REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 8310**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** NOV 14 2014 3:20 p.m.

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DECISION

CASANOVA, *J.*:

In this Petition for Review, petitioner Philippine Airlines, Inc. seeks to refund the total sum of Three Million Nine Hundred Forty Five Thousand Six Hundred Fifteen and 62/100 (P3,945,615.62), representing specific taxes imposed on petitioner's various importations of liquors, wine and cigarettes for international flight consumption.

Petitioner Philippine Airlines, Inc. (PAL) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[1]

Respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), a

[1]Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 461.

government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Section 142 and 145, respectively, of the National Internal Revenue Code (NIRC), as amended. Respondent CIR has his office address at the BIR National Office Building, Agham Road, Diliman, Quezon City where he may be served with papers, pleadings, notices, orders, judgments, summonses, and other processess of this Honorable Court.[2]

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, on the basis of the delegated authority of the respondent CIR through an Authority to Release Imported Goods (BIR Form No. 1918) ("ATRIG") duly issued by the respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC, as amended. Respondent COC has his office address at G/F OCOM Bldg. Bureau of Customs, Port Area, Manila City, where he may be served with papers, pleadings, notices, orders, judgments, summonses, and other processes of this Honorable Court.[3]

On June 11, 1978, by virtue of Presidential Decree No. 1590 (PD 1590), otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries," petitioner was granted a franchise to operate air transport services domestically and internationally.[4] Section 13 thereof which granted petitioner certain tax exemptions 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:

[2]Par. 2, Facts, JSFI, Docket (Vol. II), pp. 461-462.
[3]Par. 3, Facts, JSFI, Docket (Vol. II), p. 462.
[4]Par. 4, Facts, JSFI, Docket (Vol. II), p. 462.

(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"

On January 1, 2005, Republic Act No. 9334 (RA 9334), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections

131, 141, 142, 143, 144, 145 and 288 of the NIRC of 1997, as Amended" took effect. Section 6 thereof provides:

> "SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> 'SEC. 131. *Payment of Excise Taxes on Imported Articles.–*
>
> '(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> 'In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> 'The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That

importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."[5]

On various dates from September 2007 to December 2008, petitioner's importations of assorted liquors, cigarettes and wine arrived in Manila through the South Harbor and Ninoy Aquino International Airport, which imports were covered by various Informal Import Declarations and Entries,[6] Air Waybills/Bills of Lading,[7] and Authorities to Release Imported Goods.[8] Consequently, on May 25, 2009, petitioner received respective assessments dated December 12, 2008[9] and May 22, 2009,[10] as per letter of Ms. Gilda L. Cinco as Acting Chief – WAU to Collector Silveria S. Salazar, with regard to petitioner's liability to pay its excise taxes amounting to P2,395,951.30 and P1,549,664.32, respectively.

Subsequently, on July 20, 2009[11] petitioner, respectively, paid under protest the aforesaid amounts. Then, in its respective letters dated July 20, 2009,[12] petitioner formally protested the assessment and collection of the foregoing amounts relating to its excise taxes for the above-described importations. Thereafter, on September 29, 2009,[13] petitioner filed its written requests for refund.

[5]Par. 5, Facts, JSFI, Docket (Vol. II), pp. 463-464.
[6]Exhibits "I" to "P" and Exhibits "DD" to "KK".
[7]Exhibits "I-1" to "P-1" and Exhibits "DD-1" to "KK-1".
[8]Exhibits "S" to "Z" and Exhibits "NN" to "UU".
[9]Exhibit "Q".
[10]Exhibit "LL".
[11]Exhibits "R" and "MM".
[12]Exhibits "AA" and "VV".
[13]Exhibits "CC" and "XX".

Considering that respondent CIR failed to act on its claim for refund, petitioner instituted this instant Petition on July 18, 2011.[14]

On August 22, 2011, respondent CIR filed his Answer and interposed the following special and affirmative defenses:

> "9. Petitioner is liable for excise tax as specified in Section 131 of the National Internal Revenue Code of 1997, as amended, by RA 9334 as follows:
>
> > 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
> >
> > (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
> >
> > In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
> >
> > The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and

[14]Exhibit "BBB".

> cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

10. The case of Ang Tibay vs. Court of Industrial Relations GR No. L-46496 states the primary rights which must be respected even in an administrative proceeding:

> **1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof**. In the language of Chief Hughes, in *Morgan v. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra*.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), **but the evidence must be 'substantial'**. (Washington, Virginia and Maryland Coach Co. v. national labor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accepts as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . The statute provides that 'the rules of evidence prevailing in courts of law and equity

shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn *(sic)* judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected**. (Interstate Commence Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them**. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any *(sic)*

> industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal. *(sic)* a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)
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> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.
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> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it."

In his Comment filed on September 8, 2011[15], respondent-COC argues that he is merely an agent of respondent-CIR under Section 12 of the NIRC and when he acts within the scope of his authority, he does not acquire or incur any liability from the collection of the taxes due. Moreover, he argues that RA 9334 amended PD 1590.

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[15] Docket (Vol. I), pp. 201-214.

On February 16, 2012, the pre-trial[16] of the case was held where the parties were ordered to submit their Joint Stipulation of Facts and Issues[17] which they filed on April 4, 2012 and which was subsequently approved by the Court per Resolution[18] dated April 11, 2012. Consequently, the case was set for presentation of petitioner's evidence.

During trial, petitioner presented the following witnesses: (1) Jonathan R. Castillo Lee, petitioner's Company Materials Handling Division Manager;[19] (2) Ma. Evelyn L. Taghap, Tax Services Division Manager of petitioner,[20] and (3) Cheryl V. Capinpin, In-flight Materials Purchasing Division Manager of petitioner.[21]

Petitioner, likewise, formally offered its documentary evidence on March 13, 2013. In the Court's Resolution dated October 11, 2013, the Court admitted Exhibits "A", "D", "I" to "Q", "S" to "Z", "DD" to "LL", "OO" to "UU", "WW" to "EEE-1", "GGG" to "III-2", "III-4" to "LLL-1" but denied Exhibits "B" to "C", "R", "AA" to "CC", "MM", "VV", "FFF" to "FFF-1", "E" to "G", "III-3", and "NN".[22] Thus, Petitioner moved for reconsideration[23] of the same which resulted to the admission of Exhibits "B", "C", "E", "F", "R", "AA", "BB", "CC", "MM", "VV", "FFF", "FFF-1", "III-3", and "NN".[24]

In the April 21, 2014 hearing, counsels for respondents manifested that the case involves only questions of law and that they will not present any witness.[25] Hence, the Court ordered the parties to submit their respective Memorandum, which petitioner, respondent CIR and respondent COC filed on May 21, 2014,[26] May 14, 2014,[27] and June 20, 2014,[28] respectively.

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[16] Minutes of the Hearing dated February 16, 2012, Docket (Vol. 1), p. 269.
[17] Docket (Vol. II), pp. 461-467.
[18] *Ibid*, p. 468.
[19] Minutes of the Hearing dated May 28, 2012, Docket (Vol. II), p. 473.
[20] Minutes of the Hearing dated July 2, 2012, Docket (Vol. II), p. 505.
[21] Minutes of the Hearing dated November 19, 2012, Docket (Vol. II), p. 604.
[22] Resolution, Docket (Vol. II), pp. 1007-1008
[23] Motion for Reconsideration (on Resolution dated October 11, 2013), Docket (Vol. II), pp. 1011-1020.
[24] Resolution dated March 21, 2014, Docket (Vol. II), pp. 1068-1069.
[25] Minutes of the Hearing dated April 21, 2014, Docket (Vol. II), p. 1070.
[26] Memorandum for petitioner, Docket (Vol. II), pp. 1102-1130.
[27] Memorandum for respondent CIR, Docket (Vol. II), pp. 1071-1094.
[28] Memorandum for respondent COC, Docket (Vol. II), pp. 1131-1150.

After submission of the parties' respective Memorandum, the case was deemed submitted for Decision on June 25, 2014.[29]

Hence, this Decision.

The parties submitted the following issues[30] for the resolution of the Court:

(a) Whether or not petitioner PAL, under its franchise, Presidential Decree No. 1590, is EXEMPT from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

(b) Whether or not Republic Act No. 9334, as amended, modified, or repealed PAL's exemption under its franchise Presidential Decree No. 1590, from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

(c) Whether or not PAL is entitled to a refund of the total amount of P3,945,615.62 specific taxes paid under protest to respondent Commissioner of Internal Revenue through the Commissioner of Customs as follows:

> (a) PHP2,395,951.30 specific tax paid on 20 July 2009; and
>
> (b) PHP1,549,664.32 specific tax paid on 20 July 2009."

(d) Whether or not PAL has exhausted all administrative remedies before filing this Petition.

(e) Whether or not PAL has complied with the provisions of Section 204(C) and 229 of the NIRC of 1997, as amended in the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of tax credit certificate."

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[29] Resolution, Docket (Vol. II), p. 1151.
[30] Issues to be Tried or Resolved, JSFI, Docket (Vol. II), pp. 465-466.

The two main issues to be resolved are:

1. Whether or not petitioner is exempt from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies.

2. Whether or not petitioner is entitled to a refund of the total amount of P3,945,615.62

Anent the first issue, petitioner posits that it is exempt from payment of specific taxes by virtue of the above-quoted Section 13 of PD 1590 because the phrase "in lieu of all other taxes" means that the imposable taxes upon petitioner are limited only to its basic corporate income tax and franchise tax.

On the contrary, respondent CIR argues that only government-owned and operated duty free shops, like the Duty-Free Philippines, have been expressly granted tax exemptions and such exemption covers payment of duties only as provided by Section 131(A) of the NIRC, as amended by RA 8424 and RA 9334. Accordingly, said provision does not expressly grant petitioner the same tax exemption with respect to excise taxes on its importation of wine, liquors and cigarettes. Moreover, respondent CIR argues that RA 9334 is more specific in its tax treatment of said goods and the phrase "the provision of any special or general law notwithstanding" clearly shows the intent to withdraw petitioner's exemption from excise taxes thereon. Thus, RA 9334 is deemed to have expressly withdrawn the conditional tax exemption granted to petitioner by PD 1590.

Respondent COC, on the other hand, shares the same view with respondent CIR that RA 9334 amended PD 1590, arguing that RA 9334 is the special and the latter law that governs the imposition of excise taxes on alcoholic and tobacco products.

The argument of petitioner is meritorious.

Section 13 of PD 1590 clearly states that the tax paid by the grantee, i.e., basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes. In fact, the same has been succinctly explained by the Supreme Court in the case of *CIR vs. Philippine Airlines, Inc.*[31] in this wise:

> "xxx the taxation of PAL, during the lifetime of its franchise, shall be governed by two fundamental rules, particularly: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.
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> xxx
>
> For two decades following the grant of its franchise by Presidential Decree No. 1590 in 1978, PAL was only being held liable for the basic corporate income tax or franchise tax, whichever was lower; and its payment of either tax was in lieu of all other taxes, except real property tax, in accordance with the plain language of Section 13 of the charter of PAL. Therefore, the exemption of PAL from "all other taxes" was not just a presumption, but a previously established, accepted, and respected fact, even for the BIR."

From the foregoing, it is evident that, upon the exercise of petitioner of its option to pay basic corporate income tax or franchise tax, whichever is lower, the same shall be in lieu of all other taxes which includes petitioner's excise taxes on its importations of wine, liquors and cigarettes.

Moreover, in several occasions[32], this Court has consistently ruled that RA 9334 did not amend PD 1590 so as to strip the petitioner of the benefits granted by Section 13 as above-discussed. Thus:

> "While it is true that Section 6 of RA No. 9334 states the all encompassing phrase, "The provision of any

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[31] G.R. No. 180066, July 7, 2009.

[32] CIR vs. PAL, CTA EB Case No. 928 (CTA Case No. 7843), October 21, 2013; and, CIR vs. PAL and CIR and COC vs. PAL, CTA EB Case Nos. 942 and 944 (CTA Case No. 7868), December 9, 2013.

special or general law to the contrary notwithstanding", such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.

Equally noteworthy is the fact that Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later-general the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case."[33]

Moreover, the Supreme Court in the recent case of Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.,[34] categorically ruled that PD 1590 has not been revoked by Sec. 131 of the 1997 NIRC, as amended by Section 6 of RA 9334, to wit:

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[33] *CIR vs. Philippine Airlines, Inc.*, CTA En Banc, Case No. 920 & 922, September 9, 2013.
[34] GR Nos. 212536-37, August 27, 2014

"Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Airlines, Inc*:

> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x.

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that: *"the provisions of any special or general law to the contrary notwithstanding,"* <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed</u>. x x x.
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the

> earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in Philippine Airlines, Inc. v. Commissioner of Internal Revenue. In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes amd that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. xxx xxx xxx."

Based therefrom, RA 9334 cannot be considered as a special law because it applies to all of the people of the state and not to a particular person or thing of a class. Thus, RA 9334 is undeniably a general law. Hence, in accordance with the foregoing rulings of this Court and consistent with the hornbook rule that a general law cannot prevail over a special law, the tax exemptions granted by Section 13 of PD 1590 cannot be deemed to have been withdrawn by RA 9334.

Considering that Section 13 of PD 1590 remains to be applicable to petitioner *vis a vis* its exemption from payment of excise tax to be entitled to its present claim for refund, the Court shall now determine whether petitioner satisfied the requirements provided therein.

Under Section 13 of PD 1590, before petitioner's payment of basic corporate income tax or franchise tax could be considered as "in lieu of all other taxes", i.e. excise tax over its importation of the subject goods, the following requisites must be present:

1. The imported liquors, wines and cigarettes must be commissary and catering supplies;

2. The imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

3. The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

First Requisite: *The imported liquors, wines and cigarettes must be commissary and catering supplies*

To prove that the imported goods are commissary and catering supplies, petitioner presented its witness, Jonathan Castillo Lee to testify as to the contents of petitioner's Informal Import Declaration and Entry Forms[35] and Authorities to Release Imported Goods.[36] The relevant portions of his Judicial Affidavit read:

"xxx

5. Q : Can you mention some of your more important functions as Manager-Company Materials Handling Division?

5. A : My more important functions include ensuring the timely release of PAL importations of catering and commissary supplies from the different cargo warehouses, as well as, the filing of proper documentation for such importations.[37]

[35]Exhibits "I" to "P" and Exhibits "DD" to "KK".
[36]Exhibits "S" to "Z" and Exhibits "NN" to "UU".
[37]Exhibit "CCC".

xxx

21. Q : How would you know what imported product was involved?

21. A : You would know it by looking at the Informal Import Declaration and Entry and Air Waybill mentioned in the tabulation.

22. Q : Showing this Informal Import Declaration and Entry No. 9527, and Air WayBill No. 079-2900-4710 dated 01 SEP 2007, which were already marked as Exhibits "I" and "I-1", respectively, how are these related to the informal entry and air waybill which you just mentioned as appearing in the table?

22. A : They are copies of the informal entry and air waybill mentioned in the table.

23. Q : What is the imported product involved as shown by the informal entry and air waybill?

23. A : Looking at the frontpage of the informal entry no. 9527, under the column labelled "Description of Articles", there is written "Inflight Materials: CUTTY SARK WHISKY", and under the column labelled "No. of Packages", there is written "1". Looking at the Air Waybill No. 079-2900-4710, under the column labelled "Number and kind of packages: description of goods", there is written "60 CTNS CUTTY SARK SCOTCH WHISKY PACK IN 1 PALLET."[38]

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[38]Exh."CCC".

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Meanwhile, said witness made subsequent statements of the same tenor.

A careful examination of the testimonies of said witness reveals that he has no personal knowledge over the nature of goods represented in the Informal Entries, i.e., whether the same are for commissary and catering supplies of petitioner. In fact, the witness' duties merely involve the *timely release* of petitioner's importations of catering and commissary supplies from different cargo warehouses and the *filing* of proper documentation for such importations. Evidently, he has no participation in the *preparation* of relevant documents covering petitioner's importations.

In this regard, Section 36, Rule 130 of the Revised Rules of Court states:

> "Section 36. Testimony generally confined to personal knowledge; hearsay excluded. – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

Applying the foregoing provision of the Rules, this Court cannot give probative value to the testimonies of Jonathan Castillo Lee as to the contents of petitioner's Informal Import Declaration and Entry Forms and Authorities to Release Imported Goods because he has no participation in the preparation of these documents where he may obtain knowledge as to the nature of petitioner's imported goods. In other words, he has no personal knowledge as to the circumstances of the goods covered by said commercial documents.

Corollary thereto, this Court likewise cannot give credence to the contents of the subject Authorities to Release Imported Goods[39] that the articles described therein will be used "exclusively for international inflight consumption".

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[39]Exhibits "S" to "Z" and Exhibits "NN" to "UU".

Relevantly, the Supreme Court, in the case of *Robert Da Jose, vs. Celerina R. Angeles, et al.*,[40] declares:

"xxx

Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. Basic under the rules of evidence is that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence establishing the truth of a disputed fact. Corollarily, a document offered as proof of its contents has to be authenticated in the manner provided in the rules, that is, by the person with personal knowledge of the facts stated in the document."[41]

As previously discussed, these documents were testified to by witness Jonathan Castillo Lee who has no personal knowledge with regard to the question on whether the covered goods, in fact, would be exclusively used for international flight consumption. Hence, said documents should be given scant consideration by this Court.

Considering the foregoing, petitioner failed to prove the first requisite for Section 13 of PD 1590 to apply.

Second Requisite: *The imported liquors, wines and cigarettes are for the use of the grantee in its transport and non-transport operations and other activities incidental thereto*

For purposes of proving that the subject goods are for the use of petitioner in its transport or non-transport operations and other

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[40]G.R. No. 187899, October 23, 2013.
[41]Id., citing *Dantis v. Maghinang* , Jr. , G.R. No. 191696, April 10, 2013, pp. 7-8; and *Jaca v. People*, G.R. Nos. 166967, 166974 & 167167, January 28, 2013, 689 SCRA 270, 299.

activities incidental thereto, petitioner also presented witness Jonathan Castillo Lee to prove that said goods were "Inflight Materials".

However, as it was previously discussed, the Court cannot give probative value to the testimonies of said witness that the covered imported goods were, indeed, inflight materials to be used by petitioner in its transport operations for being hearsay evidence. Glaringly, the aforesaid witness even expressly states that he obtains knowledge of the nature of the product involved by merely "looking at the Informal Import Declaration and Entry and Air Waybill mentioned in the tabulation."[42]

As such, following the pronouncement of the Supreme Court in the previously cited *Robert Da Jose Case*,[43] the Court cannot likewise give probative value to the contents of petitioners' Informal Import Declaration and Entry and Air Waybills for failure to authenticate the same by a person having personal knowledge of the facts stated in the said document.

Third Requisite: *The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price*

Lastly, petitioner presented its witness Cheryl V. Capinpin to prove that the imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality or price. She states in her Judicial Affidavit:[44]

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9. Q. As such supervisor and then Manager, would you know why PAL imported said supplies instead of just buying them from the local sellers of similar products?

[42]Exhibit "CCC".
[43]Op cit.
[44]Exhibit "LLL".

9. A. PAL imported said alcoholic products because the importation of the said products is cheaper than buying said products locally, and, in the case of cigarettes, there are no local suppliers or dealers big enough to supply the quantity of the various foreign brands of cigarettes PAL is importing, and if ever there are said local dealers, their selling prices would definitely be higher than PAL's cost of importing the cigarettes.

10. Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

10. A. Their selling price would definitely be higher because, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes, unlike PAL which, by virtue of its franchise, did not have to pay the excise taxes and customs duties on it's *(sic)* importation of cigarettes for use in it's *(sic)* international flights. Similarly, if said suppliers buy the same cigarettes from local manufacturers, thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL.

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12. Q. Looking at Annex "A" of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

12. A. The costs of importing the commissary supplies involved and listed under the column "Product Imported", are specified under the columns labelled "Sales Invoice/Quantity & Value per Sales Invoice/Unit Cost Per Sales Invoice", "Authority to Release Imported Goods (ATRIG) No./Unit Cost per ATRIG", and "Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.", "Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.", while the costs of locally buying the same supplies are specified under the columns labelled "Philippine Wine Merchants 2007 Price List" and "Philippine Wine Merchants 2008 Price List". As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

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14. Q. How did you arrive at the unit cost per sales invoice?

14. A. As shown by the table, in the case of alcoholic products, I divided the cost per case or carton stated in the sales invoice, by twelve (12), the number of bottles per case or carton of the alcoholic product covered by the invoice, to arrive at the unit cost per bottle.

In the case of tobacco products or cigarettes, I divided the total value of the product as stated in the sales invoice, by the number of cartons or cases also stated therein, to arrive at the cost per carton. I then divided the cost per carton by fifty (50), the number of reams per carton to arrive at the cost per ream of cigarettes. To arrive at the unit cost per pack of cigarettes, I divided the cost per ream by ten (10) which is the number of packs in a ream.

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19. Q. What do the columns labelled "Philippine Wine Merchants Price List 2007", and "Philippine Wine Merchants Price List 2008" contain?

19. A. Said columns contain the local unit cost of alcoholic products per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2007 and 2008, respectively, of the alcoholic products mentioned therein, if the same products were purchased from them.

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21. Q. Showing to you this documents, labeled "Philippine Wine Merchants, 2007 Price List" and "Philippine Wine Merchants 2008 Price List", with a signature appearing at the bottom of the page of each Price List, on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and attached as Annexes "B" and "C", respectively, how are they related to the 2007 and 2008 Price Lists of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the years 2007 and 2008 appearing in your table of comparison?

21. A. Those are the price lists for the years 2007 and 2008 of Philippine Wine Merchants which I mentioned.

22. Q. Do you have other sources of local prices of the alcoholic products involved?

22. A. For purposes of this case, I do not have any other local price list because the other local

dealers of products similar to the commissary products we imported refused to furnish us their price lists despite our persistent request.

23. Q. How about the local costs of the imported cigarettes involved?

23. A. I have no local costs of the imported cigarettes involved because there are no local suppliers of the said foreign brand of cigarettes who could regularly supply PAL with the quantity it needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL."[45]

A careful scrutiny of the testimonies of witness Cheryl V. Capinpin shows that petitioner compared the prices of its imported wines or liquors with only one supplier – Philippine Wine Merchant. Further, petitioner dispensed with comparing the price of its imported cigarettes as against its price in the local market.

Based thereon, petitioner could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by one supplier, i.e., Philippine Wine Merchant. On the other hand, with respect to its imported cigarettes, it was evident that petitioner failed to make comparison in contrast to its local prices.

Hence, without sufficient basis for comparison of the quality, quantity or prices of locally available liquors, wines and cigarettes as against the quality, quantity or prices of such imported goods, petitioner could not have ascertained that the said imported goods are not locally available in reasonable quantity, quality, or price. Evidently, petitioner failed to prove the third requisite.

[45]Id., Docket, pp. 521-523.

To end, petitioner failed to prove that it complied with the conditions of PD 1590 for it to be entitled to its claim for refund in the amount of Three Million Nine Hundred Forty Five Thousand Six Hundred Fifteen and 62/100 (P3,945,615.62). As such, the Court is constrained to deny the Petition.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice