REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 2256
(CTA Case No. 8220)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:
JUN 0 9 2021 3:45pm

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DECISION

CASTAÑEDA, JR., J.:

In this Petition for Review, petitioner Commissioner of Internal Revenue seeks to reverse and set aside the assailed Amended Decision[1] and Resolution[2] promulgated on September 26, 2019 and February 26, 2020, respectively, by the CTA Special Third (3rd) Division.

For easy reference, the dispositive portion of the assailed Amended Decision reads:

[1] Penned by Retired Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Ma. Belen M. Ringpis-Liban concurring, Court *En Banc* Docket, pp. 21-40.
[2] Court *En Banc* Docket, pp. 41-44.

"**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 **P402,855,943.00**, 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."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE,** there being no new matters and issues advanced that will merit reconsideration, let alone modification of the assailed Amended Decision of September 26, 2019, respondent's *Motion for Reconsideration (Re: Amended Decision promulgated 26 September 2019)* is hereby **DENIED**, for lack of merit.

SO ORDERED."[4]

THE FACTS

Culled from the records are the following facts:

"Petitioner is a domestic corporation organized and existing by virtue of its franchise, *viz*., Presidential Decree (PD) No. 1590, with principal office at 8th Floor, PNB Financial Center, Pres. Diosdado P. Macapagal Ave., CCP Complex, Pasay City 1300.

Respondent is the Commissioner of Internal Revenue (CIR) with the power to assess and collect internal revenue taxes, fees, and charges, including excise tax on aviation turbo jet fuel imposed under Section 148(g) of the National Internal Revenue Code (NIRC) of

[3] See Note 1, p. 39.
[4] See Note 2, p. 44.

1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent, the Commissioner of Customs (COC), is the head of the Bureau of Customs (BOC), with delegated authority, by virtue of an Authority to Release Imported Goods (ATRIG), to assess and collect national internal revenue taxes on imported goods, including the excise tax on imported turbo jet fuel imposed under Section 148(g) of the NIRC of 1997, as amended. Respondent COC holds office at the Port Area, Bureau of Customs, Manila.

Petitioner claims that under its franchise, specifically Section 13(b) thereof, it has the option to pay either the basic corporate income tax or a franchise tax of two percent (2%) of its gross revenues, which shall be in lieu of all other taxes, duties and fees that may be imposed by the State.

On October 11, 1985, Letter of Instruction (LOI) No. 1483 was issued withdrawing petitioner's tax exemption on its purchase of domestic petroleum products for use in its domestic operations but not on its importation of fuel for domestic operation. This was confirmed in the BIR Ruling No. 013-99 dated January 29, 1999.

On January 29, 2003, the respondent CIR issued BIR Ruling No. 001-2003 addressed to petitioner, Cebu Air, Inc., Air Philippines Corporation, and Pacific Airways Corporation. The pertinent portion of BIR Ruling No. 001-2003 reads:

'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

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 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.'

On the basis of BIR Ruling No. 013-99, the CIR, through the COC, assessed petitioner for specific taxes on importations of aviation fuel or Jet A-1fuel for use in its domestic operations.

From December 2008 to November 2009, petitioner made several importations of Jet A-1 fuel for its domestic operations. It paid the specific taxes due thereon under protest with the District Collector of Customs of the Port of Batangas, Batangas City, detailed as follows:

Date of Importation	Date of Payment	Amount Paid	Volume of Importation (in Liters)
December 30, 2008	January 28, 2009	P68,300,000.00	18,610,354
March 24, 2009	April 29, 2009	P48,521,088.00	13,210,060
May 12, 2009	June 3, 2009	P73,901,708.00	20,123,767
July 2, 2009	July 24, 2009	P70,201,687.00	19,128,525
August 28, 2009	September 25, 2009	P67,790,611.00	18,471,556
November 19, 2009	December 18, 2009	P38,531,969.00	10,499,174
November 19, 2009	December 18, 2009	P35,608,880.00	9,702,692

On the following dates, petitioner filed a written protest in each of the above importations with respondent COC:

Date of Importation	Date of Payment under Protest	Date of Filing of Protest Letter
December 30, 2008	January 28, 2009	February 11, 2009
March 24, 2009	April 29, 2009	May 12, 2009
May 12, 2009	June 3, 2009	June 16, 2009
July 2, 2009	July 24, 2009	August 4, 2009
August 28, 2009	September 25, 2009	October 8, 2009

November 19, 2009	December 18, 2009	December 28, 2009
November 19, 2009	December 18, 2009	December 28, 2009

For failure of respondent COC to act on the protests, petitioner, on January 10, 2011, filed with respondent CIR a request for refund of the specific taxes it paid, in the total amount of P402,855,943.00.

To avoid the lapse of the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, petitioner filed the instant *Petition for Review* on January 27, 2011.

In her Answer, respondent CIR moves to dismiss the instant petition on ground that petitioner failed to exhaust administrative remedies. Allegedly, petitioner seeks the nullification of the Certification of the Department of Energy (DOE) dated December 20, 2003 and the resultant BIR Ruling No. 001-2003 but did not assail the alleged invalid Certification with the DOE. Petitioner likewise failed to appeal the said BIR Ruling to the office of the Secretary of Finance before assailing its validity before the Court. For respondent CIR, the alleged cause of action for refund of taxes is merely consequential considering that absent the nullification of the aforesaid issuances; petitioner would have no cause of action.

Respondent CIR, citing *Ang Tibay vs. Court of Industrial Relations*, also contends that petitioner failed to present evidence to justify the grant of its administrative claim for refund/tax credit. There was neither proof that it filed an administrative claim for refund with the BOC nor the alleged payment of excise taxes were actually remitted by the BOC to the BIR. And since claims for refund partake of the nature of tax exemption, it is construed strictly against petitioner.

On May 30, 2011, the parties filed their Joint Stipulation of Facts, on the basis of which a Pre-Trial Order was issued.

In the Resolution dated September 9, 2011, respondent COC was declared in default as moved by petitioner.

During the trial, petitioner presented the following witnesses: (1) its Senior Assistant Vice President — Fuel Management Department Elvis Yao; (2) the Independent Certified Public Accountant (ICPA) Myra Celeste O. Dabalos; (3) the Manager of its Tax Services Division Evelyn L. Taghap; (4) the Senior Partner of Zambrano and Gruba Law Offices Atty. Antero Jose M. Caganda; and

(5), the former Secretary of the Department of Energy Mario V. Tiaoqui.

By way of a Judicial Affidavit, witness **Elvis Yao** testified that as the Senior Assistant Vice President of petitioner's Fuel Management Department, he is in-charge of the procurement of Jet A-1 fuel, both by importation and by local purchase, for the international and domestic flights of petitioner.

On January 5, 2009, March 29, 2009, May 18, 2009, July 10, 2009, September 2, 2009 and November 24, 2009, shipments of petitioner's imported Jet A-1 fuel arrived at Pinamucan, Batangas, believing that it was exempt from payment of excise taxes on such importations by virtue of PD No. 1590, LOI No. 1483, BIR Ruling No. 013-99 and the Letter of Secretary of Finance dated September 8, 1999, addressed to Mr. Andrew L. Huang, petitioner paid under protest excise taxes on the said importations.

He further testified that the Collector of Customs of the Port of Batangas collected the said excise taxes by virtue of the ATRIGs issued by the Large Taxpayers Service of the BIR on the basis of BIR Ruling No. 001-03, dated January 29, 2003, which allegedly superseded BIR Ruling No. 013-99. However, petitioner never requested for BIR Ruling No. 001-03; neither was it notified about it prior to its promulgation even as it imposed such tax burden.

On January 10, 2011, petitioner filed a written claim for refund with respondent CIR since respondent COC failed to act on its protest filed on February 11, 2009, May 12, 2009, June 16, 2009, August 4, 2009, October 8, 2009 and December 28, 2009. On January 27, 2011, just when the two-year prescriptive period was about to expire, petitioner filed the instant petition with this Court.

The witness admitted that BIR Ruling No. 001-03 was conditional since it was ineffectual in the absence of locally available aviation fuel in reasonable quantity, quality and price. He also added that the 2002 DOE Certification, which was the basis of BIR Ruling No. 001-03, could not cover 2003 and subsequent years since 2003 aviation fuel data was not available as of 2002 as evidenced by the subsequent certifications issued by the Air Transportation Office (ATO) certifying that Jet A-1 fuel was not locally available in reasonable quantity, quality and price.

ICPA **Myra Celeste O. Dabalos**, also by way of a Judicial Affidavit, testified that she was tasked to verify documents and schedules to check whether the amount of the specific taxes sought to be refunded tallies with the amount of specific taxes paid as shown in the original copies of the official receipts issued by the Authorized Agent Banks (AABs) and of the BOC. She also verified whether Jet A-1 fuel was locally available at a reasonable price for the period December 2008 to November 2009.

Her audit revealed that the amount of specific taxes being claimed for refund tallied with the amount in the original official receipts issued by the AABs and BOC. Further, after comparison, she discovered that the cost per liter of imported Jet A-1 fuel for the period December 2008 to November 2009 was consistently lower than the cost of Jet A-1 fuel if purchased locally from Petron Corporation or Pilipinas Shell Petroleum Corporation.

The ICPA however admitted that the documents she examined were all provided by petitioner.

Witness **Evelyn L. Taghap**, in her Judicial Affidavit, declared that as the Manager of petitioner's Tax Services Division, she prepared and filed its various tax returns and that by virtue of PD No. 1590, as amended by Republic Act (RA) No. 9337, petitioner was liable only for corporate income tax and VAT. Petitioner paid its income tax for the fiscal year ended March 2010, which covered the importations of Jet A-1 fuel involved in the present case. Petitioner also filed and paid its quarterly VAT for the fiscal year ended March 2010. In view of such payments and by virtue of PD No. 1590, as amended by RA No. 9337, petitioner must no longer be made liable for excise taxes on the subject importations.

For his part, **Attorney Antero M. Caganda**, through his Judicial Affidavit admitted that petitioner was a client of Zambrano and Gruba Law Offices where he was a Senior Partner. He personally supervised the handling of the present case. In relation thereto, he wrote a letter to the DOE requesting for the breakdown of Jet A-1 fuel importation data for the years 2001 to 2010 to which the DOE sent a letter reply dated June 6, 2011 containing a table report on the importation of airline companies of Jet A-1 fuel for the years 2001 to 2010.

Presented as an expert witness, Former Secretary of DOE **Mario V. Tiaoqui** testified that given his more than 30 years background in the petroleum industry, he believed that he had the knowledge, experience and expertise to acquaint the Court about certain matters concerning the petroleum industry. According to him, local supply and local domestic refinery production had been considered by the DOE and the oil companies as one and the same, and that importation or any imported product was different from locally available supply or one that had been processed and produced in the country by local refineries. He opined that the phrase 'not locally available' under Section 13 of PD No. 1590 would mean that which was not refined or processed in the Philippines.

The witness confirmed that no written or specific definition of local available supply exists and that total supply would mean local supply plus imported fuel and that once imported it is deemed available to the consumers.

Further, despite the Oil Deregulation Law, the DOE is still in the best position to certify whether there is enough supply of aviation fuel in the country as it monitors the supply and demand of petroleum products. Any importation of aviation fuel or Jet A-1 fuel by airline company is for its own use and not for sale to the public.

On March 25, 2013, petitioner filed its *Formal Offer of Documentary Evidence* which the Court admitted per Resolutions dated May 28, 2013 and December 6, 2013.

On February 6, 2014, respondent CIR manifested that she would not present any evidence and moved for thirty (30) days to file her *Memorandum*. Respondent COC, on the other hand, though declared in default, was allowed to file his *Memorandum* within the same period there being no objection registered by petitioner.

On March 3, 2014, petitioner filed an *Urgent Omnibus Motion (With Prayer to Defer Filing of Memorandum and to Re-open Proceedings)* to establish its claims for refund using secondary evidence. The same was granted in a Resolution dated April 15, 2014.

On April 3, 2014, petitioner filed a *Manifestation and Request for Admission* of the February 27, 2014 Decision of the Regional Trial Court Branch 114 of Pasay City in the case entitled '*Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy*', docketed as Civil Case No. R-PSY-10-03889-CV.

On April 14, 2014, respondent COC filed his *Memorandum*.

On July 8, 2014, petitioner filed *Supplemental Formal Offer of Documentary Evidence*, which the Court admitted in a Resolution dated September 10, 2014.

On November 25, 2014, the instant case was submitted for decision after the petitioner and respondent CIR filed their respective memoranda, and respondent COC, his Manifestation to adopt his arguments in his *Memorandum* filed on April 14, 2014.

On August 24, 2015, or almost three (3) months before the decision became due, petitioner filed a *Motion to Re-open Trial and/or for Leave of Court to File Supplemental Memorandum.* Despite the opportunity granted, both respondents failed to file any comment or register any objection."[5]

In its October 28, 2015 Decision, the Court in Division denied respondent's Petition for Review for failure to prove: (1) that its importations of Jet A-1 fuel were used for its transport and non-transport operations; and (2) that its imported Jet A-1 fuel were not locally available in reasonable quantity.

On November 16, 2015, respondent filed its Motion for Reconsideration. Subsequently, on March 1, 2016, respondent filed its Supplemental Motion for Reconsideration. On June 21, 2016, the Court in Division issued a Resolution[6] granting respondent's alternative prayer to re-open trial for reception of additional evidence.

On September 26, 2019, the Court in Division issued the assailed Amended Decision. In the Amended Decision, the Court in Division considered the pieces of additional evidence submitted by respondent.

On October 17, 2019, petitioner filed its Motion for Reconsideration (Re: Amended Decision promulgated 26 September 2019), which was denied by the Court in Division in the Resolution[7] dated February 26, 2020.

On March 13, 2020, petitioner filed the instant Petition for Review. On July 2, 2020, the Court *En Banc* issued a Resolution[8] requiring respondent to file its comment. On August 3, 2020, respondent filed through registered mail its Comment/Opposition (to Petitioner Commissioner of Internal Revenue's Petition for Review dated 10 March 2020).

[5] Division Decision dated October 28, 2015, Court in Division Docket, Vol. 3, pp. 1608-1617.
[6] Court in Division Docket, Vol. 3, pp. 1691-1695.
[7] Court in Division Docket, Vol. 4, pp. 1970-1973.
[8] Court *En Banc* Docket, pp. 46-47.

On September 24, 2020,[9] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

The issue to be resolved by the Court *En Banc* is whether respondent is entitled to its claim for refund.

THE RULING

The Court *En Banc* denies the instant Petition.

Respondent proved that its importations of Jet A-1 fuel were used for its transport and non-transport operations

Petitioner asserts that the presentation of the Authority to Release Imported Goods (ATRIGs) and the certifications from the Air Transportation Office (ATO) are not sufficient to verify that the Jet A-1 fuel were actually used by respondent in its transport and non-transport operations.

Upon revisiting the records of the instant case, the Court *En Banc* found that respondent was able to prove the said requisite through the testimony of Mr. Roberto R. Razal – respondent's Manager for Fuel Supply and Operations — Fuel Management Department. Further, the witness' testimony was supported by documents and was corroborated by the ICPA's findings, thus:

> "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

[9] Court *En Banc* Docket, pp. 73-74.

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.

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[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.

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[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.

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. Je

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 depots, 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.

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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 walkingthrough 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 x x x.

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.

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23. Q: x x x. 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. x x x.
>
> To substantiate the foregoing declaration, petitioner offered in evidence the following documents, to wit: (1) ATRIGS issued by Olivia O. Lao, OIC-Head Revenue Executive Assistant, Large Taxpayer Service — Excise, which provides: 'x x x 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 that the imported Jet A-1 Aviation Fuel: 'x x x is necessary/incidental for the operation of Philippine Airlines.'"[10]

Based on the foregoing, respondent sufficiently proved that its importations of Jet A-1 fuel were used in its transport and non-transport operations through the following: (1) **Jet A-1 Stock Status Reports**, which reflect the data gathered from Stock Transfer Tickets, Jet A-1 Release Certificates, BIR Withdrawal Certificates, Hydrant Issue Slips, and Fuel Issue Slips prepared and issued by PAL personnel; (2) monthly **BIR Official Registry Book (ORBs); (3) ATRIGs**; and (4) **ATO Certifications**. These pieces of evidence sufficiently showed how respondent utilized its importations.

Thus, the Court *En Banc* finds no merit to petitioner's assertion that respondent failed to satisfy the above-requisite.

Respondent's imported Jet A-1 fuel were not locally available in reasonable quantity

In this regard, the Court in Division arrived at the computation of the total local available supply of Jet A-1 fuel, as follows:

	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

[10] See Note 1, pp. 26-31.

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)

The above-computation was derived from the ruling of the Supreme Court in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[11] where the Supreme Court categorically held that domestic petroleum products exclude imported products. The Supreme Court explained that 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."

The assailed Amended Decision exhaustively discussed the said ruling, as follows:

> "In *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*, 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 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.

[11] G.R. No. 198759, July 1, 2013, 700 SCRA 322.

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.'

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."

Thus, based on the foregoing, the Court in Division is correct in ruling that respondent was able to prove that its importations are not locally available in reasonable quantity.

Consequently, considering that respondent satisfied all the requisites to be entitled to its refund claim, the Court in Division has correctly granted the same in the assailed Amended Decision. Conversely, the denial of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice