the Proceedings

The facts, as culled from the record, are as follows:

---

[3] En Banc docket (CTA EB No. 1704), pp. 36-74.
[4] En Banc docket (CTA EB No. 1707), pp. 7-17.

Petitioner COC is the head of the Bureau of Customs (BOC) delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIGs), to assess and collect custom duties and all other lawful charges from imported articles, including excise tax of ₱3.67 per liter on imported aviation turbo jet fuel imposed under Section 148 (g) of the NIRC of 1997. He holds office at the Port Area, Manila.

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR), with the power to assess and collect 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 under Section 148 (g) of the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Air Philippines Corporation (APC) is a domestic corporation with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City. It is engaged in the business of air transportation of passengers and cargo to and from points within and outside the Philippines, pursuant to its franchise, Republic Act (RA) No. 8339[5], as amended by RA No. 9215[6].

Under Section 11 of RA No. 8339, as amended, respondent is entitled to the same tax-exemption privileges granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[7], to wit:

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

---

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

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

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

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

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

> 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) hereu nder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description,

imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

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

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

xxx xxx xxx"

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

> xxx (O)n June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a consideration, the dispositive portion of which states:
>
> > On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.
> >
> > In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.
>
> On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations and purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.
>
> In reply, please be informed that **pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (PAL's Franchise) and the letter-decision dated June 28, 2000 of the Secretary of Finance**, pertinent portions of which are heretofore quoted, **APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products** which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations." *(Emphasis supplied)*

Subsequently, or on January 29, 2003, BIR issued BIR Ruling No. 001-2003 addressed to respondent, Philippine Airlines, Cebu Air, Inc., and Pacific Airways Corporation, holding that:

> **In the light of the Certification of the Department of Energy dated December 20, 2002**

h/

that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. **Accordingly, your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.**

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

On the basis of the foregoing ruling, the CIR, acting through the COC, assessed respondent of specific taxes on its importations of Jet A-1 fuel used for its domestic operations.

For the period May 2003 to December 2004, respondent made several importations of Jet A-1 fuel for its domestic operations. The said importations were assessed of specific taxes by the Collector of Customs, which respondent paid under protest. The details of payments are as follows:

Date of Importation	Date of Payment under Protest	Amount Paid
May 15, 2003	1st Installment - May 30, 2003[8] 2nd Installment - June 12, 2003[9] 3rd Installment - June 27, 2003[10]	P29,176,500.00 14,588,250.00 14,588,250.00
October 29, 2003	November 7, 2003[11]	P11,670,600.00
December 5, 2003	1st Installment – December 12, 2003[12] 2nd Installment – December 19, 2003[13]	P21,494,389.94 21,494,389.94
April 5, 2004	1st Installment – April 16, 2004[14]	P14,790,905.56

[8] Exhibit I.
[9] Exhibit J.
[10] Exhibit K.
[11] Exhibit R.
[12] Exhibit X.
[13] Exhibit Y.
[14] Exhibit FF.

	2nd Installment – April 30, 2004[15]	14,790,905.56
June 13, 2004	1st Installment - June 24, 2004[16] 2nd Installment – June 29, 2004[17]	P14,827,258.75 14,827,258.75
August 16, 2004	1st Installment – August 31, 2004[18] 2nd Installment – September 14, 2004[19]	P14,800,180.00 14,800,180.00
August 28, 2004	September 23, 2004[20]	P17,031,376.34
December 17, 2004	January 12, 2005[21]	P16,732,689.72

On the following dates, respondent filed formal written protests with the Collector of Customs for the refund of the specific taxes it paid:

Date of Importation	Date of Payment under Protest	Date of Filing of Protest with COC
May 15, 2003	1st Installment - May 30, 2003 2nd Installment - June 12, 2003 3rd Installment - June 27, 2003	July 14, 2003
October 29, 2003	November 7, 2003	November 21, 2003
December 5, 2003	1st Installment – December 12, 2003 2nd Installment – December 19, 2003	December 29,2003
April 5, 2004	1st Installment – April 16, 2004 2nd Installment – April 30, 2004	May 3, 2004
June 13, 2004	1st Installment - June 24, 2004 2nd Installment – June 29, 2004	July 9, 2004
August 16, 2004	1st Installment – August 31, 2004 2nd Installment – September 14, 2004	September 15, 2004
August 28, 2004	September 23, 2004	October 6, 2004
December 17, 2004	January 12, 2005	January 27, 2005

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

Date of Importation	Date of Filing Written Claim for Refund with CIR	Amount Paid
May 15, 2003	April 28, 2005[22]	P58,353,000.00
October 29, 2003	October 28, 2005[23]	P11,670,600.00
December 5, 2003	November 21, 2005[24]	P42,988,779.88
April 5, 2004	March 28, 2006[25]	P29,581,811.12
June 13, 2004	June 20, 2006	P29,654,517.50

[15] Exhibit EE.
[16] Exhibit LL.
[17] Exhibit MM.
[18] Exhibit QQ.
[19] Exhibit RR.
[20] Exhibit VV.
[21] Exhibit ZZ.
[22] Exhibit N.
[23] Exhibit V.
[24] Exhibit BB.
[25] Exhibit HH.

August 16, 2004	March 28, 2006[26]	P29,600,360.00
August 28, 2004	March 28, 2006	P17,031,376.34
December 17, 2004	December 29, 2006[27]	P16,732,689.72

Also, to avoid the lapse of the two-year prescriptive period within which to recover the specific taxes alleged to have been erroneously paid, respondent filed eight (8) separate Petitions for Review before the Court in Division, on the following dates:

CTA Case No.	Amount of Claim Involved	Date of Payment Under Protest	Date of Expiration of Two-Year Prescriptive Period	Date of Filing of Petition
7252	P58,353,000.00	1st Installment - May 30, 2003 2nd Installment - June 12, 2003 3rd Installment - June 27, 2003	May 30, 2005	May 16, 2005[28]
7362	P11,670,600.00	November 7, 2003	November 7, 2005	November 7, 2005[29]
7383	P42,988,779.88	1st Installment – December 12, 2003 2nd Installment – December 19, 2003	December 12, 2005	December 9, 2005[30]
7445	P29,581,811.12	1st Installment – April 16, 2004 2nd Installment – April 30, 2004	April 16, 2006	April 17, 2006[31] (*April 16, 2006 falls on a Sunday*)
7494	P29,654,517.50	1st Installment - June 24, 2004 2nd Installment – June 29, 2004	June 24, 2006	June 23, 2006[32]
7517	P29,600,360.00	1st Installment – August 31, 2004 2nd Installment – September 14, 2004	August 31, 2006	August 31, 2006
7521	P17,031,376.34	September 23, 2004	September 23, 2006	September 21, 2006[33]
7566	P16,732,689.72	January 12, 2005	January 12, 2007	January 12, 2007[34]

In his *Answer* filed in CTA Case No. 7252, the CIR countered that in an action for tax refund/credit, the taxpayer has the burden of establishing its right to refund, and failure to discharge the said burden is fatal to the claim for refund. Per the CIR, no cogent reason exists to disturb

[26] Exhibit UU.
[27] Exhibit E[7].
[28] Exhibit O.
[29] Exhibit W.
[30] Exhibit CC.
[31] Exhibit II.
[32] Exhibit PP.
[33] Exhibit CCC.
[34] Exhibit DDD.

the certification and findings of the Department of Energy (DOE) that *"aviation gas, fuel and oil for use in domestic operation of domestic airlines companies are locally available in reasonable quantity, quality and price"*, especially considering that it enjoys the presumption of regularity. By virtue of the said certification, the second condition for respondent's exemption from taxes on its importation of Jet A-1 fuel is wanting, said the CIR.

For his part, the COC posited that domestic airlines are exempt from taxes on their importations of Jet A-1 fuel when these two (2) conditions are met: (1) the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and (2) in the case of importations, that they are not locally available in reasonable quantity, quality or price. On this regard, the DOE, the government agency responsible in the administration of the energy sector, hence, presumed to have regularly performed its duties, issued the Certification dated December 20, 2002 saying that the second condition for respondent's exemption from taxes on subject importation of Jet A-1 fuel is wanting. Moreover, the CTA is not the proper venue or forum for respondent to question and contest the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airlines companies are locally available in reasonable quantity, quality and price.

In his *Answer* in CTA Case No. 7362, the CIR moved to dismiss the case for failure of respondent to attach the Board Resolution authorizing Jonathan Andrew D. Lim, respondent's corporate counsel, to sue for and in behalf of respondent corporation. The COC, on the other hand, essentially raised the same special and affirmative defenses he alleged in his *Answer* in CTA Case No. 7252.

Anent CTA Case No. 7383, the CIR argued that respondent failed to exhaust administrative remedies before elevating the case to the Court. Allegedly, respondent did not question before the Office of the President of the Philippines the DOE Certification dated December 20, 2002, in violation of Section 1(j) of Rule 16 of the Rules of Court. Respondent also failed to appeal to the Office of Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before assailing its validity before the Court in violation of Section 4 of the NIRC, as amended.

For CTA Case Nos. 7445, 7494, 7517, 7521, and 7566, both COC and CIR basically raised the same arguments and defenses they raised in CTA Case Nos. 7252 and 7383 except for the amount and transaction period involved in each case.

In the Resolutions dated October 27, 2006,[35] October 30, 2006,[36] and November 30, 2006[37], the aforesaid cases were consolidated.

During the trial, respondent presented evidence in support of its cases, the CIR did not. On the other hand, the COC did not appear despite due notice.

On October 2, 2015, the Court in Division promulgated a Decision[38] denying the consolidated Petitions for Review, for insufficiency of evidence. The Court in Division ruled that respondent failed to satisfy the second requisite, namely, that the imported Jet A-1 Aviation Fuel was used for its transport and non-transport operations, therefore not entitled to the benefits under Section 13 of PAL's Franchise.

Aggrieved, respondent, on October 20, 2015 filed a *Motion for Reconsideration of the Decision dated October 2, 2015 and Motion to Reopen the Case for Presentation of Evidence*[39].

In the Resolution[40] dated February 16, 2016, the Court in Division granted respondent's *Motion to Reopen the Case for Presentation of Evidence* and hold in abeyance the resolution of its *Motion for Reconsideration*.

---

[35] Docket, pp. 229-230.
[36] Docket, pp. 232-234.
[37] Docket, pp. 268-269.
[38] Docket, pp. 1929-1951.
[39] Docket, pp. 1968-1983.
[40] Docket, pp. 2011-2021.

In the Resolution[41] dated January 24, 2017, the Court in Division admitted Exhibits R^7 to W^{13}-1 R which respondent formally offered on September 5, 2016. In the same Resolution, the Court in Division declared respondent's *Motion for Reconsideration* as submitted for resolution considering CIR's *Manifestation* that he would no longer present evidence and COC's failure to present counter evidence.

On May 8, 2017, the Court in Division promulgated the assailed Amended Decision granting the Petitions for Review and ordering petitioners CIR and COC to refund to respondent the aggregate amount of ₱235,613,134.47, representing the specific taxes paid under protest on respondent's importation of Jet A-1 fuel from May 2003 to December 2004. The Court in Division ruled that respondent satisfied all the requisites for exemption from all other taxes, pursuant to its franchise, to wit: (1) respondent was able to prove that the imported Jet A-1 fuel was used for its flight operations and other activities incidental thereto; (2) that it paid the basic corporate income tax; and (3) that at the time of the subject importation, there was no locally available Jet A-1 fuel in reasonable quantity.

Unconvinced, both the CIR and the COC filed their respective motions for reconsideration which were denied in the equally assailed Resolution of August 11, 2017.

Hence, the two (2) Petitions for Review separately filed by the COC and the CIR docketed as CTA EB No. 1704 and CTA EB No. 1707, respectively.

In a Minute Resolution dated September 26, 2017, the two Petitions for Review were consolidated pursuant to Section 1, Rule 31 of the Revised Rules of Court and was given due course on December 19, 2017.

On May 3, 2018, the instant consolidated Petitions for Review were deemed submitted for decision.

---

[41] Docket, pp. 2271-2272.

GROUNDS FOR THE PETITION

In his *Petition for Review*, the COC submits the following grounds in support of his appeal:

I. THE SUBJECT MATTER OF THESE CONSOLIDATED CASES DOES NOT FALL WITHIN THE JURISDICTION OF THE HONORABLE COURT AS DEFINED UNDER SECTION 7 OF REPUBLIC ACT NO. 9282.

II. THE BIR HAS NO JURISDICTION OVER RESPONDENT'S CLAIMS FOR REFUNDS; HENCE, THE CTA HAS LIKEWISE NO JURISDICTION OVER THE ALLEGED INACTION OF THE BIR ON SUBJECT CLAIMS FOR REFUND.

III. THE ASSESSMENT AND COLLECTION OF EXCISE TAXES BY THE COLLECTOR OF CUSTOMS ON PETITIONER'S (*sic*) IMPORTATIONS OF JET A-1 AVIATION FUEL HAD LONG BECOME FINAL AND IMMUTABLE.

On the other hand, the CIR anchors his *Petition for Review* on the following grounds:

1. The Honorable Court erred in taking jurisdiction of the consolidated cases as the Honorable Court is without jurisdiction to rule on the issue of the validity of the Certification of the Department of Energy dated 20 December 2003 (*sic*) and the BIR Ruling No. 001-2002.

2. The Certification of the Department of Energy dated 20 December 2003 (*sic*) and BIR Ruling No. 001-2003 being valid issuances, the Honorable Court erred in ruling that the imported articles are not locally available in reasonable quantity, quality, or reasonable price.

The COC asserts that considering that the enforcement or implementation of internal revenue laws on imported articles, which includes Section 131 of the Tax Code, is lodged with the BOC, they are deemed part of customs laws. And since the BOC has the power to enforce laws involving imposition of excise tax on imported articles, any issue involving liability for, or exemption from the said tax, as well as the procedure on protests and appeals should be governed by the pertinent provisions of the Tariff and Customs Code of the Philippines (TCCP), as amended. For COC, respondent conceded on this matter when it filed several written protests with the Collector of Customs for the refund of the assessed and collected excise taxes under Section 2308, in relation to Section 1708 of the TCCP, as amended.

To date however, the Collector of Customs is yet to rule on respondent's claims for refund. In the absence of any decision or ruling on the said claims for refund, there is nothing to elevate to the CTA for review, citing *Caltex (Philippines), Inc. vs. Commissioner of Internal Revenue*[42] *(Caltex case),* as his authority. With the premature filing of the consolidated appeals, the cases should be dismissed for lack of cause of action.

The COC further asserts that not even the alleged delay or inaction of the Collector of Customs in resolving respondent's claims for refund could justify respondent's premature filing of identical claims for refund with the BIR. The said delay or inaction, according to the COC, should have been brought to his attention as he controls and supervises all customs officials. Respondent however disregarded the available administrative mechanism under the TCCP, as amended, and in haste filed its claims for refund with the BIR mimicking the issues, causes of action and relief raised in its earlier claims for refund with the Collector of Customs. Effectively, respondent resorted to forum shopping. The flawed action did not affect the BOC's authority to hear and decide the claims for refund or alter the pertinent appeal mechanism under the TCCP, as amended, with respect to the assessed excise taxes on its imported Jet A-1 aviation fuel.

---

[42] G.R. No. L-20462, June 30, 1965.

Finally, the COC opines that the assessment and collection of excise taxes on respondent's imported Jet A-1 aviation fuel is beyond the CTA's competence. Although respondent adhered to the administrative mechanism under Section 2308 by seasonably filing its protests to challenge the validity of the assessment and collection of the subject excise taxes, it failed to pay the docket fees required in Section 2308, in relation to Section 3301, of the TCCP as amended, rendering assessment and collection of excise taxes on respondent's imported Jet A-1 aviation fuel final and immutable. Being mere scraps of paper, the said protests could not be entertained by the Collector of Customs pursuant to Section 2308, in relation to Section 3301 and 3303 of the TCCP, as amended.

With respect to CTA Case No. 7252, the COC states that respondent's protest against the assessment and collection of excise tax of ₱58,353,000.00 on its importation of Jet A-1 aviation fuel was filed beyond the 15-day reglementary period to file formal protest rendering the said assessment and collection of the subject excise taxes on respondent's importation of Jet A-1 aviation fuel conclusive, final and immutable.

For his part, petitioner CIR believes that the CTA has no jurisdiction to rule on the issue of the validity of the DOE Certification dated December 20, 2002 and BIR Ruling No. 001-2003. Allegedly, the consolidated petitions should have been dismissed outright as the relief prayed for entirely depends on the nullification of the DOE Certification of December 20, 2002 and the resultant BIR Ruling No. 001-2003. Allegedly, without the declaration of nullity of the said issuances, respondent would have nothing to base its claims for refund.

Even assuming that respondent's primary cause of action is the refund of excise taxes it paid for the subject importation and the nullification of the administrative issuances is merely consequential, still respondent's actions will not prosper as they are deemed collateral attacks against the said issuances. Well-established is the rule that a collateral attack on a presumably valid administrative issuance is not allowed.

The CIR also finds erroneous the ruling that at the time of the subject importations, Jet A-1 aviation fuel was not locally available in reasonable quantity, quality and price. Witness Glendalyn P. Dela Cruz, a Senior Science Research Specialist of the DOE, who handles the monitoring, inventory and local refinery production of the oil companies in the country, testified that the total local available supply of petroleum products in the country, insofar as DOE's interpretation is concerned, is the sum of three (3) components, namely: (1) refinery production; (2) product importation; and (3) inventory. The CIR interprets this to mean that the local available supply includes local production and importations. Thus, based on the DOE's interpretation, the supply for Jet A-1 fuel for the years 2001 to 2010 was always higher than the demand.

The CIR also submits that the Court in Division erred when it equated reasonableness with cheaper price of the subject Jet-A fuel. For the CIR, respondent's direct importations would always be "cheaper" over locally available products. The fact that some prices of aviation fuel from abroad are cheaper does not make the price of locally available products reasonable.

In its *Consolidated Comment*,[43] respondent submits that the contentions of both the CIR and the COC in their respective Petitions for Review are misplaced and bereft of merit.

According to respondent, the jurisdiction of the Court over its Petitions for Review has long been put to rest in the Resolution dated March 13, 2007, which denied the COC's Motion to Dismiss dated December 5, 2006 citing lack of jurisdiction on the part of the Court to take cognizance of respondent's cases. The ruling was bolstered in the assailed Amended Decision dated May 8, 2017 and Resolution dated August 11, 2017.

Further, the consolidated Petitions for Review were filed with the Court in Division for the refund of specific taxes paid which had been erroneously and illegally collected since respondent was exempt from paying taxes by virtue of RA

[43] En Banc docket, pp. 188-214.

No. 8339, in relation to PD No. 1590. Allegedly, the issue of the validity of the DOE Certification and the BIR Ruling No. 001-2003 were raised only to prove the propriety of its claims for refund. Also, the invalidity of the issuances and ruling on which the assessments were anchored were merely incidental issue that the Court must resolve to arrive at a just and complete determination of its claims for refund. As the cases were primarily claims for refund, the jurisdiction to hear and determine the same rightfully belongs to the CTA.

Respondent further argues that the COC's insistence that the cases are within his competence and that Section 1708 of the TCCP applies and not the NIRC, has also been threshed out and settled in the Resolution dated August 11, 2017. In the said Resolution, the Court in Division ruled that the COC has no jurisdiction over the subject matter of the cases under Section 12(a) of the NIRC of 1997, as amended. In fact, in his Motion for Reconsideration dated May 24, 2007, the COC admitted that it was the BIR who assessed and collected the taxes for the subject imported Jet A-1 fuel. Having admitted that he merely acted on delegated authority by the BIR, the COC cannot now claim otherwise at his convenience.

Further, on the alleged applicability of Sections 2308 and 3301 of TCCP, the same is absolutely misplaced. The subject consolidated cases involve claims for refund of erroneously paid taxes, and not an assessment finding that the taxes are still due from a taxpayer concern. For respondent, COC is confused for he could not differentiate the rules and requirements for claims for refund of erroneously paid taxes from that for assailing the assessment of unpaid taxes.

Respondent also argues that the *Caltex case* cited by the COC is inapplicable to the instant case as the subject of the *Caltex case* is the special import law under RA No. 1394, which the Supreme Court classified as customs law. In the present cases, the BOC acted only through delegated authority bestowed upon him by the CIR through the ATRIGs in accordance with Section 12(a) of the NIRC. Every ATRIGs issued shows that the subject Jet A-1 fuel were subjected to "*Excise Tax under 148(g) of the Tax Code*". Without any doubt, the paid taxes claimed for refund are specific taxes imposed under the NIRC, falls under the jurisdiction of the BIR.

Moreover, the claims for refund arose from respondent's tax exemption under its franchise, in relation to PD No. 1590, which the BIR revoked through the disputed BIR Ruling No. 001-2003. Thus, to claim that the BOC and not the BIR which has jurisdiction over the taxes paid and claimed for refund is tantamount to admission that the BIR also does not have jurisdiction to issue the disputed BIR Ruling.

Respondent also points out that its claims for refund were filed pursuant to Sections 204(C) of the NIRC, as amended and that it has complied with all the requirements under Section 229 of the same Tax Code. It filed written protests with the District Collector of Customs concerned and filed with the BIR its administrative claims for refund categorically demanding reimbursement of specified amount; and that its Petitions for Review were filed within two (2) years from the date of payment of the taxes subject of the present claims in accordance with the rules.

In any event, the application of the TCCP on procedural matters does not divest the CTA of its jurisdiction over the cases as pointed out by the Court in Division.

Anent the alleged inability of respondent to call the attention of the COC on the claimed delay or inaction of the Collector of Customs, respondent counters that the cited case of *Nestle Philippines, Inc. vs. Court of Appeals*[44] is different from the instant consolidated cases, as the taxes involved therein were customs duties on milk products, not specific tax under the NIRC.

Respondent also rejects COC's assertion that it committed forum shopping when it filed a protest with the BOC and thereafter filed claims for refund with the CIR citing the same issues, claims and relief. Respondent explains that it was in accordance with the rules and only to avail of

[44] G.R. No. 134114, July 16, 2001.

the remedy of appeal within the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended.

As to the contention of the CIR that "locally available supply" refers to the sum of local production, inventory and importations and that reasonable price does not necessarily mean the lowest price, respondent counters that the same are but a rehash of the CIR's arguments in his *Memorandum* of June 19, 2014 and *Motion for Reconsideration* of May 24, 2017, which have already been amply addressed by the Court in Division in the assailed Amended Decision dated May 8, 2017. In any event, its exemption stands as it was able to sufficiently proved that at the time of the subject importation, there was no locally available supply of fuel in reasonable quantity. Siding with the Court in Division, respondent points out that as ruled by the Court in Division, the third requisite imposes an ***alternative*** and not cumulative qualification for exemption. Thus, sufficient that it was able to prove but one element to qualify for the exemption.

The Court *En Banc's* Ruling

After a judicious review of petitioners' arguments and the record of the case, the Court *En Banc* finds no reason nor rhyme to modify much more reverse the assailed Amended Decision and Resolution of the Court in Division.

It is evident that the arguments raised by both the COC and the CIR have already been adequately addressed and passed upon by the Court in Division in the assailed Amended Decision and Resolution. Be that as it may, the Court *En Banc* will discuss the issues raised to stress the salient points and rationale of the assailed rulings of the Court in Division.

The Court of Tax Appeals has jurisdiction to determine the propriety of the present claims for refund/tax credit:

The COC professes authority under the TCCP, as amended, to rule on respondent's claims for refund since the subject matter allegedly involves duties and taxes on imported goods. In the absence of any ruling that could be subject of appeal, the consolidated Petitions for Review filed by respondent should be dismissed for being premature and for lack of cause of action.

The Court *En Banc* is not persuaded.

There is no denying that the alleged erroneously paid taxes subject of the instant refund cases are excise taxes imposed under the NIRC. Admittedly, the COC collected the taxes due on the subject importations pursuant to the delegated authority accorded to him by the CIR pursuant to Section 12(a) of the NIRC, *viz.*:

> SEC. 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* — The following are hereby constituted agents of the Commissioner: (a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods; (b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and (c) Banks duly accredited by the Commissioner with respect to receipt of payments internal revenue taxes authorized to be made thru bank. Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code.

And since the taxes subject of the present claims for refund are excise taxes imposed under the NIRC, it follows that any refund thereof shall be governed by the provisions of the NIRC, as amended.

As respondent correctly asserted, Sections 204(C) and 229 of the NIRC, as amended, govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC. Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. They read as follows:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (*Emphasis supplied*)
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or

> proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Emphasis supplied*)

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

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

> Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; . . . (*Emphasis supplied*)

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

Anent COC's contention that respondent committed intentional forum shopping, suffice it to say that the COC is merely acting on a delegated authority given by the CIR. In fact, when the COC failed to render a decision on respondent's protest, and the 2-year prescriptive period under Section 229 of the NIRC of 1997, as amended, was about to end, that respondent filed its administrative claims for refund with the BIR, and subsequently with the CTA.

In the leading case of *Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals,*[45] the Supreme Court held:

> Under the above ruling, it is clear that Section 306 [46] of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within two (2) years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. **If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or**

---

[45] G.R. No. L-13453, February 29, 1960.
[46] Now Section 229 of the NIRC of 1997.

> **proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector**. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute. (*Emphasis supplied*)

Evident from foregoing pronouncement, when the two-year prescriptive period is about to expire, a taxpayer-claimant need not wait for the decision of the CIR for purposes of judicial intervention. In fine, respondent cannot be faulted for complying with the mandated requisites under the law and taking the appropriate action to avoid the lapse of the 2-year prescriptive period.

As regards COC's contention that the assessment and collection of excise taxes on the subject imported Jet A-1 fuel had long become final and immutable for respondent's failure to pay the docket fees required under Section 2308, in relation to Section 3301 and 3303 of the TCCP as amended, before filing its protests, the Court *En Banc* is one with the Court in Division in holding that such pre-requisite is applicable only to protestable and seizure cases.

We quote with approval the ruling of the Court in Division on the matter, as follows:

> Indeed, there is no question that a party aggrieved by an assessment issued by the Collector of Customs may assail the said assessment by filing a written protest thereof; otherwise, the action of the Collector shall become final and unappealable. If the Collector's decision is adverse to the party aggrieved, the latter can then appeal the matter to the COC, whose decision can be elevated before this Court for review. More so, an appeal to the COC shall only be perfected upon filing of a written notice of appeal; and, payment of appeal docket fee in accordance with the prescribed rates within fifteen (15) days

from receipt of the notice of decision. This is the recognized procedure under the TCCP, as amended, as stated in the following provisions:

xxx xxx xxx

However, emphasis must be placed on the fact that the foregoing is applicable only to protestable and seizure cases. Unfortunately, it finds no application in the present consolidated cases since the controversy involved herein are claims for refund of erroneously paid taxes. This Court finds the ruling in the case of *PILIPINAS SHELL PETROLEUM CORPORATION vs. COMMISSIONER OF CUSTOMS, ET AL.*,[47] as instructive on the matter, viz.:

> 'x x x payment of the assessed taxes as a prerequisite to the filing of a protest requires that the case must be the subject of a protest or a protestable case. Apropos thereto, the protest mechanism mentioned in the above-cited provisions applies when the liability for duties, taxes, fees or other money charge is determined. In other words, the protest contemplated under Section 2308 of the TCCP, as amended, refers to goods that are still within the customs territory which first requires payment of duties and taxes pending its release thereof. As stated in the said Section, 'at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter.' Even so, the very fact that PSPC had secured Authority to Release Imported Good (ATRIG) from public petitioners confirms that the present controversy is

[47] CTA EB Nos. 1007 & 1003 (CTA Case No. 8004), September 5, 2016.

> not the one covered by the protest mechanism referred above.
>
> Similarly, the case of *Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Customs*, contemplates the scenario when the protest mechanism applies, viz.:
>
> xxx xxx xxx
>
> In the same vein, considering that there was no protest to speak of under Section 2308 of the TCCP, as amended, or a protestable case for that matter, the requirement of payment of documentary customs stamps under Section 3301, in relation to Section 3303 of the TCCP, as amended and CAO No. 2-2001 is necessarily not applicable for the simple reason that there were no services rendered or documents issued by the BOC to warrant its application.
>
> To reiterate, the present consolidated cases are petitioner's claims for refund of erroneously paid taxes and not protestable and seizure cases where there is a finding of unpaid taxes due to the government. As such, Section 1708 of the TCCP, as amended, should instead apply on the matter and not Section 2308 as respondent COC would want to have it."

On the other hand, the CIR claims that the Court in Division erred in taking cognizance of the consolidated petitions as it is without jurisdiction to rule on the validity of the Certification of the DOE dated December 20, 2003 and BIR Ruling No. 001-2003

The contention has no leg to stand on.

The CTA need not rule on the validity of the 2003 BIR Ruling No. 001-2003, as well as DOE Certification dated December 20, 2002.

To be sure, the issue of whether the 2003 BIR Ruling is valid will not affect the Court's determination of respondent's entitlement to refund given that the said Ruling does not cover the excise taxes on importations paid from May 2003 to December 2004, which is the subject of respondent's claims for refund. Reproduced hereunder are the contents of the 2003 BIR Ruling:

> Gentlemen:
>
> This refers to the rulings of this Office that have been separately issued to you, namely:
>
> 1. BIR Ruling No. 013-99 issued to PAL on January 29, 1999;
>
> xxx xxx xxx
>
> that we have now revisited on the basis of the instruction of the Secretary of Finance to review the exemption from taxes granted to airline companies on their importation of aviation gas, fuel, and oil for use in their domestic operations.
>
> Importations of petroleum products for domestic operations are tax-exempt in the presence of two conditions: (1) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude form shall be for the exclusive use in the franchisee's transport and nontransport operations and other activities incidental thereto, and; (2) in the case of importations, that they are not locally available in reasonable quantity, quality, or price. x x x Thus, importations of such products may not be tax-exempt unless the two conditions are present.

> In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to the 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-stated 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.
>
> This Ruling takes effect immediately.[48]

Thus, the basis of the pronouncement in the 2003 BIR Ruling was the DOE Certification issued on December 20, 2002 covering historical data. The importations subject of these cases were made in 2003 and 2004, hence, not the subject of the DOE Certification. And even *sans* this issue of the validity of the said BIR Ruling, the CTA has jurisdiction to determine the propriety of the present claims for refund/tax credit.

Respondent, like PAL, enjoy exemption from payment of excise tax on its importations of Jet A-1 fuel pursuant to the provision of its franchise:

[48] Underscoring supplied.

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

> SEC. 11. Tax Provisions. — The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed ipso facto part hereof and shall operate equally in favor of the grantee**.
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation. (Emphasis supplied)

The tax privileges enjoyed by PAL — a competing corporation — are spelled out in its franchise, Presidential Decree No. (PD) 1590, 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 non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; . . . (Emphasis supplied)

In other words, to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all its importations, PAL must satisfy the following conditions:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under

the conditions set forth in Section 13 of PD No. 1590;

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

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

In the instant consolidated *Petitions for Review*, both the CIR and COC claim that respondent failed to prove the third requisite, to wit: that the imported Jet-A fuel is not locally available in reasonable quantity, quality or price. Hence, the Court *En Banc* shall limit its discussion on the matter.

Petitioner CIR moors its stance on the DOE interpretation of the condition that local available supply includes local production and importations, and that the supply for Jet A-1 fuel for the years 2001 to 2010 was always higher than the demand, in other words, importations of Jet-A1 fuel during the relevant were unwarranted. The CIR considers the DOE as in the best position to determine whether the total supply is enough for total demand. Further, CIR contends that reasonable price is not necessarily the lowest price.

The Court *En Banc* is again not convinced.

In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,[49] the Supreme Court had the occasion to define the word domestic, in relation to Sec. 13 of PAL's franchise, as follows:

> First, examining its phraseology, the word 'domestic,' which means 'of or relating to one's own country' or 'an article of

---

[49] G.R. No. 198759, July 1, 2013, citing BLACK's LAW DICTIONARY, 9th Ed. (2009), p. 557, and http://www.merriam-webster.com/dictionary/domestic?show=0&t=1372905302 (visited January 25, 2013).

> domestic manufacture,' clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. **In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported.** (*Boldfacing supplied*)

From the foregoing construction of the word domestic under PAL's franchise, it follows that **imported petroleum products should not be included as part of the total local supply**. For if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Thus, there was nothing erroneous in giving weight and credence to the testimony of witness Glendalyn P. Dela Cruz, a Senior Science Research Specialist of the DOE that the Total Industry Petroleum Products Demand (Domestic and International Demand) is always greater than local refinery production[50].

Significantly, respondent's subject importations of Jet A-1 fuel were supported by Certifications[51] issued by the Air Transportation Office (ATO) to the effect that the imported Jet A-1 aviation fuel were not locally available in reasonable quantity, quality and price and it was necessary/incidental for the business operation of respondent. These ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court, which provides:

> SEC. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

---

[50] Exhibit W^5.
[51] Exhibits EEEE, FFFF, GGGG, HHHH & KKKK.

The ATO Certifications were issued by the Air Transportation Office or ATO, which was replaced by the Civil Aviation Authority of the Philippines (CAAP) under Republic Act (RA) No. 9497. It had the competence to issue certifications pertaining to the availability of supply of aviation fuel. ATO's authority to issue certifications was in line with its general powers under Section 32 of its charter, RA No. 776, which reads as follows:

> SECTION 32. *Powers and duties of the Administrator.* — Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:
>
> (1) To carry out the purposes and policies established in this Act; to enforce the provisions of, the rules and regulations issued in pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
>
> xxx xxx xxx
>
> (21) **To cooperate, assist and coordinate with any research and technical studies on** design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances and **air navigation facilities including aircraft fuel and oil**; Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. (*Boldfacing supplied*)

The foregoing mandate negates the CIR's contention that only the DOE could best determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 aviation fuel.

At this juncture, it must be pointed out that the use of conjunctive "or" in the third requisite - *the imported articles,* *supplies or materials are not locally available in reasonable quantity, quality* ***or*** *price* – connotes alternative, not cumulative qualification for the determination of whether there is locally available Jet A-1 fuel. Thus, it was sufficient that respondent was able to prove one (1) qualification to avail of the exemption, i.e., that at the time of the subject importations there was no locally available Jet A-1 fuel in reasonable quantity.

In view of the foregoing, the Court *En Banc* finds that respondent APC has sufficiently established its entitlement to a refund or issuance of a TCC in the amount of ₱235,613,134.57, representing excise taxes paid on importations for Jet A-1 fuel for the period May 2003 to December 2004.

WHEREFORE, the instant consolidated *Petitions for Review* filed by the Commissioner of Customs and Commissioner of Internal Revenue, docketed as CTA EB No. 1704 and CTA EB No. 1707, respectively, are hereby **DENIED**, for lack of merit. Accordingly, the assailed Amended Decision and Resolution dated May 8, 2017 and August 11, 2017, respectively, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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

Ma. Belen S - L
MA. BELEN RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice