REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## SECOND DIVISION

**PHILIPPINE AIRLINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10133**

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**BACORRO-VILLENA,** ***JJ.***

Promulgated:
SEP 28 2021
1:05 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

Before this Court is a Petition for Review[1] filed by Philippine Airlines, Inc. (**petitioner/PAL**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(2)[3], Rule 4 of the Revised Rules of the Court of

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[1] Filed on 25 July 2019, Division Docket, Volume I, pp. 10-95, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions*. – The Court in Divisions shall exercise:

Tax Appeals (**RRCTA**), praying for the refund or issuance of a tax credit certificate (**TCC**) in the total amount of ₱2,904,585.91, representing the excise taxes imposed on petitioner's importations of alcohol products that have been allegedly illegally collected and paid under protest on 27 July 2017 and 19 October 2017.[4]

## PARTIES OF THE CASE

Petitioner 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 the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[5]

Respondent Commissioner of Internal Revenue (**respondent/ CIR**), on the other hand, 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, including excise taxes paid on wines, liquors and cigarettes under Sections 142[6] and 145[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

4 Summary of the Case, Pre-Trial Order dated 28 November 2019, Division Docket, Volume I, p. 501.

5 Paragraph 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., pp. 462-463.

6 **SEC. 142.** *Wines.* — ...

7 **SEC. 145.** *Cigars and Cigarettes.* — ...

## FACTS OF THE CASE

On 11 June 1987, PAL was granted a franchise to operate air transport services domestically and internationally under 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 Between the Philippines and Other Countries".[8]

On 01 July 2005, Republic Act (**RA**) No. 9337, entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as Amended, and For Other Purposes" took effect, expressly and specifically amending petitioner PAL's franchise, and subjecting it to value-added tax (**VAT**). Petitioner's exemption from all other taxes was nevertheless retained.

For December 2013 to September 2014, petitioner imported various liquors and wines, constituting its commissary and catering supplies for use in its international flights. Such importations arrived at the Ninoy Aquino International Airport (**NAIA**) and were covered by various Informal Import Declarations and Entries[9] (**IIDEs**), Airway Bills/Bills of Lading[10] (**AWBs/BLs**) and Authority to Release Imported Goods[11] (**ATRIGs**).

Subsequently, the Bureau of Customs (**BOC**), in separate letters dated 03 November 2015[12] and 23 November 2015[13], ordered petitioner to pay excise taxes for its importation of alcohol products in the amounts of ₱855,165.67 and ₱2,049,420.24, respectively.

Petitioner protested the assessment and collection of excise taxes on its alcohol importations by filing separate letters dated 27 July 2017[14]

[8] Paragraph 4, Admitted Facts, JSFI, Division Docket, Volume I, p. 463.
[9] Exhibit "P-4" to "P-4.13", id., Volume II, pp. 542-555.
[10] Exhibit "P-5" to "P-5.13", id., pp. 556-569.
[11] Exhibit "P-6" to "P-6.13", id., pp. 570-583.
[12] Exhibit "P-8", id., p. 585.
[13] Exhibit "P-7", id., p. 584.
[14] Exhibit "P-9", id., p. 586.

and 19 October 2017[15] and paid under protest the total amount of ₱2,904,585.91, as evidenced by official receipts (**ORs**) issued by the BOC, detailed as follows:

| Date Paid | BOC Official Receipt No. | Amount Paid |
|---|---|---|
| 27 July 2017 | 01885254452[16] | ₱2,049,420.24 |
| 19 October 2017 | 01887107361[17] | 855,165.67 |
| **Total** | | **₱2,904,585.91** |

Considering petitioner's payments under protest, the BIR issued the ATRIGs[18] and thereafter, the subject importations of alcohol products were released to petitioner.

On 22 July 2019, petitioner filed an administrative claim for refund or issuance of a TCC of the excise taxes paid under protest before the office of respondent.[19]

On 25 July 2019, petitioner filed a Petition for Review pursuant to Section 204 in relation to Section 229 of the NIRC of 1997, as amended. The same was raffled to the Second Division, docketed as CTA Case No. 10133.[20]

After being granted two (2) extensions by the Second Division[21], respondent filed his Answer[22] on 02 October 2019, interposing special and affirmative defenses.

On 04 October 2019, the Court issued a Notice of Pre-Trial Conference[23] for a Pre-Trial Conference on 24 October 2019. Accordingly, respondent filed *via* LBC (a private courier) his Pre-Trial

15 Exhibit "P-10", id., p. 587.
16 Exhibit "P-11", id., p. 588.
17 Exhibit "P-12", id., p. 589.
18 Supra at note 11.
19 Exhibit "P-2", Division Docket, Volume II, pp. 529-539.
20 Then Second Division was composed of Hon. Associate Justice Juanito C. Castañeda, as Chairperson, Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.) and Hon. Associate Justice Jean Marie A. Bacorro-Villena, as Members.
21 See Orders dated 20 August 2019 and 19 September 2019, Division Docket, Volume I, p. 102 and 107, respectively.
22 Id., pp. 108-114.
23 Id., pp. 115-116.

Brief[24] on 16 October 2019, while petitioner filed its Pre-Trial Brief[25] on 18 October 2019.

On 24 October 2019, the Pre-Trial Conference proceeded where the Second Division granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[26] On 08 November 2019, the parties submitted their JSFI.[27] On 28 November 2019, the Second Division issued a Pre-Trial Order,[28] approving the said JSFI, and thereby, terminating the Pre-Trial Conference.

In the trial that ensued, petitioner presented three (3) witnesses, namely: (1) Jonathan R. Castillo Lee (**Castillo Lee**), Manager for Company Materials Handling Division; (2) Cheryl V. Capinpin (**Capinpin**), Manager for In-flight Materials Purchasing Division; and, (3) Ruel Ryan O. Julian (**Julian**), Manager for Tax Services Division.

The presentation of petitioner's first witness, Castillo Lee, was dispensed with after the counsels for respondent stipulated on his supposed testimony.[29]

In his Judicial Affidavit[30], Castillo Lee testified that: (1) he is the Manager of petitioner's Company Materials Handling Division; (2) he is in charge of ensuring the timely release of petitioner's importation of catering and commissary supplies, among others, from different cargo warehouses; (3) his duties also include the filing of proper importation documents and coordination with various offices and government agencies for the release of the imported goods; (4) on 22 July 2019, petitioner filed an administrative claim for the refund or tax credit of the excise taxes it paid under protest on 27 July 2017 and 19 October 2017 in the aggregate amount of ₱2,904,585.91; (5) as proof of such payments, petitioner submitted two (2) ORs dated 27 July 2017 and 19 October 2017 issued the BOC for the payment of ₱2,049,420.24 and

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24 Id., pp. 117-120.
25 Id., pp. 314-335.
26 See Order dated 24 October 2019, id., p. 461.
27 Id., pp. 462-479.
28 Id., pp. 501-505.
29 See Order dated 09 December 2019, id., p. 507.
30 See Judicial Affidavit of Jonathan R. Castillo Lee, Exhibit "P-30", id., pp. 124-192, with attached annexes.

₱855,165.67, respectively; (6) in addition to the ORs, he wrote two (2) letters addressed to the office of Mr. Gaylord Ventura (**Ventura**), Officer-in-Charge of the BOC's Collection Division (**OIC-Collection Division**), to formally protest the assessment and collection of excise taxes; (7) in the protest letters, he invoked petitioner's exemption from payment of taxes, duties, charges and fees under its charter, PD 1590, as regards the importation of commissary supplies; (8) whenever petitioner imports commissary supplies used in its operations, his team gathers and prepares all the relevant importation documents (*i.e.*, IIDEs, AWBs/BLs and ATRIGs); and, (9) all the importations subject of the claim for refund or tax credit are duly covered by the importations documents.

On the witness stand, Capinpin, testified through her Judicial Affidavit[31], that: (1) she is the Manager of petitioner's In-flight Materials Purchasing Division; (2) it is her duty to efficiently and effectively plan, procure and control all foreign and local materials, supplies, equipment and services, among others, for the said division; (3) petitioner imported catering and commissary supplies, such as alcohol, liquor and tobacco products because the cost of said products, when imported, is cheaper compared to those locally available and said products are not available locally in reasonable quantity, quality or price; (4) upon comparison of the local prices and the importation costs for the alcohol products, it is readily determinable that importing the said products is way cheaper than purchasing them locally; (5) she prepared a Table of Comparison[32] that shows the complete comparison of prices for the alcohol products imported by petitioner for the period December 2013 to September 2014; (6) for the local prices of alcohol products, she used the following sources: (**a**) Absolute Sales Corporation's Product Price Lists for 2013 and 2014[33], (**b**) Future Trade International's Product Price Lists for 2013 and 2014[34], (**c**) Minivan Enterprise's Product Price Lists for 2013 and 2014[35], and (**d**) BIR's Revenue Memorandum Circular (**RMC**) No. 90-2012[36]; and, (7) for the

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31 See Judicial Affidavit of Cheryl V. Capinpin, Exhibit "P-31", id., pp. 339-458, with attached annexes.
32 Exhibit "P-28", id, p. 753.
33 Exhibit "P-22", Division Docket, Volume II, pp. 697-702.
34 Exhibit "P-23", id., pp. 703-713.
35 Exhibit "P-29", id., pp. 754-755.
36 Exhibit "P-24", id., pp. 714-736.
Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142,

importations costs, she used the actual product value as shown in the sales invoice issued by petitioner's suppliers, the product value as shown in the ATRIG and the product value as shown in the IIDE.

On cross-examination, respondent's counsel asked Capinpin how she obtained the local prices compared to the importation prices. She replied that local merchants of wines and liquors provided the local prices. She then confirmed that the local prices were sourced from three (3) local merchants only. Her team approached more than five (5) local merchants, but only three (3) have responded.

Lastly, Julian likewise testified through his Judicial Affidavit[37] that: (1) he is the Manager of petitioner's Tax Services Division; (2) he is in charge of ensuring that petitioner is compliant with all its tax liabilities under its charter, PD 1590 *vis-à-vis* the provisions of the NIRC of 1997, as amended; (3) under its charter, petitioner enjoys exemption from payment of excise taxes on imporation of commissary and catering supplies; (4) petitioner's BIR Certificate of Registration does not include excise tax as a tax type for importation of alcohol and tobacco products in the portion "Registered Activity(ies) Tax Type"; (5) the importations subject of the present claim for refund or tax credit arrived in 2013 and 2014 and, since its BIR Certificate of Registration covered the period when the importations were made, petitioner's tax information as indicated and recorded therein should be the basis in determining if petitioner made its correct tax filings for the relevant taxable periods; and, (6) petitioner has paid the taxes due for the relevant taxable periods as can be shown by the different tax returns filed by petitioner corresponding to each tax type.

On 28 January 2020, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[38] (**FOE**) consisting of Exhibits "P-2" to "P-32", inclusive of sub-markings. Respondent filed on 05 February 2020 a "Motion to Admit Attached

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143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes"

37 See Judicial Affidavit of Ruel Ryan O. Julian, Exhibit "P-32", Division Docket, Volume I, pp. 196-313, with attached annexes.

38 Id., Volume II, pp. 510-528.

Comment"[39], which the Second Division granted on 13 February 2020, in the interest of substantial justice.[40]

In the Resolution dated 11 March 2020[41], the Second Division admitted all of petitioner's exhibits (*i.e.*, Exhibits "P-2" to "P-32", inclusive of sub-markings). Considering respondent's manifestation that the case has no report of investigation and that he has no witness to present, the Court likewise ordered the parties to file their respective memoranda in the same Resolution.

On 01 July 2020, respondent filed his Memorandum[42] *via* registered mail. Petitioner, on the other hand, filed its Memorandum on 10 September 2020.[43] Accordingly, on 28 September 2020, the Second Division considered the case submitted for decision.[44]

## ISSUE

As the parties so stipulated[45], the sole issue for this Court's determination is —

> WHETHER PETITIONER PHILIPPINE AIRLINES, INC. IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF ₱2,904,585.91, REPRESENTING THE EXCISE TAXES ASSESSED AND PAID UNDER PROTEST ON 27 JULY 2017 AND 19 OCTOBER 2017 ON ITS IMPORTATIONS OF ALCOHOL PRODUCTS.

In support of the above, petitioner contends that its importation of catering and commissary supplies for international consumption is exempt from all taxes pursuant to its franchise considering that RA 9334 did not repeal PD 1590.

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39 Id., pp. 756-762.
40 See Resolution dated 13 February 2020, id., p. 764.
41 Id., pp. 766-767.
42 Id., pp. 768-774.
43 Id., pp. 776-790.
44 See Resolution dated 28 September 2020, id., p. 791.
45 Issue, Joint Stipulation of Facts and Issues (JSFI), id., p. 465.

Respondent, on the other hand, avers that the total amount claimed for refund was not properly documented and that Section 131[46] of the NIRC of 1997, as amended by RA 9334, expressly withdrew the conditional tax exemption granted to petitioner. He added that since petitioner's judicial claim for refund was filed on 25 July 2019, which is barely three (3) days from the filing of its administrative claim on 22 July 2019, it is still subject to his administrative investigation or examination and pending the closure of his investigation, no grant of refund may be given to petitioner.

## RULING OF THE COURT

After a careful review of the case records and the parties' contrasting arguments, this Court resolves to deny the present Petition for Review.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the prescriptive period in the filing of the administrative and judicial claims for refund or recovery of tax **erroneously or illegally** collected, respectively. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[47] The said provisions read as follows:

> ...
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> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (C) Credit or refund taxes **erroneously or illegally** received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided,*

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46 **SEC. 131.** *Payment of Excise Taxes on Imported Articles.* —

47 *CBK Power Company Limited v. Commissioner of Internal Revenue*, 750 Phil. 748 (2015).

*however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.[48]

...

**SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

**In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause** that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[49]

...

Based on the foregoing provisions, it is crystal clear that in cases of recovery of erroneously paid or illegally collected tax, *both* the administrative claim for refund and the judicial claim for refund must be filed before the expiration of two (2) years from the *date of payment,* regardless of any supervening cause that may arise after payment. We cannot give any other interpretation to the aforequoted provisions as the language thereof is plain, clear and unambiguous.

Moreover, unlike in a claim for refund filed under Section 112(D)[50] of the NIRC of 1997, as amended, where the provision strictly

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48 Emphasis supplied.

49 Emphasis supplied.

50 **Sec. 112**. *Refunds or Tax Credits of Input Tax.* —
(A) ...
...
(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant the refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

**In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the**

provides for 120+30-day periods (*i.e.*, giving the CIR 120 days within which to decide before a taxpayer is given a period of 30 days within which to appeal with this Court), nothing in Sections 204 and 229 of the NIRC of 1997, as amended, would indicate that the BIR must first act upon the taxpayer's administrative claim before the taxpayer can file its judicial claim, or that the taxpayer is barred from going to court if not notified of the BIR's decision.

In *CBK Power Company Limited v. Commissioner of Internal Revenue*[51] (**CBK Power**), the Supreme Court ruled that CBK Power Company Limited complied with the two-year prescriptive period requirement under Sections 204 and 229 of the NIRC of 1997, as amended, when it filed both of its administrative and judicial claims for refund or tax credit five (5) days apart, to wit:

> ...
>
> The Commissioner laments that he was deprived of the opportunity to act on the administrative claim for refund of excess final withholding taxes covering taxable year 2003 which CBK Power filed on March 4, 2005, a Friday, then the following Wednesday, March 9, 2005, the latter hastily elevated the case on petition for review before the CTA. He argues that the failure on the part of CBK Power to give him a **reasonable time** to act on said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.
>
> For its part, CBK Power maintains that it would be prejudicial to wait for the Commissioner's ruling before it files its judicial claim since it only has 2 years from the payment of the tax within which to file both its administrative and judicial claims.
>
> The Court rules for CBK Power.
>
> Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a

**taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied)

...

51 Supra at note 47; Citations omitted, emphasis and italics in the original text, and supplied.

judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. These provisions respectively read:

> SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —
>
> x x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x x
>
> SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: ...

Indubitably, CBK Power's administrative and judicial claims for refund of its excess final withholding taxes covering taxable year 2003 were **filed within the two-year prescriptive period**, as shown by the table below:

| WHEN FINAL INCOME TAXES WERE WITHHELD | WHEN REMITTANCE RETURN FILED | LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD | WHEN ADMINISTRATIVE CLAIM WAS FILED | WHEN PETITION FOR REVIEW WAS FILED |
|---|---|---|---|---|
| February 2003 | 03/10/03 | 03/10/05 | March 4, 2005 | 03/09/05 |
| May 2003 | 06/10/03 | 06/10/05 | March 4, 2005 | 03/09/05 |

**With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.**

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, **on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**

In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David* (Kiener), wherein it was held that in no wise does the law, *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In *Kiener*, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow, *viz.*:**

> The controversy centers on the construction of the aforementioned section of the Tax Code which reads:
>
> > SEC. 306. **Recovery of tax erroneously or illegally collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been

> erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

The preceding provisions seem at first blush conflicting. It will be noticed that, whereas the first sentence requires a claim to be filed with the Collector of Internal Revenue before any suit is commenced, the last makes imperative the bringing of such suit within two years from the date of collection. But the conflict is only apparent and the two provisions easily yield to reconciliation, which it is the office of statutory construction to effectuate, where possible, to give effect to the entire enactment.

To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. **Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. x x x. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow...**

...

Applying the doctrine in *CBK Power*, this Court has held in *ABB, Inc. v. Commissioner of Internal Revenue*[52], that a taxpayer cannot be

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[52] CTA Case Nos. 8563, 8594, & 8674, 08 August 2016. Affirmed by the CTA *En Banc* in its Decision dated 13 March 2018 and 22 August 2018 (CTA EB Case No. 1501); Citations omitted, italics in the original text and emphasis supplied.

faulted for filing its judicial claim for refund under Section 229 of the NIRC of 1997, as amended, without waiting for the BIR to act on its administrative claim under Section 204 of the NIRC of 1997, as amended, as follows:

> ...
>
> Lastly, respondent claims that she was deprived of the opportunity to study petitioner's claim for refund. The Court does not agree. In the consolidated cases of *CBK Power Company Limited vs. Commissioner of Internal Revenue ("CIR")* and *CIR vs. CBK Power Company Limited*, the Supreme Court held that pursuant to *Sections 204 and 229 of the 1997 NIRC*, as amended, the taxpayer's claim for refund must be filed within two (2) years from the date of payment of the tax or penalty. *Section 229* further imposes the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner.
>
> **Petitioner cannot be faulted for filing its judicial claim for refund without waiting for respondent to act on its administrative claim. The law is clear, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty, and no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.**
>
> In other words, what the law requires is that the administrative claim for refund must be filed before a judicial claim for refund and both must be filed within two (2) years from date of payment.
>
> ...

**PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.**

The records show that petitioner paid excise taxes totaling ₱2,904,585.91 to the BOC on 27 July 2017[53] and 19 October 2017.[54] Counting from these dates, petitioner had until 27 July 2019 and

[53] Supra at note 16.
[54] Supra at note 17.

19 October 2019, respectively, to file its administrative and judicial claims. Evidently, petitioner's administrative claim for refund filed on 22 July 2019[55] before respondent, and the judicial claim for refund filed before this Court on 25 July 2019[56], both fell within the two-year prescriptive period, as shown in the table below:

| BOC Form No. 38-A Serial No. | Date of Payment | Amount of Payment | 2-Year Prescriptive Period | Filing Date of the Admin. Claim | Filing Date of the Judicial Claim |
|---|---|---|---|---|---|
| 01885254452[57] | 27 July 2017 | ₱2,049,420.24 | 27 July 2019 | 22 July 2019[58] | 25 July 2019[59] |
| 01887107361[60] | 19 October 2017 | 855,165.67 | 19 October 2019 | | |
| TOTAL | | **₱2,904,585.91** | | | |

Had petitioner awaited respondent's final action on its claim for refund or issuance of a TCC prior to taking court action knowing fully well that the prescriptive period for the first excise tax payment is about to lapse, petitioner would have lost not only its right to seek judicial recourse but its right to recover the amount it erroneously paid to the government and thereby, suffer irreparable damage.

Further, as regards the claim for refund on the second excise payment, We cannot deny a legitimate claim considering that it was timely and properly filed in accordance with Section 229 of the NIRC of 1997, as amended.

**PETITIONER FAILED TO PROVE THAT THERE WAS AN ERRONEOUS OR ILLEGAL EXCISE TAX WHICH WAS COLLECTED BY THE GOVERNMENT.**

We shall now determine whether petitioner is entitled to a tax refund in the amount of ₱2,904,585.91, allegedly representing petitioner's erroneous or illegal excise tax paid to the government through the BOC.

55 Supra at note 19.
56 Supra at note 1.
57 Supra at note 16.
58 Supra at note 19.
59 Supra at note 1.
60 Supra at note 17.

Well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

1. That the taxpayer should **file a written claim for refund or tax credit with the CIR within two (2) years from the date of payment of the tax or penalty**, and non-compliance with which precludes the latter from exercising his authority thereon[61];

2. That, if **denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within the said two-year period from the date of payment of the tax or penalty, regardless of any supervening cause**; otherwise, the claim for refund shall have prescribed[62];

3. The claim for refund must be a **categorical demand for reimbursement**[63]; and,

4. There must be proof of payment of the erroneously or illegally collected taxes.[64]

As previously stated, petitioner faithfully complied with the *first*, *second*, and *third* requisites by filing its administrative claim[65] (*i.e.*, Claim for Refund or Tax Credit on Excise Taxes Paid Under Protest on Importation of Alcohol Products on 27 July 2017 and 19 October 2017) with respondent on 22 July 2019 and its subsequent judicial claim[66] for refund with the Court on 25 July 2019, both of which were filed within the two-year reglementary period from the date of payment.

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61 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

62 See *Gibbs v. Commissioner of Internal Revenue*, 107 Phil. 232 (1960).

63 See *Bermejo v. Collector of Internal Revenue*, 87 Phil. 96 (1950).

64 See *Aguilar v. Commissioner of Internal Revenue*, CA-G.R. SP-16432, 30 March 1990.

65 Supra at note 19.

66 Supra at note 1.

As to the *fourth* and last requisite, petitioner has sufficiently proven that it has paid the total amount of excise tax of ₱2,904,585.91, as evidenced by BOC Form No. 38-A Serial Nos. 01885254452[67] and 01887107361.[68] However, in order to fully satisfy the *fourth* requisite, petitioner needs to likewise prove that there was an erroneous or illegal payment.

Petitioner argues that, under PD 1590[69], it is exempt from the payment of all taxes, duties, and other fees and charges of any kind of nature on all importations of commissary and catering supplies, among others, and other articles, supplies, or materials imported by petitioner for the use in its transport and non-transport operations, as well as other activities incidental thereto, notwithstanding the passage of RA 9334.[70] Conversely, respondent contends that Section 131 of the NIRC of 1997, as amended by RA 9334, expressly withdrew the conditional tax exemption granted to petitioner.

We agree with petitioner.

In a number of cases, the Supreme Court has already specifically ruled that petitioner's tax privilege under Section 13 of PD 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA 9334, subject to certain conditions. In *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*[71], it held:

> ...
>
> This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.

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67 Supra at note 16.

68 Supra at note 17.

69 AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

70 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.

71 G.R. Nos. 215705-07, 22 February 2017, 806 Phil. 358; Citations omitted, emphasis in the original text and supplied.

In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, **the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax.** This Court, ruling in favor of PAL, held that:

> 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.* [*G.R. No. 180066, July 7, 2009, 609 Phil. 695*]:
>
>> 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.** x x x
>
> 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.
>
> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that **PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use.** x x x

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, this Court, echoing the ruling in the abovecited case of *CIR v. PAL*, held that:

> In other words, **the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax**. The phrase 'in lieu of all other taxes' includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, 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.

On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

> SEC. 22. *Franchises of Domestic Airlines.* — **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc.**, R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the

> franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> **(A) The franchise tax is abolished;**
>
> **(B) The franchisee shall be liable to the corporate income tax;**
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> **(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.**

Thus, this Court held in the abovecited PAL consolidated cases:

> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). **PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement**. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.

...

The foregoing pronouncements were reiterated in the more recent case of *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*[72] (**PAL**), where the Supreme Court declared:

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72 G.R. Nos. 206079-80, 823 Phil 1043 (2018); Citations omitted and emphasis supplied.

> ...
>
> PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337 120 further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from "any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."
>
> ...
>
> Again, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, this Court maintained that despite these amendments to the National Internal Revenue Code, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that **no explicit repeals were made on Presidential Decree No. 1590.**
>
> **Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist...**
>
> ...

Accordingly, despite the enactment and effectivity of RA 9334, amending Section 131 of the NIRC of 1997, petitioner's tax exemptions subsist.

Nevertheless, despite the foregoing, petitioner's tax exemptions are *not* without conditions.

As the Supreme Court mentioned in the said *PAL* case, petitioner remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement; the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

In addition to the payment of the corporate income tax, petitioner is required to show compliance with the conditions enumerated under Section 13(b)(2) of PD 1590 to avail of the excise tax exemption for its imported alcohol products, to wit:

...

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 non[-]transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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

...

(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**...[73]

...

As such, based on jurisprudence and the foregoing provision, petitioner must fulfill the following conditions to be exempt from excise tax on its importations, to wit:

1. Petitioner paid its corporate income tax covering the period when the subject importations were made;

[73] Emphasis supplied.

2. The articles, supplies or materials are imported for petitioner's use in its transport and non-transport operations and other activities incidental thereto; and,

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

In this case, petitioner submitted in evidence its Amended Annual Income Tax Returns (**ITRs**) for TYs ended 31 December 2013[74] and 31 December 2014[75], the periods when the importations were made, with overpayments of ₱583,644,705.00 and ₱707,400,852.00, respectively, to prove payment of its corporate income tax. In which case, petitioner has fulfilled the *first* condition.

Parenthetically, petitioner is a VAT-registered entity[76] and paid its VAT payable, if any, for TYs ended 31 December 2013[77] and 31 December 2014.[78]

As for the *second* condition, the imported articles were described as "Inflight Materials" under the column "Description of Articles" in the IIDEs submitted by petitioner.[79] Moreover, the ATRIGs issued by the BIR itself and addressed to the Commissioner of Customs (**COC**) also provided that the pertinent shipment to be released at the port of NAIA consisting of the said articles will be used exclusively for "international inflight consumption only".[80]

Moreover, petitioner's witness, Capinpin, its Manager for In-Flight Materials Purchasing Division, testified, through her Judicial Affidavit[81], that the supplies imported in 2013 and 2014 were used as in-flight commissary and catering supplies, *viz*:

74 Exhibit "P-14", Division Docket, Volume II, pp. 592-607.
75 Exhibit "P-17", id., pp. 623-638.
76 Exhibit "P-3", id., p. 540.
77 Exhibits "P-15" to "P-15-e", id., pp. 608-620.
78 Exhibits "P-18" to "P-18-g", id., pp. 639-658.
79 Supra at note 9.
80 Supra at note 11.
81 Supra at note 31, p. 340.

...

Q: Do you know what the present case is about?

A: Yes. It is a claim for refund of the excise taxes assessed and paid by PAL under protest on 27 July 2017 and 19 October 2017, on its **importations of commissary and catering supplies for the period December 2013 to September 2014.**

Q: Are you familiar with those importations?

A: Yes, I am.

Q: How are you familiar with those importations?

A: I am familiar with those importations because, as mentioned earlier, one of my duties is to efficiently and effectively plan, procure, and control **all foreign and local materials, supplies, equipment, and services, among others, for the In-flight Materials Purchasing Division of PAL.**[82]

...

Thus, the subject importations of alcohol products are for the use of petitioner in its transport operations, fulfilling the *second* condition.

However, with regard to the *third* condition, *i.e.*, the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, We find that petitioner failed to prove compliance therewith.

To prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, petitioner submitted the following: (1) Judicial Affidavit of Capinpin[83], its Manager for In-flight Materials Purchasing Division; (2) Absolute Sales Corporation's Product Price Lists for 2013 and 2014[84]; (3) Future Trade International's Product Price Lists for 2013 and 2014[85]; (4) BIR's RMC

82 Emphasis supplied.
83 Supra at note 31.
84 Exhibit "P-22", Supra at note 33.
85 Exhibit "P-23", Supra at note 34.

No. 90-2012[86]; (5) Minivan Enterprise's Product Price Lists for 2013 and 2014[87]; and, (6) Table of Comparison prepared by petitioner.[88]

The Court, however, finds petitioner's proffered pieces of evidence to be insufficient.

It is noted that during the cross-examination of Capinpin[89], she testified that her observation that the imported wines and liquors are not available locally in reasonable quantity, quality or price, is merely based on the price lists obtained from Absolute Sales Corporation, Future Trade International, and Minivan Enterprise, *viz*:

> ...
> JUSTICE CASTAÑEDA:
> Cross?
>
> ATTY. MANZANARES:
> Yes, your Honors.
>
> Q: Ms. Witness, in Question No. 8[90], you mentioned that you compared local prices in the importation cost for alcohol products, is this correct?
>
> A: Yes Sir.
>
> Q: How did you get the local prices for comparison for the importation prices?
>
> A: I asked local prices from the local merchant of wines and liquors.
>
> Q: May I know how many local merchants did you approach to get these prices?
>
> A: We approached several at least more than five but only three (3) have responded.

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86 Exhibit "P-24", Supra at note 36.
87 Exhibit "P-29", Supra at note 35.
88 Exhibit "P-28", Supra at note 32.
89 TSN dated 09 December 2019, pp. 6-7.
90 Q: Why do you say that importing the said catering and commissary supplies are cheaper and reasonably priced than purchasing them locally?
A: I have compared the local prices and the importation costs for the alcohol products. Upon comparison of these prices, it is easily determinable that **importing these products are (*sic*) way cheaper than purchasing them locally**. (Emphasis supplied)

Q: **So, your local prices is (*sic*) based on three (3) merchants?**

A: **Yes.**[91]

...

Unfortunately, the Court cannot simply rely on the product price lists from the three (3) dealers or on the testimonies merely based thereon. It is hard to be convinced that the product price lists from the said dealers represent the market price in the local market or for the entire country.

Without corroborating evidence to prove that the price lists of Absolute Sales Corporation, Future Trade International and Minivan Enterprise represent the local market prices for the subject alcohol products in 2013 and 2014 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same year, We cannot conclude that petitioner's comparison of the prices of its imported wines and liquors with that of the said dealers is deemed sufficient. In the same vein, considering that RMC No. 90-2012[92] was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's wines and liquors that were imported in 2013 and 2014 with that of the said price survey that was made in 2010. Simply put, with the evidence presented by petitioner, We cannot determine, with certainty, whether the cost of importing the said wines and liquors is lower than purchasing them locally.

As the Supreme Court held in *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[93], the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven, to wit:

> ...
>
> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed

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91 Emphasis supplied.

92 Supra at note 36.

93 G.R. No. 222428, 19 February 2018 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, 18 February 2008; Citations omitted and emphasis supplied.

> in *strictissimi juris* against the taxpayer, **but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.
>
> ...

Based on the foregoing disquisition, petitioner failed to present sufficient and convincing evidence to prove that the subject importations of alcohol products were not locally available in sufficient quantity, quality, or price at the time of importation. Such being the case, petitioner failed to comply with the *third* condition and thus, has not fulfilled all the conditions to be entitled to the tax exemption granted under Section 13 of PD 1590. Consequently, petitioner failed to satisfy the *fourth* requisite in a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended. Thus, We find no erroneous or illegal collection of excise taxes refundable in favor of petitioner.

On a final note. It is well established that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[94]

**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review filed on 25 July 2019 by petitioner Philippine Airlines, Inc. is hereby **DENIED** for lack of merit.

**SO ORDERED.**

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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94 *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, 14 August 2019.

**I CONCUR:**

JUANITO C. CASTAÑEDA, JR.
Associate Justice

## ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice