REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC. ("PAL"),
Petitioner,

- versus -

C.T.A. CASE NO. 5684

COMMISSIONER OF INTERNAL REVENUE, BEETHOVEN L. RUALO AND COMMISSIONER OF CUSTOMS PEDRO C. MENDOZA, JR.,
Respondent.

Promulgated:

OCT 14 1999 [signature]

x - x

DECISION

This is a petition seeking for the refund of P34,964,402.00, representing excise taxes paid by Petitioner on its importation of Aviation Turbo Fuel or Jet A-1 Fuel which were allegedly used in its domestic operations.

Petitioner is a domestic corporation organized in accordance with the laws of the Republic of the Philippines. Respondent Commissioner Beethoven L. Rualo is the Commissioner of Internal Revenue (BIR) in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, while Respondent Commissioner Pedro C. Mendoza, Jr. is the Commissioner of the Bureau of Customs (BOC) who, together with his subordinates, are the legally constituted agents of the Commissioner of Internal Revenue in collecting the national internal revenue taxes on imported goods.

14

On March 30, 1999, the parties, through their counsels, submitted the following stipulation of facts which was admitted by the Court on April 5, 1999:

"1. That Philippine Airlines, Inc. (PAL) imported jet fuel and paid the corresponding specific/excise taxes assessed thereon by the Bureau of Customs, as evidenced by the Bureau of Customs Official Receipt No. 59861356 dated October 18, 1996 in the amount of PHP12,272,520.00, Bureau of Customs Official Receipt No. 59861584 dated November 6, 1996 in the amount of PHP11,345,951.00, and Bureau of Customs Official Receipt No. 59864445 dated February 5, 1997 in the amount of PHP11,345,941.00. Copy of said receipts are hereto attached as Annexes "A", "B", and "C" of this stipulation, respectively.

2. That Philippine Airlines did not file any written protest with the Bureau of Customs regarding the import duties and other charges assessed and collected by the Bureau of Customs.

3. That on September 23, 1998, PAL filed a demand letter with the Bureau of Internal Revenue requesting for the refund of the excise taxes paid for the above-mentioned imported jet fuel in the total amount of PHP34,964,402.00. Copy of said demand letter is hereto attached as Anex "D" of this stipulation.

4. That on July 25, 1997, PAL through its Senior Vice-President, Elvis A. Yao, filed a letter with the Commissioner of the Bureau of Internal Revenue requesting a ruling on the tax exemption privileges of Philippine Airlines, Inc. granted under Presidential Decree (P.D.) No. 1590 dated June 11, 1978 in relation to Letter of Instruction (LOI) No. 1483 dated October 31, 1985, and on November 14, 1998 a follow-up letter was sent to the Commissioner of the Bureau of Internal Revenue reiterating its request for a ruling under its letter of July 23, 1997. Copy of said letters are hereto attached as Annexes "E" and "E-1" of this stipulation;

5. That on January 29, 1999, Mr. Beethoven L. Rualo, Commissioner of the Bureau of Internal Revenue replied to the letters marked as Annexes "E". Copy of said letter is attached as Annex "F" of this stipulation;

6. That up to the present, the Commissioner of Internal Revenue has not acted on PAL's demand letter (Annex "D") for the refund of the PHP34,964,402.00 excise tax.

14

7. That PAL filed its petition for review within the two (2) year period as provided for by Section 229 of the National Internal Revenue Code."

In his Answer, Respondent Commissioner of Internal Revenue raised the following Special and Affirmative Defenses:

"5. The petitioner's claim for refund was filed only on September 23, 1998 while the petition for review was filed on October 16, 1998 giving the herein respondent less than a month to process the petitioner's claim for refund;

6. The exemption granted to petitioner under P.D. 1590 has been withdrawn by E.O. No. 93;

7. The fuel imported by the petitioner is subject to excise tax under Section 145 (now Section 148) of the Tax Code, hence, the payments made as alleged in paragraphs 4 and 5 of the petition are not refundable;

8. Well-settled is the rule that claims for refund are construed in strictissimi juris against the claimants since it partakes of the nature of an exemption from taxation;

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund."

Respondent Commissioner of Customs, on the other hand, claimed:

"4. That the Court cannot take cognizance of the petitioner's petition for review the same having been filed prematurely. The law in point is Section 7(2) of RA 1125, conferring jurisdiction to the Court of Tax Appeals. The language of the law is too clear and explicit, that there must be a decision and that the appeal must be filed within 30 days after receipt of said decision;

5. That in the instant case, there is as yet no decision of the Commissioner of Customs upon which to base the petition for review. In the en banc decision of the Supreme Court penned by Justice J.B.L. Reyes in Caltex (Phils.), Inc. vs. Commissioner of Internal Revenue (14 SCRA 599),

> the Court ruled that when the Collector of Customs has not yet acted upon the protest of an importer for refund of special import tax imposed under RA No. 1394, there is no adverse ruling from which an appeal may be taken to the Commissioner of Customs in accordance with Section 2313 of the Tariff and Customs Code. Likewise, there is no decision ruling of the Commissioner of Customs which may be appealed to the Court of Tax Appeals, pursuant to Sec. 2402 of RA 7937 (citing CNS Estate, Inc. vs. Commissioner of Customs, G.R. No. L-18773, January 31, 1964). Moreso, in the case at bar petitioner failed to comply with the provisions of Section 2308 of the Tariff and Customs Code because no formal protest was filed for the customs duties sought to be refunded."

In its Reply to the Answer of Respondent Commissioner of Customs, Petitioner denied the allegations in paragraphs 4 and 5, above-quoted. According to Petitioner, the instant petition for review was filed for the refund of excise taxes, not customs duties, paid by Petitioner on its importations of Jet A-1 fuel, and that it filed its petition for review in accordance with Sections 204 and 229 (must be 230) of the National Internal Revenue Code. Petitioner likewise argued that it included the Commissioner of Customs as one of the respondents in this case since he, together with his subordinates, are the duly constituted agents of the Commissioner of Internal Revenue as far as the collection of internal revenue taxes on importations are concerned and having collected the said excise taxes through his subordinate, the Commissioner of Customs is a necessary, if not an indispensable party to the case and in accordance with Sections 6, 7, 8 of Rule 3 of the Rules of Court, as amended.

The issues We are tasked to resolve are purely legal:

1. Whether or not the instant petition for review was filed prematurely as there is as yet no decision of the Commissioner of Customs appealable before this Court.

2. Whether or not the fuel imported by the Petitioner is subject to excise tax under Section 145 (now Section 148) of the Tax Code; and

3. Whether or not the exemption granted to Petitioner under Presidential Decree No. 1590 had already been withdrawn by Executive Order No. 93 at the time the subject excise taxes were paid. If not, was Petitioner able to meet the requirements set forth in the said presidential decree so as to be entitled to the relief sought?

Anent the first issue, Respondent Commissioner of Customs argues that the instant Petition for Review was filed prematurely as there is as yet no decision of the Commissioner of Customs appealable before this Court.

There is no merit in this contention.

This is a petition praying for the refund of excise tax which is an internal revenue tax, the refund of which is properly addressable to the Commissioner of Internal Revenue. Thus, when the Bureau of Customs collected the excise tax from Petitioner, it did so merely as deputies of the Commissioner of Internal Revenue. Petitioner's act of not filing a claim for refund of excise taxes paid with the Commissioner of Customs before elevating its case before this Court was correct as it is the decision of the Commissioner of Internal Revenue that will vest this Court with jurisdiction.

As to whether or not the fuel imported by the Petitioner is subject to excise tax under Section 145 (now Section 148) of the Tax Code, to wit:

> "**Section 145.** ***Manufactured oils and other fuels.*** - There shall be collected on refined and manufactured mineral oils and motor fuels, the following specific taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> x x x x x x x x x
>
> (7) Aviation turbo jet fuel, per liter of volume capacity, x x x,"

while the same is the rule, this Court upholds Petitioner's exemption from payment thereof by virtue of its franchise, P.D. No. 1590, the pertinent portion of which 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 sub-sections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; 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.
>
> <u>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</u> 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:
>
> x x x x x x x x x

150

> (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;"

Verily from the foregoing provisions, Petitioner's payment of its basic corporate income tax or franchise tax of 2%, whichever is lower, shall take the place of all taxes, duties, charges, royalties or fees on all importations by the grantee of aviation gas, fuel, and oil, whether refined or in crude form. The instant petition seeks for the refund of excise taxes paid by Petitioner on its importation of aviation fuel, which clearly falls within the enumerated exceptions.

Finally, as to whether or not the exemption granted to Petitioner under its franchise had been withdrawn by Executive Order No. 93, We rule in the negative. In BIR Ruling No. 13-99 dated January 29, 1999, it was the Respondent Commissioner of Internal Revenue himself who ruled that:

> "(t)he grant of such exemption is not contrary to Executive Order No. 93, withdrawing the tax and duty exemption privileges, including the preferential tax treatment of all units of government and private entities in view of Sec. 24 of PD No. 1590 which provides, viz:
>
> > "**SEC. 24.** This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof." (Underscoring supplied)

151

The foregoing finds support in the letter of then Executive Secretary Catalino Macaraig, Jr. of the Office of the President of the Philippines dated March 30, 1988 addressed to the President of Philippine Airlines which ruled that:

> "x x x this Office finds and so declares that EO Nos. 72 and 93, both series of 1985, have not effectively amended or modified any provision or section of PD No. 1590." (underscoring supplied)

Moreover, Aurora T. Aquino, Director IV of the Office of the President of the Philippines issued an undated certification that:

> "x x x according to the records available on file in this Office, Presidential Decree No. 1590 dated June 11, 1978, entitled "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" has not been amended nor revoked by any issuance."

Finally, the Department of Finance through Director Vicente G. Quintos, Head, Fiscal Incentives Review Board (FIRB) Secretariat in his letter dated May 5, 1992 addressed to Mr. Fortunato Gupit, Jr., Vice President – General Counsel, Philippine Airlines in reference to the aforequoted letter-ruling of the Office of the President through then Executive Secretary Catalino Macaraig, Jr., dated March 30, 1998, stated that:

> "x x x the FIRB is in agreement with the aforecited position of the Office of the President."

This Court agrees with Petitioner that for PAL to be subject to taxes and duties on its importation and/or domestic purchase of petroleum products, E.O. No. 93 should have expressly or specifically referred to PAL's franchise P.D. 1590, or to the provisions of Section 13 thereof, hereinbefore quoted, which grants the aforementioned tax and duty exemptions to PAL. Since E.O. No. 93 does not "specifically modify, amend, or repeal"

152

"P.D. 1590" "or any section or provision hereof", PAL's exemptions under Section 13 of its franchise still exists and should be respected.

We now determine whether Petitioner was able to meet the requirements set forth under its franchise. Under Section 13 of Petitioner's franchise, Petitioner is exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, provided that:

1. 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

2. They are not locally available in reasonable quantity, quality or price.

On the other hand, the provisions of LOI No. 684 (p. 105, CTA records) state that the importation of the aviation gas, fuel and oil, whether crude or refined, shall be allowed informal entry free of duty and released immediately subject to the presentation, within fifteen (15) days from date of release, of a statement under oath stating compliance with the above requirements. According to Petitioner, the information that the imported aviation fuel involved were actually used in its transport (domestic) operations was relayed by it to the Respondent BIR in its September 23, 1998 letter requesting for the refund of the total amount of P34,964,402.00. There was no showing that Petitioner ever complied with the submission of a statement under oath required by LOI No. 684. From this mere allegation, there is a clear indication that Petitioner failed to submit the sworn statement required by the said letter of instruction which could have entitled Petitioner to

153

a release of its importation without payment of taxes. Consequently, while Petitioner's legal bases for tax exemption may be overwhelming, this Court is constrained to deny its claim for its failure to prove compliance with the conditions stated in its own franchise and in LOI No. 684.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

154