REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NOS. 8708 & 8770**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 20 2017 : 2:40 pm

x---x

RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Partial Reconsideration (RE: Decision promulgated on 13 January 2017)**, filed on February 1, 2017, with petitioner's **Comment/Opposition [To: Respondent's Motion for Partial Reconsideration dated 31 January 2017]**, posted through registered mail on March 20, 2017.

In his Motion, respondent prays that the Court reconsider and set aside the Decision promulgated on January 13, 2017 and render another Decision denying the claim for refund in its entirety.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the present consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. The **COMMISSIONER OF INTERNAL REVENUE** is hereby **ORDERED** to refund in favor of **PHILIPPINE AIRLINES, INC.** the amount of Twelve Million Nine Hundred Twelve Thousand Four Hundred

Thirty Pesos and Eighty-Eight Centavos (P12,912,430.88) representing erroneously paid excise tax on its importation in the years 2006, 2008 to 2012 of assorted liquor, wine and cigarettes constituting its commissary and catering supplies for international flight consumption."

In his motion, respondent insists that Section 131 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9334, already repealed the exemption granted to petitioner under Presidential Decree (PD) No. 1590. Hence, he contends that petitioner has no vested right under PD No. 1590 to claim tax exemption.

Moreover, he argues that petitioner failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price. He avers that the exemption granted to petitioner is not absolute and to sustain petitioner's misguided and self-serving interpretation of its franchise provisions would ultimately convert the conditional exemption to one that is absolute. Respondent also claims that petitioner failed to prove that its right to tax refund indubitably exists.

On the other hand, in its Comment/Opposition, petitioner submits that other than repeating his arguments, which were already raised during trial, respondent failed to point out the specific errors that the Court allegedly committed. It alleges that the Court's finding of tax exemption is sufficiently supported by jurisprudence and evidence.

Respondent's arguments regarding the repeal of the exemption granted to petitioner under PD No. 1590 has been settled by the Supreme Court in the cases of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[1] and *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.*[2], which ruled that the tax privilege of petitioner provided in Section 13 of PD No. 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334. The assailed Decision pertinently reads:

> "The issue on PAL's tax exemption under its franchise, PD 1590, is not novel. No less than the Supreme Court has settled the same in the consolidated cases of *Republic of the Philippines rep. by the Commissioner of Customs vs. Philippine Airlines, Inc. (PAL)* and

---

[1]G.R. Nos. 212536-37, August 27, 2014.
[2]G.R. Nos. 209353-54 and G.R. Nos. 211733-34, July 6, 2015.

Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)[3] in this wise:

> In CIR v. PAL, the Supreme Court has already passed upon the very same issues raised by the same petitioners. The only differences are the taxable period involved and the amount of refundable tax.
>
> We have held in that case that it is a basic principle in 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 the earlier statute. A reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption:
>
> **PRESIDENTIAL DECREE NO. 1590**
>
> x x x x
>
> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international airtransport 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:**
>
> x x x x
>
> (2) **All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of** aircraft, engines,

[3] G.R. Nos. 209353-54 and G.R. Nos. 211733-34, July 6, 2015.

equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; ***provided*, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;**

x x x x

SECTION 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof.

REPUBLIC ACT NO. 9334

x x x x

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

SEC. 131. Payment of Excise Taxes on Imported Articles.-

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

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

The provision of any special or general law to the contrary notwithstanding, **the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon.** This shall apply to cigars and cigarettes, distilled spirits,

> fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided*, *further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government owned and operated duty-free shop, like the Duty- Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on introduction into the Philippine customs territory.
>
> x x x x
>
> SECTION 10. Repealing Clause. - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

The Court has exhaustively discussed all issues similar to those in the present case in this wise:

> Indeed, as things stand, **PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334**. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*:
>
>> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. 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**....
>
> 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 remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

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.

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.
>
> In this case, the CTA found that PAL had paid basic corporate income tax for fiscal year ending 31 March 2006. Consequently, PAL may now claim exemption from taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, provided it shows that 1) such articles or supplies or materials are imported for use in its transport and nontransport operations and other activities incidental thereto; and 2) they are not locally available in reasonable quantity, quality, or price."

The Dissenting Opinion of Presiding Justice Roman G. Del Rosario in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs,*[4] as cited by respondent, was issued on September 9, 2013, or before the afore-mentioned Supreme Court cases were promulgated. Yet, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5]

Finally, as aptly pointed out by petitioner, the contentions presented by respondent in the subject Motion are mere rehash of his previous arguments, which have been duly considered and adequately discussed in the assailed Decision. Thus, the Court *En Banc* finds no cogent reason to modify or much more reverse the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (RE: Decision promulgated on 13 January 2017)**, is hereby **DENIED** for lack of merit.

Anent petitioner's **Entry of Appearance** posted on March 10, 2017, the same is hereby **NOTED**. Meanwhile, considering the Court's receipt of petitioner's **Comment/Opposition [To: Respondent's Motion for Partial Reconsideration dated 31 January 2017]**, posted through registered mail on March 20, 2017, petitioner's **Motion for Additional Time to File Comment to**

[4]CTA EB Nos. 920 & 922 (CTA Case Nos. 7665 & 7713), September 9, 2013.
[5]*Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.*

Respondent's Motion for Partial Reconsideration dated 31 January 2017 posted on March 10, 2017 is deemed **GRANTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(On Leave)
ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice