REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC. (PAL), **CTA CASE NO. 7152**
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL), **CTA CASE NO. 7155**
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL), **CTA CASE NO. 7235**
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL), **CTA CASE NO. 7247**
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7305

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7454

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7518

-versus-

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

APR 0 3 2018
3:40 p.m.

x--x

AMENDED DECISION

BAUTISTA, J.:

The Case

Submitted anew for Decision, by virtue of petitioner's Motion for Reconsideration of the Decision dated 22 October 2014 and Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014), is a consolidation of seven (7) Petitions for Review filed pursuant to and in accordance with *Sections 108(B)(3)* and *112(A)*, in relation to *112(C)* of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and *Section 7(a)(1)*[1] *of Republic Act ("RA") No. 1125*[2], as amended by *RA No. 9282*[3] and *RA No. 9503*[4], in relation to *Section 3(a)(1)*[5], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[6], which prays for the refund of the aggregate amount of Nine Hundred Fifty Three Million Eight Hundred Twenty Thousand Five Hundred Fifty Three and 84/100 Pesos (Php953,820,553.84) representing specific taxes paid for petitioner's importation of aviation turbo jet fuel or Jet A-1 for its domestic operations from the period of February 2003 to December 2004.

On October 22, 2014, the Court promulgated the assailed Decision[7], the dispositive portion[8] thereof reads as follows:

> **WHEREFORE,** the Petition for Review filed by petitioner Philippine Airlines, Inc., is hereby **DENIED.**
>
> **SO ORDERED.**[9]

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

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

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

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

[5] Rule 4. *Jurisdiction of the Court, Sec. 3. Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise: (a) Exclusive original over or appellate jurisdiction to review by appeal the following: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[6] *A.M. No. 05-11-07-CTA*, November 22, 2005.

[7] *Records, CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454 and 7518, Vol. 4, Decision*, pp. 1973-2005.

[8] *Id., Dispositive Portion*, p. 2004.

[9] Emphases retained.

In the assailed Decision, the Court referred to *Section 13 of Presidential Decree ("PD") No. 1590*, which allows an exemption from all taxes due on all importation subject to the following conditions: *(1)* articles or supplies or materials are imported for the use in its transport and non-transport operations and other activities incidental thereto; and *(2)* not locally available in reasonable quantity, quality, or price. While the Court found that petitioner fulfilled the first condition, it held that there was failure to prove the existence of the second. In denying petitioner's claim for refund, the Court first declared that "locally available" should be taken in the plain, ordinary, and common usage – that is, the supply which is available to petitioner in the Philippines, be it imported or domestic; and that petitioner's theory that this should exclude importations is incorrect. Lastly, the Court ruled that in view of petitioner's definition of "locally available," it only chose to substantiate domestically manufactured supply in terms if quantity and price to prove that there was no locally available supply, and did not consider the articles or goods already imported in the Philippines, which it could have purchased.

On November 10, 2014, petitioner filed its Motion for Reconsideration of the Decision Dated 22 October 2014[10]. It moved for the reconsideration of the assailed Decision on the following grounds: *(1)* petitioner sufficiently proved that there was no locally available supply in reasonable quantity, quality, and price; *(2)* the plain and simple meaning of "locally available supply" refers only to domestically produced products, and excludes importation since an item that is imported is logically not locally available; and *(3)* assuming *arguendo* that the term "locally available supply" includes importations, the importations of airline companies should be excluded as these are not available for public consumption.

Thereafter, on November 11, 2014, petitioner submitted its Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014)[11]. It further claims that the Court failed to rule on the issue on "reasonable price;" and on the validity of *BIR Ruling No. 001-2003 ("2003 BIR Ruling")*.

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[10] *Records, Vol. 4, Motion for Reconsideration of the Decision Dated 22 October 2014*, pp. 2006-2032.
[11] *Id., Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014)*, pp. 2025-2032.

In both pleadings, petitioner prayed for the assailed Decision to be reconsidered or set aside; or, in the alternative, for the reopening of trial for presentation of additional evidence.

On February 24, 2015, in the interest of substantial justice, the Court granted petitioner's Motion for Reconsideration of the Decision dated 22 October 2014 and Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014) as to its prayer to re-open trial is concerned. However, the resolution of petitioner's Motion for Reconsideration of the Decision dated 22 October 2014 and Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014) were held in abeyance. The Court then set a hearing date for the presentation of petitioner's additional evidence.

Petitioner presented the following as witnesses: *(1)* Mr. Elvis A. Yao ("Mr. Yao"), petitioner's Vice-President – Fuel Management Department; *(2)* Mr. Roberto R. Razal ("Mr. Razal"), petitioner's Supervising Fuel Technical Specialist – Fuel Management Department; *(3)* Mr. Joel C. Romano, the Court-appointed Independent Certified Public Accountant ("ICPA Romano")[12]; and *(4)* Mr. Rolando R. Avecilla ("Mr. Avecilla"), petitioner's Assistant Vice-President for Fuel Supply and Operations – Fuel Management Department.

On March 31, 2015, petitioner submitted the Judicial Affidavit of Mr. Elvis A. Yao Dated 30 March 2015[13], wherein Mr. Yao testified that all Jet A-1 imported by petitioner is used solely for its own flight operations; and that local fuel refineries (*i.e.*, Shell, Chevron Philippines, Inc., Phoenix Petroleum Philippines, Inc.) are unable to adequately supply the amount of Jet A-1 petitioner needed, hence, it resorts to importing said fuel to meet its demands. Petitioner then filed a Supplemental Judicial Affidavit of Mr. Elvis A. Yao Dated 20 May 2015[14] on May 21, 2015, wherein Mr. Yao included Petron in the list of local fuel refineries.

On July 16, 2015, the Judicial Affidavit of Mr. Roberto R. Razal Dated 15 July 2015[15] was submitted with the Court. Mr. Razal testified

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[12] *Records, Vol. 5, Oath of Commission (For a CPA Firm)*, p. 2351.
[13] *Id., Exhibit "Q," Judicial Affidavit of Mr. Elvis A. Yao Dated 30 March 2015*, pp. 2147-2163, with annexes.
[14] *Id., Exhibit "R^6," Supplemental Judicial Affidavit of Mr. Elvis A. Yao Dated 20 May 2015*, pp. 2171-2176, with annex.
[15] *Id., Exhibit "W^6," Judicial Affidavit of Mr. Roberto R. Razal Dated 15 July 2015*, pp. 2224-2266, with annexes.

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that petitioner consumed all the fuel it imported for domestic flight operations.

ICPA Romano submitted his ICPA Report[16] on May 2, 2016. Thereafter, the Judicial Affidavit of Mr. Joel C. Romano Dated 16 June 2016[17] was filed on June 20, 2016. ICPA Romano testified that he conducted an independent special audit and examination of petitioner's consumption of Jet A-1 importations subject of the case; and that based on his audit, all of the Jet A-1 imported by petitioner were consumed solely by it for domestic operations.

On June 20, 2016, the Judicial Affidavit of Mr. Rolando R. Avecilla Dated 17 June 2016[18] was filed with the Court. Mr. Avecilla testified that the fuel issue slips and BIR Withdrawal Certificates for March 2005 cannot be found despite diligent efforts to locate the same; and that, however, the BIR's Official Registry Book contains a list of withdrawal certificates for March 2005.

Thereafter, Petitioner's Supplemental Formal Offer of Evidence[19] was submitted on August 26, 2016, offering as part of its documentary and testimonial evidence ***Exhibits* "L^{6}," "M^{6}," "N^{6}," "O^{6}," "P^{6}," "Q^{6}," "Q^{6}-1," "R^{6}," "R^{6}-1," "S^{6}," "T^{6}," "U^{6}," "V^{6}" to "V^{6}-28," "W^{6}," "W^{6}-1," "Z^{6}," "Z^{6}-1," "A^{7}," "B^{7}," "B^{7}-1" "C^{7}," "C^{7}-1" to "C^{7}-25," "D^{7}," "D^{7}-1," "D^{7}-2," "E^{7}," "E^{7}-1" to "E^{7}-25," "F^{7}," "F^{7}-1," "G^{7}," and "G^{7}-1."** In a Resolution[20] dated November 10, 2016, the Court admitted all the foregoing exhibits, save for ***Exhibits* "N^{6}," "D^{7}-1," and "D^{7}-2,"** which were denied for failure to submit the originals for comparison.

Petitioner filed its Motion for Partial Reconsideration of Court's Resolution Dated 10 November 2016[21] on December 9, 2016. In response, the Court issued a Resolution[22] on March 22, 2017 setting a commissioner's hearing for the presentation and comparison of the originals of the exhibits with the documents actually marked.

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[16] *Records, Vol. 5, Exhibit "B^{7}," ICPA Report,* pp. 2374-2384.

[17] *Id., Exhibit "F^{7}," Judicial Affidavit of Mr. Joel C. Romano Dated 16 June 2016,* pp. 2410-2422.

[18] *Id., Exhibit "G," Judicial Affidavit of Mr. Rolando R. Avecilla Dated 17 June 2016,* pp. 2393-2404, with annexes.

[19] *Id., Petitioner's Supplemental Formal Offer of Evidence,* pp. 2454-2471.

[20] *Id., Resolution,* pp. 2482-2483.

[21] *Id., Vol. 6, Motion for Partial Reconsideration of Court's Resolution Dated 10 November 2016,* pp. 2484-2490.

[22] *Records, Vol. 6, Resolution,* pp. 2542-2545.

On June 1, 2017, petitioner filed its 2nd Supplemental Formal Offer of Evidence[23], offering ***Exhibits* "D7-1" and "D7-2."** The Court then granted[24] petitioner's Motion for Partial Reconsideration of Court's Resolution Dated 10 November 2016 and admitted the two exhibits.

In view of respondent [Commissioner of Customs ("COC")]'s Memorandum[25] filed on December 13, 2016, Memorandum for Petitioner[26] submitted on January 22, 2018, and the respondent [Commissioner of Internal Revenue ("CIR")]'s failure[27] to file his memorandum; petitioner's Motion for Reconsideration of the Decision dated 22 October 2014 and Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014) were submitted for resolution on March 7, 2018[28]; hence this Amended Decision.

The Ruling of the Court

Petitioner's administrative and judicial claims were timely filed.

The Court finds it proper to first determine whether petitioner's claim for refund was timely filed.

The pertinent provisions of the *1997 NIRC* are *Sections 204 and 229, viz.*:

> SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* —The Commissioner may—
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem

[23] *Records, Vol. 6, 2nd Supplemental Formal Offer of Evidence,* pp. 2549-2555, with annexes.
[24] *Id., Resolution,* pp. 2557-2559.
[25] *Id., Memorandum,* pp. 2491-2512.
[26] *Id., Memorandum for Petitioner,* pp. 2568-2601.
[27] *Id., Records Verification Report,* p. 2567.
[28] *Id. Vol. 5, Resolution,* p. 2602.

> or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without 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.[29]

Based on the foregoing, petitioner had two (2) years from the date of payment of the tax to file both its administrative and judicial claims for refund. This was affirmed in the Supreme Court case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[30].

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

CTA CASE NO.	AMOUNT OF SPECIFIC TAXES	DATE OF PAYMENT	LAST DAY TO FILE CLAIM	DATE PETITION WAS FILED
7152	Php 24,624,356.78	21-Feb-03	21-Feb-05	18-Feb-05
7155	56,169,229.00	28-Feb-03	28-Feb-05	24-Feb-05

[29] Underscoring ours.
[30] G.R. No. 191498, January 15, 2014, 713 SCRA 645.

	11,670,600.00	23-Apr-03	23-Apr-05	22-Apr-05
7235	34,989,780.00	23-May-03	23-May-05	22-Apr-05
	23,326,520.00	30-May-03	30-May-05	22-Apr-05
	17,421,685.00	13-May-03	13-May-05	11-May-05
	24,382,107.42	20-May-03	20-May-05	11-May-05
7247	434,502.31	23-May-03	23-May-05	11-May-05
	15,920,302.00	20-Jun-03	20-Jun-05	11-May-05
	209,051.00	30-Jun-03	30-Jun-05	11-May-05
	23,651,333.33	11-Jul-03	11-Jul-05	11-May-05
	17,519,175.00	05-Aug-03	05-Aug-05	03-Aug-05
	88,890,058.00	15-Aug-03	15-Aug-05	03-Aug-05
7305	24,619,461.00	21-Aug-03	21-Aug-05	03-Aug-05
	118,216,066.00	30-Dec-03	30-Dec-05	03-Aug-05
	59,272,886.00	13-Apr-04	17-Apr-06[31]	17-Apr-06
	51,002,299.00	13-May-04	13-May-06	17-Apr-06
7454	59,309,039.00	29-Jun-04	29-Jun-06	17-Apr-06
	42,505,184.00	24-Aug-04	24-Aug-06	17-Apr-06
	24,426,368.00	10-Aug-04	10-Aug-06	17-Apr-06
	29,600,360.00	09-Sep-04	09-Sep-06	07-Sep-06
	39,072,222.00	27-Sep-04	27-Sep-06	07-Sep-06
7518	54,080,331.00	01-Oct-04	01-Oct-06	07-Sep-06
	56,166,231.00	20-Oct-04	20-Oct-06	07-Sep-06
	56,341,407.00	08-Dec-04	08-Dec-06	07-Sep-06

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

Importations are excluded in the definition of "locally available supply."

The Court finds that importations are excluded in determining locally available fuel.[32] In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[33] the Supreme Court categorically held that domestic petroleum products excludes imported products, to wit:

> Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on all taxes on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.

[31] The last day fell on April 13, 2006, which is Maundy Thursday; April 14, 2006 is Good Friday; April 15, 2006 is Saturday; April 16, 2006 is Sunday.
[32] *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs,* CTA Case Nos. 8039, 8069, 8104, and 8113, July 1, 2016; *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs,* CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839, and 7851, June 10, 2016.
[33] G.R. No. 198759, July 1, 2013, 700 SCRA 322.

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Viewed within the context of excise taxes, it may be observed that the first kind of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the second kind of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the third kind of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" - which characterizes the tax privilege LOI 1483 withdrew - refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods, may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:

First, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of

> meaning, the term "domestic petroleum products" could not refer to goods which are imported.
>
> Second, examining its context, certain "whereas clauses" in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of domestic petroleum products for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.
>
> In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon.[34]

The Court need not rule on the validity of the 2003 BIR Ruling.

As to the issue of whether the *2003 BIR Ruling* is valid, the same will not affect the Court's determination of petitioner's entitlement to refund since the said Ruling does not cover the excise tax on importations paid from February 2003 to December 2004, which is the

[34] Underscoring ours.

subject of the Petition for Review. Reproduced hereunder are the contents of the *2003 BIR Ruling*:

> Gentlemen:
>
> This refers to the rulings of this Office that have been separately issued to you, namely:
>
> 1. BIR Ruling No. 013-99 issued to PAL on January 29, 1999;
>
> xxx xxx xxx
>
> that we have now revisited on the basis of the instruction of the Secretary of Finance to review the exemption from taxes granted to airline companies on their importation of aviation gas, fuel, and oil for use in their domestic operations.
>
> Importations of petroleum products for domestic operations are tax-exempt in the presence of two conditions: (1) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude form shall be for the exclusive use in the franchisee's transport and nontransport operations and other activities incidental thereto, and; (2) in the case of importations, that they are not locally available in reasonable quantity, quality, or price. xxx Thus, importations of such products may not be tax-exempt unless the two conditions are present.
>
> 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 tax treatment as before for as long as there is such available domestic supply of petroleum products.
>
> This Ruling, therefore, supersedes the above-stated rulings and all such other rulings that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.

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This Ruling takes effect immediately.[35]

As evident from the foregoing, the basis of the pronouncement in the *2003 BIR Ruling* is the Department of Energy ("DOE") Certification issued on December 20, 2002 covering historical data. The importations subject of this case were made in 2003 and 2004, hence, not the subject of the DOE Certification. However, the Court finds that it may still rule on petitioner's claim for refund without getting into the validity of the *2003 BIR Ruling*.

Petitioner is entitled to the claim for refund, albeit at a lower amount.

Based on *Section 229 of the 1997 NIRC*, a taxpayer may recover any national internal revenue tax that has been erroneously collected or illegally collected, any penalty claimed to have been collected without authority, or any sum that has been excessively or in any manner wrongfully collected. In cases of refund of erroneously paid or illegally collected taxes, the burden of proof to establish the factual basis of the claim for tax credit or refund lies with the claimant.

To resolve the issue of whether or not the taxes have been erroneously paid by petitioner, it must first be ascertained whether there is exemption under *PD No. 1590* from specific tax on its importations of Jet A-1 for domestic operations. *Section 13 of PD No. 1590* provides as follows:

> 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 non-transport operations;

[35] Underscoring ours.

> 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

In sum, for petitioner to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in *Section 13 of PD No. 1590;*

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

The Court shall discuss the presence of all the foregoing conditions one by one.

Petitioner's basic corporate income tax or franchise tax were paid.

Petitioner filed its Annual Income Tax Return for fiscal years ended March 31, 2003[36], 2004[37] and 2005[38] with details as follows:

FISCAL YEAR ENDED	TAXABLE INCOME\(LOSS)	INCOME TAX	PAYABLE (OVERPAYMENT)	EXHIBIT	DATE FILED
March 2003	Php (911,552,157.00)	-	Php (14,865,157.00)	Q	7/15/2003
March 2004	(1,657,149,109.00)	-	(57,295,584.70)	TT	7/15/2004
March 2005	187,715,856.03	Php 60,069,073.93	(1,183,508.15)	XXX	12/15/2005

In addition, Import Entry Internal Revenue Declarations[39] ("IEIRDs") with Bureau of Customs ("BOC") Official Receipts ("ORs") or Bank ORs[40] were submitted to prove that specific taxes on importations were paid, summarized as follows:

CTA CASE NO.	AMOUNT OF SPECIFIC TAXES	IEIRD EXHIBIT (BLUE ENVELOPE)	BOC/BANK OR EXHIBIT (BLUE ENVELOPE)
7152	Php 24,624,356.78	HHHH-1	DDDD-2-1
7155	56,169,229.00	HHHH-2	DDDD-1-1
	11,670,600.00	HHHH-3	DDDD-2-2
7235	34,989,780.00	HHHH-4	DDDD-2-3
	23,326,520.00	HHHH-4	DDDD-2-4
	17,421,685.00	HHHH-5	DDDD-1-2
	24,382,107.42	HHHH-6	DDDD-2-5
7247	434,502.31	HHHH-6	DDDD-2-6
	15,920,302.00	HHHH-7	DDDD-2-7
	209,051.00	-	DDDD-1-3
	23,651,333.33	HHHH-8	DDDD-1-4
	17,519,175.00	HHHH-9	DDDD-1-5
	88,890,058.00	HHHH-10	DDDD-1-6
7305	24,619,461.00	HHHH-11	DDDD-1-7
	118,216,066.00	HHHH-12	DDDD-1-8
	59,272,886.00	HHHH-13	DDDD-3-1
	51,002,299.00	HHHH-14	DDDD-3-2 to 3
7454	59,309,039.00	HHHH-15	DDDD-2-9
	42,505,184.00	HHHH-16	DDDD-3-4 to 5
	24,426,368.00	HHHH-17	DDDD-2-10
	29,600,360.00	HHHH-18	DDDD-2-11
	39,072,222.00	HHHH-19	DDDD-2-12
7518	54,080,331.00	HHHH-20	DDDD-1-9
	56,166,231.00	-	DDDD-2-13
	56,341,407.00	HHHH-21	DDDD-2-14

[36] *Records, CTA Case. No. 7155, Exhibit "Q," 2003 ITR,* p. 110.
[37] *Petitioner's Formal Offer of Evidence ("FOE"), Blue Envelope, Exhibit "TT," 2004 ITR.*
[38] *Records, CTA Case No. 7152. Vol. 2, Exhibit "XXX," 2005 ITR, p. 958.*
[39] *Petitioner's FOE, Blue Envelope, Exhibits "HHHH-1" to "HHHH-21."*
[40] *Id., Exhibits "DDDD-1-1" to "DDDD-1-9," Exhibits "DDDD-2-1" to "DDDD-2-14."*

However, an examination of the attached documents reveals that excise tax amounting to Php56,375,282.00 (Php209,051.00[41] + Php56,166,231.00[42]) should be disallowed for reasons stated hereunder:

1. Excise tax amounting to Php209,051.00 on importation of Jet A-1 was not supported with any IEIRD. Although BOC OR No. 102010824 dated June 30, 2003[43] was presented, this represents only the payment of VAT.

2. Excise tax amounting to Php56,166,231.00 on importation of Jet A-1 was not supported with any IEIRD. Although Equitable PCI Bank OR No. 052575C dated October 20, 2004[44] was attached, nowhere in the said OR indicates that it pertains to payment of excise tax.

Without the IEIRDs, the Court cannot conclude whether such payments represent petitioner's excise tax on importation of Jet A-1. Considering that petitioner was able to prove that its basic corporate income tax and excise tax liabilities were paid, except for excise taxes amounting to Php56,375,282.00, the first requisite is deemed satisfied.

Imported Jet A-1 was used in petitioner's transport and non-transport operations, and other activities incidental thereto.

As regards the second requisite, petitioner submitted Bills of Lading[45] ("BOL"), Independent Surveyor's Reports[46], and IEIRDs[47] to establish the fact of its importations of Jet A-1. In order to prove that the subject imported Jet A-1 was for its transport and non-transport operations and other activities incidental thereto, petitioner submitted the corresponding Authority to Release Imported Goods[48] ("ATRIGs"). All ATRIGs indicate that the imported Jet A-1 will be

[41] CTA Case No. 7247.
[42] CTA Case No. 7518.
[43] *Petitioner's FOE, Blue Envelope, Exhibit "DDDD-1-3."*
[44] *Id., Exhibit "DDDD-2-13."*
[45] *Id., Exhibits "FFFF-1" to "FFFF-22."*
[46] *Id., Exhibits "EEEE-1-1" to "EEEE-1-10," "EEEE-2-1" to "EEEE-2-22."*
[47] *Id., Exhibits "HHHH-1" to "HHHH-21."*
[48] *Id., Exhibits "GGGG-1" to "GGGG-19."*

used exclusively for petitioner's daily domestic or international flight operations.

Moreover, petitioner's witnesses, namely, Mr. Yao[49], Mr. Razal[50], and ICPA Romano[51] have consistently testified that all Jet A-1 imported by petitioner were used solely for its own flight operations.

Hence, petitioner was able to prove that such fuel was actually used for its transport operations. Accordingly, the second requisite has been complied with by petitioner.

Jet A-1 was not locally available in reasonable quantity, quality, or price.

To prove that the imported aviation fuel is not locally available in reasonable quantity, quality, or price, petitioner presented the following Certifications issued by the Air Transportation Office ("ATO") and the Civil Aviation Authority of the Philippines ("CAAP"). These Certifications state that it interposes no objection to the importations of Jet A-1 [under a specified Bill of Lading ("BOL") Number] which is not available in reasonable quantity, quality, and price, and is necessary for the operations of petitioner, summarized as follows:

DATE	AGENCY	BOL NO.	EXHIBIT
01-Oct-04	ATO	504710-00003581	PPPP
16-Dec-04	ATO	40898	QQQQ
13-Apr-05	ATO	42637	RRRR
25-Apr-05	ATO	1	SSSS
14-Jun-05	ATO	0506-2-04374-E	TTTT
20-Jun-05	ATO	43598	UUUU
10-Aug-05	ATO	05/747	VVVV
01-Dec-05	ATO	504710-00006493	WWWW
21-Feb-06	ATO	06/140	XXXX
04-May-06	ATO	8016-01	YYYY
07-Jul-06	ATO	3730	ZZZZ
12-Jul-06	ATO	HIC0060707DDDA01	AAAA
14-Sep-06	ATO	9460-01	BBBBB

[49] *Records, Vol. 5, Exhibit "Q," Judicial Affidavit of Mr. Elvis A. Yao Dated 30 March 2015,* pp. 2147-2163, with annexes.
[50] *Id., Exhibit "W[6]," Judicial Affidavit of Mr. Roberto R. Razal Dated 15 July 2015,* pp. 2224-2266, with annexes.
[51] *Id., Exhibit "F[7]," Judicial Affidavit of Mr. Joel C. Romano Dated 16 June 2016,* pp. 2410-2422.

17-Nov-06	ATO	50955	CCCCC
25-Jan-07	ATO	52179	DDDDD
16-Feb-07	ATO	52659	EEEEE
20-Mar-07	ATO	53280	FFFFF
17-Jul-07	ATO	507710-00000270	GGGGG
17-Apr-07	ATO	53877	HHHHH
24-Aug-07	ATO	507710-00000325	IIIII
15-Oct-07	ATO	507710-00000349	JJJJJ
19-Dec-07	ATO	507710-00000392	KKKKK
11-Feb-08	ATO	AM-0001	LLLLL
04-Mar-08	ATO	507710-00000481	MMMMM
13-Mar-08	ATO	507710-00000497	NNNNN
02-May-08	ATO	60908	OOOOO
04-Jun-08	ATO	61617	PPPPP
26-Aug-06	CAAP	ST0803110-12	QQQQQ
02-Sep-08	CAAP	SJSS20080732001	RRRRR
03-Oct-08	CAAP	EX0552EXPT	SSSSS
22-Oct-08	CAAP	ST0810087-12	TTTTT
08-Jan-09	CAAP	ST0812089-11	UUUUU
26-Mar-09	CAAP	CSKAJS5109032401	VVVVV
14-May-09	CAAP	507710-00001290	WWWWW
02-Jul-09	CAAP	507710-00001454	XXXXX
01-Sep-09	CAAP	EX0553EXTP	YYYYY
23-Nov-09	CAAP	ST0911114-12	ZZZZZ
23-Nov-09	CAAP	ST0911114-11	AAAAAA
20-Apr-10	CAAP	5935-01	BBBBBB

However, the Court notes that the importations of Jet A-1 mentioned in the above Certifications do not pertain to the subject claimed importations specified in the BOLs presented in *Exhibits* "FFFF-1" to "FFFF-22," thus the above Certifications cannot be given evidentiary value.

Nevertheless, petitioner was able to obtain a table on Supply Demand Balance[52] of Jet A-1 from the DOE for the years 2001 to 2010. In determining Total Local Available Supply, the sum of the Inventory (Beginning), Production Local, and Importation were considered. Thus, the Total Local Available Supply of Jet A-1 for the years 2001 to 2010, covering the years 2003 and 2004 subject of this case, exceeded the demand, to wit:

DOE DATA ON SUPPLY AND DEMAND FOR THE YEARS 2001 TO 2010										
DETAILS	**JET FUEL**									
	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Inventory (Beg.)	302	291	315	309	817	856	693	484	269	577
Production Local	4,825	5,050	5,024	4,584	5,576	5,867	5,990	5,566	5,248	6,103
Importation	1,895	1,336	1,783	2,867	2,039	2,292	2,978	3,278	3,959	3,519

[52] *Records, CTA Case No. 7152. Vol. 3, Exhibit "G^6," Table on Supply Demand Balance,* p. 1582.

Total Local Available Supply	7,022	6,677	7,122	7,760	8,432	9,015	9,661	9,328	9,476	10,199
Demand	6,750	6,438	6,699	7,349	7,879	8,237	8,855	8,850	9,456	9,617
Export	-	40	-	-	-	-	273	78	-	59
Local Available Supply vs. Demand	272	239	423	411	552	778	806	478	20	582

As already discussed, in the determination of whether there is locally available Jet A-1 in reasonable quantity, quality, or price, imported Jet A -1 should not be included in the computation. After all, if locally available Jet A-1 includes both local production and imports, there will never be an instance wherein the Jet A-1 available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 will always import the same to meet their needs if no other Jet A -1 is locally available in reasonable quantity, quality, or price.

Given the foregoing, a reproduction of the table above that does not include Importations as an addend in computing the Total Local Available Supply would yield different results, *viz.*:

DETAILS	JET FUEL									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Inventory (Beg.)	302	291	315	309	817	856	693	484	269	577
Production Local	4,825	5,050	5,024	4,584	5,576	5,867	5,990	5,566	5,248	6,103
Importation	-	-	-	-	-	-	-	-	-	-
Total Local Available Supply	5,127	5,341	5,339	4,893	6,393	6,723	6,683	6,050	5,517	6,680
Demand	6,750	6,438	6,699	7,349	7,879	8,237	8,855	8,850	9,456	9,617
Export	-	40	-	-	-	-	273	78	-	59
Local Available Supply vs. Demand	(1,623)	(1,097)	(1,360)	(2,456)	(1,486)	(1,514)	(2,172)	(2,800)	(3,939)	(2,937)

As can be seen above, the Demand for Jet fuel for the years 2001 to 2010, covering the years 2003 and 2004, clearly exceeded the Total Local Available Supply. It can, then, be concluded that Jet A-1 was not locally available in reasonable quantity in 2003 and 2004, thus petitioner imported the same. This gives rise to petitioner's entitlement to the tax exemption because it is sufficient for petitioner to be able to prove even just one qualification.

In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[53], the Court of Tax Appeals ("CTA") *En Banc* held that the qualifications for exemption in *Section 13(2) of PD No. 1590* are alternative and not cumulative. The relevant portions of the decision are quoted below:

> In recent cases decided by the Court interpreting the very same provision, the Court held that <u>the law imposes an alternative, not cumulative qualification for the determination of whether importations under Sec. 13(2) of PD 1590 will be subject to the exemption and that it would suffice for petitioner</u>

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

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> to be able to prove even just one qualification out of the three -- not locally available in reasonable a) quantity, b) quality, or c) price.[54]

In the Amended Decision in the case of *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[55], the Court ratiocinated thus:

> To allow petitioner's exemption from excise taxes under PD 1590, the third condition must be present, i.e. "the articles materials or supplies should not be locally available in reasonable quantity, quality or price."
>
> The word "or" signifies that a preference can be made among the presented alternatives. While initially confusing because the phrase is couched in the negative, simply put, as long as petitioner is able to prove the absence of one condition (either reasonable quantity, quality, or price), the exemption applies. Petitioner is not required to prove the absence of all three conditions.
>
> xxx xxx xxx
>
> To require petitioner to prove the absence of all three conditions -- locally available supply in reasonable quantity, quality and price -- would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.[56]

On top of proving that Jet A-1 was not locally available in reasonable quantity in 2003 and 2004, petitioner likewise showed the unavailability of locally supplied Jet A-1 at a reasonable price. A comparison of the cost *per* liter between Petron Corporation ("Petron") and Pilipinas Shell Petroleum Corporation ("Shell") as compared to cost when imported, shows that importation of Jet A-1 is consistently

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[54] Underscoring ours.
[55] *CTA Case Nos. 8039, 8069, 8104, and 8113,* July 01, 2016.
[56] Underscoring ours.

lower than the cost if purchased locally from either Petron or Shell, as shown in the table below:

CTA CASE NO.	AMOUNT OF SPECIFIC TAXES	COST *PER* LITER IMPORTATION	COST *PER* LITER PETRON[57]	COST *PER* LITER SHELL[58]
7152	Php 24,624,356.78	**Php 13.6589**	Php 17.5951	Php 20.958
7155	56,169,229.00	**15.557**	19.3847	21.6063
	11,670,600.00	**14.5311**	18.2032	20.6169
7235	58,316,300.00	**11.6467**	15.3845	19.4759
	17,421,685.00	**11.8888**	15.451	19.7565
	24,816,609.73	**11.058**	15.3845	19.4759
7247	16,129,353.00	**11.6775**	15.3845	19.4759
	23,651,333.33	**11.4315**	15.5853	19.6468
	17,519,175.00	**12.2797**	16.0758	20.448
	88,890,058.00	**12.4692**	16.0758	20.448
7305	24,619,461.00	**12.1626**	16.0758	20.448
	118,216,066.00	**14.6451**	18.5993	22.8444
	59,272,886.00	**15.6777**	20.5545	24.2627
	51,002,299.00	**16.7078**	20.5545	24.2627
7454	59,309,039.00	**17.5295**	21.3986	24.3402
	42,505,184.00	**18.9663**	23.1376	26.1397
	24,426,368.00	**19.0356**	23.1376	26.1397
	29,600,360.00	**20.4709**	24.5721	26.7762
	39,072,222.00	**20.6013**	24.5721	26.7762
7518	54,080,331.00	**20.373**	24.5721	26.7762
	56,166,231.00	**21.675**	25.8199	28.3825
	56,341,407.00	**22.0684**	26.6797	29.5667

Based on the foregoing discussions, petitioner was able to sufficiently show that the imported Jet A-1 was not locally available in reasonable quantity and price at the time of the importations.

In sum, petitioner was able to comply with all the requisites under *Section 13 of PD No. 1590* for it to be exempt from payment of the specific taxes on its importations of Jet A-1 used for its transport operations, but in the reduced amount of Php897,445,271.84, computed as follows:

Specific taxes claimed for refund		Php 953,820,553.84
Disallowances:		
For CTA Case No. 7247	Php 209,051.00	
For CTA Case No. 7518	56,166,231.00	Php 56,375,282.00
REFUNDABLE SPECIFIC TAXES		**PHP897,445,271.84**

WHEREFORE, premises considered, petitioner's Motion for Reconsideration of the Decision dated 22 October 2014 and Supplement (To Petitioner's Motion for Reconsideration dated 10 November 2014) are **GRANTED**. Accordingly, the Decision

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[57] *Petitioner's FOE, Blue Envelope, Exhibit "CCCC," Final and Consolidated ICPA Report,* p. 21; *Petitioner's FOE, Blue Envelope, Annex K.1 ICPA Report, Exhibits "JJJJ-2-1" to "JJJJ-2-28."*

[58] *Petitioner's FOE, Blue Envelope, Exhibit "CCCC," Final and Consolidated ICPA Report,* p. 21; *Petitioner's FOE, Blue Envelope, Annex L ICPA Report, Exhibits "KKKK-2-1" to "KKKK-2-14."*

promulgated by the Court on October 22, 2014 is **REVERSED** and **SET ASIDE**.

The instant Petition for Review is hereby **GRANTED**. Consequently, respondent is **ORDERED TO REFUND** in favor of petitioner the reduced amount of **EIGHT HUNDRED NINETY-SEVEN MILLION FOUR HUNDRED FORTY-FIVE THOUSAND TWO HUNDRED SEVENTY-ONE AND 84/100 PESOS (PHP897,445,271.84).**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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