REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA CASE NO. 9990**
	Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 21 2021 2:24 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed by petitioner Philippine Airlines, Inc. against respondent Commissioner of Internal Revenue, seeking the refund of One Million Thirty-Six Thousand Six Hundred Seventy-Seven Pesos and 47/100 (₱1,036,677.47) representing excise taxes imposed on petitioner's importations of liquor and/or wine for its catering and commissary supplies for international consumption, which are allegedly illegally collected and paid under protest.[2]

The Parties

Petitioner, Philippine Airlines, Inc., 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

[1] Division Records Vol. 1, pp. 10-63.

[2] *See* Memorandum for Petitioner, Division Records Vol. 2, pp. 733-748 *and* Memorandum for Respondent, *id.*, pp. 725-731; *See also* Joint Stipulation of Facts and Issues ("JSFI"), Division Records Vol. 1, pp. 256-262 *and* Pre-Trial Order, *id.*, pp. 436-443.

Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.[3] It is a VAT-registered taxpayer with OCN No. 8RC0000575765.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), empowered to perform the duties of his office, including, among others, to decide disputed assessments, taxes fees or other charges under the law, as well as administrative claims for refund.[5]

The Facts

On 11 June 1987, by virtue of ***Presidential Decree ("P.D.") No. 1590*** otherwise known as "*An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and other Countries*," petitioner was granted a franchise to operate air transport services domestically and internationally.[6]

Under ***Section 13 of P.D. No. 1590***, petitioner is exempt from the payment of all taxes, duties, and other fees and charges of any kind or nature on all importations of commissary and catering supplies, among others, and other articles, supplies, or materials imported by petitioner for the use in its transport and non-transport operations as well as other activities incidental thereto.[7] Section 13 imposed conditions for exemption among which include petitioner's payment to the Philippine government of the lower between basic corporate income tax or 2% franchise tax.[8]

Subsequently, on 1 July 2005, ***Republic Act ("R.A.") No. 9337*** entitled "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as amended, and for Other Purposes*" took effect, which abolished the franchise tax and replaced the same with VAT.[9]

On various dates during the years 2013 and 2014, petitioner's importations of alcohol products covered by Informal Import Declaration and Entry ("IIDEs")[10] and Air Waybills/ Bills of Lading ("AWB/BL")[11] arrived in Manila.

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[3] Petition for Review, *id.*, pp. 10-63; Memorandum for Petitioner, Division Records Vol. 2, pp. 733-748.
[4] Exhibits "P-3" and "P-3-a", *id.*, pp. 566-567.
[5] Memorandum for Respondent, *id.*, pp. 725-731.
[6] JSFI, Division Records Vol. 1, pp. 256-262; Pre-Trial Order dated 13 June 2019, *id.*, pp. 436-443.
[7] *Ibid.*
[8] Section 13, P.D. No. 1590.
[9] JSFI, Division Records Vol. 1, pp. 256-262; Pre-Trial Order dated 13 June 2019, *id.*, pp. 436-443.
[10] Exhibits "P-4" to "P-4F", BIR Records, pp. 63, 54, 45, 33-34, 21-22, and 7.
[11] Exhibits "P-5" to "P-5F", *id.*, pp. 62, 53, 44, 32, 20, 14, and 6.

On 3 November 2015, the Bureau of Customs ("BOC") billed petitioner of excise taxes due on its importation of alcohol products in the aggregate amount of ₱1,036,677.77, with the following details:[12]

Warehousing Entry No.	Commodity	ATRIG Control No.	Excise Tax Due
9235-13	Liquor and Wines	ELTRDALC26429	₱ 280,800.00
4518-14	Liquor and Wines	ELTRDALC26437	266,760.00
10160-13	Liquor and Wines	ELTRDALC26436	126,360.00
9227-13	Liquor and Wines	ELTRDALC26426	126,360.00
7040-14	Liquor and Wines	ELTRDALC29330	49,140.00
72-13	Liquor and Wines	ELTRDALC26457	92,664.00
5614-14	Liquor and Wines	ELTRDALC28714	94,593.47
TOTAL AMOUNT DUE			₱ 1,036,677.47

On 23 December 2016, petitioner paid the total amount due under protest.[13] On even date, petitioner filed a Formal Protest Letter to the BOC to formally protest the assessment and collection of the subject excise taxes,[14] but there was no action thereon.[15] The corresponding official receipt evidencing payment was thereafter issued by the BOC as the constituted agent of respondent for the collection of excise taxes on imported goods.[16]

With petitioner's payment of excise taxes on the subject importations, the BIR issued the Authority to Release Imported Goods ("ATRIG") forms[17] and subsequently released the subject importations to petitioner.[18]

On 19 December 2018, petitioner filed with the BIR its administrative claim for refund[19] of ₱1,036,677.77 for the excise taxes paid under protest on 23 December 2016.

Due to respondent's inaction and in view of the impending lapse of the two (2)- year prescriptive period pursuant to ***Section 204 in relation to Section 229 of the National Internal Revenue Code of 1997 ("Tax Code"), as amended***, petitioner filed the present Petition for Review on 20 December 2018.[20]

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[12] Exhibit "P-7", *id.*, p, 66.
[13] Exhibit "P-9", *id.*, p. 64.
[14] *Ibid.; See also* Exhibits "P-34"and "P-34-a", Division Records Vol. 1, pp. 88-95.
[15] *See* Transcript of Stenographic Notes of the hearing dated 25, July 2019, pp. 11-12.
[16] Exhibit "P-8", BIR Records, p. 65.
[17] Exhibits "P-6" to "P-6F", *id.*, pp. 61, 52, 43, 3, 19, 13, and 5.
[18] *See* par. 20, Petition for Review, Division Records Vol. 1, pp. 10-63; *See also* par. 11, Memorandum for Petitioner, Division Records Vol. 2, p. 736.
[19] *See* par. 10 Answer, Division Records Vol. 1, p. 68; Memorandum for Respondent, Division Records Vol. 2, p. 727; par. 21 Petition for Review, Division Records Vol. 1, pp. 16-17; par. 15 Memorandum for Petitioner, Division Records Vol. 2, p. 737.
[20] Petition for Review, Division Records Vol. 1, pp. 10-63

Respondent filed his Answer on 16 January 2019,[21] interposing his defenses.

Thereafter, respondent filed his Pre-Trial Brief on 7 February 2019[22] while petitioner filed its Pre-Trial Brief on 29 April 2019.[23] Following the filing of both parties' Pre-Trial Briefs, the Pre-Trial Conference was held on 2 May 2019.[24]

The parties submitted their Joint Stipulation of Facts and Issues ("JSFI") on 10 May 2019,[25] which the Court approved in a Resolution, promulgated on 15 May 2019.[26] Subsequently, on 13 June 2019, the Court issued a Pre-Trial Order which governed the proceedings of the case.[27]

In the meantime, on 7 October 2019, the Court received respondent's Compliance[28] transmitting the BIR Records consisting of 73 pages consecutively numbered from pages 1-73, which the Court noted in its Minute Resolution dated 9 October 2019.[29]

During trial, petitioner presented the following witnesses:

(1) Mr. Jonathan R. Castillo Lee,[30] petitioner's Manager for Company Materials Handling Division, who testified and identified his Judicial Affidavit during the hearing on 25 July 2019;[31]

(2) Mr. Ruel Ryan O. Julian,[32] petitioner's Manager for Tax Services Division, who testified and identified his Judicial Affidavit during the hearing on 22 August 2019;[33] and

(3) Ms. Cheryl V. Capinpin,[34] petitioner's Manager of In-flight Materials Purchasing Division, who testified and identified her Judicial Affidavit and Supplemental Judicial Affidavit during the hearing on 3 December 2019.[35]

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21 *Id.*, pp. 66-72.
22 *Id.*, pp. 77-81.
23 *Id.*, pp. 232-242.
24 *Id.*, pp. 246-250.
25 *Id.*, pp. 256-262.
26 *Id.*, pp. 263-264.
27 *Id.*, pp. 436-443.
28 *Id.*, pp. 478-481
29 *Id.*, p. 482.
30 Exhibits "P-34"and "P-34-a", *id.*, pp. 88-95.
31 *Id.*, pp. 453-455.
32 Exhibits "P-35" and "P-35-a", *id.*, pp. 125-132
33 *Id.*, p. 462-463.
34 Exhibits "P-49" and "P-49-a", *id.*, pp. 288-297; Exhibits "P-50" and "P-50-a", Division Records Vol. 2, pp. 505-508.
35 *Id.*, pp. 523-524-a.

Petitioner formally offered its documentary evidence on 6 January 2020.[36] Respondent filed his Comment thereto on 8 January 2020.[37]

In a Resolution dated 26 February 2020,[38] the Court admitted all of petitioner's formally offered documentary evidence except Exhibit "P-30" for not having been identified. The Court also noted certain discrepancies with Exhibits "P-3", "P-3A", "P-4A", "P-4B", "P-5A", "P-6F", "P-12a", "P-12b", "P-13a", P-22", and "P-23a".

During the hearing on 3 December 2019, respondent's counsel manifested that she would not be presenting any evidence as there is no Report of Investigation.[39]

As directed by the Court, respondent and petitioner filed their Memoranda on 24 June 2020[40] and 19 October 2020,[41] respectively.

Thereafter, the present case was submitted for decision on 28 October 2020.[42]

The Issue[43]

The sole issue submitted for this Court's resolution is:

> Whether or not petitioner is entitled to the refund of excise taxes paid under protest for various importations on 26 August 2016 amounting to One Million Thirty-Six Thousand Six Hundred Seventy-Seven Pesos and 47/100 (₱1,036,677.47) for its importations of liquor and/or wine for its catering and commissary supplies for international consumption.

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[36] *Id.*, pp. 529-711.
[37] *Id.*, pp. 713-716.
[38] *Id.*, pp. 722-724.
[39] *Id.*, pp. 523-524-a.
[40] *Id.*, pp. 725-731.
[41] *Id.*, pp. 733-748.
[42] *Id.*, pp. 749-750.
[43] Pre-Trial Order, Division Records Vol. 1, pp. 436-443.

Arguments of the Parties

Petitioner's Arguments[44]

Petitioner contends that its importation of commissary and catering supplies are exempt from all taxes pursuant to its franchise, particularly pursuant to ***Section 13 of P.D. No. 1590***, and that such exemption was not repealed by ***R.A. No. 9334***.[45]

Respondents' Arguments[46]

Meanwhile, respondent avers that petitioner's excise tax on importations allegedly paid on 23 December 2016 was not properly documented.

He further argues that a close reading of ***paragraph 3 of Section 131 of the Tax Code***, as amended by ***R.A. No. 9334***, reveals the unmistakable intent of Congress to withdraw petitioner's exemption under ***P.D. No. 1590.***

Respondent also points out that the judicial claim for refund was filed barely one (1) day from the filing of the administrative claim for refund. Respondent contends that the present claim is subject to administrative investigation/ examination and that pending closure of this investigation, no grant of refund may be given to petitioner. Citing ***Commissioner of Internal Revenue v. Manila Electric Company***,[47] respondent claims that it was not given an opportunity to ascertain the veracity and validity of the claim. Respondent then argues that petitioner failed to exhaust administrative remedies which is a condition precedent that renders the Petition for Review dismissible.

Finally, respondent relies on the strict construction of refunds being in the nature of tax exemptions.

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[44] *See* Memorandum for Petitioner, Division Records Vol. 2, pp. 192-211.

[45] R.A. 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.

[46] *See* Memorandum for Respondent, Division Records Vol. 2, pp. 248-261; *See also* Answer, Division Records Vol. 1, pp. 66-72.

[47] G.R. No. 121666, 10 October 2007.

The Ruling of the Court

After a careful and thorough evaluation and consideration of the records and arguments of both parties, the Court denies the present Petition for Review.

Petitioner failed to exhaust administrative remedies.

The procedure for filing of administrative and judicial claims for refund is governed by ***Sections 204(C) and 229 of the Tax Code***, respectively.

Section 204 provides:

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

Meanwhile, ***Section 229*** states:

> "SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter **alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax</u>** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which

payment was made, such payment appears clearly to have been erroneously paid."
(Emphasis, Ours)

As may be gleaned from the foregoing provisions, a taxpayer-claimant must first file an administrative claim for refund before the Commissioner of the BIR prior to filing a judicial claim before the Court of Tax Appeals.[48] Both the administrative and judicial claims for refund should be filed within the two (2) year prescriptive period, and the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[49]

In the present case, it has been shown that petitioner paid the subject excise taxes to the BOC on 23 December 2016.[50] Counting two (2) years from this date, petitioner had until 23 December 2018 to file its administrative and judicial claims for refund. Ostensibly, petitioner's administrative claim for refund, filed on 19 December 2018,[51] and the judicial claim for refund, filed before this Court on 20 December 2018,[52] both fell within the two (2) year prescriptive period.

While both claims were filed within the two (2) year prescriptive period, it does not escape the attention of the Court that the administrative claim was filed with the BIR merely days before the lapse of the two (2) year period and that the judicial claim with the Court immediately followed the next day. To the mind of the Court, this displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. The rationale for the rule was elucidated in ***Ejera v. Merto***[53] as follows:

> "Thirdly, **<u>the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly</u>**. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum."
> (Emphasis, Ours.)

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48 Metropolitan Bank & Trust Co. v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
49 *Ibid.*
50 Exhibits "P-8" and "P-9", BIR Records, pp. 64-65.
51 *See* par. 10 Answer, Division Records Vol. 1, p. 68; Memorandum for Respondent, Division Records Vol. 2, p. 727; par. 21 Petition for Review, Division Records Vol. 1, pp. 16-17; par. 15 Memorandum for Petitioner, Division Records Vol. 2, p. 737.
52 Petition for Review, Division Records Vol. 1, pp. 10-63
53 G.R. No. 163109, 22 January 2014, citing Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, 19 May, 1998

Certainly, with only one (1) day given respondent, he was not "afforded a complete chance to pass upon the matter" nor "given an opportunity to act and correct the errors committed in the administrative forum."

In the recent case of ***Chin v. Maersk-Filipinas Crewing, Inc., et al.***,[54] the Supreme Court even cautioned, to wit:

> "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, **every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice**."
> (Emphasis, Ours.)

Judging from any perspective, with that one (1) day period given to him, respondent cannot be said to have been given "every opportunity" "to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund of petitioner.

Obviously, the filing of the claim with respondent mere days before the two (2) year deadline was simply to meet such deadline. Indeed, the filing of the judicial claim with the Court the following day from the filing of the claim before respondent is a clear indication of a blatant disregard of respondent's administrative powers.

The Court cannot turn a blind eye to the procedural infirmity extant in the instant case; much less will it be a partner in petitioner's disregard of the concept of exhaustion of administrative remedies. Under the circumstances, then, it finds that petitioner's case is barred for failure to exhaust administrative remedies.[55]

Even granting, without conceding, that petitioner is deemed to have timely filed its administrative and judicial claims, the Petition will still be denied for the reasons explained below.

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[54] G.R. No. 247338, 2 September 2020.
[55] Associate Justice Ma. Belen M. Ringpis-Liban dissents in this finding but concurs with all other aspects of the Decision.

Petitioner's exemption under *Section 13 of P.D. No. 1590* has not been repealed by *Section 6 of R.A. No. 9334.*

The non-revocation of petitioner's tax exemption granted under ***P.D. No. 1590*** has long been settled by the Supreme Court in ***Republic of the Philippines rep. by the Commissioner of Customs v. Philippine Airlines, Inc.*** and ***Commissioner of Internal Revenue v. Philippine Airlines, Inc.***,[56] as follows:

> "In *CIR v. PAL*, the Court has already passed upon the very same issues raised by the same petitioners. The only differences are the taxable period involved and the amount of refundable tax.
>
> We have held in that case that it is a basic principle in statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of the earlier statute. A reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption:
>
> **PRESIDENTIAL DECREE NO. 1590**
>
> xxx xxx xxx
>
> 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**

[56] G.R. Nos. 209353-54 & 211733-34, 6 July 2015.

government agency, now or in the future, including but not limited to the following:

xxx xxx 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;

xxx xxx xxx

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)

REPUBLIC ACT NO. 9334

xxx xxx xxx

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

> SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt

> persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> The provision of any special or general law to the contrary notwithstanding, **the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on introduction into the Philippine customs territory.

xxx xxx xxx

SECTION 10. *Repealing Clause*. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly. (Emphasis supplied)

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

> **Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*:**
>
>> **That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. . . .**
>
> **To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:**
>
>> **While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding*," such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. . . . (Emphasis supplied)**
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

> **In other words, the franchise of PAL remains the governing law on its exemption from taxes.** Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, *provided* that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.
>
> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.
>
> In this case, the CTA found that PAL had paid basic corporate income tax for fiscal year ending 31 March 2006. Consequently, PAL may now claim exemption from taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, provided it shows that 1) such articles or supplies or materials are imported for use in its transport and nontransport operations and other activities incidental thereto; and 2) they are not locally available in reasonable quantity, quality, or price."
> (Emphasis, Ours)

With such clear pronouncement, there can be no denying that petitioner's tax exemption privilege on its importations of commissary and catering supplies pursuant to ***Section 13 of P.D. No. 1590*** has not been revoked by ***Section 131 of the Tax Code*** as amended by ***R.A. No. 9334***.

Petitioner failed to prove that there was an erroneous or illegal excise tax collected by the government.

The Court shall now determine whether petitioner has complied with the requirements for tax refund.

Petitioner's tax exemption privilege under ***Section 13 of P.D. No. 1590*** is subject to conditions as stated therein. The provision pertinently reads:

> "SEC 13. In consideration of the franchise and rights hereby granted, **the grantee shall pay to the Philippine Government** during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax**:
>
> (a) The **basic corporate income tax** based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A **franchise tax of two per cent (2%)** of the gross revenues derived by the grantee from all sources, without distinction as to transport or 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**:
>
> ...
>
> 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**;"
>
> (Emphasis, Ours)

With the enactment of ***R.A. No 9337,*** the franchise tax provided in ***Section 13(b) of P.D. No. 1590*** was abolished and VAT on domestic airlines was imposed:[57]

> "SEC. 22. Franchises of Domestic Airlines. - The **provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.,** R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The **franchise tax is abolished;**

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[57] Section 22, R.A. No. 9337.

(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)

As can be gleaned from the foregoing, in order to be exempt from excise taxes due on all importations of commissary and catering supplies, petitioner must prove that:

1. It paid corporate income tax and VAT liabilities covering the period when the subject importations were made (i.e. 2013 and 2014);

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.

In relation to the ***first condition***, petitioner proved its filing and payment of corporate income tax for the covered period when importations were made by submitting in evidence its Annual Income Tax Returns for taxable years 2013[58] and 2014.[59] Petitioner is also a VAT-registered entity[60] and has duly accounted for and paid its VAT liabilities, if any.[61]

As to the ***second condition***, the imported articles were described as "Inflight Materials" under the "Description of Articles" column of the IIDEs.[62]

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[58] Exhibits "P-11", and "P-11a", Division Records Vol. 2, pp. 569- 585.
[59] Exhibits "P-16", and "P-16a", *id.*, pp. 599- 615.
[60] Exhibits "P-3" to "P-3A", "P-10", and "P-15", *id.*, pp. 566- 567, 569 and 598, respectively.
[61] Exhibits "P-12", "P-12a", "P-12b", "P-13", "P-13a", "P-14", "P-17", "P-17a", "P-18", "P-18a", "P-19", "P-19a", "P-20", "P-20a", *id.*, pp. 586-597, and pp. 617-635.
[62] Exhibits "P-4" to "P-4F", BIR Records, pp. 63, 54, 45, 33-34, 21-22, and 7.

Similarly, in the ATRIG forms[63] issued by respondent CIR addressed to the Collector of Customs, it bears the notation that the subject importations "will be used exclusively for international inflight consumption only."

From the foregoing, petitioner has sufficiently satisfied the second condition for exemption requiring that the imported articles are intended to be used in its transport and non-transport operations and other incidental activities.

However, as to the ***third condition*** requiring the non-availability of subject imported alcohol products in the local market at a reasonable quantity, quality, or price, the Court finds that petitioner failed to provide sufficient evidence to prove compliance therewith.

To satisfy the third condition, the law imposes an alternative and not a cumulative qualification. The third condition is satisfied if petitioner proves that the imported alcohol products are not locally available in reasonable (1) quantity, (2) quality, *or* (3) price.

In the present case, petitioner presented the following pieces of evidence to establish compliance with the third condition: (1) Judicial Affidavit and Supplemental Judicial Affidavit of Cheryl V. Capinpin, its Manager for In-flight Materials Purchasing Division;[64] (2) Absolute Sales Corporation Price List for 2013[65] and 2014;[66] (3) Future Trade International Inc. Price List for 2013 effective 1 February 2013;[67] (4) BIR Revenue Memorandum Circular *("RMC")* No. 90-2012 Price List;[68] (5) Various invoices on the subject alcohol products;[69] and (6) Table of Comparison prepared by petitioner supposedly comparing local prices with importation costs.[70]

In the Judicial Affidavit of Ms. Cheryl V. Capinpin,[71] she explained that she compared the *local prices* based on Absolute Sales Corporation, Future Trade International, Inc., and RMC No. 90-2012 price lists against the *importation costs* based on the actual product value. She then concluded that it is cheaper to import the alcohol products than to purchase them locally:

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63 Exhibits "P-6" to "P-6F", *id.*, pp. 61, 52, 43, 3, 19, 13, and 5.
64 Exhibits "P-49" and "P-49-a", Division Records Vol. 1, pp. 288-297; Exhibits "P-50" and "P-50-a", *id.*, pp. 505-508.
65 Exhibit "P-27", *id.*, pp. 665-667.
66 Exhibit "P-28", *id.*, pp. 668-670.
67 Exhibit "P-29", *id.*, pp. 671-676.
68 Exhibit "P-31", *id.*, pp. 688-708.
69 Exhibits "P-38" to "P-47", BIR Records Vol. 2, pp. 60,51, 50, 40, 37, 28, 25, 17,11, and 3.
70 Exhibit "P-48", Division Records Vol. 2, p. 520.
71 Exhibits "P-49" and "P-49-a", Division Records Vol. 1, pp. 288-297.

7. Q: As the Manager of the In-flight Materials Purchasing Division, why would PAL import said supplies instead of just buying them for the local sellers of similar products?
   A: PAL imported catering and commissary supplies, such as, alcohol, liquor, and tobacco products because the cost of said products, **when imported, are cheaper compared to those locally available. Said products are not available locally in reasonable quantity, quality, or price.**

8. Q: Why do you say that importing the said catering and commissary supplies are cheaper and reasonably priced than purchasing them locally?
   A: **I have compared the local prices and the importation cost** for the alcohol, liquor, and tobacco products. Upon comparison of these prices, **it is easily determinable that importing these products are way cheaper than purchasing them locally**.

9. Q: You mentioned that you compared the local prices and the importation costs for the alcohol products. What documents did you use in comparing these prices?
   A: For alcohol products, I used the following as my sources of **local prices**:
      i. Absolute Sales Corporation 2013 Price List;
      ii. Absolute Sales Corporation 2014 Price List;
      iii. Future Trade International Travel Retail 2013 Price List; and
      iv. Bureau of Internal Revenue's ("BIR") Revenue Memorandum Circular ("RMC") No. 90-2012 Price List.

   For **importation costs**, I used the actual product value as shown in the sales invoice issued by PAL's suppliers, product value as shown in the Authority to Release Imported Goods ("ATRIG"), and Product Value as shown in the Informal Import Declaration Entry ("IIDE").

...

22. Q: How do you compare the local prices and importation costs using the documents you just mentioned and identified?
    A: In using the pricing costs of several documents, it can be seen that the cost of importing goods is way cheaper than purchasing them locally. ...

(Emphasis, Ours)

In the Supplemental Judicial Affidavit, Ms. Capinpin further testified that she prepared a Table of Comparison comparing local prices with importation costs:[72]

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[72] Exhibits "P-50" and "P-50-a", Division Records Vol. 2, pp. 505-508.

4. Q: What else do you have, if any, to prove that the imported articles subject of this case are cheaper when imported than purchasing them locally?
   A: I have made a Table of Comparison which shows the complete comparison of prices for all articles imported by PAL for the period December 2013 to August 2014. *(sic)*

Essentially, petitioner is claiming that it has determined local prices based on three (3) price lists (i.e. Absolute Sales Corporation, Future Trade International, and RMC No. 90-2012).

However, a closer look at the Table of Comparison[73] reveals that there is only one (1) supplier (i.e. Future Trade International, Inc.) which supposedly establishes local prices. Pertinent portions of the Table of Comparison are reproduced below:

IIDE Entry	Product Imported	Price per Bottle (PHP)	Absolute Sales 2013 (PHP)	Future Trade 2013 (PHP)	Absolute Sales 2014 (PHP)	Future Trade 2014 (PHP)	RMC No. 90-2012 Price List (PHP)
9235	Volupta Rosso	75.78	*	*	*	*	*
4518	Queen Adelaide Cabernet Sauvignon	108.26	*	*	*	255.00	*
	Queen Adelaide Chardonnay	108.26	*	*	*	255.00	*
10160	Queen Adelaide Cabernet Sauvignon	107.17	*	*	*	255.00	*
	Queen Adelaide Chardonnay	107.17	*	*	*	255.00	*
9227	Queen Adelaide Cabernet Sauvignon	105.84	*	*	*	255.00	*
	Queen Adelaide Chardonnay	105.84	*	*	*	255.00	*
7040	Beringer California Chardonnay	164.13	*	*	*	*	*
5614	Stolichnaya Gold	489.88	*	*	*	*	*
	Louis Royer XO	2,355.19	*	*	*	*	*
	Patron Silver Tequila	1,036.28	*	*	*	*	*
72	Rawson Private Release Shiraz Cabernet	211.70	*	525.00	*	578.00	*
	Lindenman's Premiere Chardonnay	163.19	*	341.00	*	351.00	*

From a cursory reading of RMC No. 90-2012, it can be easily determined that it was based on a 2010 price survey of alcohol products. Considering that it is based on a 2010 price survey, no valid comparison can be made with importations in 2013 and 2014. More importantly, RMC No. 90-2012 does not contain any price quotation for any of the listed alcohol products. Neither did petitioner present any proof to establish that the absence of price quotation is due to the non-availability of the identified alcohol products in the local market. ƴ

[73] Exhibit "P-48", *id.*, p. 520.

Likewise, the Absolute Sales Corporation price list does not contain a price quotation for any of the alcohol products imported by petitioner. Petitioner also did not present any proof showing that the absence of price quotation is due to non-availability of the alcohol products in the local markets.

During cross-examination and re-direct examination of Ms. Capinpin, she confirmed that there are no price quotations for Absolute Sales Corporation and that only one (1) supplier, Future Trade International, Inc., was able to provide price quotations:[74]

ATTY. BABARAN
Q: In the table of comparison marked as Exhibit P-48, I noticed that there is only one supplier that is mentioned here, Future Trade?

MS. CAPINPIN
A: We presented Absolute Sales and Future Trade.

ATTY. BABARAN
Q: Yes, but Absolute Sales, there is no price, only Future Trade?

MS. CAPINPIN
A: Yes, Ma'am.

ATTY. BABARAN
No further question, Your Honors.

JUSTICE UY
Re-direct?

ATTY. PIERAZ
Yes, Your Honors.

Re-Direct:

ATTY. PIERAZ
Q: Ms. Witness, why were you unable to put the price list for Future Trade 2013?

MS. CAPINPIN
A: We asked for a price list for Absolute sales but unfortunately, they did not have quotations for the mentioned items that we imported.

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[74] Transcript of Stenographic Notes dated 3 December 2019, pp. 17-18.

From the foregoing, it appears that petitioner determined local prices for 2013 and 2014 from the price list of only one (1) supplier, that is Future Trade International, Inc. Considering that the 2014 price list of Future Trade International, Inc. was not admitted in evidence for not having been identified, the Court will only consider the 2013 price list as admitted in evidence.

However, the Court cannot rely on the price list of only one (1) supplier absent any corroborating evidence that such supplier adequately represents the local market prices or that said supplier is the exclusive distributor of the listed alcohol products. Thus, the Court cannot determine if the imported alcohol products are not available locally in *reasonable price*.

Similarly, the Court cannot determine from the evidence presented whether the imported alcohol products are not available locally in reasonable quantity. In Ms. Capinpin's testimony, she merely confirmed that there is no price available or that the supplier "did not have quotations for the mentioned items." From her testimony, the Court cannot ascertain that there is no available product locally. The testimony merely implies the non-availability of "price or quotation" and does not necessarily prove non-availability of the "product" itself in the local market. Simply put, there is no indication from the testimony, nor from evidence on record, that the imported alcohol products are not available locally in *reasonable quantity*.

All told, petitioner has not been able to prove the third condition for it to be exempt from excise taxes – that the imported alcohol products are not available locally in reasonable quantity, quality or price. Such failure on its part is fatal to its cause.

It bears repeating to emphasize that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers, the latter having the burden to prove compliance with the conditions for the grant of the tax refund or credit.[75]

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

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[75] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

WE CONCUR:

ERLINDA P. UY
Associate Justice

(I concur in the result.)
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.

ERLINDA P. UY
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