Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA EB NOS. 1162 & 1167** (CTA Case No. 8236)
-versus-	
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, *Respondents.*	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA,
x-----------------------------------x	UY,
COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, AND
-versus-	RINGPIS-LIBAN, JJ.
PHILIPPINE AIRLINES, INC., *Respondent.*	Promulgated: JAN 07 2016 1:55 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision are consolidated Petitions for Review for the Court *En Banc* filed by the respective parties on May 21, 2014[1] and May 22, 2014[2] under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals, *as amended*, of the Decision[3] and Resolution[4] dated December 18, 2013 and April 10, 2014, respectively, rendered by the Special First Division of this Court.

[1] Posted by Philippine Airlines, Inc. within the extended period of time granted in an *En Banc* Resolution dated May 7, 2014, docketed as CTA EB No. 1162.
[2] Filed by the Commissioner of Internal Revenue within the extended period of time granted in an *En Banc* Resolution dated May 12, 2014, docketed as CTA EB No. 1167.
[3] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza R. Fabon-Victorino. *Rollo,* CTA EB No. 1162, pp. 434-462.
[4] *Id.*, at 474-476.

CTA EB No. 1162

Philippine Airlines, Inc. (PAL) seeks the partial nullification of aforementioned Decision and Resolution, insofar as the denial of PAL's refund for the remaining amount of ₱4,670,506.42, representing excise taxes it erroneously paid on its various importations of alcohol and tobacco products, the dispositive portions of which, respectively, read as follows:

> **Decision dated December 18, 2013:**
>
> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **Three Million One Hundred Thirty One Thousand Six Hundred Thirty Nine Pesos and Thirty One Centavos (₱3,131,639.31)**, representing petitioner's erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption."
>
> **SO ORDERED**."[5]
>
> **Resolution dated April 10, 2014:**
>
> "**WHEREFORE**, petitioner's **"Motion for Partial Reconsideration (Of the Decision dated December 18, 2013)"** and respondent's **"Motion for Partial Reconsideration (Re: Decision Promulgated 18 December 2013)"** are **DENIED** for lack of merit.
>
> **SO ORDERED**."[6]

CTA EB No. 1167

On the other hand, the Commissioner of Internal Revenue (CIR) seeks the reversal of the assailed Decision and Resolution insofar as the partial grant of PAL's refund of its erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption in the amount of ₱3,131,639.31, and for this Court to deny PAL's entire claim for refund.

[5] *En Banc* Docket, p. 462.
[6] *Id*, at 476.

The Facts

The antecedent facts as culled from the Decision of the Court *a quo* are as follows:

"Petitioner Philippine Airlines, Inc. [PAL] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.

There are two respondents in this case. Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including the excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended. Respondent COC holds office at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

On June 11, 1978, by virtue of Presidential Decree (PD) No. 1590, otherwise known as 'An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries', [PAL] was granted a franchise to operate air transport services domestically and internationally. Section 13 of PD No. 1590 partly provides:

> 'SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

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

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

'SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

'SEC. 131. Payment of Excise Taxes on Imported Articles. —

'(A)Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

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

'The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.'

On February 3, 2005, then BIR Commissioner Guillermo L. Parayno, Jr. wrote then BOC Commissioner George M. Jereos, calling attention to Section 6 of RA No. 9334 and the failure of the BOC to collect excise taxes 'on all importations of alcohol and tobacco products destined for Duty Free Philippines (DFP) and the freeport zones such as the Subic Bay Freeport Zone.' In the said letter, the BIR also requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to DFP and the freeport zones be immediately collected.

On February 4, 2005, then BOC Commissioner Jereos issued a Memorandum to BOC officers and personnel, directing them to 'effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones'.

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the 'Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Regulation No. 12-2004.'

On April 4, 2005, [PAL] contested the action taken by the Collector of Customs of the Manila International Container Port (MICP) in trying to collect excise taxes and customs duties on [PAL's] importation of cigarettes for use in its operations, and in refusing to release them, unless these taxes and duties are first paid. In its letter, [PAL] requested the immediate release of its imported two pallets of cigarettes for its commissary supplies.

[PAL's] April 4, 2005 letter was endorsed to the Legal Service of the BOC, which responded to its request for release of the imported cigarettes by issuing a Memorandum on April 25, 2005 addressed to COC Alberto D. Lina.

Likewise, considering the great risk of exposing its shipment of Australian wines to spoilage, [PAL] advised the COC on May 16, 2005 that it would pay, under protest, the taxes, duties and fees imposed for the said shipment.

[PAL's] subsequent importations of wine, liquor, and cigarettes needed for its international flights were subjected to excise tax and also withheld release from the customs ports pending payment of taxes, duties, and fees.

On December 12, 2008, Gilda L. Cinco, Acting Chief of WAU of the BOC, submitted to Silveria Salazar, Chief of the Collection Division of NAIA Customhouse, the documents evidencing [PAL's] payment of duties, taxes, and other charges pursuant to Customs Memorandum Order (CMO) No. 13-2005 and Revenue Regulations No. 3-2006.

On February 25, 2009, [PAL] paid under protest the total excise taxes in the amount of P7,802,145.73 on its importation of assorted liquor and cigarettes. On the same date, [PAL] wrote a letter to Mrs. Silveria Salazar to 'formally protest the assessment and collection from Philippine Airlines Incorporated (PAL) the total amount of P7,802,145.73 as excise tax allegedly due from its importation of liquors and/or cigarettes for catering and commissary supplies'.

On February 27, 2009, [PAL] filed with the District Collector of Customs of NAIA a written protest against the assessment and collection of excise taxes in the amount of P7,802,145.73 in accordance with Section 2308 of the Tariff and Customs Code.

On May 12, 2009, [PAL] filed an administrative claim for refund dated May 11, 2009 with respondent CIR for the refund of the amount of P7,802,145.73, representing its alleged erroneously paid excise taxes on the subject importations of assorted liquor and cigarettes.

Due to [CIR's] inaction, [PAL] filed this instant Petition for Review on February 24, 2011."[7]

CIR filed her Answer and argues, among others, that PAL must first prove that judicial claim for refund was timely filed and its compliance with the pertinent rules and regulations on claims for refund. CIR further argues that PAL has to prove by clear and convincing evidence that the requirements for a claim for refund were met and that the aggregate amount of ₱7,802,145.73, representing tax it paid under protest to the COC on its alleged importations for taxable year 2008 is properly documented. CIR further claims that PAL's claim for refund of its erroneous payment of tax is devoid of merit considering that PAL is liable to pay excise tax by express provision of law citing Section 6 of RA No. 9334.

During the trial, PAL presented documentary and testimonial evidence while CIR, through counsel, manifested during the hearing on August 17, 2012 that there are no BIR records in this case. After the parties, except for the COC who was declared in default, filed their respective Memorandum, the case was then submitted for decision on March 1, 2013.

[7] *En Banc* Docket, pp. 7-13.

On December 18, 2013, the Court *a quo* rendered a Decision [8] partially granting PAL's claim for refund in the reduced amount of ₱3,131,639.31, representing its erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.

In essence, the Court *a quo* made the following pronouncements:

1. The CTA has jurisdiction over the instant case as PAL timely filed its claim for refund pursuant to Sections 204 and 229 of the NIRC of 1997, as amended;

2. CIR is the proper party in the present case pursuant to Section 4 of the NIRC of 1997, as amended;

3. PAL is partially entitled to its claim for refund:
   i) The amendment introduced by RA No. 9337 only modified or altered PAL's options for the payment of taxes since it is now obliged to pay the corporate income tax and the value-added tax in lieu of all other taxes, with the franchise tax being expressly abolished.

   ii) PAL proved its exemption for the payment of excise taxes for its importation of wines and liquor in the amount of ₱3,131,639.31 after it has sufficiently established that it complied with the conditions for tax exemption prescribed under Section 13 of PD 1590.

   iii) PAL failed to establish its claim for refund in the amount of ₱4,670,506.42, representing the excise tax it paid under protest on its importations of liquors and cigarette products for failure to comply with the requisite that these items are not locally available in reasonable quantity, quality or price.

The Motions for Partial Reconsideration filed by the parties on January 21, 2014[9] and February 21, 2014[10], respectively,

[8] *Supra* note 3.
[9] Filed by Philippine Airlines, Inc.

were subsequently denied for lack of merit in a Resolution[11] dated April 10, 2014.

Both parties thereafter filed their respective Petitions for Review before the *Court En Banc*.

The Issues

In CTA EB No. 1162, PAL raises the issue of whether the Court *a quo* erred in denying its claim for refund of erroneously paid excise tax on its importation of commissary supplies to the extent of the amount of ₱4,670,506.42.[12]

In turn, in CTA EB No. 1167, CIR raises the issue of whether the Court *a quo* erred in ruling that PAL is entitled to the refund in the amount of ₱3,131,639.31, representing alleged erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.[13]

The Court *En Banc's* Ruling

Both petitions are devoid of merit.

We shall first discuss CIR's argument that Section 131 of the NIRC of 1997, as amended by R.A. No. 9334, expressly withdrew the conditional tax exemption granted to PAL.

The issue is no longer novel. In ***Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.***,[14] the Supreme Court clearly held that the tax privilege of PAL pursuant to Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA No. 9334. Thus:

[10] Filed by Commissioner of Internal Revenue.
[11] *Supra* note 4.
[12] *En Banc* No. 1162, Docket, p. 271.
[13] *En Banc* No. 1167, Docket, p. 12.
[14] G.R. Nos. 212536-37, August 27, 2014.

"It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.

Indeed, as things stand, **PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334.** We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc*:

> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. xxx *[G.R. No. 180066, July 7, 2009, 592 SCRA 237, 261]*

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

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

> special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case." [Emphasis supplied.]

Consequently, the Court *a quo* is correct in upholding the tax privilege of PAL pursuant to Sec. 13 of PD 1590 in the assailed Decision and Resolution. We shall now proceed to determine whether PAL is entitled to its claim for refund of erroneously paid excise tax on its importation of commissary supplies in the total amount of ₱7,802,145.73.

PAL submits that it is erroneous for the Court *a quo* to deny its claim for refund of excise tax on its importation of Gordon's Gin, Grand Marnier Liqueur and various cigarette products on the basis of the absence of a comparative local pricelist as the condition under Section 13 of PD 1590 for petitioner to be exempt from paying taxes on imported products is when they are not locally available in reasonable quantity, quality or price.[15] PAL insists that the comparative local price is not the only determining factor to justify the exemption of the imported product especially when such could not be provided in view of the absence of local suppliers capable of supplying the required amount of imported cigarettes.[16]

PAL further argues that CIR judicially admitted in her Partial Motion for Reconsideration dated January 23, 2014 that the cost of importing the commissary supplies is always cheaper than purchasing them locally.[17] Consequently, the presentation of such price list or proving the fact that they are not locally available in reasonable quantity, quality or price is no longer necessary in view of CIR's judicial admission pursuant to Section 4, Rule 129 of the Rules on Evidence.

In her comment, CIR counters that the exemption granted to PAL is not absolute but subject to the simultaneous fulfillment of the three (3) conditions under Section 13, PD 1590, *i.e.,* the commissary supplies are not locally available in

[15] CTA EB No. 1162 Docket, p. 274.
[16] *Id.*, at 275.
[17] *Id.*, at 279.

reasonable (i) quantity; (ii) quality; and (iii) price.[18] CIR argues that imported liquor and cigarettes are reasonably priced in the Philippines. CIR opines that while PAL's quoted base international prices may be cheaper, that does not make the locally available products' price "unreasonable" because a reasonable price is not necessarily the lowest price.

CIR further clarified her statement that *"petitioner's quoted importations will forever be 'cheaper' over the locally available products"* was propounded based on a theoretical comparison between manufacturer's prices vis-à-vis the same product transported and retailed in the Philippines; and such was part of her argument that reasonable price is not necessarily the cheapest quoted price as the same rationalization has no basis in fact and in law.[19] Thus, CIR concludes that PAL failed to sufficiently prove that the subject imported cigarettes, wine, and liquors are not locally available in reasonable quantity, quality and price.[20]

We are not persuaded.

In order to be exempt from payment of taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies pursuant to Section 13(2) of PD 1590, it is imperative for PAL to prove, among others, that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

After a careful review of the records of the instant case, the Court *En Banc* affirms the findings of the Court *a quo* that PAL failed to prove its entitlement to refund in the amount of ₱4,670,506.42, representing its claim for refund of excise tax paid on imported Gordon's Gin and Grand Marnier Liqueur and various cigarette products. We quote:

> "Petitioner presented in evidence its Annual Income Tax Returns for fiscal years ending March 31, 2008 and March 31, 2009, showing that it paid its corporate income tax for the same years. Likewise, it was established that petitioner is a

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[18] *Id.*, at 499.
[19] *Id.*, at 501-502.
[20] *Id.*, at 502-505.

VAT-registered entity and paid its VAT liabilities for the subject period as evidenced by its Certificate of Registration and Quarterly VAT Returns for the first quarter of fiscal year 2008 to the third quarter of fiscal year 2009.

As shown in the various "Authority to Release Imported Goods" (BIR Form No. 1918) issued by the CIR to the Commissioner of Customs, the subject imported articles are intended exclusively for petitioner's international in-flight consumption. Also, in the "Informal Import Declaration and Entry" (IIDE) documents submitted by petitioner, the imported articles were described as 'In Flight Materials'.

In order to support its claim that the subject imported articles were not locally available in reasonable quantity, quality or price, petitioner presented the Judicial Affidavit of Ms. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department; the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; the Philippine Wine Merchants' Price List for 2008; the Monthly Philippine Dealing System (PDS) Rates for fiscal years 2008, 2009 and 2010; and the letters of Ms. Marianne C. Raymundo, petitioner's Vice-President for Financial Services with the subject 'Booking Rates' for the months of January, July, September, and October 2008.

A perusal of the Philippine Wine Merchants' Price List for 2008 showed that the local prices of the following wine products imported by petitioner were not included in the said price list:

Product Imported	**IIDE No.**	**Exhibit**
Gordons Gin	846	"NN"
Grand Marnier	7800	"WW"

Thus, only the importation cost of the following wines and liquor products as listed in the 'Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies' submitted by petitioner, can be compared with the local prices reflected in the Philippine Wine Merchants' Price List for 2008:

Exhibit	**Product Imported**	**Unit Cost per Sales Invoice (price per**	**IIDE No.**	**Unit Cost per IIDE (per bottle in**	**Phil. Wine Merchants 2008 Pricelist (price per bottle converted to US$)**

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		bottle in US$)		US$)	[Exhibits "ZZZ-3" and "ZZZ-5"]
"I" to "I-2"	Lindemans Premier Selection Shiraz	3.22	164	3.91	6.58
	Lindemans Premier Selection Chardonnay	3.22			
	Penfolds Private Release Chardonnay	5.03			
	Penfolds Private Release Shiraz Cabernet	5.03			
"N" to "N-2"	Chivas Regal	12.50	9220	15.21	23.27
	Royal Salute	51.00			135.41
	Martell VSOP	16.00			34.28
"O" to "O-2"	Vin de Table Blanc PAL Vin de Table Rouge PAL	2.14	9957	2.03	7.48
"P" to "P-2"	Absolut Vodka	4.38	9968	5.79	9.52
"Q" to "Q-2	Absolut Vodka	4.38	10000	5.79	9.52
"T" to "T-2"	Lindemans Premier Selection Chardonnay	3.91	11052	3.86	6.12
	Lindemans Premier Selection Shiraz	3.91			
	Penfolds Private Release Chardonnay	5.80			
	Penfolds Private Release Shiraz Cabernet	5.80			
"NN" to "NN-2"	Johnnie Walker Black Label	9.83	846	8.89	24.69
"OO" to OO-2-a"	Camus VSOP Cognac Elegance	13.67	853	20.35	44.31
	Camus Cognac XO Elegance	50.00			103.38
	Camus XO Superieur	35.00			103.38
"PP" to "PP-2-a"	Absolut Vodka	4.38	2006	14.10	11.12
	Remy Martin VSOP	15.88			36.71
"QQ" to "QQ-2"	Vin de Table Blanc PAL Vin de Table Rouge PAL	2.14	6874	2.28	7.87
"RR" to "RR-2"	Absolut Vodka	4.38	6916	5.81	10.18
"SS" to "SS-2"	Vin de Table Blanc PAL Vin de Table Rouge PAL	2.18	6940	2.28	8.00
"TT" to "TT-2"	Lindeman's Chardonnay	3.70	7766	5.00	5.83
	Lindemans Shiraz	3.70			
	Penfolds Chardonnay	4.80			
	Penfolds Shiraz	4.80			
"UU" to "UU-2"	Piper Heidsieck Brut	15.62	7776	17.74	55.39
"VV" to "VV-2"	Remy Martin VSOP Cognac	15.88	7777	17.96	32.38

Clearly, from the foregoing table, the cost of importing the above-enumerated wines and liquor is lower than purchasing them locally.

Anent the imported cigarettes, this Court notes that petitioner failed to submit the local price list of the imported cigarettes. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department, stated the following in her Judicial Affidavit: ✓

"22.Q. How about the local costs of the imported cigarettes involved?

22.A. I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the said cigarettes who could regularly supply PAL with the quantity and brand of the cigarettes it needs for its commissary supplies for sale in its international flights. Furthermore, if there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.

23.Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

23.A. Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers, thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL."

The Court cannot just rely on the foregoing statements. Petitioner should have presented a certification from local dealers of cigarettes that they cannot supply petitioner enough cigarettes for its catering and in-flight use and that if they had such products, a list of the corresponding selling prices. In the absence thereof, the Court cannot determine whether the cost of importing cigarettes is likewise lower than purchasing them locally."[21]

Notably, We cannot sustain the uncorroborated testimony of PAL's witness, Ms. Cheryl V. Capinpin, that the cost of buying Gordon's Gin and Grand Mernier locally, although not appearing in the Philippine Wine Merchants 2008 Price List, are definitely higher than the cost of importing the same because, unlike PAL, the local suppliers do not enjoy the exemption from payment of excise taxes and customs duties on said imported alcoholic products, which necessarily increase their local selling

[21] Decision dated December 18, 2013; *En Banc* Docket, CTA EB No. 1162, pp. 457-460.

prices.[22] This Court cannot further rely on Ms. Capinpin's testimony that the imported cigarette brands cannot be secured locally in reasonable quantity, quality or price it needs for its commissary supplies for sale in its international flights.[23] No other evidence was presented to support that the imported cigarettes are not locally available in reasonable quantity, quality or price. Thus, it cannot be gainsaid that said statements without supporting evidence are mere conclusions grounded entirely on speculations and conjectures which cannot be given credence.

This Court notes that in its Motion for Partial Reconsideration before the Court *a quo*, petitioner attached the National Tobacco Administration (NTA)'s letter dated February 1, 2013 with a list of the brands of locally manufactured cigarettes and imported cigarettes and the corresponding importers of the same. However, We cannot give credence to the said document without running afoul with Section 34, Rule 132 of the Rules on Evidence which provides that the court shall consider no evidence which has not been formally offered.[24] It bears stressing that a "formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court."[25]

Settled is the rule that tax refunds, as in this case, are in the nature of tax exemptions, and are to be construed

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[22] Answers to Question Nos. 103 and 160, Judicial Affidavit of Ms. Cheryl V. Capinpin; Division Docket, Vol. II, pp. 586 &594.
[23] Answer to Question No. 37, Judicial Affidavit of Ms. Cheryl V. Capinpin; Division Docket, Vol. II, p. 576.
[24] Section 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (35)
[25] *Heirs of Pedro Pasag, et al., v. Sps. Parocha, et al.,* G.R. No. 155483, April 27, 2007.

strictissimi juris against the entity claiming the same.[26] Hence, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[27]

From the foregoing, we see no cogent reason to deviate from the factual findings of the Court *a quo* that petitioner has sufficiently proved its entitlement to the claim for tax refund in the reduced amount of ₱3,131,639.31, representing its erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.

WHEREFORE premises considered, the respective Petitions for Review of the parties are hereby **DENIED**. The Decision and Resolution of the Special First Division of this Court in CTA Case No. 8236 dated December 18, 2013 and April 10, 2014 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

[26] *Philippine Geothermal Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005 *citing Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191*, 25 November 2003, 416 SCRA 436, 461.
[27] *Id.*

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice