REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Petitioners,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1018
(CTA Case No. 7935)

x---x

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1021
(CTA Case No. 7935)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1022
(CTA Case No. 7935)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

JUL 02 2014 Apolinario 9:00 a.m.

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DECISION

CASTANEDA, JR., J.: gr

Before Us are consolidated Petitions for Review, docketed as CTA EB No. 1018[1] filed by Commissioner of Internal Revenue (CIR) on May 29, 2013; CTA EB No. 1021[2] filed by Philippine Airlines, Inc. (PAL) through registered mail and was posted on June 19, 2013; and CTA EB Case No. 1022[3] filed by the Commissioner of Customs (COC) on June 20, 2013.

The first and third petitions, CTA EB Nos. 1018 and 1022, seek to set aside the Decision[4] (assailed Decision) of the CTA Third Division promulgated on December 20, 2012 and Resolution[5] (assailed Resolution) of the CTA Special Third Division promulgated on May 14, 2013 which partially granted PAL's claim for refund representing erroneously paid excise taxes on its importation of cigarettes, liquors, wines as commissary supplies for the periods June 25, 2007, July 20, 2007 and July 30, 2007 in the total amount of ONE MILLION FIVE HUNDRED EIGHT THOUSAND AND NINE HUNDRED NINETY-ONE PESOS AND 84/100 (P1,508,991.84).

Meanwhile, the second petition, CTA EB No. 1021, seeks the reversal and setting aside of the same Decision dated December 20, 2012 and Resolution dated May 14, 2013; and prays for the grant of refund in the amount of P9,380,680.88 in addition to the amount of P1,508,991.84 already granted in the assailed Decision.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows:[6]

> 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 PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, Metro Manila.
>
> On the other hand, respondent Commissioner of Internal Revenue (CIR) is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 141, 142, 143, and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.
>
> Likewise named as respondent is the Commissioner of Customs (COC), who is the Commissioner of the Bureau of Customs (BOC), which is the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed

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[1] *Rollo* (CTA EB No. 1018), pp. 1-17, with Annexes.
[2] *Rollo* (CTA EB No. 1021), pp. 299-331, with Annexes.
[3] *Rollo* (CTA EB No. 1022), pp. 9-33.
[4] *Rollo* (CTA EB No. 1018), pp. 19-48. Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Lovell R. Bautista, concurring.
[5] *Rollo* (CTA EB No. 1018), pp. 49-58.
[6] *Ibid.*, pp. 19-26.

on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 141, 142, 143 and 145, respectively, of the NIRC of 1997, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (BIR Form No. 1918) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12 (a) of the NIRC, as amended.

On June 11, 1978, petitioner was granted a franchise to establish, operate, and maintain air transport services within the Philippines and other countries by Presidential Decree No. 1590 (PD 1590).

On January 1, 2005, Republic Act No. 9334 (RA 9334), took effect. Section 6 of RA 9334 provides:

> "Section 131. Payment of Excise Taxes on Imported Articles. —
>
> (A) Person 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 an introduction into the Philippine customs territory."

On February 3, 2005, then BIR Commissioner Guillermo Parayno wrote then BOC Commissioner George M. Jercos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise tax "on all importations destined for Duty Free Philippines (DFP) and the Freeport zones such as the Subic Bay Freeport Zone." Furthermore, in said letter, the BIR requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to the DFP and the Freeport zones be immediately collected.

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

On March 1, 2005, the new BOC Commissioner Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones pursuant to RA No. 9334 and BIR Revenue Regulations No. 13-2004."

Paragraph IV of CMO 13-2005, subtitled "Operational Provisions", required the accomplishment of consumption entries, instead of the previously required warehouse entries, as a requisite for the clearance of imported cigarettes and liquors, to wit:

xxx xxx xxx xxx

On April 4, 2005, petitioner wrote a letter to Atty. Felipe Bartolome, District Collector of Customs, Manila International Container Port, Bureau of Customs, Manila, requesting the immediate release of its shipment alleging that the articles imported are for its commissary supplies; which are exempt from all taxes under Section 13 of PD 1590.

Petitioner's April 4, 2005 letter was endorsed to the Legal Service of the BOC, which responded to its request for release of the imported cigarettes by issuing a Memorandum on April 25, 2005 addressed to COC Commissioner Alberto D. Lina. The April 25, 2005 Memorandum simply expressed that petitioner is "liable for the payment of excise tax on all their importation of the subject articles, even under the old and previous Section 131 of the NIRC of 1977; subject however to duty drawback and/or tax refund, if applicable."

Considering that the subsequent importations of wine, liquor and cigarettes for petitioner's commissary supplies were also withheld release from the customs ports pending payment of taxes, duties, and fees with danger of spoilage and possible loss while in storage; and considering further the alleged failure of the COC to take formal action on the April 25, 2005 recommendation of the BOC's Legal Service, petitioner paid under protest the excise taxes due on the following importations, detailed as follows:

xxx xxx xxx xxx

On April 22, 2008, petitioner simultaneously filed before respondent CIR three (3) written claims for refund of excise taxes alleged to have been erroneously paid on June 25, 2007, July 10, 2007, July 20, 2007, and July 30, 2007.

However, respondent CIR failed to act on the said administrative claims for refund. Hence, petitioner filed the instant Petition for Review on June 24, 2009.

Respondent CIR filed her Answer and interposed the following Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau;
5. The amount of P10,889,672.72 being claimed by petitioner as specific taxes allegedly paid on June 25, 2007, July 11, 2007 (and) July 20, 2007 and July 30, 2007 was not properly documented;
6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95) and such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211).

After trial on the merits, the CTA Third Division rendered the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondents are **ORDERED** to **REFUND** in favor of petitioner the amount of **ONE MILLION FIVE HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY-ONE PESOS AND 84/100 (P1,508,991.84)**, representing petitioner's erroneously paid excise tax on June 25, 2007, July 20, 2007, and July 30, 2007.
>
> SO ORDERED.[7]

Dissatisfied with the foregoing decision, the CIR filed on January 14, 2013 a Motion for Partial Reconsideration; the COC filed on January 17, 2013 a Motion for Reconsideration; and PAL filed on January 17, 2013 a Motion for Partial Reconsideration which were all denied in a Resolution dated May 14, 2013 as follows:

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[7] *Rollo* (CTA EB No. 1018), p. 47.

> **WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration, respondent Commissioner of Customs' Motion for Reconsideration and petitioner's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[8]

Hence, these Petitions for Review *en banc*.

On July 8, 2013, the CTA *en banc* in a Minute Resolution[9] consolidated CTA EB No. 1022 with CTA EB No. 1018. On August 16, 2013, the CTA *en banc* in a Minute Resolution[10] consolidated CTA EB No. 1021 with CTA EB Nos. 1018 and 1022.

After the parties submitted their Comments,[11] the CTA *en banc* issued a Resolution[12] on October 1, 2013 directing the parties to submit their respective memoranda. The CIR manifested on October 17, 2013[13] that she is adopting her Petition for Review in CTA EB No. 1018 and her Comment/Opposition to the Petition for Review in CTA EB No. 1021 as her Memorandum while PAL submitted a Manifestation and Motion[14] on November 15, 2013 adopting its Petition for Review in CTA EB No. 1021 and its Comment/Opposition to the Petitions for Review in CTA EB Nos. 1018 & 1022 as its Memorandum. Meanwhile, the COC submitted his Consolidated Memorandum[15] on November 7, 2013.

Thereafter, the consolidated cases were submitted for decision on December 4, 2013.[16]

THE ISSUES

The parties raised the following issues in their respective Petitions for Review, to wit: Ju

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[8] *Rollo* (CTA EB No. 1018), p. 58.
[9] *Ibid.*, pp. 63-64.
[10] *Ibid.*, pp. 80-81.
[11] PAL's Comment/Opposition (to the Petition for Review in CTA EB No. 1018) was filed on July 11, 2013, *Rollo* (CTA EB No. 1018), pp. 65-74. CIR's Comment/Opposition (to the Petition for Review in CTA EB No. 1021) was filed on September 6, 2013, *Rollo* (CTA EB No. 1018), pp. 85-90. PAL's Comment/Opposition (to the Petition for Review in CTA EB No. 1022) was filed on September 9, 2013, *Rollo* (CTA EB No. 1018), pp. 94-101. COC's Comment (to the Petition for Review in CTA EB No. 1021) was filed on November 7, 2013, *Rollo* (CTA EB No. 1021), pp. 549-562.
[12] *Rollo* (CTA EB No. 1018), pp. 105-106.
[13] *Ibid.*, pp. 107-109.
[14] *Ibid.*, pp. 134-136.
[15] *Ibid.*, pp. 113-132.
[16] *Ibid.*, pp. 140-141.

<u>CTA EB No. 1018</u>

Whether or not respondent is entitled to a tax refund in the reduced amount of P1,508,991.84 representing alleged erroneously paid excise tax on June 25, 2007, July 20, 2007 and July 30, 2007.

<u>CTA EB No. 1021</u>

Whether petitioner has sufficiently proved that the subject imported cigarettes, wine and liquors are not locally available in reasonable quantity, quality or price.

A. Whether petitioner is entitled to the refund of excise tax in the amount of P4,718,180.88 on certain brands of imported wine and liquors despite the non-presentation of sales invoices on their purchase or importation.

B. Whether petitioner is entitled to the refund of excise tax in the amount of P4,662,500.00 on its imported cigarettes despite the non-presentation of pricelist for locally available products.

<u>CTA EB No. 1022</u>

Whether or not Section 13 of PD 1590 was amended by Section 6 of RA 9334.

The foregoing issues can be summarized as follows:

Is PAL entitled to the refund of its alleged erroneously paid excise taxes on its importation of commissary supplies such as cigarettes, liquors and wines for the periods June 25, 2007, July 20, 2007 and July 30, 2007 in the reduced amount of One Million Five Hundred Eight Thousand Nine Hundred Ninety-One Pesos and 84/100?

THIS COURT'S RULING

The consolidated petitions are DISMISSED for lack of merit. We affirm the assailed Decision and Resolution of CTA Third Division based on the following:

1. PAL's charter or Presidential Decree No. (PD) 1590 which exempts its importation of commissary supplies from excise taxes remains effective; and
2. Despite effectivity of Section 13 of PD 1590, PAL failed to provide sufficient proof to satisfy the conditions set forth therein in order to be

entitled to the exemption in so far as the amount of P9,380,680.88 is concerned.

PAL'S CHARTER, PD 1590 REMAINS EFFECTIVE AS AFFIRMED BY THE SUPREME COURT. SUBSEQUENT LEGISLATION DID NOT REPEAL PD 1590.

PAL's charter or also known as Presidential Decree No. (PD) 1590 exempts from excise taxes its commissary and catering supplies such as alcohol and tobacco products subject to the conditions stated therein, and in relation to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) 9337.[17]

Section 13 of PD 1590 provides:

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

[17] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 1123, 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.

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

PD 1590 should be read in conjunction with Section 22 of RA 9337 as follows:

> SECTION 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.** (Emphasis ours)

Under RA 9337 in relation to PD 1590, taking into consideration that the franchise tax is now abolished, the payment of the basic corporate income tax shall exempt PAL from other taxes, duties, royalties, registration, license, and other fees and charges except value added tax ("VAT") and real property tax. The law also requires that imported articles or supplies or materials should be for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and should not be locally available in reasonable quantity, quality, or price.

Clearly, the amendments pertaining to the inapplicability of franchise tax and payment of basic corporate income tax under RA 9337 did not revoke PAL's tax privilege pertaining to the "in lieu of other taxes" clause.

Here, PAL was able to substantiate and comply with the requirements under PD 1590 and RA 9337 but only as to the amount of P1,508,991.84 of excise taxes paid; thus, this amount is refundable. PAL's exemption from excise tax payment of P1,508,991.84 on the importation of commissary and catering supplies is among the taxes recognized within the scope of the "in lieu of other taxes" provision stated in Section 13 of its charter.

On the other hand, the wordings of Section 6 of RA 9334,[18] "the provisions of any special or general law to the contrary notwithstanding," cannot be inferred as an express repeal of the exemptions stated in PAL's franchise because it did not specifically cite PD 1590 as one of the acts intended to be repealed.

Repeals by implications are not favoured. All efforts should be exerted in order to harmonize and give effect to all laws on the subject.[19] What is needed is a manifest indication of the legislative purpose to repeal.[20]

The recent Supreme Court case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[21] upholds the existence and validity of PAL's charter in this manner:

> xxx xxx xxx
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> In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:
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> xxx xxx xxx
>
> Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, 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 that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement." In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: *gc*

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[18] 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.

[19] *In the Matter of Application for the issuance of a writ of habeas corpus Richard Brian Thornton for and in behalf of the minor child Sequeira Jennifer Delle Francisco Thornton v. Adelfa Francisco Thornton*, G.R. No. 154598, August 16, 2004, 436 SCRA 550.

[20] *Major General Carlos F. Garcia v. Sandgan bayan and the Office of the Ombudsman*, G.R. No. 165835, June 22, 2005, 460 SCRA 600.

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

> (*a*) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (*b*) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. **Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law**. (Emphasis ours)

While it is true the above cited PAL case applies to excise tax on the importation of aviation fuel products for the period July 24 to 28, 2004, this case bolsters the fact that PD 1590 is valid and enforceable.

In the 2009 case of *Commissioner of Internal Revenue v. Philippine Airlines, Inc,.*[22] the Supreme Court explained in this wise the reason why PAL through PD 1590, a special law, is vested special tax privileges:

> **Section 13 of Presidential Decree No. 1520 is not unusual. A public utility is granted special tax treatment (including tax exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility. In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.**
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> xxx xxx xxx
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> **Between Presidential Decree No. 1520, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails.** The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to 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 the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly

[22] G.R. No. 180066, July 7, 2009, 592 SCRA 237.

repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. (Emphasis ours)

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.[23] In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue,*[24] it was emphasized that "**All courts must take their bearings from the decisions of this Court".**

With the recent CTA *en banc* cases of *Commissioner of the Bureau of Customs v. Philippine Airlines, Inc.;*[25] *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL), Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.;*[26] *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL), Commissioner of Customs v. Philippine Airlines, Inc.(PAL);*[27] and *Commissioner of Internal Revenue v. Philippine Airlines, Inc.("PAL"), Republic of the Philippines, represented by the Commissioner of Customs v. Philippine Airlines, Inc. (PAL)*[28] promulgated this year and year 2013, the majority agreed that 1997 NIRC, as amended by RA Nos. 9334 and 9337 did not repeal P.D. 1590, a special law.

Jurisprudence and CTA *en banc* rulings affirm the validity of PAL'S charter in the absence of repeal by subsequent legislation.

THE SUPREME COURT CASE OF *REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE HONORABLE SECRETARY OF FINANCE, ET AL. V. HON. RAMON S. CAGUIOA, ET AL.*[29] *IS INAPPLICABLE TO THE INSTANT CASE.*

The Commissioner of Internal Revenue cannot find solace in the case of *Republic of the Philippines, represented by the Honorable Secretary of Finance, et al. v. Hon. Ramon S. Caguioa, et al.*[30] In resolving whether entities operating within the Subic Special Economic and Freeport Zone ("SBF") are exempt from payment of excise tax due on imported alcohol and tobacco products starting January 1, 2005, the Supreme Court ruled in the negative. The Supreme Court

[23] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.
[24] G.R. No. 176290, September 21, 2007, 533 SCRA 776, 781.
[25] CTA EB No. 954, January 29, 2014.
[26] CTA EB Nos. 942 & 944, December 9, 2013.
[27] CTA EB Nos. 928 & 929, October 21, 2013.
[28] CTA EB No. 920 & 922, September 9, 2013.
[29] G.R. No. 168584, October 15, 2007, 536 SCRA 193.
[30] *Id.*

anchored its findings on RA 9334,[31] further amending 1997 NIRC which subsequently withdrew tax exemption privilege on importations of alcohol and tobacco products previously availed by entities operating within SBF area under RA 7227 or the Bases Conversion and Development Act of 1992 creating the Subic Special Economic and Freeport Zone ("SBF") and the Subic Bay Metropolitan Authority ("SBMA"). Otherwise stated, RA 9334 repealed RA 7227.

The *Caguioa* case is inapplicable to the case at bar. RA 8424, otherwise known as the 1997 NIRC[32] and RA 9334 never mentioned the repeal of PD 1590.

Thus, the Court's Third Division correctly ruled in partially granting PAL's refund claim of excise tax of P1,508,991.84 on the importation of catering and commissary supplies such as alcohol and tobacco products for the periods June 25, 2007, July 20, 2007 and July 30, 2007.

PAL FAILED TO PROVE ENTITLEMENT TO REFUND IN SO FAR AS THE AMOUNT OF P9,380,680.88 IS CONCERNED.

In order to be entitled to exemption from excise tax on importations of commissary supplies, PAL must be able to prove, as one of the conditions set forth in Section 13 of PD 1590, that the imported commissary supplies are not locally available in reasonable quantity, quality or price.

We quote with concurrence the findings of CTA Third Division in its assailed Decision, to wit:

> As to the importation of the foregoing brands of cigarettes, Mr. Santos admitted that the cost of locally buying the same product for the same year cannot be established since no price thereof is available for Duty Free Philippines in 2005 as well as in the Philippine Wine Merchants Price Lists, which contain only the prices for wines. Mr. Santos likewise added that if ever there are local suppliers of the cigarettes involved, its selling price would definitely be higher than the importation cost of PAL of said cigarettes; which is exempt from duties and taxes under its franchise inasmuch as local suppliers will have to pay excise taxes and customs duties.

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[31] 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, which took effect on January 1, 2005.
[32] Effective January 1, 1998.

However, other than the testimony of the said witness, there is nothing in the evidence presented by petitioner which would support a conclusion that the subject cigarettes are not locally available in reasonable quantity, quality or price.

Also, the Court observes that petitioner failed to present the sales invoices or official receipts for its purchase or importation of the following articles from which the local prices can be compared:

Import Entry No.	Articles
3724	Chivas Real Whisky
14314	Piper Heidsieck
3730	Carlos I
3732	Royal Salute Whisky, Ballantine Scotch Whiskey, Carlos I Brandy and Martel VSOP Cognac
14302	Remy Martin XO Remy Martin VSOP Piper Heidsieck
14305	Jack Daniels, Regal Whisky, Cutty Sark, Royal Salute, Finlandia Vodka
14310	Chivas Regal Whisky

In this regard, it must be noted that the Court may not consider the comparison made by petitioner between the Unit Costs of the articles as per Informal Import Declaration Entry No. and the local prices of the same articles considering that, as per the testimony of Mr. Santos, the said Unit Costs are merely the valuations given by the Bureau of Customs from which they assessed and collected the excise tax due and thus, are not the actual cost or price of the subject imported articles.

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PAL needs more than the testimony of Mr. Victor Santos, PAL's employee and lone witness on price comparison to establish and prove its compliance to the conditions under the law. The lack of pricelist in Duty Free Philippines for the locally available cigarettes did not prove that the imported cigarettes are not available at reasonable quantity, quality or price in the local market.

On imported wine and liquor, if We are to compare its purchase price *vis-à-vis* local price, the best evidence to show the actual price would be the source documents, i.e., sales invoices and/or official receipts. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[33]

WHEREFORE, premises considered, the Petitions for Review under CTA EB No. 1018, CTA EB No. 1021 and CTA EB No. 1022 are hereby **DISMISSED**. Accordingly, the Decision dated December 20, 2012, and Resolution dated May 14, 2013 promulgated by CTA Third Division and CTA Special Third Division, respectively, are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[33] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Petitioners,

CTA EB NO. 1018
(CTA Case No. 7935)

- versus –

PHILIPPINE AIRLINES, INC.,
Respondent.

x---x

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA EB NO. 1021
(CTA Case No. 7935)

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS
Respondents.

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

CTA EB NO. 1022
(CTA Case No. 7935)

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JUL 02 2014 9:00 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

In his *ponencia*, my learned and esteemed colleague, the Honorable Senior Associate Justice Juanito C. Castañeda, Jr., affirms the assailed Decision and Resolution of the Court in Division which ordered the refund of excise taxes paid by Philippine Airlines, Inc. (PAL) on June 25, 2007, July 20, 2007 and July 30, 2007, in the amount of P1,508,991.84 on its importations of cigarettes, liquors and wines as commissary supplies.

With utmost respect, I dissent.

The crux of the controversy boils down to whether or not the excise tax exemption granted to PAL under PD No. 1590 on its importation of cigarettes, liquors and wines has been repealed.

On June 11, 1978, PD No. 1590 was issued wherein PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to 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.

Relevant portions of Section 13 of PD No. 1590 state as follows:

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

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> **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**:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> **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;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997,"* took effect. RA No. 8424 amended the National Internal Revenue Code[1] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424, I am of the humble view that **importation by PAL of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes**. Section 131 of the 1997 NIRC provides that: om

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[1]"SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I

Organization and Function of the Bureau of Internal Revenue

'SECTION 1. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

"SECTION 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 customshouse, 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 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: Provided, however, That this shall **not** apply to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by **a government-owned and operated duty-free shop**, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

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(B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphases supplied)

In other words, Section 131 of the 1997 NIRC clearly provides that importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise taxes - - *"the provision of any special or general law to the contrary notwithstanding."* The **only exceptions** specified therein are those importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the **Subic Special Economic and Freeport Zone**, the **Cagayan Special Economic** Zone and Freeport, and the **Zamboanga City Special Economic Zone**, as well as those importations of cigars and cigarettes, distilled spirits and wines **by a government-owned and operated duty-free shop**, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On January 1, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334, then made applicable the imposition of excise tax on importations of cigars, cigarettes, distilled spirits, fermented liquors and wines even if they are brought directly into the duly chartered or legislated freeports, *viz.*:

> "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 customshouse, 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 <u>shall apply</u> 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

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> 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.
>
> Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.
>
> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes shall not apply to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically withdrew the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

Based on the foregoing, the exemption of PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 **was actually withdrawn as early as January 1, 1998 with the enactment of RA No. 8424 albeit RA No. 9334 later expanded the list of importations which are subject to excise taxes**. Under Section 131 of the NIRC of 1997, as amended by RA No. 9334, any special or

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general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, **fermented liquors** [2] 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. Fermented liquor was simply added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, I find that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on PAL's importation under Section 13(2) of PD No. 1590. Suffice it to say, the repealing clause of RA No. 8424 expressly provides that:

> "SECTION 7. Repealing Clauses. — (A) Xxx xxx xxx.
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, **including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.**" (Emphasis supplied)

The above-cited Section of RA No. 8424 is explicit and clear. In enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

It may not be amiss to point out that Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. **PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes.** This shows the clear intent of the legislature to withdraw the tax exemption previously granted to PAL on its importation of afore-stated articles pursuant to Section 13(2) of PD No. 1590.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[3] ("*Cagayan case*"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code,

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[2] Fermented liquors was included in the list of importations which shall be subject to excise tax.
[3] G.R. No. L-60126, September 25, 1985.

as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> Xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, it is my humble view that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should therefore be construed as an express repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, Section 131 of the 1997 NIRC specifically identified the entities that are exempt from excise tax on importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges. Since said identification did not include PAL's importations, it necessarily follows that there is an express repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as afore-stated items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. It further posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

Sections 16 and 24 of PD No. 1590, as cited by petitioner, provide that:

> **"Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."
>
> **"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." (Emphasis supplied)

I find the arguments raised by PAL bereft of constitutional moorings. PAL proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption in the mode or manner it deems proper. PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[4], *viz*:

> "To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to

[4] G.R. No. 168584, October 15, 2007.

importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

First. Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

Fourth. **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.

> These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**
>
> **While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked."** (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[5], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

> "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes**." (Emphasis supplied)

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on PAL's importations.

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[5] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

I take note of Section 22 of RA No. 9337,[6] which took effect on November 1, 2005, abolishing the franchise tax provided under PAL's charter and subjecting PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement.

It is my view that at the time of the enactment of RA No. 9337, PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on PAL's importation of afore-stated articles was reenacted or restored, **although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334**.

While I am not unaware of the pronouncement of the Supreme Court in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*,[7] it is my position that the same is not applicable to the present case. For one, in *Philippine Airlines, Inc.*, the Supreme Court, **in re-confirming PAL's tax exemption under its franchise, made a specific reference only to PAL's excise tax exemption on petroleum products**. In contrast, the present case involves excise tax on importation of cigarettes and liquors. While Section 131 of RA No. 8424 (1997 NIRC) withdrew PAL's excise tax exemption on importation of cigarettes, liquors and wines by the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*", PAL's exemption from both direct and indirect taxes on its importation of petroleum products remained even after the enactment of RA No. 8424 (1997 NIRC).

Note that in *Philippine Airlines, Inc.,* the Supreme Court merely clarified that with regard to PAL's purchases of *petroleum products*, LOI 1483 divested PAL of its tax exemption on purchases of domestic petroleum products for use in its domestic operations but not PAL's exemption from excise tax on its importation of petroleum products, *viz.*:

> "B. Coverage of LOI 1483.
>
> LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic

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[6] 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

[7] G.R. No. 198759, July 1, 2013.

petroleum products for use in its domestic operations. It pertinently provides:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the **tax-exemption privilege granted to PAL on its <u>purchase of domestic petroleum products for use in its domestic operations</u> is hereby withdrawn**. (Emphasis and underscoring supplied)

On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL.

The Court disagrees.

Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **<u>all taxes</u>** 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 **<u>excise taxes</u>**, it may be observed that the **<u>first kind</u>** 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 **<u>second kind</u>** 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 **<u>third kind</u>** 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 — <u>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</u>** and **<u>does not, in any way, pertain to any of PAL's tax privileges concerning imported goods</u>**, 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."

There is no dispute that PD No. 1590 is valid in so far as PAL's exemption from excise tax on its importation of aviation fuel is concerned since there is nothing in RA No. 8424 which removed said excise tax exemption. But as to PAL's importations of cigarettes and liquors, their exemption from excise tax as granted in PD No. 1590 is no longer valid as it was repealed or modified by Section 131 of RA No. 8424 (1997 NIRC) by the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*".

In fine, I submit that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of PAL from excise taxes on its importations of cigarettes and wines has been withdrawn. On the other hand, PAL's exemption from excise tax on its importation of liquors has been withdrawn on January 1, 2005 when RA No. 9334 took effect. Thus, when PAL paid the excise taxes on June 25, 2007, July 20, 2007 and June 30, 2007 for its importations of cigarettes, liquors and wines as commissary supplies, during which Section 131 of RA No. 8424 (1997 NIRC), as amended by RA No. 9334 is effective, PAL is subject to excise tax on said importations. Accordingly, PAL is not entitled to the refund of the amount of P1,508,991.84, representing the excise taxes that PAL paid on its afore-stated importations of cigarettes, liquors and wines as commissary supplies.

In this regard, I vote to DENY the Petition for Review filed by PAL and GRANT the Petitions for Review filed by the Commissioner of Internal Revenue and the Commissioner of Customs.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, **Petitioners,** **-versus-** **PHILIPPINE AIRLINES, INC.,** **Respondent.**	**CTA EB NO. 1018** **(C.T.A. CASE NO. 7935)**

x--------------------------------------x

PHILIPPINE AIRLINES, INC., **Petitioner,** **-versus-** **COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,** **Respondents.**	**CTA EB NO. 1021** **(C.T.A. CASE NO. 7935)**

x--------------------------------------x

COMMISSIONER OF CUSTOMS, **Petitioner,** **- versus -** **PHILIPPINES AIRLINES, INC.,** **Respondent.**	**CTA EB NO. 1022** **(CTA Case Nos. 7935)** ***Present:*** **DEL ROSARIO, *PJ,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** ***and*** **RINGPIS-LIBAN, *JJ.*** **Promulgated:** JUL 02 2014 apolinar 9:00 a.m.

X--X

DISSENTING OPINION

RINGPIS-LIBAN, J.:

The *ponencia* of my esteemed colleague, the Honorable Associate Justice Juanito C. Castañeda, dismissed the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Commissioner of Customs (COC). Majority of this Court sustained the findings of the CTA-Third Division[1] and the CTA Special Third Division[2] that Section 6 of Republic Act (RA) No. 9334[3] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[4].

I respectfully vote to **DISAGREE** with the majority opinion and join the Honorable Presiding Justice Roman G. Del Rosario in his dissent.

It is a well-settled principle in statutory construction that, "When 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 the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case."[5]

In fact, this was determined to be a core issue of the matter at hand -- whether Sections 6 and 10 of RA 9334 (the provisions requiring payment of excise tax on imported articles) have repealed Section 13 of PD 1590 (provisions of tax exemptions under PAL's franchise). It is also on this basis that the *ponencia* upheld the former Third Division's Decision[6] dated December 20, 2012 in CTA Case No. 7935, and its Resolution[7] dated May 14, 2013.

The majority opinion further holds that although Sec. 6 of RA 9334 states the all-encompassing phrase "the provision of any special or general law to the contrary notwithstanding", such phrase could not be considered an express repeal of the exemptions granted under PAL's franchise because it failed to expressly mention PD 1590 with respect to paying the government excise tax.

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[1] Decision of the CTA-Third Division in CTA Case No. 7935 dated December 20, 2012.
[2] Resolution dated May 14, 2013 denying the motion for reconsideration thereof.
[3] Republic Act No. 9334, 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.
[4] Presidential Decree No. 1590, An Act Granting a New Franchise to Philippine Airlines, inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.
[5] Manila Rairoad Co. v. Rafferty, 40 Phil. 224
[6] En Banc docket, pp. 19-48, *Annex "A"*.
[7] En Banc docket, pp. 49-58, *Annex "B"*.

On the one hand, we have PD 1590 which granted PAL its franchise and contains tax exemption provisions. Because such enactment is only applicable to PAL, it is, by all means, considered a special law. A special statute, as the term is generally understood, is one which relates to particular person or things of a class[8] or to a particular portion or section of the state only.[9]

On the other hand, we have RA 9334 an act which specifically increases excise tax rates imposed on alcohol and tobacco products and which amended several sections of the National Internal Revenue Code of 1997 (RA 8424), including Section 131 thereof. RA 9334 is considered to be an amendatory statute. Amendments are to be construed together with the original act to which they relate as constituting one law, and also with other statutes on the same subject, as part of a coherent system of legislation.[10] RA 9334, therefore, must be read together with RA 8424 which is a general statute. A general statute is a statute which applies to all of the people of the state or to all of a particular class of person in the state with equal force.[11] It is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.[12]

Applying the rules of statutory construction, then the special law -- PD 1590 -- would indeed be considered to remain an exception to RA 8424, the general law, and PAL would still be exempt from the payment of excise taxes on cigars and cigarettes, fermented spirits and wines that it imported.

However, the rule is not absolute and admits of exceptions. I believe that the case at bar falls under those exceptions.

One exception to the principle is where the special law merely establishes a general rule while the general law creates a specific and special rule, in which case the general law prevails over the special law.[13] The principle that a special law on a subject prevails over a general law on the same subject presupposes that the general law refers to the subject in general and the special law treats the same subject in particular. The rule does not apply where the situation is reverse, that is, the general law treats the subject in particular and the special law refers to it in general. In this situation, the general law prevails

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[8] Valera v. Tuason, 80 Phil. 823 (1948).
[9] U.S. v. Serapio, 23 Phil. 584 (1912).
[10] *Statutory Construction*, Rodriguez, Rufus B. 1999, citing 82 C.J.S. Statutes § 384.
[11] U.S. v. Serapio, 23 Phil. 584 (1912).
[12] Valera v. Tuason, 80 Phil. 823 (1948); Villegas v. Subido, G.R. No. 31711, Sept. 30, 1971, 41 SCRA 190 (1971).
[13] City of Manila v. Teotico, G.R. No. 23052, Jan. 29, 1968, 22 SCRA 276 (1968).

over the special law in the event of repugnancy or conflict between the two laws.[14]

Under PD 1590, the subject of excise taxes due on its importations of cigars and cigarettes, fermented spirits and wines, are treated generally and are considered encompassed in Section 13 thereof. In that section, in consideration of the franchise granted to PAL, it shall pay either basic corporate income tax or a franchise tax. **Section 13** further denotes the treatment of the tax paid, thus:

> "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
>
> 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; x x x"[15]

In fact, PD 1590 does not even mention "cigars and cigarettes, distilled spirits, fermented liquors and wines" with any particularity and such items would only fall under the generic phrase **"commissary and catering supplies"** which would consist of many other products than just alcohol and tobacco. In contrast, RA 9334 deals with the excise tax rates imposed on, specifically, alcohol and tobacco products. The fact that Sec. 6 of RA 9334, in its third paragraph, is preceded by the phrase, **"The provision of any special or general law to the contrary notwithstanding x x x"** evinces a clear intent

[14] Bagatsing v. Ramirez, G.R. No. 41636, Dec. 17, 1976, 74 SCRA 306 (1976).

[15] Section 13, Presidential Decree No. 1509, An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.

to withdraw prior exemptions of excise tax when it comes to "cigars and cigarettes, distilled spirits, fermented liquors and wines".

The case at bar therefore falls under the exception where a general law treats the subject in particular and the special law refers to it in general, and in such a case, the general law -- RA 8424 as amended by RA 9334 -- must prevail.

The case of ***Republic of the Philippines v. Caguioa***[16] elucidates the matter further. In that case, the petitioners, via a Petition for Certiorari and Prohibition, sought to annul the orders of Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City which granted a writ of preliminary injunction to respondents, in effect staying the implementation of RA 9334. On a head-on collision with RA 9334 was RA 7227 (The Bases Conversion and Development Act of 1992) which, among other things, created the Subic Special Economic and Freeport Zone (SBF) and the Subic Bay Metropolitan Authority (SBMA).

Private respondents in the *Caguioa* case were all domestic corporations doing business at the Subic Bay Freeport. They applied for and were granted Certificates of Registration and Tax Exemption by the SBMA which allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, **including alcohol and tobacco products**, and **uniformly granted them tax exemptions for such importations** as contained in their respective Certificates.

Although the Supreme Court in the *Caguioa* case limited itself to resolving the most pertinent and justiciable matter at hand, i.e. the propriety of preliminary injunction granted to respondents, it however opined, thus:

> "It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.
>
> By subsequently enacting R.A. No. 9334, however, **Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines**. Juxtaposed to show this intention are the respective

[16] G.R. No. 168584, October 15, 2007.

provisions of Section 131 of the NIRC before and after its amendment by R.A. No. 9334:

Sec. 131 of NIRC before R.A. No. 9334	**Sec. 131, as amended by R.A. No. 9334**
Sec. 131. Payment of Excise Taxes on Imported Articles. –	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.	(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.	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	**The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits,**

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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. Provided, however, That **<u>this *shall not apply* to cigars and cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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 are not transshipped to any other port in the Philippines: *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, charges, including excise tax due thereon; *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 "tax and duty-free" and "not for resale": Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then	**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. <u>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 Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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 "tax and 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,

such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. x x x x.	fermented liquors and wines, from one Freeport to another Freeport, shall not be deemed an introduction into the Philippine customs territory. x x x x. (Emphasis and underscoring supplied)

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF."[17]

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, the Supreme Court went on to state several basic principles and observations, the relevant ones of which, I find, should also shed light on the case at bar, to wit:

"*Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege[18], a tax

[17] *Supra.*
[18] *Supra*; citing United Paracale Mining Co. v. De la Rosa, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.

exemption may be modified or withdrawn at will by the granting authority.[19]

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.[20]

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[21] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.[22] In case of doubt, non-exemption is favored.[23]

Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal.[24] Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI[25] of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334."

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[19] *Supra*; citing Abakada Guro Party List Officers v. Ermita, G.R. Nos. 168056, 168207, 168461 and 168463, September 1, 2005, 469 SCRA 1, 134.

[20] *Supra*; citing Tio v. Videogram Regulatory Board, G.R. No. L-75697, June 18, 1987, 151 SCRA 208, 215.

[21] *Supra*; citing Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152; Philippine Long Distance Telephone Company, Inc. v. City of Davao, 447 Phil. 571, 584 (2003); Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc., G.R. No. L-71122, March 25, 1988, 159 SCRA 199, 210; City of Baguio v. Busuego, L-29772, September 18, 1980, 100 SCRA 116, 123.

[22] *Supra*; citing Caltex Philippines, Inc. v. Commission on Audit, G.R. No. 92585, May 8, 1992, 208 SCRA 727, 753.

[23] *Supra*; citing Benguet Corporation v. Central Board of Assessment Appeals, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 587.

[24] *Supra*; citing Commissioner of Internal Revenue v. Court of Appeals, February 6, 1997, citing Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc., 88 SCRA 294, 452.

[25] Sec. 28 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.

Based on the foregoing, I vote to grant the instant Petitions for Review respectively filed by the CIR and the Republic of the Philippines, as represented by the COC.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice