REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

AIR PHILIPPINES CORPORATION, *Petitioner,*	**CTA CASE NO. 10168**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF CUSTOMS and COLLECTOR OF BUREAU OF CUSTOMS-NAIA, *Respondents.*	Promulgated:

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11:10 a.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant Petition for Review ("Petition") prays that this Court nullify the Decision of the Commissioner of Customs ("COC"), dated August 20, 2019, which affirmed the Resolution of the Bureau of Customs ("BOC") - Ninoy Aquino International Airport ("NAIA") ("BOC-NAIA"), dated May 2, 2019.[1]

The Parties

Petitioner, **AIR PHILIPPINES CORPORATION ("APC"),** is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and is a holder of a congressional franchise under *Republic Act No.* ("RA") *9339, as amended by RA No. 9215*, which allows it to operate and maintain a commercial airline or offer transport services for the carriage of passengers, mail, and goods by air, both domestic and

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[1] Pre-Trial Order, Statement of the Case, *Rollo* Vol. VI, pp. 3086-3087.

international.[2] It has a registered address at PAL Express Administration Bldg., PAL Gate 1, Andrews Avenue, Barangay 191, Pasay City, Metro Manila, Philippines.[3]

Meanwhile, respondents **COC and COLLECTOR OF BOC-NAIA** are government agencies under the Department of Finance, with principal offices at G/F OCOM Building, 16th Street, South Harbor, Port Area, Metro Manila and BOC Building, Mendoza Street, NAIA, Pasay City, Metro Manila, respectively.[4]

The Facts

By virtue of the equality clause[5] under its congressional franchise, petitioner is granted duty and tax free importation of aircrafts, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel oil, whether refined or in crude form, and other articles, supplies, or materials imported for the use in petitioner's transport operations.[6]

The BOC did not release petitioner's importations without the latter complying with the formalities prescribed by the Tariff and Customs Code of the Philippines ("TCCP") and such other rules and regulations prescribed by respondent COC, one of which is the submission of the Tax Exemption Certificate ("TEC") to be secured from the Department of Finance ("DOF").[7]

In light of this, petitioner requested from BOC-NAIA, in a Letter, dated January 3, 2017,[8] that it be allowed to post surety bonds for the year 2017 to secure the conditional release of its importations to be used in its transport operations. In its request, petitioner noted that it is exempt from the payment of duties and taxes in its importations, subject to compliance with the formalities prescribed by the TCCP and by such other rules and regulations prescribed by the COC.[9]

In a Memorandum, dated January 24, 2017,[10] BOC – NAIA District Collector Edgar Z. Macabeo approved petitioner's request subject to strict compliance with the following conditions:[11]

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2 Pre-Trial Order, Statement of Facts and Issues, *Id.*, p. 3087.
3 Petition, *Rollo*, Vol. I, pp. 7-8.
4 *Ibid.*
5 Section 15, RA 8339, in relation to Section 13, Presidential Decree No. ("PD") 1590.
6 Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3088.
7 *Ibid.*
8 BOC Records, p. 411.
9 Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3088.
10 BOC Records, p. 408.
11 Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3088.

a) The request for the allowance to post surety bonds for the conditional release of petitioner's importations must be made monthly; and

b) The DOF TECs must be submitted within a non-extendible period of 60 days from the conditional release of petitioner's importations. Should petitioner fail to submit the TECs within this period, the amount of the surety bond put up for the purpose shall be automatically forfeited in favor of the government.

Pursuant to the above Memorandum, petitioner posted various surety bonds[12] issued by AFP General Insurance Corporation ("AFPGIC") to secure the conditional release of its importations in 2017.[13]

On May 16, 2018, petitioner received a Demand Letter[14] from the Bonds Division, BOC – NAIA detailing the unliquidated bonds posted by petitioner covering the period April 25, 2016 to December 29, 2017. The Demand Letter also declared petitioner as liable to the BOC for the total amount of PHp166,372,770.00 representing the penal amount of the bonds, plus other charges, it posted as security for the conditional release of its importations which were not covered by Indorsements or TECs duly issued by the DOF pursuant to *Customs Administrative Order No.* ("CAO") *05-1991* ("CAO 5-91") (Amended Rate Schedule on the Impositions of Surcharge for Breach of Bond).[15]

The matter was then referred to the Law Division, BOC – NAIA, which conducted three separate hearings on February 14, 2019 and March 4, 2019. During the hearings, the Chief of the Bonds Division, Acting Account Keeper, Acting Storekeeper, and Acting Warehouseman, NAIA Customshouse, appeared for the government. For petitioner, its authorized representatives appeared to explain petitioner's position.[16]

Petitioner filed its Position Paper.[17] For its part, the Bonds Division submitted a categorized list of import entries relative to the surety bonds posted by petitioner in a reduced total aggregate amount of Php158,288,972.00, as follows:[18]

	Category	Description	Penal Amount

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[12] BOC Records, pp. 344-348.
[13] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3089.
[14] Annexes "A" and "B", Petition; BOC Records, pp. 305-326.
[15] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3089.
[16] *Ibid.*
[17] Annex "K", Petition; BOC Record, pp. 90-129.
[18] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3089-3090.

1	Entries with fully completed liquidated bonds	57 entries with supporting documents	Php29,070,595.00
2	Entries with DOF Indorsement and awaiting Notice of Cancellation of Bonds from the Bonds Division, BOC - NAIA	189 entries with corresponding supporting documents	Php43,748.840.00
3	Entries awaiting DOF approval / indorsements to BOC - NAIA	254 entries classified, as follows:	Php80,188,157.50
	3.a. Entries duly filed with DOF within the 60 – day period pursuant to BOC – NAIA Memorandum, dated January 24, 2017	236 entries	Php70,133,606.00
	3.b. Entries filed beyond the 60 – day period but within the 180 – day period pursuant to CAO 5 - 91	16 entries	Php9,968,551.00
	3.c. Entries filed beyond 60 – day and 180 – day period	2 entries	Php86,000.00
4	Entries without records	10 entries	Php1,061,216.00
5	Entries not filed for exemption for DOF	6 entries	Php2,688,048.00
6	Petitioner's liabilities	8 entries	Php1,532,116.00
	Total		Php158,288,972.00

For Category 5 and Category 6, petitioner admitted its liability and offered to pay the amount of Php4,220,164.00.[19]

Respondent Collector of BOC – NAIA then issued a Resolution[20] directing the final demand be made against petitioner for payment of the penal amount of the surety bonds in a further reduced aggregate sum of Php129,218,377.00 (*i.e.*, Category 1 was removed), and unless and until the

[19] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3090.
[20] BOC Records, p. 175.

entire amount of this accountability is fully settled, the renewal of petitioner's License to Operate Customs Bonded Warehouse No. 196 be disallowed.[21]

Petitioner filed its Notice of Appeal[22] and Protest and Memorandum of Appeal,[23] where it argued against the BOC – NAIA Collector's Resolution.[24]

Respondent COC rendered the assailed Decision[25] affirming the BOC – NAIA Collector's Resolution.[26]

Thus, petitioner filed the instant Petition.[27]

On October 18, 2019, Summons were issued requiring respondents to file an Answer to the Petition.[28] On January 8, 2020, respondents filed their Answer.[29]

On February 10, 2020, petitioner filed its Reply to the Answer.[30]

On February 27, 2020, this Court issued a Notice of Pre-Trial Conference.[31] On August 26, 2020, respondents filed their Pre-Trial Conference Brief.[32] Meanwhile, petitioner filed its Pre-Trial Brief on November 17, 2020.[33] On November 18, 2020, the Pre-Trial Conference ensued.[34] The parties then filed a Revised Joint Stipulation of Facts and Legal Issue on December 22, 2020.[35] On July 28, 2021, this Court issued a Pre-Trial Order which dictated the pace of the trial proceedings.[36]

On January 18, 2021, petitioner submitted the Judicial Affidavit of its witness, Jaime C. Perez.[37] During the Hearing conducted on January 21, 2021, said witness was placed on the witness stand in relation to petitioner's request for a Status Quo Ante Order.[38]

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[21] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3090.
[22] Annex "J", Petition; BOC Records, p. 87.
[23] Annex "I", Petition; BOC Records, pp. 67-107.
[24] BOC Records, p. 175; Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3091.
[25] BOC Records, p. 275.
[26] Pre-Trial Order, Statement of Facts and Issues, *Rollo* Vol. VI, pp. 3091
[27] *Rollo,* Vols. I-Y, pp. 7-2525.
[28] *Rollo,* Vol. V, pp. 2557-2558.
[29] *Id.,* pp. 2565-2588.
[30] *Id.,* pp. 2617-2628.
[31] *Id.,* at pp. 2643-2644.
[32] *Id.,* pp. 2650-2668.
[33] *Id.,* pp. 2724-2732.
[34] *Id.,* pp. 2735-2737.
[35] *Rollo,* Vols. V-VI, pp. 2748-2758.
[36] *Rollo,* Vol. VI, pp. 3085-3095.
[37] *Rollo,* Vol. VI, pp. 2776-2905.
[38] *Id.,* pp. 2910-2912.

Petitioner then submitted on February 1, 2021 its Formal Offer of Evidence in relation to its request for a Status Quo Ante Order.[39] To this, respondents filed their Comment on February 8, 2021.[40] All of petitioner's Exhibits were admitted by this Court through a Resolution, dated March 15, 2021.[41] On June 31, 2021, petitioner filed its Memorandum in relation to the request Status Quo Ante Order.[42] Meanwhile, respondents filed their Memorandum in relation to such matter on June 1, 2021.[43] In a Resolution, dated July 28, 2021, this Court denied petitioner's request for a Status Quo Ante Order noting that petitioner failed to prove that it has a prima facie right to be protected considering that the imposition of the penal amount of the bonds arose from petitioner's failure to comply with the conditions of the bond; and that respondents are not performing any act that will threaten petitioner's rights considering that the forfeiture proceedings are aimed against the surety bonds posted by petitioner and not against its current and future importations.[44]

On July 28, 2022, petitioner filed a Motion to Allow the Engagement of an Independent Certified Public Accountant ("ICPA").[45] On September 12, 2022, petitioner submitted the Judicial Affidavit of Ms. Victoria A. Martinez in relation to her commissioning as the ICPA for the instant case.[46] On March 9, 2023, Ms. Martinez was commissioned as the ICPA for the instant case by this Court.[47] On April 24, 2023, the ICPA submitted her ICPA Report.[48] On June 10, 2023, petitioner submitted the Judicial Affidavit of Ms. Martinez in relation to her ICPA Report.[49] On September 28, 2023, she was placed on the witness stand.[50]

On October 23, 2023, petitioner filed its Formal Offer of Evidence.[51] On November 15, 2023, respondents filed their Comment/Opposition to such Formal Offer of Evidence and they further manifested that they will no longer present any witness for the trial.[52] In a Resolution, dated July 29, 2024, this Court admitted all of petitioner's Exhibits.[53] Moreover, in such Resolution, this Court considered Exhibits "R-2" to "R-5" as judicially admitted evidence considering that both parties stipulated upon and admitted such exhibits.

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[39] *Id.*, pp. 2913-2955.
[40] *Id.*, pp. 2968-2972.
[41] *Id.*, pp. 2986-2987.
[42] *Id.*, pp. 2988-3025.
[43] *Id.*, pp. 3026-3044.
[44] *Id.*, pp. 3071-3084.
[45] *Id.*, pp. 3179-3181; 3204-3206.
[46] *Id.*, pp. 3185-3201.
[47] *Id.*, pp. 3210-3213.
[48] *Id.*, pp. 3215-3280.
[49] *Rollo*, Vol. VII, pp. 3282-3328.
[50] *Id.*, pp. 3329-3330.
[51] *Id.*, pp. 3331-3398.
[52] *Id.*, pp. 3399-3405.
[53] *Id.*, pp. 3488-3491.

On October 30, 2024, petitioner filed its Memorandum.[54] On October 17, 2024, respondents filed their Memorandum.[55]

In a Resolution, dated November 28, 2025, the instant case was submitted for decision.[56]

Hence, this Decision.

The Issue

> Whether or not the Assailed Decision of respondent COC correctly affirmed the Resolution of the Collector of BOC-NAIA, directing petitioner to pay the penal amounts of Php129,218,377.00 on the surety bonds posted for the conditional release of its importations.[57]

Arguments of the Parties

Petitioner's Arguments[58]

Petitioner avers that: it should not be held liable for entries which were already issued with TECs; it has no control on the transmittal of the TECs from the DOF to the BOC, as it is deemed to be an internal matter between DOF and BOC; and APC should not be held liable for entries without record.

Tax entries under Category 2 are clearly tax exempt. All of the 189 entries under Category 2 have been issued TEC endorsements by the DOF. As to the matter of its submission, it is not disputed that the DOF TEC endorsements must be transmitted to the BOC within the prescribed period under *CAO 5-91*. However, the BOC's imposition of such penalty under Category 2 on the sole basis that the DOF TEC endorsements were belatedly transmitted to the BOC clearly defeats the legislative purpose of granting APC a franchise. Clearly, there was compliance with the aforementioned obligations with respect to the entries under Category 2, even if there was delay, through no fault, of petitioner.

Per petitioner, the importer has no obligation to ensure that the DOF transmitted the TEC to BOC for liquidation of bonds pursuant to *CAO 5-91* for Category 3. In imposing the penalty, respondent posits that the DOF

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54 *Id.*, at 3497-3516.
55 *Id.*, at 3518-3542.
56 *Rollo* Vol. VII.
57 See Statement of Issues, Pre-Trial Order.
58 See petitioner's Memorandum, *Rollo* Vol. VII, pp. 3506-3514.

exemption certificate must be submitted within a non-extendible period of 60 days from the conditional release of petitioner's importation (*i.e.,* should the importer fails to submit said certificates within this period, the amount of the surety bond put up for the purpose shall be automatically forfeited in favor of the government; and that *CAO 5-91* penalizes submission of documents beyond 6 months from the date of expiration of the chargeable bond or bonds. However, a plain reading of *Section 2 of CAO 5-91* shows no unequivocal imposition of responsibility to submit such documents on the importer itself. Likewise, it is a common knowledge and practice in the BOC that it is the DOF which transmits the TEC to the BOC. Despite this, petitioner maintains its stance that it has submitted all the required and necessary documents to the DOF for the timely issuance of the TEC Endorsements. Unfortunately, no TEC Endorsements for the transactions under Category 3 have been issued by the DOF. Moreover, no fault can be ascribed to petitioner for failing to follow up with the DOF for the release of such TEC Endorsements. Petitioner could not have requested extension of time, or do follow ups, as it was not privy to the inter-agency transmittal of the TEC Endorsements. Pursuant to *Customs Memorandum Order No. 16-99,* respondents are obliged to remind or give notice to the importers of the impending expiration of bonds to give it a chance to comply with the conditions for liquidation. Instead of such notice, a demand to pay was sent to petitioner by respondents. Petitioner already did its part of timely filing its application for TEC. It must not be penalized for circumstances beyond its control considering that the parent agency of respondents was the one which failed to issue the TECs despite petitioner's submissions.

Petitioner is not liable for the 10 entries with no record under Category 4. Without proof that petitioner is the party involved in the 10 entries, and therefore, it should have liquidated the same, petitioner should not be made liable for such. Otherwise, this constitutes a clear violation of the due process of law.

Respondents' Arguments[59]

Respondents, meanwhile, argue that petitioner failed to submit the DOF endorsements and/or TECs within the 60-day period provided under the Memorandum, dated January 24, 2017 or within the 6-month period counted from the date of the expiration of the chargeable bonds provided under CAO 5-91. Petitioner does not deny, and in fact admitted, that in the Memorandum, dated January 24, 2017, its request to be allowed to post surety bonds for the year 2017 to secure the conditional release of its importations to be used in its transport operations was granted, subject to strict compliance with the conditions listed above.

[59] See respondents' Memorandum, *Id.*, pp. 3527-3540

CAO 5-91, on the other hand, penalizes submission of documents beyond 6 months from the date of expiration of the chargeable bond or bonds.

As admitted by petitioner's witness, Mr. Perez, petitioner did not comply with the conditions it undertook when it was allowed to post surety bonds for 2017 to secure the release of its importations to be used in its transport operations in the Memorandum, dated January 24, 2017. To offset its admitted non-compliance with an uncomplicated requirement – the timely submission of TECs – the petitioner proffered the excuse that the required TECs were submitted albeit beyond the period stated in the Memorandum, dated January 24, 2017, and *CAO 5-91*. This claim was, however, contradicted by petitioner's second witness, ICPA Marquez, when she testified during cross – examination that none of the documents that she examined showed that petitioner complied with the requirement of timely submitting the TECs to the BOC.

Through the surety bonds that petitioner posted in exchange for the privilege of having its importations provisionally released – even before the documents showing entitlement to tax exemption have been submitted – it bound itself to comply with the conditions under the law and relevant regulations in connection with the benefit of the early release of its imported goods. Specifically, these are the undertakings contained in the Memorandum, dated January 24, 2017, and *CAO 5-91* on the timely submission of pertinent documents evidencing the exempt status of the earlier conditionally released imports. In turn, petitioner accepted the very consequence of the failure to comply with the conditions of the provisional release of its importations, *i.e.,* to pay, in the form of a penalty, the amount of taxes and duties due on the subject importations. And since the penalty is imposable upon the importer, the obligation to ensure the timely submission of the required documents rests upon the importer. These requisites are not mere technicalities that could be simply brushed aside.

The assailed Decision does not defeat petitioner's tax exemption. The franchise granted to petitioner remains subject to "the provisions of the Constitution and applicable laws, rules and regulations. Moreover, *Section 800 of RA 10648 or the Customs Modernization and Tariff Act ("CMTA")* provides that "goods shall be exempt from the payment of import duties upon compliance with the formalities prescribed in the regulations which shall be promulgated by the Commissioner with the approval of the Secretary of Finance. Thus, petitioner's tax exemption is subject to the DOF Revenue Operations Manual and the Memorandum, dated January 24, 2017.

It must be emphasized that tax exemptions are construed strictly against the taxpayer who must prove by clear evidence, not only its statutory grant of exemption, but also its compliance with pertinent laws, rules and regulations in the availment of such privilege. Thus, the burden is on the petitioner to prove that it has strictly complied with the conditions for its tax exemption and not on the government to show that it has not.

The Ruling of the Court

The instant Petition is partly granted.

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (4) of RA 1125, as amended by RA 9282,* to wit:

> "***SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> 4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;"

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions by the COC involving liability for customs penalties arising from the implementation of the Customs Law which is now the *CMTA*. In the present case, petitioner is appealing the Assailed Decision issued by respondent COC affirming the Assailed Resolution of the Collector of the BOC – NAIA finding petitioner liable for the aggregate amount of Php129,218,377.00 representing the penal amount on the surety bonds posted by petitioner which arose from its alleged failure to comply with: a) the conditions set forth under the Memorandum, dated January 24, 2017, in relation to the provisional release of its importation, and b) *CAO 5-91*. Since the issue at hand pertains to a penalty arising from the implementation by the COC of the *CMTA* and its corresponding rules and regulations, this Court has undoubted jurisdiction over the instant case.

Now, the question that should be determined is whether petitioner timely filed its judicial appeal. Under *Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals*, "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision."

In the case at bar, petitioner allegedly received the Assailed Decision on September 10, 2019.[60] Following this, petitioner had 30 days upon learning of the receipt of the Assailed Decision, or until October 10, 2019, within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on September 18, 2019,[61] this Court properly assumed jurisdiction over the present case.

Petitioner is liable for the penal amounts of the bond since it failed to comply with the mandatory conditions set forth in the Memorandum, dated January 24, 2017, and the provisions of CAO 5-91. It is however not liable for the penal amounts of the bond under Category 4.

At the outset, it must be emphasized that tax exemptions are strictly construed against the taxpayer claiming such exemption. The taxpayer is duty bound to prove by clear evidence, not only its statutory grant of exemption, but also its compliance to the laws, rules and regulations governing the availment of such privilege.[62]

This principle is in fact recognized in *Section 800 of the CMTA* when it provided that importation of "[a]ircraft, equipment and machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil, whether crude or refined except when directly or indirectly used for domestic operations, and such other goods or supplies imported by and for the use of scheduled airlines operating under congressional franchise: Provided, That such goods or supplies are not locally available in reasonable quantity, qualify and price and are necessary or incidental to the proper operation of the scheduled airline importing the same certain goods" shall be exempt from the payment of import duties only upon compliance with the formalities prescribed in regulations, as follows:

> SEC. 800. Conditionally Tax and/or Duty-Exempt Importation. – The following goods shall be exempt from the payment of import duties *upon compliance with the formalities prescribed in the regulations which shall be promulgated by the Commissioner with the approval of the Secretary of Finance:* Provided, That goods sold, bartered, hired or used for purposes other than what they were intended for and without prior payment of the duty, tax or other charges which would have been due and payable at the time of entry if the goods had been entered without the benefit of this

[60] Petition, *Rollo*, Vol. I, p. 16.
[61] *Id.*, p. 7.
[62] *See Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013 (central issue is VAT Refund).

> section, shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs laws: Provided, however, That a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall not be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges: Provided, further, That the President may, upon the recommendation of the Secretary of Finance, suspend, disallow or completely withdraw, in whole or in part, any conditionally free importation under this section:.
>
> . . . .
>
> (v) Aircraft, equipment and machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil, whether crude or refined except when directly or indirectly used for domestic operations, and such other goods or supplies imported by and for the use of scheduled airlines operating under congressional franchise: Provided, That such goods or supplies are not locally available in reasonable quantity, qualify and price and are necessary or incidental to the proper operation of the scheduled airline importing the same;
> (Emphasis and underscoring, Ours)

More importantly, even petitioner's legislative franchise itself, *RA 9339, as amended by RA 9215*, provides that its nature and scope is subject to the provisions of the Constitution and applicable laws, rules and regulations.[63]

Therefore, in order for petitioner to successfully claim its exemption from import duties of its imported aircrafts, equipment, machinery, spare parts, aviation gas, fuel and oil, among others, which are necessary or incidental for their proper operation, it is incumbent upon petitioner not only to prove its legislative grant of exemption on import duties but it must also prove its compliance with the requisites and conditions for claiming such exemption.

One of such requisites and conditions for claiming such import duty exemption is compliance with the DOF Revenue Operations Manual ("DOF manual").[64] The DOF manual embodies the laws, conditions, policies, the step–by–step procedure in obtaining tax exemption, the documents required to be submitted, and the fees and charges to be paid. Under the DOF manual, it is the DOF Revenue Operations Group ("ROG") who was the major frontline office tasked with the operational control and supervision to review and monitor the tax and duty exemption granted to various sectors by the government in order to prevent excessive leakage of revenues.[65]

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[63] Section 1.
[64] Has recently been updated under Department Order No. 10-201 of the DOF, February 1, 2019.
[65] Assailed Decision, *Rollo*, Vol. V, p. 2552.

As a matter of policy and procedure, and as properly observed by respondent COC,[66] the BOC should first await the tax and duty exemption certificate to be issued by the ROG before it can allow the tax – and duty – free release of the importations of airlines operating under a congressional franchise.

However, due to the time-sensitive nature of petitioner's business and its far-reaching effect on the economy and the public interest, and as requested by petitioner itself, then NAIA Customshouse District Collector, Edgar Z. Macabeo, as a compromise, agreed to the conditional release of petitioner's importations of aircrafts and aircraft parts, subject to the strict compliance of the condition that petitioner must post a surety bond guaranteeing that it will present the corresponding TECs within a period of 60 days from the date of the conditional release. Otherwise, the amount of the surety bond will be automatically forfeited in favor of the government. This is the content of the January 24, 2017 Memorandum.[67]

Moreover, since surety bonds have been posted, the same became subject to *CAO 5-1991* which provides for the liquidation and cancellation of bonds posted before the BOC.[68]

Accordingly, petitioner's availment of its import duty exemption as contained in its congressional franchise, *RA 9339, as amended by RA 9215*, and as incorporated in *Section 800 of the CMTA,* is subject to compliance with the conditions contained in the Memorandum, dated January 24, 2017, and CAO 5-91. Especially so, since petitioner requested for a preferred treatment wherein it already obtains possession of its imported goods even before submitting TECs to the BOC proving its entitlement to an import duty exemption. Normally, a taxpayer needs to prove first its entitlement to an import duty exemption before its importations are released to its possession by the BOC.

Thus, petitioner's import duty exemption is subject to the condition under the Memorandum, dated January 24, 2017, that the DOF issued TEC should be submitted to the BOC within the period of 60 days from the date of the conditional release of petitioner's importations. Otherwise, the amount of the surety bond will be automatically forfeited in favor of the government. On the other hand, with respect to CAO 5-91, petitioner's import duty exemption is further subject to the condition that the DOF issued TECs must be submitted to the BOC for the liquidation and cancellation of the chargeable bond within 6 months from the expiration thereof. Otherwise, the entire amount of the bond shall be forfeited in favor of the government as penalty.

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[66] *Ibid.*

[67] Assailed Decision, *Rollo*, Vol. V, pp. 2552-2553.

[68] June 27, 1991.

These periods cannot be dispensed with considering that the BOC agreed to a preferential treatment in favor of petitioner where the latter was allowed to obtain its importation even before proving its duty exemption. Compliance with the 60-day and 6-month periods are part of the consideration in exchange of which the BOC agreed to such preferential treatment in favor of petitioner. Such periods serve to protect the interest of the government where it will be instantly assured that the importations it immediately released in favor of petitioner are in fact duty-exempt.

It is undisputed that the DOF TEC endorsements for the 189 entries under Category 2 have all been belatedly transmitted to the BOC.[69] Moreover, as admitted by petitioner, all of the entries under Category 3 have not been issued any DOF TEC endorsement at all.[70] Accordingly, these entries failed to comply with the conditions (*i.e.,* submission of TECs to the BOC within 60-day period from release / 6-month period from expiration of the bond) set forth under Memorandum, dated January 24, 2017, and *CAO 5-91*.[71] Thus, the government correctly moved for the forfeiture of the amount of the bonds under these 2 Categories.

Moreover, petitioner's claim that the forfeiture of its bonds under entries wherein DOF TECs have already been issued albeit belatedly would run against its congressional franchise providing duty exemption privileges has no leg to stand on.

To reiterate, petitioner requested for a preferential treatment where it was allowed to have its importations immediately released in its favor even before proving before the BOC its duty exemption simply by posting a surety bond and subjecting itself to conditions that it would submit the DOF TECs within 60 days from the release of the goods and within 6 months from the expiration of the bond. By doing so, it became bound to comply with the aforementioned condition that it should immediately submit the DOF TEC within the cited period. These periods are part of the consideration to which the government agreed in exchange for giving such preferential treatment to petitioner as these ensure the government that the goods instantly released in favor of petitioner are actually duty exempt. Thus, petitioner cannot simply brush these periods aside on a claim that such conditions may interfere with its duty exemption under its congressional franchise. In fact, the government is justified in providing a penalty (*i.e.,* forfeiture of the penal amount of the bonds) for failing to comply with these periods to protect its interest.

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[69] See petitioner's Memorandum, *Rollo,* Vol. VII, p. 3507;
[70] *Id.,* p. 3509.
[71] TSN of Mr. Perez, dated January 21, 2021, pp. 44-45; TSN of Ms. Marquez, dated September 28, 2023, pp. 18-21.

Further, as stated above, petitioner's duty exemption under its congressional franchise is subject to the provisions of the Constitution and applicable laws, rules and regulations.[72] Hence, it must comply with the aforementioned periods to enjoy its duty exemption especially since it has requested for preferential treatment wherein its importations have been released instantly even prior to actually proving that such importations are indeed duty exempt. The forfeiture of the penal amounts of the bond in this case is therefore justified as petitioner should be penalized for, without a doubt, it failed to comply with the periods in relation to Categories 2 and 3.

Petitioner cannot also pass on the blame to the DOF for failing to timely submit the TECs to the BOC. For one, it did not present evidence that the submission of the TECs is an internal matter between the DOF and the BOC. Petitioner is the one availing of a tax exemption and the submission of the TECs to the BOC within 60 days from release of the importation is one of the main conditions for availing the duty exemption. It was therefore incumbent upon petitioner to be on its toes in monitoring the status of the submission of these TECs to the BOC. It cannot simply be unconcerned just because the imported goods have already been released to its possession.

However, with respect to the Category 4 entries, the same cannot be imposed against petitioner considering that these cannot be ascribed to petitioner. To force petitioner to pay such amount would be a violation of petitioner's right to due process.

As duly found by respondent COC,[73] the Category 4 entries pertain to bonds without records. Up to this date, no document has been shown to prove that petitioner is the party involved in the 10 entries under Category 4 and, as such, should be the one to liquidate the same. Since these 10 entries have not been shown to pertain to petitioner, to make petitioner pay for these bonds would be unjust. Merely notifying a taxpayer of his or her tax liabilities without details or particulars is not enough. He or she must be informed of the facts and the law on which the assessment is based. Otherwise, there will be a grave deprivation of his or her due process of law.[74] This Court thus agrees with respondent COC that the penal amount of the bonds contained in Category 4 should not be imposed against petitioner.

As petitioner admitted liability for the penal amounts contained under Categories 5 and 6, petitioner must pay for the same.

Given the foregoing, petitioner is found liable for the penal amounts of the bonds it posted, as computed as follows:

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72 Section 1, RA 9339, as amended by RA 9215.
73 Assailed Decision, *Rollo*, Vol. V, p. 2554.
74 *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

	Category	Description	Penal Amount
2	Entries with DOF Indorsement and awaiting Notice of Cancellation of Bonds from the Bonds Division, BOC - NAIA	189 entries with corresponding supporting documents	Php43,748.840.00
3	Entries awaiting DOF approval / indorsements to BOC - NAIA	254 entries classified, as follows:	Php80,188,157.50
5	Entries not filed for exemption for DOF (admitted by petitioner)	6 entries	Php2,688,048.00
6	Petitioner's liabilities (admitted by petitioner)	8 entries	Php1,532,116.00
	Total		Php128,157,161.50

ACCORDINGLY, the instant Petition for Review filed by petitioner **AIR PHILIPPINES CORPORATION** is hereby **PARTLY GRANTED.** Petitioner is liable for the penal amount of its surety bonds in the aggregate amount of Php128,157,161.50.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice