REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB NO. 1484
(CTA Case No. 8362)

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

Promulgated:

MAR 26 2019
11:32 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Before this Court are the following:

1. The Commissioner of Internal Revenue's (CIR's) **Motion for Reconsideration**[1], filed on April 27, 2018, with Philippine Airlines, Inc.'s (PAL's) **Comment/Opposition**[2], posted on July 24, 2018, which the Court received on August 6, 2018; and

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[1] *Rollo,* pp. 528-537.
[2] *Id.,* unpaginated.

2. The Commissioner of Customs' (COC's) **Motion for Reconsideration**[3] posted on May 7, 2018, which the Court received on May 11, 2018, with PAL's **Comment/Opposition**[4] posted on August 2, 2018, which the Court received on August 10, 2018.

The Motions for Reconsideration by the CIR and COC both seek the re-evaluation of the Court's Decision[5] dated April 10, 2018, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The Court in Division's Decision and Resolution promulgated on January 4, 2016 and June 22, 2016, respectively are hereby **REVERSED AND SET ASIDE.** The case is **REMANDED** to the Court in Division for the determination of the amount of refund due to petitioner.
>
> **SO ORDERED."**

As grounds for the CIR's Motion for Reconsideration the CIR claims that 1) petitioner failed to prove that the alleged commissary supplies are locally available in reasonable quantity, quality or price; 2) that no independent and credible evidence was presented to prove this matter as the testimony of petitioner's own employee, Ms. Cheryl Capinpin, is self-serving; 3) that as to reasonableness of the price, reasonableness should not be equated with cheaper prices as a reasonable price is not necessarily the lowest price; and 4) claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

In PAL's Comment/Opposition to the CIR's motion, PAL argues that the testimony of Ms. Capinpin should not be considered self-serving simply because she is an employee of PAL, since her testimony was presented in open court for the appreciation of the Court, as well as cross-examination by the CIR. Second, as regards the unreasonableness of the price of locally available products as compared to products that have cheaper prices abroad, PAL argues that it has been consistently declared that tables of comparison, price lists, and other similar documents are sufficient to establish that the items imported are not available in reasonable quantity, quality or price.

On the other hand, the COC's Motion for Reconsideration is based on the following grounds: 1) the Court *en banc* has no jurisdiction over PAL's claim

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[3] *Id.*, pp. 548-562.
[4] *Id.* at Note 2.
[5] *Id.*, pp. 498-518.

for refund; as the collection of excise taxes on imported articles is within the BOC's jurisdiction, it follows that the procedure for its payment, protest, claim for refund, and appeal are governed by the Tariff and Customs Code of the Philippines (TCCP) as held in *Caltex (Philippines), Inc. v. Commissioner of Internal Revenue*[6]*;* and 2) PAL's claim for refund has no basis in evidence.

In PAL's Comment/Opposition to the COC's Motion for Reconsideration, PAL argues that, on the contrary, the Court of Tax Appeals has jurisdiction over the present case and the COC's reliance on *Caltex* is misplaced. The doctrine laid down in *Caltex*, a 1965 case, as well as the provisions of Republic Act (RA) No. 1937 have long been overturned by RA 1124 or *An Act Creating the Court of Tax Appeals.* PAL also points out that it has presented sufficient evidence to establish its claim for refund for the same reasons as indicated in its Comment/Opposition to the CIR's motion.

Respondents' motions are bereft of merit.

On the issue of jurisdiction of the CTA, indeed, *Caltex* has long been overturned by more recent legislation and pronouncements. As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are evidently within its jurisdiction.[7] The jurisdiction of the CTA is conferred by Republic Act No. 1125, as amended by Republic Act No. 9282, which provides in part:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> a. *Exclusive appellate jurisdiction to review by appeal* as herein provided:
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> 1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*
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> . . .
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> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – *Any party adversely affected by a decision, ruling or* ***<u>inaction</u>*** *of the Commissioner of Internal Revenue, the Commissioner of*

[6] G.R. No. L-20462, June 30, 1965.
[7] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

> *Customs*, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

In this particular case which involved the inaction not only of the COC on PAL's written protest, but also the inaction of the CIR on its administrative claim for refund, the case of *Nestle Philippines, Inc. (Formerly Filipro, Inc.) vs. Honorable Court of Appeals, Court of Tax Appeals and Commissioner of Customs*[8], is illustrative, to wit:

> Accordingly, once a written protest is seasonably filed with the Collector of Customs **the failure or inaction of the latter** to promptly perform his mandated duty under the Tariff and Customs Code **should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it,** ***if any is proven*****, and thereby enrich itself at the expense of the taxpayers.** If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness. *(Emphasis supplied)*

In the present case, PAL imported cigarettes, liquors and wines on various dates in 2007, 2009, and 2010. PAL filed with the District Collector of Customs of NAIA a written protest against the assessment and collection of the excise tax on the above importations, but the COC failed to act on PAL's claim. PAL filed a correspondent administrative claim for refund with the CIR which remained unacted upon as well. Given those circumstances, PAL rightfully invoked the jurisdiction of this Court, consistent with RA 1125, as amended by RA 9282.

As regards the probative value of the testimony of Ms. Capinpin, using the standards set by the Supreme Court in *People v. Omictin*[9], Ms. Capinpin's testimony cannot be labelled self-serving by the mere fact that she is an employee of PAL. *Omictin* defined self-serving evidence as "those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court."[10] The Court's rationale was explained, thus:

[8] G.R. No. 134114, July 6, 2001.
[9] *People v. Omictin*, G.R. No. 188130, July 26, 2010.
[10] *Id.*

> "Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.
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> This principle was reiterated in the more recent *People v. Villarama,* where the Court ruled, 'x x x [A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court.' Assayed against the foregoing standards, Ambrosio's testimony is not self-serving and is admissible in evidence.
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> It is common adage that all the evidence presented by a party is self-serving, and it is incumbent upon the adverse party to confront the same with contrary evidence. To be sure, in a number of criminal cases where the degree of evidence required is that of proof beyond reasonable doubt, the Supreme Court even ruled that the lone testimony of the private complainant is sufficient and may be the sole basis for conviction even in the absence of corroborative testimony of other witnesses."

As pointed out by PAL, Ms. Capinpin testified under oath as to the contents of her judicial affidavit and was subjected to cross-examination by the CIR and COC, as well as clarificatory questions from the Court. As such, the credence of her testimony must not be allowed to be undermined by bare allegations in the absence of proof to the contrary which respondents failed to present.

As regards the sufficiency of evidence on record, respondents do not question PAL's compliance with the first two requisites for the exemption from the payment of excise tax on its importation of cigarettes, liquor and wine to apply. One, that PAL paid its corporate income tax and VAT liabilities for the subject period of importation; and, two, that the imported articles, supplies or materials were used in PAL's transport and non-transport operations and other activities incidental thereto.

It is with regard to the third requisite -- that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price -- that respondents take issue with the sufficiency of evidence presented by PAL.

However, respondents have not presented anything persuasive enough to negate the probative value of the Judicial Affidavit of Ms. Cheryl Capinpin[11] (petitioner's Manager for In-flight Materials Purchasing Division), the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[12] , the Philippine Wine Merchants (PWM) Price List for the years 2007[13], 2008[14], and 2009[15], the Affidavit of Gilbert M. Galedo[16] who testified to the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty Free Philippines, the Future Trade International Travel Retail Price List as of Feb 2009[17], and the Monthly Philippine Dealing System (PDS) rates for the years 2007 to 2010[18] to merit the conclusion that the subject imported articles were indeed available in reasonable quantity, quality, or price.

Instead, there is positive testimony on record from Ms. Capinpin to the contrary, to wit:

> **Q16:** As such Supervisor then Manager, would you know why PAL imported said supplies instead of just buying them for the local sellers of similar products?
> **A16:** Yes. PAL imported the said alcohol and liquor products because the importation of the said products is cheaper than buying said products locally.
>
> **Q17:** Why do you say that importing the said catering and commissary supplies is cheaper for PAL than if it purchased the same locally?
> **A17:** Because, as shown in a comparative table which I made, a copy of which is attached hereto as Exhibit "OOO", comparing the cost of importing said supplies and the cost of purchasing them locally, PAL's cost of importing them is definitely much lower than the cost of buying them locally.
>
> **Q18:** Looking at Exhibit "OOO" of your affidavit, where does it say that the cost of importing the various commissary supplies involved in this case is much lower than the cost of buying them locally?
> **A18:** The cost of importing the commissary supplies involved and listed under the column "Product Imported", are specified under

[11] *Id.* at Note 4, pp. 573-591, Exhibit "EEE".
[12] *Id.*, pp. 592-597, Exhibit "EEE-2".
[13] *Id.*, p. 642, Exhibit "EEE-3".
[14] *Id.*, p. 643, Exhibit "EEE-4".
[15] *Id.*, p. 644, Exhibit "EEE-5".
[16] *Id.*, p. 645, Exhibit "EEE-6".
[17] *Id.*, p. 647, Exhibit "EEE-7".
[18] *Id.*, p. 649, Exhibit "EEE-8".

the columns labeled "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 and Entry No.", while the costs of locally buying the same supplies are specified under the columns labeled "Philippine Wine Merchants 2006 Price List", "Philippine Wine Merchants 2007 Price List", "Philippine Wine Merchants 2008 Price List", "Philippine Wine Merchants 2009 Price List", "Duty Free Phils 2009 Retail Prices", and "Future Trade International Travel Retail Price List as of Feb 2009". As can be readily seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

x x x   x x x   x x x

Q25: What do the columns labeled "Philippine Wine Merchants Price List of 2006", "Philippine Wine Merchants Price List 2006", "Philippine Wine Merchants Price List 2007", "Philippine Wine Merchants Price List 2008", and "Philippine Wine Merchants Price List 2009" contain?
A25: The said columns contain the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2006 to 2009, respectively, of the alcoholic products mentioned therein, if the same products were to be purchased from them.

Q26: What is your source of the local prices of Philippine Wine Merchants for the years 2006, 2007, 2008 and 2009?
A26: My source is the 2006, 2007, 2008 and 2009 Price Lists of the Philippine Wine Merchants as given to us by the Philippine Wine Merchants, a local wine dealer.

As previously mentioned, the Court had the opportunity to personally examine Ms. Capinpin during her presentation in open court, where she was subjected to cross-examination and clarificatory questions. As regards the sufficiency of evidence presented by PAL to substantiate its refund, the Court finds no reason to disturb its prior findings.

Based on the foregoing, this Court finds no compelling reason to reverse or modify its Decision.

WHEREFORE, premises considered, both Motions for Reconsideration of respondent CIR and COC are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I reiterate my Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my Dissenting Opinion
JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

I join and concur ~~with Justice Castañeda~~
ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join Justice Castañeda
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice