Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB No. 1323** (CTA Case Nos. 8032 and 8075)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: MAY 12 2017 2:30 pm

x- -x

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Philippine Airlines, Inc., pursuant to Section 4(b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals, as amended, seeking to reverse and set aside the

---

[1] En Banc Rollo (Vol. I), pp. 63-83.
[2] **RULE 8**
PROCEDURE IN CIVIL CASES

SEC. 4. *Where to appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal. (n)

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal. (n)

Decision[3] (assailed Decision) dated January 5, 2015, and Resolution[4] (assailed Resolution) dated May 26, 2015, both rendered by the CTA Third Division in CTA Case Nos. 8032 and 8075.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder, to wit:

Decision dated January 5, 2015:

"**WHEREFORE**, in view of the foregoing, petitioner's claim for refund in the amount of Php22,214,356.06 representing its importations of cigarette, wines, and liquors from February to May 2008 is hereby **DENIED**.

SO ORDERED."

Resolution dated May 26, 2015:

" **WHEREFORE**, the 'Motion for Reconsideration,' is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

Petitioner Philippine Airlines, Inc. 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.[5]

On the other hand, respondent Commissioner of Internal Revenue (respondent CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who holds office at the BIR National Office Building, Agham Road, Diliman Quezon City.[6]

Co-respondent Commissioner of Customs (respondent COC) is the duly appointed Commissioner of the Bureau of Customs (BOC) who holds office at G/F OCOM Building, Bureau of Customs, Port Area, Manila City.[7]

---

[3] Annex "A" to the Petition for Review, Ibid., pp. 84-127.
[4] Annex "B" to the Petition for Review, Id., pp. 128-135.
[5] Par. 2, The Parties, Petition for Review, En Banc Rollo, p. 64.
[6] Par. 3, The Parties, Petition for Review, Id.
[7] Par. 4, The Parties, Petition for Review, Id.

The facts[8] of the case, as narrated by the CTA Third Division in the Assailed Decision, are as follow:

"On June 11, 1978, by virtue of PD No. 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 Other Countries,*' petitioner was granted a franchise to operate and maintain air transport services domestically and internationally.

Pursuant to Section 13 of PD No. 1590, petitioner is entitled to tax exemption from all other taxes after payment of either (a) the basic corporate income tax; or (b) a franchise tax of two percent of gross revenues.

On January 1, 2005, RA No. 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 National Internal Revenue Code of 1997, as Amended' took effect. Section 6 of the said law provides:

'SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

'SEC. 13. *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 customs house, 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

[8] Page 2-26 of the January 5, 2015 Decision, Id., pp. 85-109.

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.'

On February 3, 2005, then CIR Guillermo Parayno wrote to then Commissioner of Customs ('COC') George Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes'. . . on all importations destined for Duty Free Philippines ('DFP') and the Freeport zones, such as the Subic Bay Freeport Zone', and requested the BOC to immediately collect the excise taxes due on the imported alcohol and tobacco products brought to the DFP and Freeport zones.'

On February 4, 2005, then COC George Jereos issued a Memorandum to the BOC officers and personnel directing them to 'effect collection of excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones.

On March 1, 2005, COC Alberto Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the 'Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulations No. 12-2004.'

Consequently, petitioner's importation of cigarettes, wines and liquors were subjected to excise tax and withheld from release pending payment of said taxes.

Petitioner, on various dates, paid under protest the assessed specific taxes and filed its administrative and judicial claims for refund of its excise tax on importations of cigarettes, wines and liquors for the period of February to May 2008, as follows:

CTA Case No.	Amount	Date of Payment	Date of Filing of Admin. Claim	Date of Filing of Judicial Claim
8032	Php2,293,035.65	February 21, 2008	March 5, 2009	February 22, 2010
	4,670,596.10	March 06, 2008	March 5, 2009	
	4,996,793.33	March 11, 2008	March 5, 2009	
	2,279,825.42	April 01, 2008	March 5, 2009	
8075	Php4,910,127.24	April 18, 2008	March 5, 2009	April 14, 2010
	3,063,978.32	May 19, 2008	March 5, 2009	

<u>CTA Case No. 8032</u>

In respondent CIR's Supplemental Answer, the following special affirmative defenses are interposed:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of Php14,240,250.50 being claimed by petitioner as alleged specific taxes paid on 21 February 2008, 6 March 2008, 11 March 2008 and 1 April 2008 was not properly documented.
>
> 6. Petitioner must prove that the amount sought to be refunded are erroneously paid taxes within the

purview of Sections 204 and 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).

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

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

While in respondent COC's Answer the following Special and Affirmative Defenses are alleged:

'16. Respondent COC repleads, reproduces and incorporates, by way of reference, all of the foregoing averments.

Petitioner is not exempt from excise tax either under its franchise (PD 1590) or under Republic Act No. 9334

17. Petitioner contends that pursuant to Presidential Decree 1590, the law granting its airline franchise, it is tax and duty-exempt from payment of excise taxes on its importations of cigarettes and wines allegedly for international flight consumption. It avers that it was erroneously collected with the excise tax in the aggregate amount of amount of Fourteen Million Two Hundred Forty Thousand Two Hundred Fifty and 50/100 (Php14,240,250.50) and therefore claims for its refund.

18. Section 13 of Presidential Decree No. 1590 fully reads:

> 'Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during

the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or 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:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

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 transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;

3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

(a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and

(b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term 'gross revenues' is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources.

19. Nowhere in PD 1590 does it clearly state that petitioner is exempt from excise tax on its wine and cigarettes importations. For it is required that exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.

20. In the absence of words clearly exempting from payment of excise tax on all its importations, petitioner should be held liable thereof. Well-settled is the rule that tax statutes must be strictly construed against the taxpayer who is claiming for the exemption because the law does not look with favor on tax exemptions and that he who seeks to be, must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

21. Settled too is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.

22. The nature of an excise tax is that it is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Thus, petitioner cannot claim exemption from excise tax on all its importations when PD 1590 specifically grants it exemption only in relation to its franchise, subject to the terms and conditions prescribed therein.

23. Moreover, Section 8 of PD 1590 specifically provides that petitioner shall be 'subject to the laws of the Philippines now existing or hereafter enacted.'

24. Therefore, assuming arguendo that petitioner is exempt from excise tax under PD 1590 as it claims itself to be, still, there is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority. To state otherwise is to limit the taxing

power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

25. Thus, the latest expression of the taxing authority with regard to excise taxes is found under Section 6 of Republic Act No. 9334 entitled '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 National Internal Revenue Code of 1997, as Amended' which became effective in 2005 and provides:

> **'Section 6.** Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> > **'Section 131. Payment of Excise Taxes on Imported Articles. —**
> >
> > **(A) Persons Liable.**
> >
> > xxx xxx xxx
> >
> > <u>'The provision of **any special** or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits 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**</u>: Provided, however, That this shall not apply to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': x x x' *(Emphasis supplied)*

26. Clearly from the above-mentioned provision, it can be gleaned that excise taxes are imposed on **all importations** of cigar and cigarettes, distilled spirits, fermented liquors and wines, **notwithstanding the contrary provisions of any special or general law**, such as PD 1590 which granted the franchise of petitioner. Hence, by the explicit language of Section 131 (A) of RA 9334 which authorizes the government to impose excise tax on imported articles, including the subject importations of petitioner, is clear.

27. Even Section 24 of PD 1590 clearly states that petitioner's franchise may be modified, amended or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal any section or provision thereof. Therefore, there is no need for the legislature to enumerate in RA9334 and give a long list of all laws or franchises that will be affected by the imposition of excise tax.

28. No less than our Constitution clearly provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires.** With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power; they are also **subject to alteration by**

the power to tax, which like police power cannot be contracted away.

29. Besides, PD 1590 was issued way back in 1978 when petitioner was still the 'national flag carrier' following the reacquisition by the Government of the ownership, control and management thereof (1st Whereas Clause, PD 1590). Thus, petitioner's tax exemptions under PD 1590 were based on the overriding consideration, i.e., government ownership. Such condition though existing at the time when petitioner's franchise was granted, no longer holds true to date.

30. It should be recalled too that in December 1986, then President Corazon C. Aquino, who was exercising executive and legislative powers, issued Executive Order (EO) No. 93 (entitled "Withdrawing All Tax and Duty Incentives, subject to certain exceptions, Expanding the Powers of the Fiscal Incentives Review Board and for other purposes") which **withdrew all tax and duty exemptions** granted to government and private entities effective March 10, 1987 with certain exceptions. Section 1 of the said EO reads:

> 'Sec. 1. **The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted 'to government and private entities are hereby <u>withdrawn</u>,** except:
>
> a) those covered by the non-impairment clause of the Constitution;
>
> b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
>
> c) those enjoyed by enterprises registered with:

(i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;

(ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;

(iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;

d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;

e) those conferred under the four basic codes namely:

(i) the Tariff and Customs Code, as amended;

(ii) the National Internal Revenue Code, as amended;

(iii) the Local Tax Code, as amended;

(iv) the Real Property Tax Code, as amended.

f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board. (emphasis supplied)

31. The wholesale withdrawal of tax incentives granted to all government and private entities under EO 93 is in order for the government to re-examine existing tax exemptions and restore through the 'review mechanism' of the Fiscal Incentives Review Board only those that are consistent with declared economic policy. Thus wise, the chief revenue source of the government will not be greatly, if not unnecessarily, eroded since tax exemptions that were granted on piecemeal basis, and which have lost relevance to existing programs, are eliminated. Accordingly, whatever tax exemption or privilege granted in favor of petitioner under PD 1590 was considered withdrawn by virtue of EO 93.

32. Under the present circumstances or 20 years after the grant of its franchise, petitioner as a private entity, and like all the other entities, is subject to excise tax on its importations, in the absence of a clear provision exemption it from the coverage of RA 9334.

33. It must be underscored that the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government has been repeatedly observed. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it.

34. In sum, the Php14,240,250.50 taxes were rightfully collected by respondent COC from petitioner on the importation of alcohol and cigarettes in accordance with law.

35. Consistent with the provisions of RA 9334, respondent CIR imposed taxes on petitioner's importation, and respondent COC collected those taxes upon the former's advice.

36. The BOC, being a mere collection agency, does not have the power and jurisdiction to adjudicate any issue arising from the rulings, rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions, being of equal ranks, unless otherwise duly delegated as an incident to the collection.

37. Under the premises, petitioner should have availed of administrative remedies before lodging the present case to this Honorable Court. Taxes paid and collected are presumed to have been paid in accordance with law, therefore, not refundable.

Petitioner is not entitled to tax refund for excise tax payments on the subject importations.

38. In an action for refund, the burden of proof is on the taxpayer to establish its right for refund, and failure to sustain the burden is fatal to its claim for refund. This, it is incumbent upon petitioner to show that the alleged excise taxes in the total amount of Php14,240,250.50 were erroneously collected by respondent COC.

39. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases.

40. Assuming arguendo that the subject importations were used by petitioner as its commissary and catering supplies, the Letter of Instructions No. 684 issued in April 4, 1978 (Annex CC to its Petition) however mandates that the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil for its use shall be allowed informal entry free of duty and released subject to the presentation within fifteen (15) days from the date of release of a statement

under oath stating that: (a) the articles or supplies are not locally available in reasonable quantity, quality, and price; and (b) that such articles or supplies are necessary or incidental to its operation and business activities.

41. The same LOI 684 provides that petitioner's imported consumable item for its catering and food services shall be transferred directly and immediately to the Bureau of Custom's bonded warehouse by submitting a requisition slip and after proper accounting of the said released articles and supplies by presentation of proof of actual use in its airline operations. Likewise, such withdrawals of the articles and supplies shall be approved by respondent Commissioner of Customs.

42. Again, petitioner has not shown that it had complied with the requirements of LOI 684. A perusal of the instant petition shows that petitioner did not submit, within fifteen (15) days from the date of release of its articles and supplies from the accredited customs warehouse, a statement under oath or an affidavit required by LOI 684.

43. It has been ruled that the grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities.

44. Based on the foregoing, for failing to show compliance with the above-mentioned requirements, petitioner cannot still claim any exemptions from payment of excise taxes for the subject importation of its alcohol and cigarettes.

45. In any case, tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor.

46. Petitioner failed to clearly show that it is exempted from payment of excise tax on the subject wine and

cigarette importations, thus, respondent COC validly implemented Republic Act No. 9334 and its regulation which has the force and effect of law.

47. Moreover, petitioner's reliance on the DOJ Opinion No. 44, dated 17 June 1996 is misplaced, as it is not binding on respondent COC for it is merely advisory in nature. The said DOJ Opinion was issued upon a definite fact and issue, i.e., whether PAL is exempted from payment of filing fees relative to its application for an increase of its authorized capital stock from Php5 Billion and Php10 Billion. Thus, it is not controlling particularly on the issue of whether PAL is exempt from payment of excise tax on the subject wine and cigarette importations.

48. Likewise, BIR Ruling dated 13 April 1994 is not conclusive against respondent COC for the reason that the BIR merely ruled on PAL's exemption from documentary stamp tax on bank notes/documents on certain loans.

49. Jurisprudence has it that when an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law; and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means.

50. Verily, petitioner has not shown its right to exemption from excise tax on the subject importations. Thus, its claim for refund should be denied and the instant petition should be dismissed.'

CTA Case No. 8075

In respondent CIR's Answer, she raised the same defenses in her Supplementary Answer filed on April 22, 2010 in CTA Case No. 8032, except the amount and dates found in paragraph five (5), which states as follows:

'5. The amount of Php14,240,250.50 being claimed by petitioner as alleged specific taxes paid on 21 February 2008, 6 March 2008, 11 March 2008 and 1 April 2008 was not properly documented.'

On the other hand, respondent COC raised the following Special and Affirmative Defenses, to wit:

> 6. Respondent repleads, reproduces, and incorporates by way of reference all the foregoing averments.
>
> 7. Petitioner argues that Presidential Decree No. 1590, the law granting its airline franchise, exempts it from excise taxes on its importations of cigarettes and wines for international flight consumption; consequently, the act of respondents of collecting excise taxes from its subject importations based on Republic Act No. 9334 is erroneous, thereby entitling them to a refund of all excise taxes paid in the total amount of Php7,974,105.56.
>
> 8. Petitioner's argument lacks merit.
>
> 9. By passing Republic Act No. 9334 (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 National Internal Revenue Code of 1997, as amended, Congress made clear its intention to increase the tax base and thereby eliminate tax exemption privileges being enjoyed by several entities, including petitioner.
>
>> 9.1. Where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect (Mecano vs. Commission on Audit, 216 SCRA 500 [1992]). The pertinent provision of RA 9334 holds:
>>
>>> 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.
>>>
>>> xxx xxx xxx
>>>
>>> **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.

Sec. 10. Repealing Clause. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

9.2. Being clear and manifest, the intention of Congress in passing RA 9334 must be given effect.

9.3. As mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority. To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it (Republic vs. Caguioa, 536 SCRA 193 [2007]).

9.4. Moreover, no less than our Constitution clearly provides that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires (Sec. 11, Article XII of the 1987 Constitution). Franchises are subject to alterations through a reasonable exercise of police power; they are also subject to alteration by the power to tax, which like police power, cannot be contracted away (City Government of San Pablo, Laguna vs. Reyes, 305 SCRA 353 [1999]). a

9.5. RA 9334 is clearly an amendment of petitioner's franchise caused by Congress in the exercise of the government's power to tax. Well-settled is the principle that tax exemptions may be withdrawn at the pleasure of the taxing authority (Mactan Cebu International Airport Authority vs. Marcos, et al., 261 SCRA 667 [1996]).

9.6. The Supreme Court in Manila Electric Company vs. Province of Laguna, et al., 306 SCRA 750 [1999]), explained that tax exemptions contained in franchises do not partake the nature of a contract. A franchise is but a grant that is subject to amendment, alteration or repeal by Congress when the common good so requires, thus:

> While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of contracts and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, like

its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires.

9.7. All told, petitioner is liable for excise taxes on its importation of cigarette, wine and liquor, by virtue of the clear legislative intent expressed by Congress in RA 9334, which amounts to an amended of petitioner's franchise. Hence, respondent CIR properly prescribed the collection of the subject excise taxes and respondent COC rightfully collected them.

10. Consistently, Section 8 of PD 1590 specifically provides that petitioner shall be 'subject to the laws of the Philippines now existing or hereafter enacted.'

11. It must be underscored that the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government. Taxes being the lifeblood of the government, should be collected without unnecessary hindrance, and every precaution must be taken no to unduly suppress it (Republic vs. Caguioa, supra.).

12. Petitioner's allegation that RA 9334 subjects to tax previously tax-free and duty-free importations of cigarettes and wine of 'freeports and duty-free shops only,' results from an erroneous interpretation of the law's provisions.

12.1. Section 6 of RA 9334 specifically states that '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.' The phrase 'even if' meant to clarify that the enumerated items intended for freeports and duty-free shops are no longer exempted from being levied applicable taxes. It does not in any way indicate that only goods brought to freeports and duty-free shops shall be levied taxes, as what petitioner asserts. The intention of the law is too clear to be mistaken.

13. So, too does petitioner's reference to Letter of Instruction No. 684 (LOI 684) not avail. Petitioner contends that by virtue of this enactment, its importation of commissary and catering supplies were allowed informal entry free of duty.

13.1. LOI 684, issued in April 4, 1978, clearly mandates that the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil for its use shall be allowed informal entry free of duty and released immediately subject to the presentation within fifteen (15) days from the date of release, of a statement under oath stating that: (a) such articles or supplies are not locally available in reasonable quantity, quality and price; and (b) that such articles are necessary for or incidental to the operation of petitioner and its other business activities.

13.2. LOI 684 further provides that petitioner's imported consumable item for its catering and food services shall be transferred directly and immediately to the Bureau of Customs' bonded warehouse, and may be withdrawn by petitioner by accomplishing a requisition slip. The consumable items so withdrawn shall be properly accounted for by presentation of proof of actual use in the airline's operations.

13.3. Unfortunately, petitioner has not shown that it has complied with all the requirements of LOI 684 for it to enjoy the tax exemption privileges provided by the same law, specifically for its subject importations of liquor, cigarette and wine. Nevertheless, LOI 684 yields to the clear legislative intent of RA 9334 which removes petitioner's tax exemption from the subject importations.

14. Petitioner cited BIR Ruling dated April 13, 1994 to support its argument that the phrase "in lieu of all taxes" in Section 13 of its franchise had the effect of exempting it

from payment of all taxes other than those imposed in the same law.

> 14.1. However, this BIR ruling is not conclusive upon respondent COC because the BIR merely ruled therein on petitioner's exemption from payment of documentary stamp tax on bank notes/documents on certain loans, and not on matters that have a direct implication on this case.

15. Petitioner also cites Opinion No. 44 of the Department of Justice dated June 17, 1996, which allegedly construed the meaning of "in lieu of all taxes.'

> 15.1. However, petitioner's reliance on this opinion is misplaced. The opinion was issued upon a definite fact and issue, i.e., whether petitioner is exempted from payment of filing fees relative to its application for an increase of its authorized capital stock from P5 Billion to P10 Billion. Thus, it is not controlling particularly on the issue of whether petitioner is exempt from payment of excise taxes on its importations of liquor, cigarette and wine.

16. When an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law, and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means (La Bugal-B'laan Tribal Association, Inc. vs. Ramos, 421 SCRA 148 [2004]).

17. Finally, tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 [1926], Reagan vs. Commissioner, 30 SCRA 968 [1969]) and failure to sustain the burden is fatal to the claim for refund. Tax refunds cannot be permitted to exist upon 'vague

implications' (Commissioner of Internal Revenue vs. Procter and Gamble, 204 SCRA 377 [1991]).'

A pre-trial conference was set. On July 15, 2010, respondent COC filed his pre-trial brief.

On August 2, 2010, petitioner filed a 'Motion for Consolidation,' praying that CTA Case No. 8032, pending before the First Division be consolidated with CTA Case No. 8075, pending before the Second Division. The latter Court issued a Resolution granting the 'Motion for Consolidation,' which was confirmed by the former Court in a Resolution dated November 3, 2010.

On November 24, 2010, the parties submitted their 'Consolidated Joint Stipulation of Facts and Issues,' after the Court's Resolution dated September 17, 2010.

Petitioner presented its 'Petitioner's Documents for Marking as Exhibits' and 'Supplemental Formal Offer of Exhibits.' On the other hand, the right of respondents to present evidence has been deemed waived.

Pursuant to CTA Administrative Circular No. 01-2013, dated March 26, 2013, and Order dated April 3, 2013, the consolidated cases, docketed as CTA Case Nos. 8032 and 8075, were transferred to the Third Division.

On January 14, 2014, the Court resolved to submit the case for decision, taking into consideration the 'Memorandum' filed by petitioner on January 2, 2014, and the 'Memorandum,' filed by respondent COC on January 6, 2014, without any Memorandum filed by respondent CIR."

On January 5, 2015, the Court in Division rendered its Decision denying petitioner's Petition for Review for failure to comply with the second and third conditions set forth under Section 13 of Presidential Decree No. 1590 (PD No. 1590).

Thus, petitioner filed a Motion for Reconsideration[9] on January 26, 2015, which was denied by the Court for insufficiency of evidence in its Resolution[10] promulgated on May 26, 2015.

[9] Division Docket (Vol. VI) CTA Case No. 8032, pp. 3438-3447.
[10] Ibid., pp. 3500-3507.

Thereafter, within the extension of time requested by petitioner, it filed, thru registered mail, its Petition for Review [11]on July 3, 2015 and the same was received by the Court on July 7, 2015.

Without necessarily giving due course to the Petition, the Court En Banc ordered respondents to file their comment, not a motion to dismiss, within ten days from receipt of the Resolution[12] dated September 2, 2015. Respondent CIR complied[13] thereto on September 14, 2015, while respondent COC filed a Motion for Extension of Time to File Comment[14] on September 22, 2015, which was granted in a Minute Resolution[15] promulgated on September 24, 2015.

However, another Motion for Extension of Time to File Comment[16] was filed by respondent COC on September 19, 2015, which was granted in a Minute Resolution dated November 4, 2015.

Eventually, respondent COC filed his Comment[17] on September 22, 2015, which was admitted by the Court En Banc, in its Resolution[18] promulgated on December 9, 2015.

On December 28, 2015, petitioner filed a Reply (To Respondent Commissioner of Customs' Comment dated 22 October 2015)[19].

On February 5, 2016, the Court En Banc gave due course to the Petition and required the parties to submit their Memoranda within thirty (30) days from receipt thereof.[20]

On February 19, 2016, respondent CIR filed a Manifestation[21] stating that he is adopting the arguments raised in the Comment to the Petition for Review as his Memorandum, which was noted by the Court En Banc in its Minute Resolution[22] dated February 24, 2016.

---

[11] See Footnote No. 1
[12] En Banc Rollo (Vol. IV), pp. 1533-1534.
[13]Comment (Re: Petition for Review), Ibid., pp. 1535-1541.
[14] Id., pp. 1555-1559.
[15] Id., p. 1560.
[16] Id., pp. 1561-1566.
[17] Id., pp. 1567-1594.
[18] Id., pp. 1597-1600.
[19] Id., pp. 1601-1607.
[20] Resolution dated February 5, 2016, Id., pp. 1620-1630.
[21] Id., pp. 1631-1634.
[22] Id., pp. 1635-1636.

Similarly, respondent COC filed a Manifestation and Motion[23] on March 14, 2014, which was noted and granted in a Minute Resolution[24] dated March 16, 2016.

Within the extension of time granted[25] by the Court En Banc, petitioner filed its Memorandum[26] on April 18, 2016.

The above-captioned case was submitted for decision in the Resolution[27] promulgated on May 12, 2016.

Hence, this Decision.

Petitioner questions the assailed Decision and resolution based on this sole issue:

> **"THE THIRD DIVISION ERRED IN DENYING PAL'S CLAIM FOR REFUND OF ERRONEOUSLY PAID EXCISE TAX ON ITS IMPORTATION OF LIQUORS AND CIGARETTES IN THE AMOUNT OF PHP22,214,356.06, BECAUSE PAL WAS ABLE TO SUFFICIENTLY PROVE ITS COMPLIANCE WITH THE REQUIREMENTS TO ENTITLE IT TO EXEMPTION FROM THE PAYMENT OF EXCISE TAX."**

Petitioner mainly contends the Court erred in its appreciation of the evidence presented as it had proven, by preponderant evidence, that the articles imported are not locally available in reasonable quantity, quality or price; that its witness, Ms. Cheryl V. Capinpin, has sufficiently explained that: (a) despite PAL's efforts, other local wine and liquor suppliers refused to provide their price list; and (b) no local suppliers were available to supply the same brand and quantity of cigarettes needed by PAL for its commissary supplies for sale in its international flights; and, that no evidence was submitted by respondents to disprove the facts established by petitioner's evidence.

On the other hand, respondent CIR avers that no independent and credible evidence was presented by petitioner to prove that the subject commissary supplies were not locally available in reasonable quantity, quality

---

[23] Id., pp. 1637-1641.
[24] Id., pp. 1642.
[25] Minute Resolution dated March 22, 2016, Id., p. 1648.
[26] Id., pp. 1649-1668.
[27] Id., pp. 1670-1671.

and price. Accordingly, it is highly self-serving for petitioner's own employee, Ms. Capinpin, to certify that the imported products were not locally available in reasonable quantity, quality and price; and her study on prices was not comprehensive in nature.

For his part, co-respondent COC argues that the instant Petition should be denied due course on the ground that petitioner's Verification and Certification Against Forum Shopping is defective, and the filing of the Petition is without authority of petitioner's Board of Directors; that the subject Petition is pro forma, as petitioner's arguments are a mere rehash of its assertions already passed upon and rejected by the CTA Third Division; and, that petitioner has not sufficiently proven that it is entitled to its claimed exemption under PD No. 1590 or the tax laws.

We find petitioner's Petition for Review partly meritorious.

Procedural Issue

Co-respondent COC claims that the instant Petition for Review should be denied due course because the verification and certification against forum shopping is defective. It was signed by only one signatory, Ms. Ma. Clara C. de Castro, which is contrary to the requirements prescribed by petitioner's own Board Resolution No. 2014-12-2007 that specifically requires the signing of petitioner's pleadings and petitions by "any two (2) of the signatories" enumerated therein.

We disagree.

The foregoing issue had already been settled by the Court in Division, in this wise:

> "The Court noted that even though the Board Resolution No. 2014-12-007 required two (2) signatories listed therein, acting jointly to execute the verification and certification of non-forum shopping, nevertheless the list included Atty. De Castro as one of the authorized signatories.
>
> Also, petitioner subsequently submitted a Secretary Certificate dated December 22, 2015, stating that its Board Resolution No. 2015-11-05, approved on December 2, 2015, ratified and confirmed the legal documents previously signed by Atty. De Castro on behalf of petitioner, x x x x:

x x x x

Hence, whatever was lacking, from the strictly corporate point of view, was cured when petitioner subsequently issued the appropriate board resolution.

From the foregoing and applying the ruling in *Spouses Lim vs. Court of Appeals and Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*, the Court finds that there was substantial compliance with the requirements of verification and certification of non-forum shopping as provided in the Rules of Court.

Furthermore, Atty. De Castro holds the position of Senior Assistant Vice-President of petitioner's Legal Affairs Department. Thus, Atty. De Castro, to our mind, is in a sufficiently high and authoritative position to verify the truthfulness and correctness of the allegations in the subject petition, to justify her authority in filing the petition and to sign the verification and certification of non-forum shopping."[28]

<u>*Substantive Issue:*</u>

Considering that the there is no question that the franchise of PAL remains the governing law on its exemption from taxes, the Court En Banc will therefore limit its discussion on petitioner's alleged compliance with the conditions stated under Section 13 (b) (2) of PD No. 1590 in order for its imported supplies to be considered exempt from excise tax, thus:

"SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the

[28] En Banc Rollo (Vol. IV), pp. 1628-1629.

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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; . . . ." (Emphases supplied)

Based on the foregoing provisions, to exempt petitioner from paying taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies, petitioner must establish the following:

1. It paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies or materials are imported for PAL's use in its transport and non-transport operations and other activities incidental thereto; and

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

Anent the first requisite, there is no question that petitioner was able to prove that it paid its corporate income tax and VAT through the following documentary evidence: Amended Annual income Tax Return-2008[29]; Annual

[29] Exhibit "DDDD".

Income Tax Return-2009[30]; Certificate of Registration dated December 18, 2007[31]; Certificate of Registration dated August 4, 2004[32]; Payment Form-Annual Registration Fee for 2009[33]; Payment Form -Annual Registration Fee for 2010[34]; Quarterly VAT Return-Fourth Quarter of 2008[35]; and, Quarterly VAT Return-Fourth Quarter of 2009[36].

With regard to the second requisite, petitioner was able to substantiate that the imported articles were used for commissary and catering supplies as established in the assailed Resolution dated May 26, 2015, to which We fully agree, to wit:

> "In the ATRIG the contents thereof provides:
>
> *'TAXPAYER: PHILIPPINE AIRLINES, INC.*
> *ADDRESS: PAL Inflight Ctr., Customs Bonded Whse.*
> *#13 (A-C)-Baltao*
>
> xxx xxx xxx
>
> *Please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Manila, consisting of the above described articles, will be used exclusively for International Inflight consumption.'*
>
> A further perusal of the ATRIG reveals that the contents thereof were recorded under the sovereign authority of the Bureau of Internal Revenue ('Bureau') as the document was certified by the Commissioner of the Bureau.
>
> In the consolidated cases of *Heirs of Jose Marcial K. Ochoa, et al. vs. G & S Transport Corporation, et al.*, the Supreme Court has held that public documents under Section 19(a) of Rule 132 refers to those recording made by a public officer, to wit:
>
> > 'Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents. As mentioned in our March

[30] Exhibit "EEEE".
[31] Exhibit "FFFF".
[32] Exhibit "GGGG".
[33] Exhibit "HHHH".
[34] Exhibit "IIII".
[35] Exhibit "LLLL".
[36] Exhibit "MMMM".

9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States.

A further research on said agency shows that it was created through Executive Order 10973 by President John F. Kennedy on November 3, 1961 pursuant to the Foreign Assistance Act of 1961. It is headed by an Administrator and Deputy Administrator, both appointed by the President of the Unites States and confirmed by its Senate. From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is *prima facie* evidence of the facts stated therein.

And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs.'

Therefore, since the recording was under the authority of the Commissioner, and that the Commissioner is a public officer, the ATRIGs are considered public document.

Section 23, Rule 132 of the Rules of Court provides that 'public documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.'

Therefore, the stated fact in the ATRIG which provides that the importation was used exclusively for International Inflight Consumption is *prima facie* evidence that indeed the importation was used for Inflight Consumption.

Since there is the absence of any evidence to contradict the facts stated in the ATRIG, the Court shall reconsider its position in denying petitioner's claim based on none compliance with the second requisite of Section 13 of PD 1590 which provides that the imported articles were used for commissary and catering supplies."[37]

With regard to the third requisite, records show that the excise taxes paid under protest by petitioner on February 21, 2008, March 6, 2008, March 11, 2008, April 1, 2008, April 18, 2008 and May 19, 2008, respectively, in the total amount of ₱22,214,356.06[38], pertain to its importation in the years 2005, 2006 and 2007 of assorted liquor, wine and cigarette products constituting its commissary and catering supplies for international flight consumption, detailed as follows:

Arrival Date	Exhibit Reference			Description	Excise Tax Paid
	Informal Import Declaration and Entry (IIDE)	Air Waybill / Bill of Lading (AWB/BL)	Authority to Release Imported Goods (ATRIG)		
CTA CASE NO. 8032					
Importations the Excise Taxes of which were paid under protest on February 21, 2008					
23-Sep-06	"L-1"	"L-1-a"	"L-1-d"	JW Black Label 12/75cl 40%	₱ 42,130.37
04-Oct-06	"L-2"	"L-2-a"	"L-2-d"	Camus XO Superieur Cognac 6x50cl 40%	31,352.00
04-Oct-06	"L-3"	"L-3-a"	"L-3-d"	West Light Cigarettes Special Edition	208,480.00
14-Oct-06	"L-4"	"L-4-a"	"L-4-d"	Winston Red KS Cigarettes	781,800.00
14-Oct-06	"L-5"	"L-5-a"	"L-5-d"	Camus XO Cognac 12x70cl	54,867.46

[37] Pages 4 to 6, May 26, 2015 Resolution, Annex "B" to the Petition for Review, En Banc Rollo , pp. 131-133.

[38]

BOC Official Receipt No.	Date of Payment	Amount of Excise Tax Paid	Reference
148506775	21-Feb-08	₱ 2,293,035.65	Exhibit "K"
148679334	06-Mar-08	4,670,596.10	Exhibit "P"
149316307	11-Mar-08	4,996,793.33	Exhibit "U"
150060802	01-Apr-08	2,279,825.42	Exhibit "Z"
CTA Case No. 8032 TOTAL		**₱ 14,240,250.50**	
150270434	18-Apr-08	₱ 4,910,127.24	Exhibit "NN"
151882866	19-May-08	3,063,978.32	Exhibit "KKK"
CTA Case No. 8075 TOTAL		**₱ 7,974,105.56**	
GRAND TOTAL		**₱ 22,214,356.06**	

21-Oct-06	"L-6"	"L-6-a"	"L-6-c"	Piper Heidsieck Brut 75cl	254,739.60
28-Oct-06	"L-7"	"L-7-a"	"L-7-b"	Piper Heidsieck Brut 75cl	255,528.00
29-Oct-06	"L-8"	"L-8-a"	"L-8-c"	Lindemans Premier Shiraz Cabernet 75cl	11,792.25
				Lindemans Premier Chardonnay 75cl	7,861.50
				Penfolds Private Chardonnay 75cl	7,861.50
				Penfolds Private Shiraz Cabernet 75cl	11,792.25
04-Nov-06	"L-9"	"L-9-a"	"L-9-c"	JW Black Label 12/75cl 40%	124,830.72
04-Nov-06	"L-10"	"L-10-a"	"L-10-c"	West Ice Cigarettes	375,000.00
				Davidoff Classic	125,000.00
Subtotal					**₱ 2,293,035.65**
Importations the Excise Taxes of which were paid under protest on March 6, 2008					
18-Nov-06	"Q-1"	"Q-1-a"	"Q-1-f"	Royale Salute 750ml	₱ 58,060.80
				Drambuie 750ml	36,288.00
				Finlandia Vodka 750ml	50,803.20
				Grand Marnier 700ml	33,868.80
				Skyy Vodka 750ml	5,443.20
22-Nov-06	"Q-2"	"Q-2-a"	"Q-2-c"	JW Black Label 12/75cl	477,867.60
				J&B Rare 12/75cl	76,204.80
15-Nov-06	"Q-3"	"Q-3-a"	"Q-3-c"	Piper Heidsieck Brut 12/.75L	345,945.00
17-Nov-06	"Q-4"	"Q-4-a"	"Q-4-d"	Remy Martin VSOP Cognac 750ml	181,440.00
				Piper Heidsieck Brut 12/.75L	145,454.40
22-Nov-06	"Q-5"	"Q-5-a"	"Q-5-d"	Mild Seven Lights	500,000.00
				Mild Seven Super Lights	550,000.00
				Salem M King	750,000.00
				Salem L King	250,000.00
				Winston Lights KS	437,500.00
22-Nov-06	"Q-6"	"Q-6-a"	"Q-6"	Remy Martin XO	33,868.80
25-Nov-06	"Q-7"	"Q-7-a"	"Q-7-c"	Lindemans Premier Selection Chardonnay 750ml	7,861.50
				Lindemans Premier Selection Shiraz Cabernet 750ml	11,792.25
25-Nov-06	"Q-8"	"Q-8-a"	"Q-8-c"	Penfolds Chardonnay 750ml	7,861.50
				Penfolds Shiraz/Cabernet 750ml	11,792.25
28-Nov-06	"Q-9"	"Q-9-a"	"Q-9-c"	J&B Rare 12/75cl	108,864.00
09-Dec-06	"Q-10"	"Q-10-a"	"Q-10-e"	Piper Heidsieck Champagne 750ml	589,680.00
Subtotal					**₱ 4,670,596.10**
Importations the Excise Taxes of which were paid under protest on March 11, 2008					
14-Dec-06	"V-1"	"V-1-a"	"V-1-e"	Camus XO Superieur Cognac 50ml	₱ 29,030.40
14-Dec-06	"V-2"	"V-2-a"	"V-2-c"	Cognac Camus VSOP 70cl	135,475.20
				Cognac Camus XO 70cl	50,803.20
16-Dec-06	"V-3"	"V-3-a"	"V-3-d"	Lindemans Premier Selection Chardonnay 750ml	15,723.00
				Lindemans Premier Selection Shiraz Cabernet 750ml	23,584.50
16-Dec-06	"V-4"	"V-4-a"	"V-4-d"	J&B Rare Scotch Whisky 750ml	495,331.20
16-Dec-06	"V-5"	"V-5-a"	"V-5-c"	Remy Martin VSOP Cognac 700ml	365,783.04
17-Dec-06	"V-6"	"V-6-a"	"V-6-c"	Penfolds Chardonnay 750ml	15,565.77
				Penfolds Shiraz Cabernet 750ml	23,584.50
17-Dec-06	"V-7"	"V-7-a"	"V-7-d"	Penfolds Chardonnay 750ml	15,723.00
				Penfolds Shiraz Cabernet 750ml	23,584.50
18-Dec-06	"V-8"	"V-8-a"	"V-8-d"	JW Black Label 750ml	641,707.92

				J&B Rare Scotch Whisky 750ml	381,024.00
20-Dec-06	"V-9"	"V-9-a"	"V-9-c"	Skyy Vodka 750ml	58,786.56
20-Dec-06	"V-10"	"V-10-a"	"V-10-d"	West Lights	182,420.00
				Davidoff Classic	234,540.00
20-Dec-06	"V-11"	"V-11-a"	"V-11-g"	Cutty Sark Whisky 700ml	109,734.91
				Chivas Regal Whisky 700ml	460,064.71
				Royal Salute Whisky 700ml	58,525.29
				Finlandia Vodka 750ml	11,757.31
				Jack Daniel's Whisky 750ml	188,116.99
21-Dec-06	"V-12"	"V-12-a"	"V-12-d"	Winston Red KS	1,433,300.00
24-Dec-06	"V-13"	"V-13-a"	"V-13-c"	Penfolds Chardonnay 750ml	17,152.83
				Penfolds Shiraz Cabernet 750ml	25,474.50
Subtotal					**₱ 4,996,793.33**
Importations the Excise Taxes of which were paid under protest on April 1, 2008					
08-Apr-06	"AA-1"	"AA-1-a"	"AA-1-f"	Australian Wines 750ml	₱ 39,308.00
24-Sep-06	"AA-2"	"AA-2-a"	"AA-2-e"	Skyy Vodka 750ml	88,179.84
				Grand Marnier Cordon Rouge 700ml	36,578.30
				Ballantines Scotch Whiskey 17YO 700ml	275,251.74
14-Feb-07	"AA-3"	"AA-3-a"	"AA-3"	Lindemans Premier Selection 750ml	42,457.50
				Penfolds Chardonnay 750ml	16,983.00
				Penfolds Shiraz Cabernet 750ml	42,457.50
01-Mar-07	"AA-4"	"AA-4-a"	"AA-4-d"	Martini Sweet Vermouth 5cl	1,811.52
				Martini Dry Vermouth 5cl	1,358.64
07-Mar-07	"AA-5"	"AA-5-a"	"AA-5-c"	Vin de Table Blanc 750ml	67,932.00
				Vin de Table Rouge 750ml	103,596.30
				Canter Sauvignon Bordeaux 750ml	8,491.50
08-Mar-07	"AA-6"	"AA-6-a"	"AA-6-d"	Camus Cognac VSOP Elegance 70cl	153,628.88
				Camus Cognac XO Superieur 50cl	31,352.83
19-Mar-07	"AA-7"	"AA-7-a"	"AA-7-d"	Cutty Sark Whiskey 700ml	109,734.91
				Martell VSOP Cognac 700ml	58,525.29
09-Apr-07	"AA-8"	"AA-8-a"	"AA-8-c"	Piper Heidsieck Brut 750ml	849,132.00
14-Apr-07	"AA-9"	"AA-9-a"	"AA-9-c"	Martell VSOP Cognac 700ml	58,525.00
25-Jun-07	"AA-10"	"AA-10-a"	"AA-10-c"	JW Black Label 750ml	176,947.55
				J&B Rare Scotch Whiskey 750ml	117,573.12
Subtotal					**₱ 2,279,825.42**
CTA CASE NO. 8075					
Importations the Excise Taxes of which were paid under protest on April 18, 2008					
27-Jan-07	"CC"	"CC-1"	"OO"	Gordon's Gin 750cl 43%	₱ 26,331.48
17-Feb-07	"DD"	"DD-1"	"PP"	Camus VSOP 70cl 40%	146,313.22
24-Feb-07	"EE"	"EE-1"	"QQ"	Jack Daniel 750ml	188,116.99
				Royal Salute 700ml	117,050.58
				Carlos I 700ml	310,915.58
				Chivas Regal 750ml	315,977.76
				Ballantines 700ml	58,982.52
				Martell VSOP 700ml	58,525.29
10-Mar-07	"FF"	"FF-1"	"RR"	JW Gold Label 75cl 80%	188,116.99
				J&B Rare 75cl 80%	205,752.96
02-Apr-07	"GG"	"GG-1"	"SS"	JW Black Label 750ml	176,947.55
28-Apr-07	"HH"	"HH-1"	"TT"	Jack Daniel 750ml	188,116.99

				1800 Reposado 750ml	97,977.60
				Royal Salute 700ml	58,525.29
				Carlos I 700ml	603,542.02
				Chivas Regal 750ml	315,977.76
				Martell VSOP 700ml	58,525.29
30-May-07	"II"	"II-1"	"UU"	Penfolds Chardonnay 750ml	19,105.88
02-Jun-07	"JJ"	"JJ-1"	"VV"	Ballantines 21YO 700ml	117,965.03
30-Jun-07	"KK"	"KK-1"	"WW"	Salem M King Cigarettes	586,350.00
				Salem L King Cigarettes	65,150.00
				Winston Red KS	716,650.00
				Winston Lights KS	247,570.00
01-Jul-07	"LL"	"LL-1"	"XX"	Amarula Cream Liquor 750ml	41,640.48
Subtotal					**₱ 4,910,127.26**
Importations the Excise Taxes of which were paid under protest on May 19, 2008					
14-Sep-05	"BBB"	"BBB-1"	"LLL"	Piper Hiedsieck Brut 750ml	₱ 314,496.00
				Remy Martin VSOP 700ml	169,344.00
12-Oct-05	"CCC"	"CCC-1"	"MMM"	Chard Australian Wines 750ml	31,446.00
09-Apr-07	"DDD"	"DDD-1"	"NNN"	Vin de Table Blanc 750ml	72,177.75
				Vin de Table Rouge 750ml	100,199.70
05-May-07	"EEE"	"EEE-1"	"OOO"	Skyy Vodka 750ml	195,955.20
20-May-07	"FFF"	"FFF-1"	"PPP"	Camus Cognac VSOP Elegance 700ml	146,313.22
30-May-07	"GGG"	"GGG-1"	"QQQ"	Mild Seven Lights	195,450.00
				Mild Seven Super Lights	208,480.00
				Salem L King Cigarettes	65,150.00
				Winston Red KS	586,350.00
				Winston Lights KS	169,390.00
18-Jun-07	"HHH"	"HHH-1"	"RRR"	Piper Hiedsieck Brut 750ml	636,849.00
21-Jun-07	"III"	"III-1"	"SSS"	Vin de Table Blanc 750ml	72,177.75
				Vin de Table Rouge 750ml	100,199.70
Subtotal					**₱ 3,063,978.32**
Total					**₱22,214,356.08**

To prove that the imported liquor and wine products were not locally available in reasonable price, petitioner presented a table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price Lists for the years 2005[39], 2006[40] and 2007[41].

The Court in Division, however, ruled that the foregoing price lists from Philippine Wine Merchants are insufficient to prove that the subject imported articles, supplies or materials were not locally available in reasonable price.

Again, We do not agree.

[39] Exhibit "KKKK-3".
[40] Exhibit "KKKK-4".
[41] Exhibit "KKKK-5".

In a plethora of cases involving Philippine Airlines, Inc.[42], the Court En Banc has consistently ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price List **and/or** Duty Free Philippines Retail Prices were deemed sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.

It further bears noting that Supreme Court, in the case of *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.,*[43] affirmed the factual findings of the CTA En Banc in declaring that the "tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally x x x and Price List for 2005 of Duty-Free Philippines", together with the testimony of petitioner's witness, sufficient in proving that the subject imported articles were not locally available in reasonable quantity, quality or price.

Therefore, it is of no moment even if petitioner would compare the prices of its imported wines and liquor with only one local supplier.

However, a careful perusal of petitioner's Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[44] shows that the following imported liquor and wine products with a total amount of ₱585,265.87 excise tax payment do not have the corresponding local prices, to wit:

Arrival Date	Exhibit Reference			Description	Excise Tax Paid
	IIDE	AWB/BL	ATRIG		
CTA CASE NO. 8032					
Importations the Excise Taxes of which were paid on March 6, 2008					
18-Nov-06	"Q-1"	"Q-1-a"	"Q-1-f"	Drambuie 750ml	₱ 36,288.00
				Grand Marnier 700ml	33,868.80
Subtotal					**₱ 70,156.80**
Importations the Excise Taxes of which were paid on April 1, 2008					
24-Sep-06	"AA-2"	"AA-2-a"	"AA-2-e"	Grand Marnier Cordon Rouge 700ml	₱ 36,578.30
				Ballantines Scotch Whiskey 17YO 700ml	275,251.74
Subtotal					**₱ 311,830.04**
CTA CASE NO. 8075					

[42] CTA EB Case Nos. 1216, 1217 and 1221 (CTA Case No. 8184), May 27, 2016, CTA EB Case Nos. 954 & 1046 (CTA Case Nos. 7677, 7685 and 7746), October 14, 2014; CTA EB Case Nos. 920 & 922 (CTA Case Nos. 7665 and 7713), September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032 (CTA Case No. 8153), April 30, 2014; CTA Case No. 8236, December 18, 2013.
[43] G.R. Nos. 209353-54, 211733-34, July 6, 2015.
[44] Exhibit "KKKK-2".

Importations the Excise Taxes of which were paid on April 18, 2008					
27-Jan-07	"CC"	"CC-1"	"OO"	Gordon's Gin 750cl 43%	₱ 26,331.48
24-Feb-07	"EE"	"EE-1"	"QQ"	Ballantines 700ml	58,982.52
2-Jun-07	"JJ"	"JJ-1"	"VV"	Ballantines 21YO 700ml	117,965.03
Subtotal					**₱ 203,279.03**
Total					**₱ 585,265.87**

We further find the following comparisons made by petitioner erroneous for the reasons stated below:

a. The liquor/wine per Philippine Wine Merchants' Price List against which the imported product was compared has different volume/liter per bottle.

Arrival Date	Exhibit Reference			Description	Excise Tax Paid	Remark
	IIDE	AWB/BL	ATRIG			
CTA CASE NO. 8032						
Importations the Excise Taxes of which were paid on February 21, 2008						
23-Sep-06	"L-1"	"L-1-a"	"L-1-d"	JW Black Label 12/75cl 40%	₱ 42,130.37	The available volume of Johnnie Walker Black Label per PWM's 2006 price list is 700ml.
24-Nov-06	"L-9"	"L-9-a"	"L-9-c"	JW Black Label 12/75cl 40%	124,830.72	
Subtotal					**₱ 166,961.09**	
Importations the Excise Taxes of which were paid on March 6, 2008						
18-Nov-06	"Q-1"	"Q-1-a"	"Q-1-f"	Royale Salute 750ml	₱ 58,060.80	The available volume of Royale Salute per PWM's 2006 price list is 700ml.
22-Nov-06	"Q-2"	"Q-2-a"	"Q-2-c"	JW Black Label 12/75cl	477,867.60	The available volume of Johnnie Walker Black Label per PWM's 2006 price list is 700ml.
17-Nov-06	"Q-4"	"Q-4-a"	"Q-4-d"	Remy Martin VSOP Cognac 750ml	181,440.00	The available volume of Remy Martin VSOP per PWM's 2006 price list is 700ml.
Subtotal					**₱ 717,368.40**	
Importations the Excise Taxes of which were paid on March 11, 2008						
18-Dec-06	"V-8"	"V-8-a"	"V-8-d"	JW Black Label 750ml	₱ 641,707.92	The available volume of Johnnie Walker Black Label per PWM's 2006 price list is 700ml.
20-Dec-06	"V-11"	"V-11-a"	"V-11-g"	Chivas Regal Whisky 700ml	460,064.71	The available volume of Chivas Regal Scotch Whisky per PWM's 2006 price list is 750ml.
Subtotal					**₱1,101,772.63**	
Importations the Excise Taxes of which						

were paid on April 1, 2008						
25-Jun-17	"AA-10"	"AA-10-a"	"AA-10-c"	JW Black Label 750ml	₱ 176,947.55	The available volume of Johnnie Walker Black Label per PWM's 2007 price list is 700ml.
Subtotal					**₱ 176,947.55**	
CTA CASE NO. 8075						
Importations the Excise Taxes of which were paid on April 18, 2008						
02-Apr-07	"GG"	"GG-1"	"SS"	JW Black Label 750ml	₱ 176,947.55	The available volume of Johnnie Walker Black Label per PWM's 2007 price list is 700ml.
Subtotal					**₱ 176,947.55**	
Total					**₱2,339,997.22**	

b. The liquor/wine per Philippine Wine Merchants' Price List against which the imported product was compared has no description as to its volume/liter.

Arrival Date	**Exhibit Reference**			**Description**	**Excise Tax Paid**
	IIDE	**AWB/BL**	**ATRIG**		
CTA CASE NO. 8032					
Importations the Excise Taxes of which were paid under protest on February 21, 2008					
04-Oct-06	"L-2"	"L-2-a"	"L-2-d"	Camus XO Superieur Cognac 6x50cl	₱ 31,352.00
14-Oct-06	"L-5"	"L-5-a"	"L-5-d"	Camus XO Cognac 12x70cl	54,867.46
21-Oct-06	"L-6"	"L-6-a"	"L-6-c"	Piper Heidsieck Brut 75cl	254,739.60
28-Oct-06	"L-7"	"L-7-a"	"L-7-b"	Piper Heidsieck Brut 75cl	255,528.00
Subtotal					**₱ 596,487.06**
Importations the Excise Taxes of which were paid under protest on March 6, 2008					
15-Nov-06	"Q-3"	"Q-3-a"	"Q-3-c"	Piper Heidsieck Brut 12/.75L	₱ 345,945.00
17-Nov-06	"Q-4"	"Q-4-a"	"Q-4-d"	Piper Heidsieck Brut 12/.75L	145,454.40
09-Dec-06	"Q-10"	"Q-10-a"	"Q-10-e"	Piper Heidsieck Champagne 750ml	589,680.00
Subtotal					**₱1,081,079.40**
Importations the Excise Taxes of which were paid under protest on March 11, 2008					
14-Dec-06	"V-1"	"V-1-a"	"V-1-e"	Camus XO Superieur Cognac 50ml	₱ 29,030.40
14-Dec-06	"V-2"	"V-2-a"	"V-2-c"	Cognac Camus VSOP 70cl	135,475.20
				Cognac Camus XO 70cl	50,803.20
Subtotal					**₱ 215,308.80**
Importations the Excise Taxes of which were paid under protest on April 1, 2008					
08-Mar-07	"AA-6"	"AA-6-a"	"AA-6-d"	Camus Cognac VSOP Elegance 70cl	₱ 153,628.88
				Camus Cognac XO Superieur 50cl	31,352.83
09-Apr-07	"AA-8"	"AA-8-a"	"AA-8-c"	Piper Heidsieck Brut 750ml	849,132.00
Subtotal					**₱1,034,113.71**

CTA CASE NO. 8075					
Importations the Excise Taxes of which were paid under protest on April 18, 2008					
17-Feb-07	"DD"	"DD-1"	"PP"	Camus VSOP 70cl 40%	₱ 146,313.22
24-Feb-07	"EE"	"EE-1"	"QQ"	Martell VSOP 700ml	58,525.29
Subtotal					**₱ 204,838.51**
Importations the Excise Taxes of which were paid under protest on May 19, 2008					
14-Sep-05	"BBB"	"BBB-1"	"LLL"	Piper Heidsieck Brut 750ml	₱ 314,496.00
20-May-07	"FFF"	"FFF-1"	"PPP"	Camus Cognac VSOP Elegance 700ml	146,313.22
18-Jun-07	"HHH"	"HHH-1"	"RRR"	Piper Heidsieck Brut 750ml	636,849.00
Subtotal					**₱1,097,658.22**
Total					**₱4,229,485.70**

c. The imported product was compared against a different brand/product of liquor/wine.

Arrival Date	Exhibit Reference			Description	Excise Tax Paid	Compared against:
	IIDE	AWB/BL	ATRIG			
CTA CASE NO. 8032						
Importations the Excise Taxes of which were paid under protest on February 21, 2008						
29-Oct-06	"L-8"	"L-8-a"	"L-8-c"	Lindemans Premier Shiraz Cabernet 75cl	₱ 11,792.25	Australian Red/White, Hardy's
				Lindemans Premier Chardonnay 75cl	7,861.50	
				Penfolds Private Chardonnay 75cl	7,861.50	
				Penfolds Private Shiraz Cabernet 75cl	11,792.25	
Total					**₱ 39,307.50**	
Importations the Excise Taxes of which were paid under protest on March 6, 2008						
25-Nov-06	"Q-7"	"Q-7-a"	"Q-7-c"	Lindemans Premier Selection Chardonnay 750ml	₱ 7,861.50	Australian Red/White, Hardy's
				Lindemans Premier Selection Shiraz Cabernet 750ml	11,792.25	
25-Nov-06	"Q-8"	"Q-8-a"	"Q-8-c"	Penfolds Chardonnay 750ml	7,861.50	
				Penfolds Shiraz/Cabernet 750ml	11,792.25	
Total					**₱ 39,307.50**	
Importations the Excise Taxes of which were paid under protest on March 11, 2008						
16-Dec-06	"V-3"	"V-3-a"	"V-3-d"	Lindemans Premier Selection Chardonnay 750ml	₱ 15,723.00	Australian Red/White, Hardy's
				Lindemans Premier Selection Shiraz Cabernet 750ml	23,584.50	
17-Dec-06	"V-6"	"V-6-a"	"V-6-c"	Penfolds Chardonnay 750ml	15,565.77	
				Penfolds Shiraz Cabernet 750ml	23,584.50	
17-Dec-06	"V-7"	"V-7-a"	"V-7-d"	Penfolds Chardonnay 750ml	15,723.00	
				Penfolds Shiraz Cabernet 750ml	23,584.50	
24-Dec-06	"V-13"	"V-13-a"	"V-13-c"	Penfolds Chardonnay 750ml	17,152.83	

				Penfolds Shiraz Cabernet 750ml	25,474.50	
Total					**₱160,392.60**	
Importations the Excise Taxes of which were paid under protest on April 1, 2008						
08-Apr-06	"AA-1"	"AA-1-a"	"AA-1-f"	Lindeman's Premier Selection Chardonnay BVS		Australian Red/White, Hardy's
				Lindeman's Premier Selection Shiraz Cabernet BVS		
				Penfolds Private Release Chardonnay		
				Penfolds Private Release Shiraz Cabernet	₱ 39,308.00	
14-Feb-07	"AA-3"	"AA-3-a"	"AA-3"	Lindemans Premier Selection 750ml	42,457.50	
				Penfolds Chardonnay 750ml	16,983.00	
				Penfolds Shiraz Cabernet 750ml	42,457.50	
01-Mar-07	"AA-4"	"AA-4-a"	"AA-4-d"	Martini Sweet Vermouth 5cl	1,811.52	Sweet Vermouth
				Martini Dry Vermouth 5cl	1,358.64	Dry Vermouth
07-Mar-07	"AA-5"	"AA-5-a"	"AA-5-c"	Vin de Table Blanc 750ml	67,932.00	French Red/White. Listel
				Vin de Table Rouge 750ml	103,596.30	
				Canter Sauvignon Bordeaux 750ml	8,491.50	
Total					**₱324,395.96**	
CTA CASE NO. 8075						
Importations the Excise Taxes of which were paid under protest on April 18, 2008						
30-May-07	"II"	"II-1"	"UU"	Penfolds Chardonnay 750ml	₱ 19,105.88	Australian Red/White, Hardy's
Total					**₱ 19,105.88**	
Importations the Excise Taxes of which were paid under protest on May 19, 2008						
12-Oct-05	"CCC"	"CCC-1"	"MMM"	Chard Australian Wines 750ml	₱ 31,446.00	Australian Red/White, Hardy's
09-Apr-07	"DDD"	"DDD-1"	"NNN"	Vin de Table Blanc 750ml	72,177.75	
				Vin de Table Rouge 750ml	100,199.70	
21-Jun-07	"III"	"III-1"	"SSS"	Vin de Table Blanc 750ml	72,177.75	
				Vin de Table Rouge 750ml	100,199.70	
Total					**₱376,200.90**	
GRAND TOTAL					**₱958,710.34**	

Based therefrom, the Court En Banc finds that only the importation cost of the following liquor and wine products can be compared with the local prices for the same brand or products reflected in the Philippine Wine Merchants' Price Lists for the years 2005, 2006 and 2007:

Arrival Date	Exhibit Reference	Description	Excise Tax Paid	Unit Cost per Sales Invoice	Price per bottle per Philippine Wine

	IIDE	AWB/BL	ATRIG				Merchants' 2005, 2006 & 2007 Price List
CTA CASE NO. 8032							
Importations the Excise Taxes of which were paid under protest on March 6, 2008							
18-Nov-06	"Q-1"	"Q-1-a"	"Q-1-f"	Finlandia Vodka 750ml	₱ 50,803.20	US$5.25	₱726.00/ US$14.60
				Skyy Vodka 750ml	5,443.20	US$2.90	₱519.00/ US$10.32
22-Nov-06	"Q-2"	"Q-2-a"	"Q-2-c"	J&B Rare 12/75cl	76,204.80	US$7.00	₱995.00/ US$20.02
22-Nov-06	"Q-6"	"Q-6-a"	"Q-6"	Remy Martin XO	33,868.80	US$50.42	₱4,840.00/ US$97.39
28-Nov-06	"Q-9"	"Q-9-a"	"Q-9-c"	J&B Rare 12/75cl	108,864.00	US$5.60	₱995.00/ US$20.02
Total					**₱ 275,184.00**		
Importations the Excise Taxes of which were paid under protest on March 11, 2008							
16-Dec-06	"V-4"	"V-4-a"	"V-4-d"	J&B Rare Scotch Whisky 750ml	₱ 495,331.20	US$7.00	₱995.00/ US$20.02
16-Dec-06	"V-5"	"V-5-a"	"V-5-c"	Remy Martin VSOP Cognac 700ml	365,783.04	US$15.89	₱1,710.00/ US$34.87
18-Dec-06	"V-8"	"V-8-a"	"V-8-d"	J&B Rare Scotch Whisky 750ml	381,024.00	US$5.60	₱995.00/ US$20.02
20-Dec-06	"V-9"	"V-9-a"	"V-9-c"	Skyy Vodka 750ml	58,786.56	US$2.90	₱519.00/ US$10.58
20-Dec-06	"V-11"	"V-11-a"	"V-11-g"	Cutty Sark Whisky 700ml	109,734.91	US$5.63	₱980.00/ US$19.98
				Royal Salute Whisky 700ml	58,525.29	US$51.00	₱7,376.00/ US$150.39
				Finlandia Vodka 750ml	11,757.31	US$5.25	₱726.00/ US$14.80
				Jack Daniel's Whisky 750ml	188,116.99	US$8.44	₱1,060.00/ US$21.61
Total					**₱1,669,059.30**		
Importations the Excise Taxes of which were paid under protest on April 1, 2008							
24-Sep-06	"AA-2"	"AA-2-a"	"AA-2-e"	Skyy Vodka 750ml	₱ 88,179.84	US$2.90	₱519.00/ US$10.33
19-Mar-07	"AA-7"	"AA-7-a"	"AA-7-d"	Cutty Sark Whiskey 700ml	109,734.91	US$5.62	₱850.00/ US$17.63
				Martell VSOP Cognac 700ml	58,525.29	US$15.04	₱1,620.00/ US$33.60
14-Apr-07	"AA-9"	"AA-9-a"	"AA-9-c"	Martell VSOP Cognac 700ml	58,525.00	US$14.00	₱1,620.00/ US$34.08
25-Jun-17	"AA-10"	"AA-10-a"	"AA-10-c"	J&B Rare Scotch Whiskey 750ml	117,573.12	US$5.60	₱863.00/ US$18.67
Total					**₱ 432,538.16**		
CTA CASE NO. 8075							
Importations the Excise Taxes of which were paid under protest on April 18, 2008							
24-Feb-07	"EE"	"EE-1"	"QQ"	Jack Daniel 750ml	₱ 188,116.99	US$8.44	₱950.00/ US$18.94
				Royal Salute 700ml	117,050.58	US$46.22	₱6,400.00/ US$131.73
				Carlos I 700ml	310,915.58	US$9.92	₱1,099.00/ US$22.62

				Chivas Regal 750ml	315,977.76	US$11.25	₱1,100.00/ US$22.64
10-Mar-07	"FF"	"FF-1"	"RR"	JW Gold Label 75cl 80%	188,116.99	US$7.75	₱2,800.00/ US$58.07
				J&B Rare 75cl 80%	205,752.96	US$7.00	₱663.50/ US$13.76
28-Apr-07	"HH"	"HH-1"	"TT"	Jack Daniel 750ml	188,116.99	US$9.00	₱920.00/ US$19.35
				1800 Reposado 750ml	97,977.60	US$9.17	₱675.00/ US$14.20
				Royal Salute 700ml	58,525.29	US$46.22	₱6,400.00/ US$134.63
				Carlos I 700ml	603,542.02	US$9.92	₱1,099.00/ US$23.12
				Chivas Regal 750ml	315,977.76	US$11.25	₱1,100.00/ US$22.14
				Martell VSOP 700ml	58,525.29	US$14.00	₱1,620.00/ US$34.08
01-Jul-07	"LL"	"LL-1"	"XX"	Amarula Cream Liquor 750ml	41,640.48	US$6.00	₱1,000.00/ US$22.05
Total					**₱2,690,236.29**		
Importations the Excise Taxes of which were paid under protest on May 19, 2008							
14-Sep-05	"BBB"	"BBB-1"	"LLL"	Remy Martin VSOP 700ml	₱ 169,344.00	US$16.88	₱1,830.00/ US$32.69
05-May-07	"EEE"	"EEE-1"	"OOO"	Skyy Vodka 750ml	195,955.20	US$2.90	₱450.00/ US$9.74
Total					**₱ 365,299.20**		
GRAND TOTAL					**₱5,432,316.95**		

With regard to the local price list of the imported cigarettes, the Court En Banc is in unison with the findings of the Court in Division that petitioner failed to compare the price of imported cigarettes as against its price in the local market since no price list for the same was presented by petitioner as shown in the following testimony of Ms. Cheryl V. Capinpin, petitioner's Manager – In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department[45], to wit:

> "21.Q. How about the local costs of the imported cigarettes involved?
>
> 21.A. I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the same brand of imported cigarettes who could regularly supply PAL with the quantity it regularly 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] Exhibit "KKKK".

22.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?

22.A. Their selling price would definitely be higher because, unlike PAL, 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. 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."

Again, bare allegations, sans substantiation by competent evidence, are not proof. In this particular item, petitioner failed to present any certification from local dealers of cigarettes that they cannot supply petitioner enough cigarettes for its catering and in-flight use. Thus, the claimed excise tax payment on cigarettes in the amount of ₱8,668,580.00, detailed below, should be denied:

Arrival Date	Exhibit Reference			Description	Excise Tax Paid
	IIDE	AWB/BL	ATRIG		
CTA CASE NO. 8032					
Importations the Excise Taxes of which were paid on February 21, 2008					
04-Oct-06	"L-3"	"L-3-a"	"L-3-d"	West Light Cigarettes Special Edition	₱ 208,480.00
14-Oct-06	"L-4"	"L-4-a"	"L-4-d"	Winston Red KS Cigarettes	781,800.00
04-Nov-06	"L-10"	"L-10-a"	"L-10-c"	West Ice Cigarettes	375,000.00
				Davidoff Classic	125,000.00
Total					**₱ 1,490,280.00**
Importations the Excise Taxes of which were paid on March 6, 2008					
22-Nov-06	"Q-5"	"Q-5-a"	"Q-5-d"	Mild Seven Lights	₱ 500,000.00
				Mild Seven Super Lights	550,000.00
				Salem M King	750,000.00
				Salem L King	250,000.00
				Winston Lights KS	437,500.00
Total					**₱ 2,487,500.00**
Importations the Excise Taxes of which were paid on March 11, 2008					
20-Dec-06	"V-10"	"V-10-a"	"V-10-d"	West Lights	₱ 182,420.00
				Davidoff Classic	234,540.00
21-Dec-06	"V-12"	"V-12-a"	"V-12-d"	Winston Red KS	1,433,300.00

Total					**₱ 1,850,260.00**
CTA CASE NO. 8075					
Importations the Excise Taxes of which were paid on April 18, 2008					
30-Jun-07	"KK"	"KK-1"	"WW"	Salem M King Cigarettes	₱ 586,350.00
				Salem L King Cigarettes	65,150.00
				Winston Red KS	716,650.00
				Winston Lights KS	247,570.00
Total					**₱ 1,615,720.00**
Importations the Excise Taxes of which were paid on May 19, 2008					
30-May-07	"GGG"	"GGG-1"	"QQQ"	Mild Seven Lights	₱ 195,450.00
				Mild Seven Super Lights	208,480.00
				Salem L King Cigarettes	65,150.00
				Winston Red KS	586,350.00
				Winston Lights KS	169,390.00
Total					**₱ 1,224,820.00**
GRAND TOTAL					**₱ 8,668,580.00**

In view of the foregoing, petitioner has proven that it is entitled to refund the amount of **₱5,432,316.95**, representing erroneously paid excise tax on its importations in the years 2005, 2006 and 2007 of various liquor and wine products constituting its commissary and catering supplies for international flight consumption.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondents are hereby **ORDERED TO REFUND** in favor of petitioner the amount of **FIVE MILLION FOUR HUNDRED THIRTY-TWO THOUSAND THREE HUNDRED SIXTEEN AND 95/100 (₱5,432,316.95),** representing erroneously paid excise tax on its importations of various liquor and wine products in the years 2005, 2006 and 2007.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I respectfully vote to affirm the Decision and Resolution of the CTA Third Division.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I vote to affirm the assailed Decision.)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(With due respect, I vote to affirm the Decision and *Resolution of the CTA Third Division.)*
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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