REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - **versus** - **PHILIPPINE AIRLINES, INC.,** Respondent.	**CTA EB No. 1901** (CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454 & 7518)

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COMMISSIONER OF CUSTOMS, Petitioner, - **versus** - **PHILIPPINE AIRLINES, INC.,** Respondent.	**CTA EB No. 1916** (CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454 & 7518) Present: Del Rosario, PJ, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ. Promulgated: SEP 15 2020 3:31 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* are the following incidents:

(1) Petitioner Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision promulgated 3 February 2020), filed on February 19, 2020; and

(2) Petitioner Commissioner of Custom's (COC) Motion for Reconsideration (of the Decision dated February 3, 2020), filed through registered mail on February 24, 2020.

Consequently, respondent Philippine Airlines, Inc. (PAL) filed its Consolidated Comment/Opposition (to Petitioner Commissioner of Customs' *Motion for Reconsideration* dated 24 February 2020 and Petitioner Commissioner of Internal Revenue's *Motion for Reconsideration* dated 18 February 2020) on June 19, 2020.

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

> "**WHEREFORE**, the consolidated Petitions for Review in CTA EB Case Nos. 1901 and 1916 are **DISMISSED**, for lack of merit.
>
> **SO ORDERED.**"[1]

In their respective motions, both petitioners assert that PAL was unable to prove that its Jet A-1 Aviation Fuel importations are used for its transport and non-transport operations. Furthermore, PAL was unable to prove that said imported articles were not locally available in reasonable quantity, quality or price. Meanwhile, petitioner COC also questions the jurisdiction of the Court.

In its Consolidated Comment/Opposition, PAL asserts that the Court has jurisdiction over the case. Further, it has complied with the requisites to be entitled to its refund claim.

After considering the arguments of the parties, the Court *En Banc* resolves to deny both motions.

The CTA has jurisdiction over the instant case

[1] Court *En Banc* Docket, p. 265.

In ruling that the CTA has jurisdiction over the case, the Court in Division stated that:

> "The pertinent provisions of the *1997 NIRC* are *Sections 204 and 229, viz.:*
>
> > SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—The Commissioner may—
> >
> > xxx xxx xxx
> >
> > (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
> >
> > xxx xxx xxx
> >
> > "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
> >
> > In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without 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.

Based on the foregoing, petitioner had two (2) years from the date of payment of the tax to file both its administrative and judicial claims for refund. This was affirmed by the Supreme Court case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership.*

The dates of filing of petitioner's administrative and judicial claims for refund *vis-à-vis* the two (2)-year prescriptive period are summarized as follows:

xxx xxx xxx

Based on the foregoing table, petitioner's administrative and judicial claims for refund were all timely filed."

While petitioner COC does not assail the findings of the Court in Division in relation to the timeliness of the administrative and judicial claims, petitioner COC asserts that the filing of the instant case is premature considering that he has not decided or ruled yet on PAL's refund claims.

The Court *En Banc* disagrees.

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 and RA No. 9503, categorically states:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected** by a decision, ruling **or inaction** of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."*(Emphasis supplied)*

Based on the above-quoted provision, any party adversely affected by the inaction of the Commissioner of Customs may file an appeal with the CTA. Considering the categorical admission of petitioner COC that he did not act upon PAL's refund claim, coupled with the timeliness of both the administrative and judicial claims, the CTA has jurisdiction over the instant case.

PAL was able to prove that its imported Jet A-1 fuel was used in its transport and non-transport operations, and other activities incidental thereto

Both petitioners CIR and COC assert that PAL failed to prove that its Jet A-1 Aviation Fuel importations were used for its transport and non-transport operations. On the other hand, PAL asserts that:

> "41. In elaborating on the meaning of the term 'consumed', Mr. Razal explained in great detail the process involved from the time the imported aviation fuel is received in the port up until the same is loaded into Respondent's aircrafts. In doing so, Mr. Razal identified and explained each document executed in the course of such procedure, such as the Jet A-1 Stock Status Report, Stock Transfer Ticket, Jet A-1 Release Certificate and Fuel Issue Slips."[2]

After revisiting the evidence presented by PAL, the Court *En Banc* finds that PAL was able to prove the above-requisite through the above pieces of documentary evidence and through the testimony of its witness. Thus, the Court *En Banc* sees no reason to deviate from its previous findings.

PAL was able to prove that said imported articles were not locally available in reasonable quantity

Finally, petitioners CIR and COC assert that the Philippines had enough supply of aviation fuels in 2003 and 2004.

Upon closer scrutiny of the data presented by petitioners, it clearly appears that they utilized such data which included both imported and locally available Jet A-1 Fuels to comprise the total available supply. Again, this issue has already been clarified in the assailed Decision, as follows:

> "In this regard, the Court in Division cited the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*

[2] Court *En Banc* Docket, p. 103.

where the Supreme Court categorically held that domestic petroleum products exclude imported products. The Supreme Court explained that the term 'purchase of domestic petroleum products for use in its domestic operations' as used in LOI 1483 could only refer to 'goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported.'

In finding that respondent's imported Jet A-1 fuel was not locally available in reasonable quantity, quality or price, the Court in Division examined the table on Supply Demand Balance of Jet A-1 fuel from the DOE for the years 2001 to 2010.

Upon scrutiny of the said documentary evidence and applying the ruling of the Supreme Court in the *Philippine Airlines* case, the Court *En Banc* confirmed that upon excluding imported Jet A-1 fuel, there is indeed a shortage of locally available supply thereof. Hence, respondent sufficiently proved that the same is not locally available in reasonable quantity."

To reiterate, in order to arrive at the correct data pertaining to the total locally available supply, reference must only be had to **goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition, and not to things imported.** Thus, petitioners' continuous reliance on wrong data does not warrant the reversal of the assailed Decision.

To conclude, petitioners failed to raise meritorious arguments to justify the reconsideration of the assailed Decision. Hence, the denial of their respective motions is in order.

WHEREFORE, petitioner Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision promulgated 3 February 2020), and petitioner Commissioner of Customs' Motion for Reconsideration (of the Decision dated February 3, 2020) are **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice