REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA Case No. 8220

Members:

- versus -

FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

SEP 26 2019
10:54 a.m.

x- x

AMENDED DECISION

Fabon-Victorino, J.:

On October 28, 2015, the Court promulgated a Decision[1] denying the instant Petition for Review for insufficiency of evidence. The decretal portion of the Decision reads as follows:

> **WHEREFORE**, the instant Petition for Review are hereby **DENIED**, for insufficiency of evidence.
>
> For lack of merit, petitioner's Motion to Re-open the case is likewise **DENIED**.
>
> **SO ORDERED.**

In the said Decision, the Court found petitioner's evidence inadequate to sustain its prayer for a refund or tax credit in the amount of ₱402,855,943.00, allegedly representing specific taxes paid under protest on different

[1] Docket, pp. 1608-1631.

dates in the year 2009 on its importations of Jet A-1 fuel for domestic operations. The Court ruled that petitioner **failed to prove** that: (1) the imported Jet A-1 fuel was used for its transport and non-transport operations as the only evidence presented to prove this requirement were the Authority to Release Imported Goods (ATRIGs), which standing alone, were self-serving evidence and without any weight or probative value given that the information contained therein were supplied by petitioner itself; and (2) at the time of importation, Jet A-1 fuel was not locally available in reasonable quantity, quality, or price.

Relentless, petitioner filed a *Motion for Reconsideration*[2] on November 16, 2015, praying in the alternative that: (1) the Decision dated October 28, 2015 be RECONSIDERED and that respondents be ORDERED TO REFUND or ISSUE a tax credit certificate in its favor in the sum of ₱402,855,843.00, representing specific taxes paid under protest on its importations of Jet A-1 for domestic operations for the period of December 2008 to November 2009; or (2) trial be reopened to allow it to present additional evidence. In its subsequent *Supplemental Motion for Reconsideration*[3], petitioner reiterated its arguments and prayed for a reconsideration of the assailed Decision.

On June 21, 2016, the Court allowed the reopening of the proceedings for the presentation of additional evidence for petitioner and held in abeyance the resolution of its bid for reconsideration.[4]

During the hearing, petitioner presented its Manager for Fuel Supply and Operations – Fuel Management Department, Roberto R. Razal and the Court-commissioned Independent Certified Public Accountant (ICPA) Joel C. Romano.[5]

By way of a Judicial Affidavit[6] dated January 11, 2017, witness **Roberto R. Razal** testified that as petitioner's Manager for Fuel Supply and Operations – Fuel Management Department, he is tasked to: (1) oversee the refueling

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[2] Docket, pp. 1645-1664.
[3] Docket, pp. 1679-1688.
[4] Resolution dated June 21, 2016, docket, pp. 1691-1695.
[5] Minutes of Hearing held on January 17, 2017, docket, p. 1781.
[6] Exhibit R^8, docket, pp. 1762-1772.

operations of scheduled PAL flights; (2) ensure that an adequate supply of Jet A-1 aviation fuel is maintained for PAL's flight operations; (3) ensure that the quality of Jet A-1 aviation fuel meets industry standards; (4) oversee the process of receiving PAL's importations of Jet A-1 aviation fuel and delivering such fuel to PAL's depots; (5) gather data and review and validate all reports and documents prepared by PAL personnel relative to the supply, service, and consumption of Jet A-1 aviation fuel; and (6) monitor and ensure proper documentation of fuel deliveries and uplifts to the aircrafts.

He further testified that the subject seven (7) shipments of Jet A-1 aviation fuel from January to November 2009 were used solely by petitioner for its domestic flight operations. The Stock Status Reports (SSR), which reflect the details of the movement of the imported Jet A-1 fuel from the primary depot to the Joint Oil Companies Aviation Fuel and Storage Plant (JOCASP) and the PAL-owned depots, indicate that all importations of Jet A-1 aviation fuel during the period of January to November 2009 were accounted for and used for petitioner's domestic flight operations. The BIR Official Registry Book containing the total monthly volumes of imported fuel received by the primary depot and those issued to the secondary/airport depots for eventual loading to petitioner's aircrafts, also indicates that all importations of Jet A-1 aviation fuel during the period of January to November 2009 were accounted for and used for petitioner's domestic flight operations.

In corroboration, **ICPA Joel C. Romano** testified[7] that per his examination and verification of petitioner's supporting documents, the 109,770,011 liters of aviation turbo jet fuel or Jet A-1 fuel imported by petitioner for the period January 5, 2009 to November 24, 2009 were fully consumed by petitioner solely for its domestic operations.

After formal offer of its additional documents, petitioner rested.[8]

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[7] Exhibit S[8], docket, pp. 1735-1747.
[8] Resolution dated September 7, 2017 docket, pp. 1846-1849; and Resolution dated April 17, 2019.

In its *Motion for Reconsideration*[9] filed on November 16, 2015, petitioner raises the following arguments:

a) The Court gravely erred in holding that petitioner was unable to sufficiently prove that its importations of Jet A-1 fuel were used for its transport and non-transport operations; and

b) The Court gravely erred in holding that petitioner was unable to sufficiently prove that its imported Jet A-1 fuel were locally available in reasonable quantity, quality, or price at the time of such importations.

To determine if petitioner is entitled to refund/tax credit in the total amount of ₱402,855,943.00, allegedly representing specific taxes paid under protest on its imported Jet A-1 fuel for domestic operations for the period of December 2008 to November 2009, it is paramount to take a second look at petitioner's franchise – Presidential Decree (PD) No. 1590, Section 13 of which states:

> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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[9] See Note 2, *supra*.

> 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; xxx

Thus, petitioner must satisfy the following requirements to be exempt from paying specific taxes on its importation of Jet A-1 fuel and be entitled the refund sought:

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 imported should not be locally available in reasonable quantity, quality or price.

In the assailed Decision, the Court ruled that petitioner has complied with the first requisite.

To show compliance with the second requisite, i.e., that subject seven (7) shipments of imported Jet A-1 fuel were used for its transport and non-transport operations, petitioner presented its Manager for Fuel Supply and Operations - Fuel Management Department, Roberto R. Razal, who described in detail the movement of the subject imported Jet A-1 fuel from the primary depot where they were stored after their release from the BOC until they were uplifted into the aircraft, to wit:

> [4] Q: In the course of your duties as former Supervising Fuel Technical Specialist, do you remember purchases made by PAL of Jet A-1 aviation fuel during the period involved in this case, *i.e.* January to November 2009?
>
> A: Yes. PAL made several purchases of Jet A-1 aviation fuel and had them imported into the Philippines. During the period of January to November 2009, there were a total of seven (7) importations of Jet A-1 aviation fuel.
>
> [5] Q: What happened to the Jet A-1 aviation fuel purchased and imported by PAL?
>
> A: PAL consumed all the fuel that it imported for its domestic flight operations.
>
> xxx xxx xxx
>
> [18] Q: What document, if any, proves that all importations of Jet A-1 aviation fuel during the period of January to November 2009 were accounted for and used for PAL's flight operations?
>
> A: I reviewed Stock Status Reports which reflect the details relating to the movement of the imported fuel from the primary depot to JOCASP/PAL owned airport depots. The Stock Status Report is a daily record of the amount of imported fuel that arrived at the JOCASP/PAL owned airport depots, the amount of imported

fuel that is withdrawn and loaded into PAL aircrafts.

xxx xxx xxx

[22] Q: Are there any other document which proves that all importations of Jet A-1 aviation fuel during the period of January to November 2009 were accounted for and used for PAL's flight operations?

A: Yes, I also reviewed the monthly BIR Official Registry Book (ORBs) which contains, among others, the total monthly volumes of imported fuel received by the primary depot and those issued to the secondary/airport depots for eventual loading to PAL's aircrafts. **It is an official document, the entries of which are certified by the BIR as an accurate and true representation of all transactions for the covered period.**

xxx xxx xxx

[26] Q: What is the basis of the data appearing on the Jet A-1 Stock Status Reports?

A: The data reflected in the Stock Status Reports are gathered from the Stock Transfer Tickets, Jet A-1 Release Certificates, BIR Withdrawal Certificates, Hydrant Issue Slips, and Fuel Issue Slips prepared and issued by PAL personnel.

[27] Q: Can you briefly explain the purpose of these documents you have just mentioned?

A: A Stock Transfer Ticket serves as proof that the imported fuel has been transferred from the primary depot to the secondary/airport depots. This Stock Transfer Ticket is accompanied by a Jet A-1 Release Certificate which, in turn, certifies that the fuel has undergone quality testing, meets industry standards, and is fit for consumption.

A BIR Withdrawal Certificate serves as proof that a withdrawal of the imported fuel from the primary depot has been authorized by the BIR. It is also an attestation by the BIR that the

> imported fuel withdrawn is exempt from payment of excise tax.
>
> A Hydrant Issue Slip serves as proof that the fuel has been withdrawn from the secondary/airport depots and issued to refueler trucks, for eventual loading into PAL's aircrafts.
>
> Lastly, a Fuel Issue Slip serves as proof that the fuel, as cleared for consumption, was in fact loaded into PAL's aircrafts.[10]

The ICPA confirmed the foregoing information by describing the details of his verification and examination of petitioner's supporting documents pertaining to the subject shipments of imported Jet A-1 fuel resulting in the conclusion that petitioner fully consumed the subject imported Jet A-1 fuel on its domestic operations. The relevant portion of his testimony reads:

> 16. A: To determine that there was importation of Jet A-1 Fuel by PAL and verify whether the imported Jet A-1 Fuel were consumed for its domestic operations, we performed the following:
>
> 1. We reviewed and verified the Jet A-1 Fuel importations made by PAL for the period January 5, 2009 to November 24, 2009 to ascertain that there were indeed importations of the said fuel and payments of specific taxes thereon.
>
> 2. We verified and validated the imported Jet A-1 Fuel inventory beginning balance by examining PAL's Inventory record generated from its Inventory System – the Oracle. We also verified that the imported Jet A-1 Fuel inventory as well as transfers and issuances measured on per US Gallon (USG) were converted into liters using the standard conversion rate of 1 gallon: 3.78541 liters.
>
> 3. We verified and validated that there were beginning balances of imported Jet A-1 fuel recorded and reported in its various deposts,

[10] Docket, pp. 1763-1768.

in the primary depots (Pinamucan, Batangas and Subic Bay) and in the secondary depots (Joint Oil Companies Aviation Fuel Storage Plant (JOCASP) and NICHOLS depots), and that such beginning balances were subsequently issued.

4. We verified the Official Registry Books ("ORBs") to ascertain that the imported Jet A-1 fuel stock transfers and issuances from PAL depots to PAL aircrafts were duly attested by the BIR Revenue Officer and the representative of PAL. We also verified the imported Jet A-1 Fuel's Stocks Status Reports (SSR), Stock Transfer Tickets ("STT"), Release Certificate ("RC"), Fuel Issue Slips ("FIS"), Hydrant Issue Slip ("HIS") and the BIR Withdrawal Certificates ("BIR-WCP") to ascertain that such transfers and issuances of imported Jet A-1 fuel were used for PAL's domestic flight operations.

5. We verified and validated that the movement of imported Jet A-1 fuel on PAL Inventory records were accounted on a first-in, first-out basis of accounting.

xxx xxx xxx

18. Q: From your verification procedures, what is your observation regarding PAL's method of accounting in its inventory records?

A: PAL maintains records of its imported Jet A-1 fuel on the basis of first-in, first-out ("FIFO") method of accounting in its Fuel Inventory records - "the Jet A-1 Fuel first purchased are first issued" - the inventory at the end of the period are those most recently purchased. This method is in accordance with Philippine Accounting Standards No. 2 (PAS 2) - Inventory.

19. Q: How did you verify and validate the amount of the beginning balances of imported Jet A-1?

A: We verified the beginning (January 4, 2009) inventory balance of the Jet A-1 Fuel at the Primary Depot by walking-through PAL's Inventory System - the Oracle. The computer printout of the Jet A-1 Fuel Inventory balance at the two primary (2) depots, namely: Pinamucan, Batangas and Subic, Zambales xxx.

xxx xxx xxx

20. Q: Can you explain how you verified the quantity of Jet A-1 Fuel that was withdrawn and transferred from various primary depots (delivered via their tankers) and delivered to PAL's secondary depots?

A: We examined and tallied the amount of Jet A-1 Fuel delivered from the primary depots of PAL to the secondary depots in the SSR for receipts of Jet A-1 Fuel at the secondary depot, and traced the same to the Jet A-1 Release Certificates, the SST, and BIR-WCP issued and attested by the BIR at every withdrawal from the primary depot.

21. Q: On the other hand, can you explain how you verified the quantity of Jet A-1 fuel that was issued and consumed by PAL for its domestic operations?

A: We examined and tallied the amount of Jet A-1 Fuel loaded into the aircrafts of PAL for domestic flights as reflected in the SSRs for withdrawals from the secondary depot, and traced the same to the FIS, HIS, and the BIR-WCPs issued and attested by the BIR at every loading/uplifting of Jet A-1 Fuel for PAL domestic flights.

Also, we reviewed, verified and validated the corresponding ORBs which was prepared by PAL and duly attested to by the assigned BIR Revenue Officer, to ascertain that the January 4, 2009 inventory of Jet A-1 at the Primary Depot amounting to 22,137,149 liters were fully delivered and received by PAL at the Secondary Depot and consequently consumed for its domestic flights during those months.

xxx xxx xxx

23. Q: xxx. How did you verify that the aggregate amount of Jet A-1 Fuel imported from January to

> November 2009 was fully consumed by July 26, 2010?
>
> A: We examined and tallied the amount of Jet A-1 Fuel loaded into the aircrafts of PAL for domestic flights as reflected in the SSRs for withdrawals from the secondary depot, and traced the same to the FIS, HIS and the BIR-WCPs issued and attested by the BIR at every loading/uplifting of Jet A-1 Fuel for PAL domestic flights for the months subsequent to the period subject of the claim for refund or issuance of tax credit certificate *i.e.* January to November 2009. xxx.[11]

To substantiate the foregoing declaration, petitioner offered in evidence the following documents, to wit: (1) ATRIGS[12] issued by Olivia O. Lao, OIC-Head Revenue Executive Assistant, Large Taxpayer Service - Excise, which provides: "xxx please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, **will be used exclusively for its daily domestic flight operations**"; and (2) Air Transportation Office (ATO) Certifications[13] that the imported Jet A-1 Aviation Fuel: "xxx is necessary/incidental for the operation of Philippine Airlines".

In *Commissioner of Customs vs. Air Philippines Corporation*[14], this Court's *En Banc* held that as long as the ATRIG is corroborated by other documentary and testimonial evidence, then they may be considered as proof that the imported aviation fuel was, indeed, used in petitioner's transport and non-transport operations and other activities incidental thereto.

Indubitably, the additional evidence presented by petitioner, both testimonial and documentary, sufficiently established that the importation of subject aviation fuel was for its transport operations and other activities incidental

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[11] Docket, pp. 1739-1742.
[12] Exhibits "N-6", "O-5", "P-5", "Q-5", "R-5", "S-5", and "T-5", BOC Records, pp. 19, 36, 54, 72, 90, 108, and 126, respectively.
[13] Exhibits "W" to "NNN", docket, pp. 999-1042.
[14] CTA EB Nos. 1456 and 1458, October 18, 2017.

thereto, in satisfaction of the second condition for its entitlement for the refund prayed for.

Anent the third requisite, to wit, that "*the imported articles, supplies or materials are not locally available in reasonable quantity, quality, **or** price*", it must be stressed that, by using the conjunctive *"or"*, the law imposes an alternative, not cumulative, qualification for the determination of whether there is locally available Jet A-1 fuel. Hence, it is sufficient that the taxpayer, such as petitioner, is able to prove the absence of only one condition to qualify for the exemption.

In the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Air Philippines Corporation*[15], this Court's *En Banc* ruled that as long as petitioner is able to prove the absence of one condition (either reasonable quantity, quality, or price), the exemption applies. In other words, petitioner is not required to prove the absence of the three conditions to benefit from the exemption provided by the law.

To prove that the imported fuel is not locally available in reasonable quantity, quality or price, petitioner presented Certifications[16] from the ATO, now the Civil Aviation Authority of the Philippines or CAAP which indicates the following:

> TO WHOM IT MAY CONCERN:
>
> This is to certify that Jet A-1 Aviation Fuel under Bill of Lading No. xxx is **not locally available in reasonable quantity, quality and price** and is necessary/incidental for the operation of Philippines Airlines. (*Emphasis supplied*)

The ATO Certification was given weight as mandated under Section 44, Rule 130 of the Rules of Court which provides:

[15] CTA EB Nos. 1537 and 1550, May 21, 2018.
[16] Exhibits "W" to "NNN", docket, pp. 999-1042.

> 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.

Significantly, in the case of *Air Philippines Corporation vs. Commissioner of Internal Revenue*,[17] the Court explained why the CAAP is not precluded from issuing the subject certifications, to wit:

> **It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497, are not, by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same.** As correctly pointed out by petitioner, perusal of **the charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel**. In fact, Section 35 (a) of RA No. 9497, which essentially reiterated Section 32 (1) of RA No. 776, as amended, states that the CAAP is vested with 'authority to take charge of the technical and operational phase of civil aviation matters' which, naturally, include aircraft fuel and oil. (*Emphasis supplied*)

Further, petitioner submitted a Report[18] dated April 14, 2011 from the DOE, captioned Supply Demand Balance 2001-2010 in Thousand Barrels (MB) with the following relevant data as shown in the following table:

[17] CTA Case Nos. 7966, 7990 and 8020, March 15, 2017.
[18] Exhibit "T7", docket, p. 1141.

	2008			2009		
DETAILS	**JET FUEL**	**KEROSENE**	**KERO-JET**	**JET FUEL**	**KEROSENE**	**KERO-JET**
Inventory (Beginning)	484	343	827	269	224	493
Production Local	5,566	1,030	6,596	5,248	1,002	6,250
Importation	3,278	301	3,579	3,959	483	4,441
Total Local Available Supply	**9,328**	**1,674**	**11,002**	**9,476**	**1,709**	**11,184**
Demand	8,850	1,265	10,115	9,456	1,252	10,708
Export	78		78			
+(-) Local Available Supply vs. Demand	478	409	809	20	456	475

From the foregoing table, local supply includes locally produced and imported, combined. In determining the Total Local Available Supply, the sum of the Inventory (Beginning), Production Local and Importation were considered. Thus, the Total Local Available Supply of all three kinds of fuels for the years 2008 and 2009 exceeds the demand.

In *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*[19], the Court explained the reason for the exclusion of imported Jet-A fuel in determining locally available fuel, to wit:

> As this Court has held in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, in determining local availability of Jet A-1 fuel, the term 'locally available' cannot include imported Jet A-1 fuel. In that case, *We* held:
>
> > 'In *PAL v. CIR*, the Supreme Court held that domestic petroleum products excluded imported products, as follows:
> >
> > > *First*, examining its phraseology, the word 'domestic', which means 'of or relating to one's own country' or 'an article of domestic manufacture', clearly pertains to goods manufactured or

[19] CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

> 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.

Applying the foregoing to the present case, in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, 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. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, or price.' (*Emphasis in the original*)

To appreciate the import of the conclusions of the Supreme Court in the *PAL vs. CIR* case (PAL Case) further, *We* quote:

'Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.

Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, *i.e.*, the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies **when PAL itself acts as the importer of the foregoing petroleum products**. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, **it stands as the statutory taxpayer directly liable to the government for the same**.

In view of the foregoing, the Court observes that the phrase 'purchase of domestic petroleum products for use in its domestic operations' ***- which characterizes the tax privilege LOI 1483 withdrew - refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods,*** may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) **PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege)**. Both textual and contextual analyses lead to this conclusion:

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

Second, examining its context, certain 'whereas clauses' in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term 'purchase of **domestic petroleum products** for use in its domestic operations' as used in LOI 1483 **could only refer to 'goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition,' and not to 'things imported.'** In this respect, it cannot be

> gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.'
>
> As evident from the above discourse, what qualifies as domestic petroleum products, which in this case is aviation fuel, cannot include those that are imported. It is necessarily excluded from the term.

Accordingly, a reproduction of the table above without adding Importations in computing the Total Local Available Supply would yield different results, to wit:

	2008			2009		
DETAILS	**JET FUEL**	**KEROSENE**	**KERO-JET**	**JET FUEL**	**KEROSENE**	**KERO-JET**
Inventory (Beginning)	484	343	827	269	224	493
Production Local	5,566	1,030	6,596	5,248	1,002	6,250
Total Local Available Supply	**6,050**	**1,373**	**7,423**	**5,517**	**1,226**	**6,743**
Demand	**8,850**	**1,265**	**10,115**	**9,456**	**1,252**	**10,708**
Export	78		78			
+(-) Local Available Supply vs. Demand	(2,878)	(108)	(2,770)	(3,939)	(26)	(3,965)

Based on the foregoing, in the case of Jet Fuel for the years 2008 and 2009, the Demand in the amount of 8,850 MB and 9,456 MB, clearly exceeds the Total Local Available Supply of 6,050 MB and 5,517 MB, respectively.

Hence, the Jet A-1 fuel imported by petitioner was not locally available in reasonable quantity, justifying the subject importation thereby entitling petitioner to the tax exemption prayed for. Note, that it is sufficient for the taxpayer, such as herein petitioner, to prove just one circumstance to qualify for the tax exemption.

All said, petitioner is entitled to a refund of the erroneously collected and paid under protest excise taxes in the aggregate amount of ₱402,855,943.00.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **GRANTED**. Accordingly, the Decision dated October 28, 2015 is amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review is **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Philippine Airlines, Inc. the aggregate amount of **₱402,855,943.00**, representing specific taxes on its importation of Jet A-1 fuel for its domestic operations paid under protest on January 28, 2009, April 29, 2009, June 3, 2009, July 24, 2009, September 25, 2009, and December 18, 2009.
>
> **SO ORDERED**."

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice