REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILIPPINES AIRLINES, INC.,
Respondent.

CTA EB NO. 1752
(CTA Case No. 8143)

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COMMISSIONER OF CUSTOMS,
Petitioner,

-*versus*-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1756
(CTA Case No. 8143)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 10 2019 2:53 p.m.

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DECISION

DEL ROSARIO, P.J.:

The present consolidated Petitions for Review filed separately by the Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) on December 12, 2017 and December 28, 2017, respectively, question the July 17, 2017 Decision and November 20, 2017 Resolution of the Court in Division in the case entitled *Philippines Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs.* The assailed Decision ordered the refund or issuance of a tax credit certificate in favor of Philippine Airlines, Inc. (PAL) in the amount of P302,012,195.86, representing excise taxes paid for importation of Jet A-1 fuel for domestic operations for the period August 2008 to October 2008, while the November 20, 2017 Resolution denied the CIR and COC's respective motions for reconsideration.

THE FACTS

The undisputed facts, as narrated by the Court in Division, are as follows:

Commissioner of Internal Revenue *[respondent in the Court in Division, now the petitioner]* is the head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges, including excise tax on Jet A-1 fuel imposed by Section 148 of the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Commissioner of Customs *[respondent in the Court in Division, now the petitioner]* is the head of the Bureau of Customs (BOC) which is the government agency in charge of the assessment and collection of customs duties and other impositions from imported articles, including the excise tax on imported Jet A-1 fuel imposed under Section 148 of the NIRC of 1997, as amended, delegated and authorized by CIR through an Authority to Release Imported Goods (ATRIG) duly issued by the latter and addressed to the former. As provided in Section 12 of the NIRC of 1997, as amended, COC and his subordinates are the agents of CIR with respect to the collection of national internal revenue taxes on imported goods. COC holds office at the Port Area, Bureau of Customs, Manila.

Philippine Airlines, Inc. (PAL) *[petitioner in the Court in Division, now the respondent]* is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at the 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City 1300.

PAL's franchise, Presidential Decree (PD) No. 1590, took effect on June 11, 1978. Section 13 thereof provides:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

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(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:

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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

xxx xxx xxx"

On October 31, 1985, Letter of Instructions (LOI) No. 1483 was issued by then President Ferdinand E. Marcos, withdrawing PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operation.

On January 29, 1999, CIR issued BIR Ruling No. 013-99, confirming an opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. Said BIR Ruling further states that the intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations.

The Secretary of Finance confirmed BIR Ruling No. 013-99 in a letter issued on September 8, 1999.

The Department of Energy (DOE) issued a Certification dated December 20, 2002 stating that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price.

On January 29, 2003, BIR Ruling No. 001-03 was issued, addressed to PAL, to Cebu Air, Inc., to Air Philippines, Inc., and to Pacific Airways Corporation, the significant parts of which read as follows:

> "In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to the other airlines. Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.
>
> This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

On the basis of BIR Ruling No. 001-03, the CIR, acting through respondent COC, assessed PAL for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

For the period covering August 2008 to October 2008, PAL made the following importations and corresponding payments under protest of the specific tax assessed by the Collector of Customs of the Port of Subic, Olongapo City, and the Collector of Customs of the Port of Batangas, Batangas City. The payments made by PAL are evidenced by the official receipts (ORs), as follows:

Date of Importation	Date of Payment	Amount Paid	Official Receipt
August 8, 2008	September 1, 2008	P59,315,119.86	Security Bank Corporation OR No. 100756
August 9, 2008	August 15, 2008	P47,625,389.00	Equitable PCI Bank OR No. 252623C
August 23, 2008	September 18, 2008	P66,154,529.00	Equitable PCI Bank OR No. 253098C
September 24, 2008	October 22, 2008	P65,019,122.00	Banco de Oro Unibank, Inc. OR No. 1691366A
October 22, 2008	November 19, 2008	P63,898,036.00	Equitable PCI Bank OR No. 248117C

PAL filed formal written protests for the refund of the respective specific taxes with the District Collector of Customs of the Port of Subic and the District Collector of Customs of the Port of Batangas, on the following dates:

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest with the COC
August 8, 2008	September 1, 2008	September 15, 2008
August 9, 2008	August 15, 2008	August 28, 2008
August 23, 2008	September 18, 2008	October 2, 2008
September 24, 2008	October 22, 2008	November 5, 2008
October 22, 2008	November 19, 2008	December 3, 2008

For failure of COC to act on the protests and to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC of 1997, as amended, PAL filed a written claim for refund with CIR on November 18, 2009, for the specific taxes paid for all its importations.

To avoid the lapse of the two-year prescriptive period within which to recover the specific taxes erroneously paid, PAL filed a Petition for Review before the Court in Division on August 17, 2010 in accordance with Section 229 of the NIRC of 1997, as amended.

After trial, the Court in Division rendered the assailed Decision on July 17, 2017, granting PAL's claim for refund in the amount of P302,012,195.86, the dispositive part of which reads:

> WHEREFORE, premises considered, the instant Petition for Review is GRANTED. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner Philippine Airlines, Inc. in the amount of P302,012,195.86, representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period August 2008 to October 2008.
>
> SO ORDERED.

The Court in Division ruled that (1) PAL's administrative and judicial claims for refund were all timely filed; (2) it is vested with jurisdiction to rule on the validity of BIR Ruling No. 001-2003, and even without the issue on validity of said BIR Ruling, it has jurisdiction to decide or to determine the propriety of the refund claim; (3) PAL complied with all the requisites under Section 13 of PD No. 1590 to be exempted from excise tax on its importations of Jet A-1 fuel used for its domestic operations, *i.e., (i) PAL paid its corporate income tax and VAT liabilities for the subject period of importation; (ii) the imported Jet A-1 fuel was actually used for its transport operations; and, (iii) the imported Jet A-1 fuel was not locally available in reasonable quantity and price at the time of the importations*; and (4) the qualifications for exemption - "quantity, quality or price" in Sec. 13(2) of PD 1590 are alternative and not cumulative citing *CIR vs. PAL.*[1]

CIR filed his Motion for Partial Reconsideration on August 3, 2017, with PAL's Comment/Opposition filed on September 15, 2017. COC also filed his Motion for Reconsideration on August 3, 2017, with PAL's Comment/Opposition filed on September 8, 2017.

On November 20, 2017, the Court in Division issued a Resolution denying both the CIR and COC's respective motions for reconsideration, the pertinent parts of which read:

> After considering the arguments of the parties, it is apparent to this Court that, indeed, the arguments raised by the CIR and the COC in their respective Motions for Reconsideration are not new. They have been previously discussed and considered prior to rendering our Decision promulgated on July 17, 2017.

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[1] CTA EB Nos. 1308, 1309, and 1311, February 27, 2017.

> Considering that no new matters have been raised, the CIR's Motion for Partial Reconsideration and the COC's Motion for Reconsideration are DENIED for lack of merit.
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> SO ORDERED.

Dissatisfied, CIR filed his Petition for Review before the Court *En Banc* on December 12, 2017, docketed as CTA EB No. 1752, ascribing the following errors allegedly committed by the Court in Division:

> I
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> The Third Division of the Honorable Court erred in ruling that it has jurisdiction to rule on the validity of BIR Ruling No. 001-2.
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> II
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> The Third Division of the Honorable Court erred in ruling that the petitioner was able to prove that its income tax and VAT liabilities were paid.
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> III
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> The Third Division of the Honorable Court erred in ruling that petitioner was able to prove that the Jet A-1 fuel was actually used for its transport and non-transport operations.
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> IV
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> The Third Division of the Honorable Court erred in relying on the Civil Aviation Authority of the Philippines (CAAP) Certification in ruling that Jet A-1 fuel is not locally available in reasonable quantity, quality or price.
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> V
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> The Third Division of the Honorable Court erred in ruling that in determining locally available supply, importations are excluded.[2]

COC also filed his Petition for Review on December 28, 2017, docketed as CTA EB No. 1756, and raised the following grounds in support thereof:

> I

[2] CTA EB No. 1752 Docket, pp. 3-4

The Honorable Court's Third Division erred in ruling that it has jurisdiction over the subject matter of the Petition.

II

The Honorable Court's Third Division erred in ruling that respondent is exempted from payment of excise taxes on its Jet A-1 fuel importations.[3]

CTA EB No. 1756 was consolidated with CTA EB No. 1752 in a minute Resolution issued on February 9, 2018 pursuant to Sec. 1, Rule 31 of the Rules of Court.[4]

PAL filed its Comment/Opposition to CIR's Petition for Review on February 20, 2018 and to COC's Petition for Review on April 25, 2018.[5]

These consolidated cases were submitted for decision on May 15, 2018.[6]

PARTIES' ARGUMENTS

CIR's arguments

The Court in Division had no jurisdiction to rule on the validity of BIR Ruling No. 001-2003,[7] and the collateral attack on presumably valid administrative issuance is not allowed.[8]

The Court in Division erred in ruling that PAL was able to prove that its basic corporate income tax and VAT liabilities were paid, as there was failure on its part to prove actual remittance of taxes to the BIR.[9] PAL should have presented a certification from the Revenue Accounting Division to prove actual remittance of the alleged payment.[10]

The Court in Division erred in ruling that PAL was able to prove that the Jet A-1 fuel was actually used for its transport operations.[11]

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[3] CTA EB No. 1756 Docket, p. 17.
[4] CTA EB No. 1752 Docket, p. 73.
[5] CTA EB No. 1752 Docket, pp. 80-103; 115-134.
[6] CTA EB No. 1752 Docket, pp. 137-138.
[7] CTA EB 1752 Docket, p. 4.
[8] CTA EB 1752 Docket, pp. 5-6.
[9] CTA EB 1752 Docket, pp. 7-8.
[10] CTA EB 1752 Docket, p. 8.
[11] CTA EB 1752 Docket, p. 8.

The presentation of the Authority to Release Imported Goods (ATRIGs) is not sufficient to prove that the Jet A-1 aviation fuel were actually used by PAL in its transport and non-transport operations.[12]

The Court in Division erred in relying on the CAAP Certifications that Jet A-1 aviation fuel is not locally available in reasonable quantity, quality or price.[13] The Department of Energy (DOE) is in the best position to determine whether the total supply is enough for total demand. CAAP has nothing to do with monitoring fuel supply and demand, and its functions are limited as provided by Republic Act No. 9497 and as published on the CAAP website.[14] As provided in Republic Act No. 7638, all policies, programs and updates on the utilization, supply and distribution of energy resources are under the mandate of the DOE.[15]

The Court in Division erred in ruling that in determining locally available supply, importations are excluded.[16] Local available supply is that which is locally available to the market, and such would include local production and importations.[17]

COC's arguments

The subject matter of this case does not fall within the jurisdiction of the Court.[18] There being no decision yet of the COC on PAL's claim for refund, the Court has no case to take cognizance of, and PAL's petition should have been dismissed for being premature and for lack of cause of action.[19] The alleged inaction of the Collector of Customs in resolving claims for refunds is not one of the cases falling within the jurisdiction of the Court, and the matter should have been brought to COC's attention who has the control and supervision over all customs officials.[20]

PAL is guilty of deliberate forum shopping as it filed identical claims for refund with the BIR instead of pursuing the administrative mechanism under the Tariff and Customs Code of the Philippines (TCCP) to assail the supposed inaction of the Collector of Customs.[21]

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[12] CTA EB 1752 Docket, p. 11.
[13] CTA EB 1752 Docket, p. 11.
[14] CTA EB 1752 Docket, p. 12.
[15] CTA EB 1752 Docket, p. 13.
[16] CTA EB 1752 Docket, p. 15.
[17] CTA EB 1752 Docket, p. 16.
[18] CTA EB 1756 Docket, p. 17.
[19] CTA EB 1756 Docket, p. 21.
[20] CTA EB 1756 Docket, p. 24.
[21] CTA EB 1756 Docket, p. 25.

PAL's claims for refund both filed with the BOC and BIR should be summarily dismissed pursuant to Section 2 of the Revised Circular No. 28-91.[22]

While the petition was for the refund of specific taxes, it, in essence, sought nullification of BIR Ruling No. 001-2003 and DOE Certification dated December 20, 2002, which were the basis of the assessment, and the Court has no jurisdiction to declare the assailed DOE certification and BIR Ruling as invalid.[23] PAL did not seek reconsideration of BIR Ruling 001-2003 within the thirty (30) day period provided under Revenue Memorandum Circular No. 44-2001, and it should not be allowed to belatedly question the subject BIR Ruling for its failure to exhaust all other administrative remedies available to it,[24] hence, said BIR Ruling remains to be valid and subsisting.[25]

The DOE Certification dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operations are locally available in reasonable quality, quantity and price remains to be applicable and existing as DOE is in the best position to determine whether there is indeed a locally available supply of Jet A-1 fuel, and the Court is not the proper forum to question the administrative findings of DOE.[26]

PAL failed to establish that there is no locally available Jet A-1 fuel in reasonable quantity, quality or price.[27] There is no sufficient proof which would show that PAL actually used the imported Jet A-1 fuel in its transport and non-transport operations. The statement in the Judicial Affidavit of Elvis Yao, PAL's Senior Vice President of the Fuel Management Department that PAL imported the Jet A-1 fuel for use in its transport operations, absent any corresponding proof/supporting document, is insufficient to establish PAL's compliance with the requirement.[28]

PAL was not able to prove that there is no locally available Jet A-1 fuel in reasonable quantity.[29] The Court in Division should have considered the supplies of Jet A-1 fuel which were already in the Philippines at the time of the subject importations, be it manufactured domestically or imported, so long as they are available for PAL to

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[22] CTA EB 1756 Docket, p. 25.
[23] CTA EB 1756 Docket, p. 26.
[24] CTA EB 1756 Docket, p. 32.
[25] CTA EB 1756 Docket, p. 27.
[26] CTA EB 1756 Docket, pp. 33-34.
[27] CTA EB 1756 Docket, p. 34.
[28] CTA EB 1756 Docket, p. 35.
[29] CTA EB 1756 Docket, p. 36.

purchase.[30] If the imported aviation fuel were added to those that were locally produced, there would be more than sufficient supply of aviation fuel locally in the year 2008 when the subject importations were made, as shown from PAL's own evidence.[31]

The Certification issued by the Air Transportation Office (ATO), *now the Civil Aviation Authority of the Philippines (CAAP)* that imported aviation fuel was not available in reasonable quantity, quality and price, which was relied upon by the Court in Division, lacks credence since CAAP is not the appropriate government agency to attest whether there is locally available aviation fuel in reasonable quantity, quality or price.[32]

PAL failed to prove that there is no locally available Jet A-1 fuel in reasonable price or quality.[33] The testimony of the court-appointed Independent Certified Public Accountant (ICPA) failed to convince that the importation cost of Jet A-1 fuel from August to October 2008 is reasonably lower than the cost of Jet A-1 fuel if purchased locally. The ICPA's findings are based only on the price of Jet A-1 fuel as provided by the two companies, Shell and Petron. The ICPA should have inquired [from] other local oil companies and verify as to their capacity to supply the required demand of PAL and whether it was indeed for a "reasonable price".[34] It was wrong for the Court in Division to reduce the law's requirement of determining the availability of Jet A-1 fuel locally and in reasonable prices to mere comparison of prices with imported costs, prepared by no less than the ICPA.[35]

PAL did not adduce an iota of evidence as to whether there is locally available Jet A-1 fuel in reasonable quality at the time of the subject importations.[36]

PAL's arguments

In its Comment to CIR's Petition, PAL contends that the Court has jurisdiction over the claim for refund and incidentally the determination of the validity of BIR Ruling No. 001-2003;[37] it has sufficiently proven payment of the specific taxes claimed for refund

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[30] CTA EB 1756 Docket, p. 37.
[31] CTA EB 1756 Docket, p. 39.
[32] CTA EB 1756 Docket, p. 39.
[33] CTA EB 1756 Docket, p. 40.
[34] CTA EB 1756 Docket, p. 40.
[35] CTA EB 1756 Docket, p. 41.
[36] CTA EB 1756 Docket, p. 41.
[37] CTA EB 1752 Docket, p. 82.

and/or tax credit;[38] it was able to prove that the imported Jet A-1 fuel was actually used for its transport and non-transport operation;[39] the CAAP had authority to issue the Certifications, which were properly given weight by the Court;[40] and, the Court correctly determined that locally available supplies exclude importations.[41]

In its Comment to COC's Petition for Review, PAL states that it is merely a rehash of the arguments presented in its Memorandum dated 13 July 2016 and Motion for Reconsideration dated 03 August 2017 filed before the Court in Division; these arguments have been weighed, considered, and already been thoroughly rejected by the Court in Division.[42]

The Court has jurisdiction over the subject matter of the case notwithstanding the inaction of the COC on its protest.[43]

The Court has jurisdiction over the instant claim for refund and incidentally [in] the determination of the validity of BIR Ruling No. 001-2003 and DOE Certification dated 20 December 2002.[44] The primary issue sought to be resolved is its entitlement to a refund of the specific taxes it paid on its various importations of Jet A-1 fuel, and it is incumbent upon it to prove the propriety of the refund by contesting the very same issuance and/or ruling on which the assessments were based.[45]

The Court may rule on a claim for refund without ruling on the failure of the taxpayer to appeal BIR Ruling No. 001-2003.[46] Should the petition necessarily pass upon the validity of BIR Ruling and the DOE Certification, it is anyway a matter within the jurisdiction of the Court.[47]

It was constrained to file the Petition due to the impending expiration of the two-year prescriptive period within which to file a judicial claim for refund in accordance with Section 229 of the NIRC.[48]

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[38] CTA EB 1752 Docket, p. 86.
[39] CTA EB 1752 Docket, p. 89.
[40] CTA EB 1752 Docket, p. 91.
[41] CTA EB 1752 Docket, p. 93.
[42] CTA EB 1752 Docket, p. 117.
[43] CTA EB 1752 Docket, p. 118.
[44] CTA EB 1752 Docket, p. 121.
[45] CTA EB 1752 Docket, p. 122.
[46] CTA EB 1752 Docket, p. 122.
[47] CTA EB 1752 Docket, p. 123.
[48] CTA EB 1752 Docket, p. 124.

It sufficiently proved that it used the imported Jet A-1 fuel in its transport and non-transport operations with the ATRIGs and the testimony of Mr. Yao.[49] The BIR-issued ATRIGs clearly states that the imported Jet A-1 fuel will be used for its domestic operations, and as a document issued by the BIR in the performance of its official functions, the ATRIG enjoys the presumption of regularity.[50]

It sufficiently proved that there is no locally available Jet A-1 fuel in reasonable quantity.[51]

The Court properly gave credence to the ATO Certifications.[52] The ATO has the authority to issue certifications concerning the local availability of fuel when it comes to civil aviation matters. The ATO Certifications clearly state that at the period of the subject importations, there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality and price.[53] The powers of ATO (now CAAP) to issue Certifications is in line with their general power under Sec. 32 of RA 776 and Sec. 35 of RA 9497.[54]

The Court correctly relied on the findings of the ICPA that the cost of importing Jet A-1 fuel is reasonably lower than the cost of purchasing the same fuel locally. It sufficiently proved that there is no locally available Jet A-1 fuel in reasonable price.[55]

ISSUES

Is the Court in Division correct in granting PAL a refund or issuance of a tax credit certificate in the amount of P302,012,195.86, representing excise taxes paid on its importation of Jet A-1 Fuel for use in its domestic operations for the period August 2008 to October 2008?

Ancillary to the aforesaid main issue are the following:

(1) Is there forum shopping when PAL filed written protests for refund with the Bureau of Customs and subsequently filed a claim for refund with CIR?

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[49] CTA EB 1752 Docket, p. 126.
[50] CTA EB 1752 Docket, p. 126.
[51] CTA EB 1752 Docket, p. 127.
[52] CTA EB 1752 Docket, p. 129.
[53] CTA EB 1752 Docket, p. 129.
[54] CTA EB 1752 Docket, p. 130.
[55] CTA EB 1752 Docket, p. 131.

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(2) Is the Court in Division vested with jurisdiction over the case, *i.e.* to rule on the validity of BIR Ruling No. 001-2003, and to decide or to determine the propriety of the refund claim?

(3) Was there compliance with the requisites under Section 13 of PD No. 1590 for PAL to be exempted from excise tax on its importations of Jet A-1 fuel used for its domestic operations, viz.: (i) PAL paid its corporate income tax and VAT liabilities for the subject period of importation; (ii) the imported Jet A-1 fuel was actually used for its transport operations; and, (iii) the imported Jet A-1 fuel was not locally available in reasonable quantity, quality or price at the time of the importations.

RULING OF THE COURT *EN BANC*

PAL is not guilty of forum shopping

The filing of PAL's administrative claim for refund with the CIR after the COC *(considered as the CIR's collection agent pursuant to Sec. 12 of the NIRC)* failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes,[56] and claim for refund of taxes with the CIR is subject to the two-year prescriptive period under Sections 204(C) and 229 of the NIRC.[57]

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[56] Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
[57] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – 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.
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Court has jurisdiction to review inaction on a claim for tax refund and to rule on the validity of BIR Ruling

Review of the case records disclose that PAL filed its Petition for Review with the Court in Division in view of the inaction of the BIR on its claim for refund and in order to avoid the lapse of the two-year prescriptive period provided under Section 204 (C) of the NIRC.[58] COC, therefore, has miserably failed to grasp the real cause of action of the present appealed case.

PAL is correct in invoking the jurisdiction of the Court in Division. The said Court is vested with authority to review on appeal inaction of the CIR on claims for refund as stated in Sec. 7 of Republic Act (RA) No. 1125, as amended by RA 9282,[59] and Sec. 3, Rule 4 of the Revised Rules of the Court of Tax Appeals.[60]

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, 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 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.
[58] CTA Case No. 8143 Docket, pp. 2-3.
[59] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
[60] Rule 4 – Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:

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In the same vein, as aptly stated in the assailed Decision, the Court is also clothed with power to review rulings of the CIR:[61]

> "Further, in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*, the Supreme Court enunciated that the CTA has jurisdiction to rule on the validity of a particular administrative rule or regulation as long as it is within its appellate jurisdiction. The pertinent portion of the decision reads:
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>> 'Evidently, *City of Manila* can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes British American Tobacco to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.' *(Emphasis supplied)*
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> Moreover, in the *case of Banco De Oro, et al. vs. Republic of the Philippines, et al.*, the Highest Tribunal held that:
>
>> '**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals**. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>>
>> **Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court**, thus:
>>
>>> SEC. 7. *Jurisdiction.* — The CTA shall exercise:

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(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx

[61] Pages 27-29 of the Assailed Decision.

> 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 or other laws administered by the Bureau of Internal Revenue*;
>
> xxx
>
> 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.
>
> xxx
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. — No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera*, this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau of Internal Revenue, thus:

> 'While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that* ***the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not the RTC.***
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops . . .*' (Emphases supplied)

> Considering that what is being assailed is a ruling of respondent CIR embodied in BIR Ruling No. 001-2003, this Court is vested with jurisdiction to rule on the validity thereof. Nonetheless, even without the issue of validity of the said BIR Ruling, this Court clearly has jurisdiction to decide on or to determine the propriety of the present refund claim."

PAL's entitlement for refund

The Court *En Banc* sees no cogent reason to depart from the Court in Division's ruling that PAL was able to comply with all the requisites under Section 13 of PD No. 1590 for it to be exempted from excise tax on its importations of Jet A-1 fuel used for its domestic operations as the conclusion reached by the Court in Division is supported by evidence.

The Court *En Banc* shall, nonetheless, elaborate on the requirement that the imported Jet A-1 fuel is used for transport and non-transport operations, which according to COC was not established by PAL.

A scrupulous review of the records belies the COC's stand. PAL has proven, by the required quantum of evidence, that the imported Jet A-1 fuel was used for its domestic operations. The ATRIGs[62] together with the following pieces of evidence offered by PAL **(without any objection from the CIR and COC on the purposes for which they were being offered)** and subsequently admitted[63] by the Court in Division, support the finding that the imported Jet A-1 fuel was used by PAL in its domestic operations, to wit:

Exhibit	Description	Purpose
I[6]	Final Report of the ICPA Myra O. Dabalos entitled "Final Report on the Results of the Procedures Performed on the Verification of Documents and Schedules Supporting the Claim for Refund/Tax Credit Certificate for Specific Taxes Paid for the Period August to October 2008 in relation to Importation of Jet A-1 Fuel from August to November 2008"	To prove, among others, that: a. Ms. Dabalos conducted an independent study covering petitioner's importation of Jet A-1 fuel for the period August to October 2008 with excise taxes paid for the period August to November 2008, among others; **b. Ms. Dabalos verified the propriety of the amount of specific taxes being claimed by Philippine Airlines, Inc. ("PAL") <u>for</u>**

[62] Exhibits "M-5", "N-5", "O-5" and "P-5".

[63] Resolution dated December 17, 2014, CTA Case No. 8143 Docket Vol. III, pp 1256-1258.

I^6-1	Signature of Ms. Dabalos	**<u>refund on its importations of Jet A-1 fuel used in its domestic operations</u> as against the official receipts issued by Authorized Agent Banks and of the Bureau of Customs;** c. The result of the independent study further showed that for the period August to October 2008, there is no locally available Jet A-1 fuel at reasonable price; d. Petitioner imported several liters of Jet A-1 fuel on different dates; e. Petitioner paid under protest excise taxes concerning different importations of Jet A-1 fuel on different dates; f. Petitioner's claim for refund is proper pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97; and g. Other matters in support of Petitioner's case.[64]
J^6	Summary of Excise Tax Payments	
K^6	Comparison of Quantities Based on Supporting Surveyor's Certificates of Quantity, Bill of Lading, Authority to Release Imported Goods or Import Entry Declaration Against Quantity Used in the Computation of Specific Tax Paid	

The Final Report of ICPA Myra O. Dabalos categorically states that:

"Procedures and Findings:

To establish the propriety of the Petitioner's Claim for refund/TCC pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, we performed the following procedures:

A. Verification of the Propriety of the Amount of Specific Taxes Representing Payments Made by the Petitioner on its Importation of Aviation Turbo Jet Fuel or Jet A-1 <u>Used in its Domestic Airline Operations Being Claimed for Refund/Tax Credit</u> and Supporting Documents

xxx xxx xxx

[64] CTA Case No. 8143 Docket Vol II, pp. 747-750.

> **B. Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 Used in its Domestic Airline Operations Being Claimed for Refund/Tax Credit and the Cost of Domestic Purchases of Aviation Turbo Jet Fuel Using the Price Quotations issued by Local Oil Companies (i.e., Petron Corporation and Pilipinas Shell Petroleum Corporation).**[65] (Underlining supplied)

A claim for tax refund necessitates only the preponderance of evidence threshold.[66] Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[67]

It must be emphasized that once the requirements laid down by law have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party.[68] It is then the turn of the CIR and the COC to disprove PAL's claim by presenting contrary evidence.

The pieces of evidence, i.e., ATRIGs, testimony and final report of the Independent Certified Public Accountant (ICPA), presented by PAL sufficiently show that it actually used the imported Jet A-1 fuel in its domestic operations. The burden of evidence to dispute such fact has thereby been shifted to the CIR and the COC albeit, sorely, such burden - - they failed to discharge.

Further, perusal of the records show that in PAL's Petition for Review filed with the Court in Division, it alleged in paragraph 17 that "Section 13 of PD 1590, as amended by LOI 1483, provides for the tax exemption of PAL on its importation of aviation fuel for use in its domestic operations". PAL, thus, prayed that the Court declare that under its franchise, it is exempt from specific tax on its importations on various dates of Jet A-1 fuel for use in its domestic operations, and therefore entitled to refund of or issuance of a tax credit certificate in the total amount of P302,012,195.86.

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[65] CTA Case No. 8143 Docket Vol. 2, pp. 1027-1028.
[66] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008.
[67] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206525, January 28, 2015.
[68] *Id.*

The parties and the Court in Division were confined to the issues joined from the averments of the Petition for Review and the Answer. In their Answers filed with the Court in Division, the CIR and the COC denied paragraph 17 for the reasons stated in the respective Special and Affirmative Defenses. **Nowhere in their Answers, specifically in their Specific and Affirmative Defenses, did the CIR or the COC raised as a defense that PAL is not entitled to refund because it did not actually use the imported Jet A-1 fuel in its operations.** Considering that neither the CIR nor the COC raised the issue on actual use of the imported Jet A-1 fuel in their Answers, specifically in their Special and Affirmative Defenses, there was no joinder of issue on this matter. Thus, such issue may not ever be considered as disputed.

Finally, in his Comment to PAL's Formal Offer of Evidence, the COC objected to the admission of the afore-listed Exhibit "I[6]" "for being misleading as there is locally available jet fuel in reasonable quantity, quality and price pursuant to the DOE Certification"[69] – **and not because the imported Jet A-1 fuel has not been used in its domestic flight operations.** Neither the Memorandum of the COC nor the CIR filed before the Court in Division alleged that PAL's refund claim should be denied for failing to present proof that the imported Jet A-1 fuel were not actually used by PAL in its domestic operations.

The issue on actual use was raised for the first time by the COC only in its Motion for Reconsideration of the assailed July 17, 2017 Decision of the Court in Division.

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.[70]

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[69] Comment (on Petitioner's Formal Offer of Evidence dated July 18, 2014), CTA Case No. 8143 Docket, Vol. III, p. 1179.

[70] S.C. Megaworld Construction and Development Corporation vs. Engr. Luis U. Parada, G.R. No. 183804, September 11, 2013.

It is noteworthy that the Court *En Banc*, in *Commissioner of Customs vs. Philippines Airlines, Inc.*, CTA EB No. 1731, February 7, 2019,[71] affirmed the sufficiency of ATRIGs presented by PAL together with the testimonies of its witnesses in granting the refund *sans* specific evidence on the actual use of imported fuel in its domestic operations, the matter not having been raised as an issue in the pleadings, similar to the present controversy.

All told, this Court *En Banc* sees no reason to modify much more to reverse the assailed Decision of the Court in Division in granting PAL a refund or issuance of a tax credit certificate in the amount of P302,012,195.86, representing excise taxes paid on its importation of Jet A-1 Fuel for use in its domestic operations for the period August 2008 to October 2008.

WHEREFORE, premises considered, the Petitions for Review filed by the Commissioner of Internal Revenue and the Commissioner of Customs on December 12, 2017 and December 28, 2017, respectively, are **DENIED** for lack of merit. Accordingly, the July 17, 2017 Decision and November 20, 2017 Resolution of the Court in Division in CTA Case No. 8143 are **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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[71] Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castaneda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring, and Associate Justice Esperanza R. Fabon-Victorino, dissenting.

Ma. Belen Lib

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(on leave)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice