REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

AIR PHILIPPINES CORPORATION (APC), Petitioner,	CTA Case Nos. 7872, 7883, 7922, 7929 & 7952
- versus -	Members: FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: APR 29 2019 12:50 p.m.

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RESOLUTION

Fabon-Victorino, J.:

This resolves the following:

1. Respondent Commissioner of Internal Revenue's *Motion for Reconsideration (Re: Amended Decision promulgated on 08 November 2018)*[1] filed on December 3, 2018, with petitioner's *Comment/Opposition* thereto filed on January 17, 2019; and

2. Respondent Commissioner of Customs' *Motion for Reconsideration (of the Amended Decision dated November 8, 2018)*[2] filed on December 3, 2018, with petitioner's *Comment/Opposition* thereto filed on February 4, 2019.

[1] Docket, pp. 2800-2814.
[2] Docket, pp. 2816-2835.

Both respondents seek reconsideration of the Amended Decision[3] promulgated on November 8, 2018, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration of the Decision** is **GRANTED**. Accordingly, the Decision dated April 1, 2016 is amended to read as follows:
>
> > **WHEREFORE**, in view of the foregoing, the Petitions for Review are **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **₱73,769,349.40** representing specific taxes paid under protest corresponding to its importation of Jet A-1 aviation fuel for its domestic flight operations covering the period of January to July 2007.
>
> **SO ORDERED.**

CIR's Motion for Reconsideration

In asking for a reconsideration, CIR claims that:

1. THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO PROVE THAT ITS IMPORTATIONS OF JET A-1 AVIATION FUEL ARE USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS;

2. THE HOHORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO PROVE THAT THE IMPORTED ARTICLES WERE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY

[3] Docket, pp. 2781-2799.

OR PRICE BASED SOLELY ON THE AIR TRANSPORTATION OFFICE (ATO) CERTIFICATIONS ISSUED TO PETITIONER; and

3. THE HOHORABLE COURT ERRED IN CONSIDERING THE ADDITIONAL EVIDENCE PRESENTED BY PETITIONER DESPITE THE DECISION THAT HAS ALREADY BEEN PROMULGATED.

In its *Comment/Opposition* to the CIR's bid for reconsideration, petitioner submits that CIR's contentions are mere rehash of matters already passed upon and resolved by the Court in the Amended Decision dated November 8, 2018. Further, the contentions are bereft of merit as: (1) it was able to present uncontroverted evidence that its imported Jet A-1 fuel were used for its transport operations; (2) the ATO Certifications were properly given weight by the Honorable Court; and (3) its presentation of additional evidence was correctly allowed by the Honorable Court in the interest of justice.

COC's Motion for Reconsideration

COC, on the other hand, anchors his *motion* on the following grounds:

I. WITH ALL DUE RESPECT, THIS HONORABLE COURT HAS NO JURISDICTION TO DECLARE VOID THE INTERPRETATION MADE BY THE RESPONDENT BIR AS TO THE TAX PROVISION IN PD 1590;

II. WITH ALL DUE RESPECT, THIS HONORABLE COURT ERRED IN DISREGARDING ITS PREVIOUS RULING IN ITS DECISION DATED APRIL 1, 2016 THAT PETITIONER FAILED TO EXHAUST THE ADMINISTRATIVE REMEDIES; and

III. WITH ALL DUE RESPECT, THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER WAS ABLE TO PROVE ALL THE CONDITIONS FOR ITS AVAILMENT OF THE EXEMPTION UNDER ITS FRANCHISE.

In its *Comment/Opposition* thereto, petitioner similarly states that COC's contentions are mere rehash of matters already passed upon and resolved by the Court in the assailed Amended Decision of November 8, 2018. Nevertheless, petitioner contends that the Court has jurisdiction over the instant claims for refund; that its resort to judicial remedy was justified since there was an urgency of judicial intervention; and that it was able to prove all conditions for its entitlement to the tax exemption.

Both *motions* must fail.

Indeed, both the CIR and COC merely mimic all their arguments all of which have already been thoroughly discussed and passed upon by the Court in the assailed Decision of November 8, 2018.

Nevertheless, and if only to put their minds to rest, let it be stressed that Court did not declare void BIR Ruling No. 001-2003. In fact, while the Court has jurisdiction to rule on the validity of the said BIR Ruling as declared by the Supreme Court in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*,[4] the Court opted not to dwell on it since the factual milieu of the instant case does not warrant a ruling on the validity of BIR Ruling No. 001-2003. As explained by the Court in page 5 of the assailed Amended Decision, to wit:

> "It bears stressing that the factual milieu of the case does not warrant a ruling on the validity of BIR Ruling No. 001-2003 as it will not affect the determination of petitioner's entitlement to the refund sought given that the said BIR Ruling does not cover the specific tax on importations paid from January to July 2007, which are the subject of the instant Petition for Review."

With the foregoing, it follows that respondent COC's assertion that the Court "*erred in disregarding its previous*

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[4] G.R. No. 210987, November 24, 2014.

ruling in its Decision dated April 1, 2016 that petitioner failed to exhaust the administrative remedies" is without basis.

WHEREFORE, the *Motions for Reconsideration* filed by respondents Commissioner of Internal Revenue and Commissioner of Customs are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice