REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA CASE NO. 8198**
- *versus* -	Members: *Bautista, Chairperson* *Fabon-Victorino, and* *Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, *Respondent.*	Promulgated: JUN 02 2015 10:12 a.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review filed by petitioner Philippine Airlines, Inc. ("PAL") on November 14, 2011, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282[3] and RA No. 9503,[4] which seeks for the Court to order

[1]Sec. 7.*Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[2]An Act Creating the Court of Tax Appeals, as amended.

[3]An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending

respondents Commissioner of Internal Revenue ("CIR") and Commissioner of Customs ("COC") to refund the amount of Php2,610,430.72 and Php5,147,669.00 or the total amount of Php7,758,099.72 paid under protest on December 11, 2008 from specific tax on its importations of assorted liquors and wine for international flight consumption.[5]

The Parties[6]

Petitioner Philippine Airlines ("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 1307, Pasay City, where it may be served with summons.

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("BIR"), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors, and cigarettes under Section 142 and 145, respectively, of the National Internal Revenue Code ("NIRC")[7], as amended. Her office address is at the BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with papers, pleadings, notices, orders, judgments, summonses, and other processes of this Honorable Court.

Respondent Commissioner of Customs ("COC") is the Commissioner of the Bureau of Customs ("BOC"), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, on the basis of the delegated authority of the respondent CIR through an Authority to Release Imported Goods ("ATRIG"), BIR Form No. 1918, duly issued by the respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC, as amended. His office address at

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for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[4]An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5]*Records*, pp. 1-217, with Annexes.

[6] *Id.*, Pre-Trial Order, pp. 784-785.

[7] Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes."

G/F OCOM Bldg., Bureau of Customs, Port Area, Manila City, where he may be served with papers, pleadings, notices, orders, judgments, summonses, and other processes of this Honorable Court.

The Facts

On June 11, 1978, by virtue of P.D. 1590,[8] petitioner was granted a franchise to operate air transport services domestically and internationally.[9]

On January 1, 2005, R.A. 9334[10] took effect.

On February 3, 2005,[11] CIR Commissioner Guillermo L. Parayno, Jr. ("Com. Parayno") called the attention of COC Commissioner George M. Jereos ("Com. Jereos") to implement Section 6 of R.A. No. 9334 and to immediately collect the excise tax due on the imported alcohol and tobacco products brought to Duty Free Philippines ("DFP") and freeport zones.

On February 4, 2005, Com. Jereos issued a Memorandum,[12] directing the collection of excise tax due on imported alcohol and tobacco products even if destined to DFP and to Freeport Zones.

On March 1, 2005, COC Commissioner Alberto D. Lina ("Com. Lina") issued Customs Memorandum Order No. 13-2005[13] ("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 R.A. 9334 and BIR Regulation No. 12-2004."

On April 4, 2005,[14] petitioner contested the action taken by the District Collector of Customs of the Manila International Container

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[8] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.
[9] *Id.*, Pre Trial Order, p. 785.
[10] 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, as Amended.
[11] *Id.*, Exhibit "C," pp. 1080-1081.
[12] *Id.*, Exhibit "D," p. 1082.
[13] *Id.*, Exhibit "E," pp. 1083-1085.
[14] Id., Exhibit "F," pp. 1086-1087.

Port ("MICP") in seeking to collect excise taxes and customs duties on petitioner's importation of cigarettes for use in its operations and to release the shipment immediately without condition or payment of excise tax.

On April 25, 2005,[15] the Bureau of Customs Legal Service issued a Memorandum addressed to Com. Lina, recommending the strict and proper implementation of CMO 13-2005 in adherence to Section 131 of the NIRC of 1997, as amended by RA 9334, subject to duty drawback and/or tax refund, if applicable. It further recommended that any claims of exemptions should be strictly interpreted against the claimant/taxpayer.

On May 16, 2005,[16] petitioner wrote Com. Lina stating that it is being required to pay excise tax, value added tax, and customs duties as a condition or before it could withdraw their goods from MICP; that it is going to pay under protest the subject claim; and that it shall claim tax refund or other alternative action allowed under the law.

Importations of assorted liquor and wine from January to April 2008[17] ("First Batch") arrived at the Ninoy Aquino International Airport ("NAIA") and South Harbor, were assessed excise taxes in the total of PHP2,610,430.72, and were duly covered by Authority to Release Imported Goods ("ATRIG").[18] The details are as follows:

Port of Entry	Arrival Date	Informal Import Declaration and Entry	Air Waybill/Bill of Lading No.	ATRIG No.	Excise Taxes (PHP)
South Harbor	23 January 2008	873	D0712/3255	00011651	169,999.83
NAIA	28 January 2008	904	079-2999-2491	00014836	252,481.74
NAIA	22 February 2008	2047	079-2999-3036	00014816	599,655.57
South Harbor	01 March 2008	2084	D0802/3446	00014826	169,999.83
NAIA	22 March 2008	2549	079-3070-8484	00014808	55,194.75
South Harbor	26 March 2008	3002	D083/3624	00014824	169,999.83
NAIA	04 April 2008	3742	079-2999-3946	00014810	78,643.35
NAIA	11 April 2008	3733	079-2999-4042	00014811	235,146.24
NAIA	16 April 2008	3761	079-3070-8506	00014829	24,285.69
NAIA	19 April 2008	4225	079-2999-4193	00014815	321,244.06
NAIA	21 April 2008	4252	079-2999-4252	00014827	530,156.79
NAIA	25 April 2008	4251	079-3012-9481	00014809	3,623.04

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[15] *Id.*, Exhibit "G," pp. 1313 -1319.
[16] *Id.*, Exhibit "H," p. 1088.
[17] *Id.*, Exhibits "I" to "T," pp. 1089-1112.
[18] *Id.*, Exhibits "W" to "HH," pp. 1114-1125.

Likewise, importations for the period May to July 2, 2008[19] ("Second Batch") were assessed excise taxes amounting to PHP5,147,669.00, and each item is covered by a corresponding ATRIG,[20] broken down as follows:

Port of Entry	Arrival Date	Informal Import Declaration and Entry	Air Waybill/Bill of Lading No.	ATRIG No.	Excise Taxes (PHP)
NAIA	01 May 2008	4303	079-3012-9573	00014823	146,313.22
NAIA	02 May 2008	4310	079-2999-4694	00014835	539,529.98
NAIA	10 May 2008	4906	079-2999-4845	00014822	759,320.46
NAIA	16 My 2008	5390	079-2999-4926	00018766	164,320.46
NAIA	17 May 2008	4980	079-3148-0595	00014828	149,971.05
South Harbor	21 May 2008	5873	D0804/3889	00019238	161,338.50
NAIA	24 May 2008	5398	079-3192-9811	00019236	42,457.50
NAIA	28 May 2008	5413	079-3150-7070	00019241	176,947.55
NAIA	03 June 2008	5880	079-3150-7195	00018764	651,877.64
NAIA	07 June 2008	5887	079-3150-7280	00019245	700,533.90
NAIA	21 June 2008	6372	079-3150-7534	00018761	824,579.48
NAIA	25 June 2008	6401	079-3148-1531	00018765	26,127.36
NAIA	9 July 2008	6952	079-3192-9833	00019239	38,211.75
NAIA	10 July 2008	7178	079-3150-7836	00019240	542,730.59
NAIA	18 July 2008	7160	160-6452-4121	00019244	3,657.83
NAIA	21 July 2008	7182	079-3148-2253	00019237	219,469.82

On November 4, 2008, Gilda L. Cinco, Acting Chief, WAU/FED of the BOC, submitted petitioner's Batch 1[21] and Batch 2[22] documents to Coll. Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse for payment of customs duties, excise tax, and IPF due on their importation of alcohol and tobacco products.

On December 11, 2008, petitioner paid the excise taxes for both batches of importations of assorted liquor and wine, to wit:

Batch	Amount	Date of Payment	Receipt Number
Batch 1 (January 23-April 25, 2008)	PHP2,610,430.72	December 11, 2008	1581970024[23]
Batch 2 (May 1-July 21, 2008)	PHP5,147,669.00	December 11, 2008	1581970006[24]
TOTAL	**PHP7,758,099.72**		

On the same date, petitioner wrote two (2) separate letters to Mrs. Silveria Salazar, Chief-Collection Division of the Bureau of

[19] *Id.*, Exhibits "LL" to "AAA," pp.1126-1157.
[20] *Id.*, Exhibits "DDD" to "SSS," pp.1159-1174.
[21] *Id.*, Exhibit "U," p. 1113.
[22] *Id.*, Exhibit "BBB," p. 1158.
[23] *Id.*, Exhibit "V," pp. 666.
[24] *Id.*, Exhibit "CCC," pp. 734.

Customs, Collection District III, stating therein that it is paying under protest the excise taxes for both batches of importations, amounting to PHP2,610,430.72[25] and PHP5,147,669.00[26], respectively.

On December 17, 2008, petitioner filed before the District Collector of Customs of NAIA a protest against the said assessment and collection in accordance with Section 2308 of the Tariff and Customs Code.

On March 5, 2009, petitioner filed with respondent CIR its request for refund of the amount PHP2,610,430.72[27] and PHP5,147,669.00,[28] representing the excise taxes paid under protest on the importations of assorted wines, liquors and cigarettes for the period January 28 to April 25, 2008 and May 1 to July 21, 2008, respectively, and alleging that the taxes collected from them were erroneously or illegally collected.

On December 10, 2010, pursuant to Section 229 of the NIRC, petitioner filed the instant Petition for Review,[29] since respondent CIR has not acted upon petitioner's claim for refund or tax credit.

On January 12, 2011, respondent Commissioner of Internal Revenue ("CIR"), in her Answer,[30] raised the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
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> 5. Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
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> 6. The claim for refund in the amount of Seven Million, Seven Hundred Fifty Eight Thousand, Ninety Nine and

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[25] *Id.*, Exhibit "II," pp. 679.
[26] *Id.*, exhibit "TTT," p. 751.
[27] *Id.*, Exhibit "KK," p. 691.
[28] *Id.*, Exhibit "VVV," pp. 762.
[29] *Records*, pp. 1-217 (with annexes).
[30] Id., pp. 234-242.

72/100 (P7,758,099.72) being claimed by petitioner paid and incurred for the taxable year 2008 is not warranted.

7. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes.

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It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the *clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications* **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003)** A perusal of the provision will emphasize that to validly substantiate a claim for refund, the taxes paid must be erroneously or illegally collected. Accordingly, the law granting tax exemption cannot rest on vague inference.

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9. In the case of Manila Electric Company vs. City of Laguna, the Supreme Court clarified that:

> *'It is true that the phrase 'in lieu of all taxes' found in special franchises has been held in several cases to exempt the franchise holder from payment of tax on its corporate franchise imposed of the Internal Revenue Code, as the charter is in the nature of a private contract and the exemption is part of the inducement for the acceptance of the franchise, and that the imposition of another franchise tax by the local authority would constitute an impairment of contract between the government and the corporation. But these "magic words" contained in the phrase "shall be in lieu of all taxes" have to give way to the peremptory language of the LGC specifically providing for the withdrawal of such exemption privileges.'*

Therefore, petitioner forthwith cannot seek refuge in the said phrase to indiscriminately refuse to pay taxes duly imposed by the taxing authorities. In providing "in lieu of all taxes" clause, Congress does not perpetually divest its power to tax. Clearly, Republic Act 9334 is indicative of a later legislative will.

10. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)**

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On January 28, 2011, respondent COC filed his Answer,[31] raising the following Affirmative Defenses:

"Respondent Commissioner of Customs hereby repleads and incorporates all the above allegations and further respectfully states:

I. Sections 6 and 10 of R.A. 9334 have repealed Sections 13 and 24 of P.D. 1590.

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[31] *Id.*, pp. 260-272.

II. Petitioner is no longer entitled to tax exemption, having become a private entity.

Petitioner argues that respondent's collection of excise taxes on its imported cigars, cigarettes and wines violates its franchise and its right to due process. Prior to the enactment of R.A. No. 9334, petitioner asserts, it has always been allowed to bring in its commissary and catering supplies without the collection of any excise taxes, duties and import processing fees.

As already discussed, Section 6 of R.A. No. 9334 has plainly withdrawn petitioner's exemption from excise taxes on the importation of commissary supplies.

More, a reading of P.D. No. 1590 - promulgated in 1978 - reveals that the latter franchise was granted when petitioner was still a government-owned and controlled corporation. P.D. No. 1590's first whereas clause states thus: 'WHEREAS, the ownership, control, and management of Philippine Airlines, our national flag carrier have been **reacquired by the Government."**

It can be then reasonably inferred that the tax exemption under Section 13 was extended petitioner in consideration of its former status as a government-owned and controlled corporation. Having been acquired by private investors in the late 1990s, petitioner cannot now assert the continued enjoyment of this privilege, especially in light of the modification of its franchise by R.A. No. 9334.

A franchise shall not be granted except under the condition that it shall be subject to amendment, alteration, or repeal from Congress when directed by the common good.

At any rate, it is settled that tax exemptions are never presumed and when granted are strictly construed against the grantee. The privilege petitioner invokes, under Section 13 and 24 of P.D. 1590, partakes the nature of a tax exemption. Such privilege must perforce be strictly construed against petitioner in light of a later enactment like Section 6, R.A. No. 9334, effectively withdrawing petitioner's tax exemption under Sections 13 and 24 of P.D. 1590."

On April 26, 2011, the parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues.[32]

On May 2, 2011, a Pre-trial Order[33] was issued by the Third Division terminating pre-trial and setting the date for the presentation of evidence by the parties.

During trial, petitioner presented the following as witnesses: (1) Mr. Joseph Brian T.L. Tan, Manager-Aircraft Materials Purchasing Division;[34] (2) Ma. Evelyn L. Taghap, Manager of the Tax Services and Compliance Department;[35] and (3) Cheryl V. Capinpin, Manager, In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department.[36]

On July 16, 2012, petitioner filed a Motion to Admit Formal Offer of Evidence. On April 1, 2013, petitioner filed a Supplemental Formal Offer of Exhibits (With Motion for Marking).

On June 20, 2013, the Court issued a Resolution[37] admitting Exhibits "A," "B," "C," "D," "E," "F," "G," "I," "I-1," "J," "J-1," "K," "K-1," "L-1," "M," "M-1," "N," "N-1," "O," "O-1," "P," "P-1," "Q," "Q-1," "R," "R-1," "S," "S-1," "T," "T-1," "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG," "HH," "JJ,' "KK," "LL," "MM," "MM-1," "NN," "NN-1," "OO," "OO-1," "PP," "PP-1," "QQ," "QQ-1," "RR-1," "SS," "TT," "TT-1," "UU," "UU-1," "VV," "VV-1," "WW," "WW-1," "XX," "XX-1," "YY," "YY-1," "ZZ," "ZZ-1," "AAA," "AAA-1," "BBB," "CCC," "DDD," "EEE," "FFF," "GGG," "HHH," "III," "JJJ," "KKK," "MMM," "NNN," "PPP," "QQQ," "RRR," "SSS," "UUU," "VVV," "WWW," "XXX," "YYY," "AAAA," "AAAA-1," "BBBB," "CCCC," "CCCC-1," "DDDD," "EEEE," "FFFF," "FFFF-1," "GGGG," "GGGG-1," "HHHH," "IIII," "LLLL,"

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[32] *Id.*, pp. 544-549.
[33] *Id.*, pp. 784-797.
[34] Minutes of Hearing dated May 2, 2011, Docket (Vol. II), p. 798.
[35] Minutes of Hearing dated November 21, 2011, Docket (Vol. II), p. 861.
[36] Minutes of Hearing dated March 29, 2012 Docket (Vol. II), p. 1024.
[37] *Id.*, pp. 1515-1518.

"MMMM," "NNNN," "OOOO," "RRRR," "QQQQ," "QQQQ-1," "SSSS," "TTTT," "UUUU," "VVVV," "VVVV-1," "XXXX," "YYYY," "ZZZZ," "AAAAA," "BBBBB," "EEEEE," "GGGGG," "IIIII," "JJJJJ," "JJJJJ-1," "JJJJJ-2," "JJJJJ-3," "JJJJJ-4," "JJJJJ-5," and "JJJJJ-6."

On July 16, 2013, petitioner filed a Motion to Admit Attached[38] Motion for Reconsideration (Of Resolution Dated June 20, 2013).[39] On November 22, 2013, the Court issued a Resolution admitting Exhibits "II," "FFFF-1-a," "FFFF-1-b," "FFFF-1-c," "L," "SS-1," "JJJJ," "PPPP," "WWWW," "LL-1," "RR," "OOO," and "LLL."

On March 13, 2014, during the initial presentation of evidence for respondents, counsels for respondents jointly manifested that they have no evidence to present. Thus, on March 19, 2014, the Court issued a Resolution[40] ordering the parties to file their respective memoranda within a period of thirty (30) days.

On June 4, 2014, the Court resolved[41] to submit the case for decision, taking into consideration the Memorandum filed by petitioner on April 10, 2014,[42] by respondent Commissioner of Internal Revenue on May 12, 2014[43] and by respondent Commissioner of Customs[44] on May 12, 2014.

Hence, this Decision.

The Issues[45]

For the Court's resolution are the following issues:

1. WHETHER OR NOT PAL's APPLICATION FOR REFUND COMPLIES WITH SECTION 229 OF THE NIRC AND OTHER RELEVANT RULES AND REGULATIONS GOVERNING THE RECOVERY OF EXCISE TAXES COLLECTED ON IMPORTED GOODS

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[38] *Id.*, pp. 1519-1522.
[39] *Id.*, pp. 1523-1537.
[40] *Id.*, p. 1574.
[41] *Id.*, p. 1687.
[42] *Id.*, pp. 1575-1604.
[43] *Id.*, pp. 1615-1642.
[44] *Id.*, pp. 1643-1684.
[45] *Id.*, JSFI, pp. 547-548.

MORE PARTICULARLY,

A. DID PAL TIMELY FILE ITS APPLICATION WITHIN THE PERIOD PRESCRIBED BY LAW;

B. DID PAL SUBMIT COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND;

C. DID PAL EXHAUST ITS ADMINISTRATIVE REMEDIES BEFORE THE BOC

2. WHETHER OR NOT R.A. 9334, AS AMENDED, MODIFIED, OR REPEALED PAL'S EXEMPTION UNDER ITS FRANCHISE, P.D. 1590, FROM THE PAYMENT OF SPECIFIC TAXES ON ALL ITS IMPORTATIONS OF CIGARETTES, LIQUOR, AND WINE FOR ITS CATERING AND COMMISSARY SUPPLIES FOR INTERNATIONAL CONSUMPTION

MORE PARTICULARLY, WHETHER OR NOT PAL IS ENTITLED TO A REFUND OF:

A. PHP2,610,430.72 SPECIFIC TAX UNDER PROTEST ON DECEMBER 11, 2008; AND

B. PHP5,147,669.00 SPECIFIC TAX PAID UNDER PROTEST ON DECEMBER 11, 2008 OR A TOTAL OF PHP7,758,099.72

ALL PAID TO THE RESPONDENT COMMISSIONER OF CUSTOMS.

Petitioner's Arguments

Petitioner maintains that it timely filed its administrative and judicial claim pursuant to Section 229 of the NIRC as excise taxes were made on December 11, 2008, and the administrative and judicial claims were filed on March 5, 2009 and December 10, 2010, respectively.

Furthermore, petitioner asserts that R.A. 9334 did not amend or repeal its franchise under P.D. 1590, hence, it is still entitled to exemption from payment of excise taxes on all its importations of liquor and wine used for consumption in its international flights.

Lastly, petitioner claims that it has complied with all the requirements for exemption from specific tax on its importations of wines, liquors and cigarettes, as provided in P.D. 1590, as amended by R.A. 9334.

Respondent Commissioner of Internal Revenue's Counter-Arguments

Respondent counter argues that with the passage of Section 131 of the NIRC, as amended by R.A. 9334, the tax exemption granted to petitioner under P.D. 1590 has been expressly withdrawn; that R.A. 9334 is the specific law on the tax treatment of imported cigarettes, liquors and wines, while P.D. 1590 is the general law, therefore R.A. 9334 should be applied; and that petitioner failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price.

Respondent Commissioner of Customs' Counter-Arguments

Respondent COC alleges that the language of R.A. Nos. 8424[46] and 9334 reveals the clear intent of Congress to withdraw the tax privilege extended to petitioner under P.D. 1590 as the provisions of Section 131 of R.A. Nos. 8424 and 9334 provides that the importation of the articles enumerated therein shall be subject to applicable taxes including excise taxes due thereon.

Moreover, respondent COC alleges that Section 131 of R.A. Nos. 8424 and 9334 only exempts cigars, cigarettes, distilled spirits and wines from excise taxes only if these are brought by chartered or legislated free ports; or imported by a government owned and controlled duty free shop, and not those brought by private entities like petitioner.

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[46] An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes.

Finally, respondent alleges that there is an irreconcilable inconsistency between Section 6 of P.D. 1590 and Section 131 of R.A. Nos. 8424 and 9334 which therefore manifests the intent of Congress to repeal petitioner's franchise.

The Ruling of the Court

The petition is without merit.

The aforesaid issues can be summed as follows:

1. Whether petitioner timely filed its Petition for Review as prescribed in Section 229 of the NIRC;

2. Whether petitioner's franchise under PD 1590 has been amended and/or modified with the advent of R.A. 9334; and

3. Whether petitioner satisfied the conditions set forth in PD 1590 for exemption from excise tax on its importation of cigarette, liquor and wine as to entitle it to claim for refund of PHP2,610,430.72 and PHP5,147,669.00 or a total of PHP7,758,099.72 for specific taxes paid under protest on December 11, 2008.

Anent the first issue, PAL timely filed its application within the period prescribed by law. Section 229 of the NIRC provides as follows:

> "**Sec. 229.** *Recovery of Tax Erroneously or Illegally collected.*
>
> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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

It is clear from the foregoing provision that both the administrative and judicial claims for refund must be filed within two (2) years from the date of payment of the tax.

In the present case, petitioner paid under protest the excise taxes assessed for both batches of its importations on December 11, 2008,[47] counting the two-year prescriptive period, petitioner has until December 11, 2010 to file its administrative and judicial relief. Petitioner filed its administrative case before the CIR on March 5, 2009.[48] Before the lapse of the two-year period, without the CIR acting on its case, petitioner filed the instant Petition for Review on December 10, 2010.[49] Thus, both the administrative and judicial claims were filed on time.

Anent the second issue, the Supreme Court has already settled the issue that R.A. 9334 did not amend or modify P.D. 1590 in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines,*[50] to wit:

> "It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of

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[47] As evidenced by Official Receipt Nos. 158197024 (Exhibit "V") and 158197006 (Exhibit "CCC").

[48] *Id.*, Exhibit "KK," p. 691; and Exhibit "VVV," p. 762.

[49] *Id.*, Petition for Review, pp. 1-217.

[50] G.R. No. 212536-37, August 27, 2014.

1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*

> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. xxx.

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA E*n Banc,* borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that: *the provisions of any special or general law to the contrary notwithstanding,*" such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed.
>
> xxx xxx xxx
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the

earlier special and the latter general - the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

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

Therefore, from the foregoing, the governing law in petitioner's franchise is P.D. 1590.

Section 13 of PD 1590 provides the following conditions in order for petitioner to be exempted from excise tax on its importation of assorted cigarettes, alcohol and wines, to wit:

"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 percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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

> (1) xxx
>
> (2) **All taxes,** including compensating taxes, duties, charges, royalties, or fees due on **all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies,** aviation gas, fuel and oil, whether refined or in crude form **and other articles, supplies or materials; provided that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price."** *(Emphasis ours)*

Hence, anent the third issue, in order for petitioner to be exempted from taxes, duties, charges, or fees on the importation of its assorted cigarettes, alcohol and wines for international flights, petitioner must prove the following:

1. the corporate income tax and VAT liabilities for the subject period was paid;

2. the imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

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

As to the first requisite, petitioner paid its corporate income tax and VAT liabilities for the subject period of importation as shown by the following documents:

Documents	Exhibit
Annual Income Tax Return for the fiscal year ended March 31, 2009 (BIR Form No. 1702)	CCCC
Certificate of Registration	DDDD
Certificate of Registration - dated August 4, 2004	EEEE
Payment Form (BIR Form No. 0605)	FFFF
Quarterly Value-Added Tax Return (BIR Form No. 2550Q) - First Quarter of Fiscal year ended March 31, 2009	FFFF-1
Quarterly Value-Added Tax Return (BIR Form No. 2550Q) - Second Quarter of Fiscal year ended March 31, 2009	FFFF-1-a
Quarterly Value-Added Tax Return (BIR Form No. 2550Q) - Third Quarter of Fiscal year ended March 31, 2009	FFFF-1-b
Quarterly Value-Added Tax Return (BIR Form No. 2550Q) - Fourth Quarter of Fiscal year ended March 31, 2009	FFFF-1-c

Likewise, the Judicial Affidavit[51] of **Ma. Evelyn L. Taghap,**[52] affirms the aforesaid payments when she made the following statements:

[51] Exhibit "GGGG," pp. 801-806.
[52] Manager of petitioner's Tax Services and Compliance Department.

"4. Q. As such Manager, can you mention some of your functions?

4. A. My functions include the handling of the tax liabilities of PAL to the government both domestic and international, and this includes the preparation and filing of its various tax returns.

xxx xxx xxx

11. Q. Would you know if PAL paid the corporate income taxes and registered for value-added tax and accounted for value-added tax on is sale of goods, property or services and its lease of property for the fiscal year which covers the importations of commissary products involved in this case?

11. A. Yes sir. PAL paid the corporate income taxes and registered for value-added tax and accounted for value-added tax on is sale of goods, property and its lease of property for the fiscal year ended March 31, 2009, which is the fiscal year which covers the importations of commissary products involved in this case.

12. Q. Why do you know that PAL paid the corporate income tax and registered for value-added tax and accounted for value-added tax on is sale of goods, property or services and its lease of property for the fiscal year ended March 31, 2009?

12. A. I know because, as I have stated earlier, as Manager of PAL's Tax Services and Compliance Division, I am in-charge of the preparation of the tax returns of PAL.

13. Q. Showing to you this Annual Income Tax Return which I will request the Honorable Court to be marked as Exhibit "CCCC", on the upper right hand corner of which appears the label "Date/Filed: July 15, 2009 05:29PM, to be marked as Exhibit

"CCCC-1", how is this related to the corporate income tax which you said PAL paid for the fiscal year ended March 31, 2009?

13. A.That is a copy of the said Tax Return on the basis of which PAL paid its corporate income tax for the fiscal year ended March 31, 2009.

xxx xxx xxx

15.Q. You mentioned also that PAL registered for value-added tax. Do you have any document that would show that PAL is VAT-registered?

15. A.Yes, sir. PAL was issued a Certificate of Registration showing that it is VAT-registered, and every year it pays the annual VAT registered fee of PHP500.

16.Q. Showing to you a copy of a Certificate of Registration under the name of Philippine Airlines, Inc., dated December 18, 2007, which I will request the Honorable Court to be marked as Exhibit "DDDD", and which specifies Value-Added Tax as one of the type of taxes included in its registered activities, how is this related to the Certificate of Registration which you just mentioned?

16. A.That is a copy of the Certification of Registration I mentioned which shows that PAL is VAT-registered.

17. Q.Showing to you a copy of a Certificate of Registration under the name of Philippine Airlines, Inc., dated 04 Aug 2004, which I will request the Honorable Court to be marked as Exhibit "EEEE", which also shows the Value-Added Tax as one of the type of taxes included in its registered activities. What is the relation of this Certificate with the earlier Certificate you already identified?

17. A. That is a copy of the earlier certificate of registration of PAL.

18. Q. Since PAL had already a Certificate of Registration dated 04 Aug 2004, why did it register again on December 18, 2007?

18. A. It registered again on December 18, 2007 to update its business address in 2007 from PAL Center, Legaspi St. Legaspi Village, Makati City, to PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City.

19. Q. You also said that every year PAL pays its annual VAT registration fee. Do you have any document that would show that PAL has been paying its annual VAT registration fee?

19. A. Yes, sir. Our Payment BIR Form 0605 which we accomplish each time we pay the said annual registration fee will show that we paid the registration fees for fiscal year ended March 31, 2009.

20. Q. Showing to you this Payment Form No. 0605 with the date of filing shown as January 14, 2009, and Philippine Airlines appearing as the taxpayer, which I will request the Honorable Court to be marked as Exhibit "FFFF" for the petitioner, how is this form related to the Payment Form which you just mentioned?

20. A. That is a copy of the Payment Form which we accomplished for the payment of the VAT registration fee for the year 2009.

21. Q. You said that PAL also accounted for value-added tax on its sale of goods, property or services and its lease of property for the fiscal year March 31, 2009, do you have any document that would show that PAL accounted for such value-added tax?

21. A.A VAT return of PAL for the year 2009 would show that PAL paid the value-added tax on its sale of goods, property or services and its lease of property for the said fiscal years.

22. Q.Showing to you these VAT return for the fiscal year March 2009, with Philippine Airlines appearing as the taxpayer, which I will request the Honorable Court to be marked as Exhibit "FFFF-1" for the petitioner, how is this related to the VAT return for the year 2009 which you have just mentioned?

22. A.That is a copy of the VAT return which I just mentioned as proof that PAL paid the VAT on its sale of goods, property or services and its lease of property for the year 2009."

As to the second requisite, petitioner presented the Judicial Affidavit[53] of Joseph Brian T.L. Tan ("Mr. Tan"),[54] relevant portions are as follows:

"4. Q: Prior to becoming such Manager, what positions have you held at PAL, if any?

4. A: I was Corporate Auditor and Manager - Company Materials Handling Division.

5. Q: Can you mention some of your more important functions as Manager - Company Materials Handling Division?

5. A: My more important functions include ensuring the timely release of PAL importations of catering and commissary supplies from the different cargo warehouses, as well as, the filing of proper documentation for such importations.[55]

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[53] *Id.*, Exhibit "AAAA," pp. 552-588.
[54] Manager of petitioner's Aircraft Materials Purchasing Division.
[55] *Id.*, Exhibit "AAAA," p. 552.

xxx xxx xxx

20. Q: Looking at the aforementioned letter, there is written on the first page thereof a table with four (4) columns labelled "Port of Entry", "Informal Entry, AWB/BL Number and "Arrival Date", respectively. Would you know how that table is related to the PAL's importation?

20. A: That is the tabulation of the importations of liquors and/or cigarettes for Catering and Commissary Supplies per the letter of assessment from the Bureau of Customs mentioned earlier and which I have identified, which importations were assessed a total of PHP2,610,430.72 in excise taxes.

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22. Q: How would you know what imported product was involved?

22. A: You would know it by looking at the Informal Import Declaration and Entry and Bill of Lading mentioned in the tabulation.

23. Q: Showing this Informal Import Declaration and Entry No. 873, and Bill of Lading No. D0712/3255, dated 23 12 2007, already marked as Exhibits "I-1" *(sic)* and "I-1", respectively, how are these related to the informal entry and bill of lading which you just mentioned as appearing in the table?

23. A: They are copies of the informal entry and bill of lading mentioned in the table? *(sic)*

24. Q: What is the imported product involved as shown by the informal entry and air waybill?

24. A: Looking at the front page of the informal entry no. 873, under the column labelled 'Description of

> Articles', there is written 'INFLIGHT MATERIALS VIN DE TABLE BLANC PAL, VIN DE TABLE ROUGE PAL' and under the column labelled 'No. of Packages', there is written '1001'. Looking at the Bill of Lading No. D0712/3255, under the column labelled 'Number and kind of packages: description of goods', there is written '1 x 20 DRY S.T.C. 1001 CARTONS WINE."[56]

It is worthwhile to note that the duties of the witness involved ensuring the timely release of petitioner's importations of catering and commissary supplies from the different cargo warehouses, as well as, the filing of proper documentation for such importations,[57] therefore, the witness has no personal knowledge of whether the goods subject of the informal entries and air waybill are for commissary and catering supplies of petitioner.

Basic in the Rules of Evidence that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence in establishing the truth of a disputed fact.[58]

Thus, Section 36, Rule 130 of the Revised Rules of Court is instructional on the matter, to wit:

> "**Section 36.** *Testimony generally confined to personal knowledge; hearsay evidence excluded.* - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

Corollary, a document offered as proof of its contents, in this case, the Informal Import Declaration and Entry Forms and Authorities to Release Imported Goods, has to be authenticated in the manner provided in the rules, that is, by the person with personal knowledge of the facts stated in the document.[59]

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[56] *Id.*, Exhibit "AAAA," p. 555.
[57] *Id., Judicial Affidavit of Mr. Joseph Brian T.L. Tan, p. 552, item 5.A.*
[58] *Robert Da Jose Vs. Celerina R. Angeles*, et al., G.R. No. 187899, October 23, 2013, 708 SCRA 506.
[59] *Id.*

In the instant case, this Court cannot give credence to the testimony of petitioner's witness since he had no personal knowledge and/or direct participation in the preparation of the Informal Import Declaration and Entry Forms and Authorities to Release Imported Goods.

Thus, petitioner failed to prove compliance with the second requisite under Section 13 P.D. No. 1590.

As to the third requisite, in order to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price, petitioner presented the Judicial Affidavit[60] of **Ms. Cheryl V. Capinpin** ("Ms. Capinpin")[61] together with the Table of Comparison[62] showing that the cost of importing petitioner's commissary supplies are lower than sourcing them locally. The pertinent portions of Ms. Capinpin's Judicial Affidavit are as follows:

> "4.Q. Before assuming your present position, what was your position in PAL?
>
> 4.A. I was Supervisor of In-flights Materials Purchasing Division of PAL.
>
> 5.Q. As Manager of the In-flights Materials Purchasing Division, would you please name some of your more significant functions?
>
> 5.A. To efficiently and effectively plan, procure and control all foreign and local materials, supplies, equipment and services, among others, for In-flight Materials Purchasing Division.
>
> xxx xxx xxx
>
> 9.Q. As such supervisor would you know why PAL imported said supplies instead of just buying them from the local sellers of similar products?

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[60] *Id.*, Exhibit "JJJJJ," p. 877-907.
[61] Manager of Petitioner's In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department.
[62] *Id.*, Exhibit "JJJJJ-1," p. 908.

9.A. PAL imported said alcoholic products because the importation of the said products is cheaper than buying said products locally, and, in the case of cigarettes, there are no local suppliers or dealers big enough to supply the quantity of the various foreign brands of cigarettes PAL is importing, and if ever there are said local dealers, their selling prices would definitely be higher than PAL's cost of importing the cigarettes.

10.Q. Why do you say that importing said catering and commissary supplies is cheaper for PAL than if it purchased the same locally?

10.A. Because, as shown in a comparative table which is attached hereto as Annex "A", comparing the cost of importing said supplies and the cost of purchasing them locally, PAL's cost of importing them is definitely much lower than the cost of buying them locally?

11.Q. Looking at Annex "A" of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

11.A. The cost of importing the commissary supplies involved and listed under the column "Product Imported", are specified under the columns labelled "Unit Cost Per Sales Invoice," "Unit Cost per ATRIG," and "Unit Cost per Informal Import Declaration Entry No.," while the cost of locally buying the same supplies are specified under the column labelled "Philippine Wine Merchants 2008 Price List". As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

xxx xxx xxx

18.Q. What does the column labelled "Philippine Wine Merchants Price List 2008 contain?

18.A. Said column contains the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the year 2008, of the alcoholic product mentioned therein, if the same product is purchased from them?

19.Q. What is your source of the local price of Philippine Wine Merchants for the year 2008?

19.A. My source if the 2008 Price List of Philippine Wine Merchants given to me by Philippine Wine Merchants, a local wine dealer.

20.Q. Showing to you this document labelled "Philippine Wine Merchant, 2008 Price List" with a signature appearing at the botton *[sic]* of the page on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and marked as Annex "B," how is this related to the 2008 Price List of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the year 2008 appearing in your table of comparison?

20.A. That is the price list for the year 2008 of Philippine Wine Merchant which you mentioned.

21.Q. Do you have other sources of local prices of the products involved?

21.A. We have no other sources of said local prices because other local wine merchants or dealers refused to give us their list of prices despite our persistent requests. We even tried getting the quotation of Duty Free Philippines, but they also refused to give us any.

22.Q. How about the local costs of the imported cigarettes involved?

22.A. I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the cigarettes who could regularly supply PAL with the quantity it regularly needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.

23.Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

23.A. Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and custom duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL.

On the other hand, because of its franchise, P.D. No 1590 PAL does not have to pay any excise tax and customs duties on the imported products involved."

A careful scrutiny of the testimony of witness Ms. Capinpin shows that petitioner compared the prices of its imported wines or liquors with only one supplier, i.e., Philippine Wine Merchant,[63] and that petitioner dispensed with comparing the price of its imported cigarettes as against its price in the local market. Thus, petitioner

[63] *Id.*, Judicial Affidavit of Ms. Cheryl V. Capinpin, Annex *"B,"* p. 999.

could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by only one supplier.

With respect to the imported cigarettes, it is evident that petitioner failed to make comparison in contrast to its local prices. Petitioner merely assumed based on speculations that its requirement on imported cigarettes could not be satisfied by any local supplier.[64] This is certainly not in accord with the conditions set forth for exemption from excise tax which must be strictly construed against the claimant.

Hence, without sufficient basis for comparison of the quality, quantity or prices of locally available liquors, wines and cigarettes as against the quality, quantity or prices of such imported goods, petitioner could not have ascertained that the said imported goods are not locally available in reasonable quantity, quality, or price. Evidently, petitioner failed to prove compliance with the third requisite.

In sum, despite petitioner's exemption from the payment of excise taxes, petitioner was not able to prove compliance with the requirements set forth by Section 13 of P.D. No. 1590. Claims for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.[65] The burden therefore, is upon the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[66]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[64] *Id.*, p. 880, item nos. *22-23*.
[65] *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013, 709 SCRA 164.
[66] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. Nos. 187485, 196113, 197156, February 12, 2013, 690 SCRA 336.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice