Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1216
(CTA Case No. 8184)

x-------------------------------x

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1217
(CTA Case No. 8184)

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PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1221
(CTA Case No. 8184)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 24 2016 10:28 a.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted for consideration are the following:

1. **Motion for Reconsideration** filed by the Commissioner of Internal Revenue (CIR) on June 17, 2016, with **Comment/Opposition** filed by Philippine Airlines, Inc. (PAL), through registered mail, on August 22, 2016; and

2. **Motion for Reconsideration** filed by PAL on July 7, 2016, with **Opposition (Re: Motion for Reconsideration)** filed by the CIR on August 11, 2016 and **Manifestation (In lieu of Comment)** filed by the Commissioner of Customs (COC), through registered mail, on August 19, 2016.

On May 27, 2016, the Court *En Banc* promulgated a Decision denying the parties' respective petitions for review. The dispositive portion of the assailed *En Banc* Decision reads as follows:

> "**WHEREFORE,** the Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In his Motion for Reconsideration, the CIR prays that the above *En Banc* Decision be reconsidered and set aside, and a new one be rendered denying PAL's entire claim for refund. He argues that PAL failed to provide any independent and credible evidence to substantiate its claim that the subject commissary supplies are not locally available in reasonable quantity, quality and price. The CIR asserts that reasonable price does not automatically equate to cheaper price. More so, the CIR alleges that the testimony of PAL's very own witness, Ms. Cheryl V. Capinpin, is highly self-serving and is not the kind of evidence that will shift the burden of evidence on the CIR and COC.

On the other hand, in its Motion for Reconsideration, PAL insists that it was able to sufficiently prove by preponderant evidence that the imported commissary supplies are not locally available in reasonable quantity, quality and price. Thus, it prays that the amount of ₱3,987,180.00 representing the excise taxes it erroneously paid on various importations of tobacco products be refunded, in addition to the amount of ₱1,657,121.51 which was already granted by the court *a quo*.

After due consideration of the arguments presented by the parties, *We* find no merit in the instant Motions. Notably, the arguments proffered in both Motions are mere rehash of the same facts and issues which have already been analyzed and passed upon in the assailed Decision. Nonetheless, at the risk of being repetitive, this Court shall again address the issues raised herein.

In the series of PAL cases involving claims for refund of excise tax on imported commissary supplies, more often than not, it has always been the price of the imported articles that is the subject of controversy in determining whether the said articles are not locally available in reasonable amount. For this reason, PAL presented a Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[1] and the Philippine Wine Merchant's Price List for 2008[2]. *We* found that the foregoing, coupled by the uncontroverted testimony of its lone witness, Ms. Cheryl V. Capinpin, PAL's Manager of In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department, are sufficient to prove that PAL was entitled to the claimed refund. However, such entitlement is only limited to its importation of assorted liquors. As held in the assailed Decision, PAL failed to present evidence, other than the testimony of Ms. Cheryl V. Capinpin, which would corroborate that the imported cigarettes are not locally available in reasonable quantity, quality or price, *to wit*:

> "In a long line of PAL cases[3], *We* have consistently held 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

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[1] Exhibit "YY-1"
[2] Exhibit "YY-2"
[3] CTA EB Case Nos. 954 & 1046, October 14, 2014; CTA EB Case Nos. 920 & 922, September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032, April 30, 2014; CTA Case No. 8236, December 18, 2013

commissary and catering supplies is lower than purchasing them locally. In fact, in the case of Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.[4], the Supreme Court sustained the factual findings of the CTA in declaring that the imported articles are not locally available in reasonable quantity, quality or price as it takes into account the evidence presented by PAL, namely: letter of tabulation of comparison of cost of importing the articles and cost of purchasing them locally, invoices issued by PAL for its purchase of the imported articles, and a pricelist from Duty-Free Philippines. The Supreme Court held that:

> 'As to the issue of PAL's noncompliance with the conditions set by Section 13 of P.D. 1509 for the imported supplies to be exempt from excise tax, it must be noted that these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.'"

With regard to the CIR's allegation that the testimony of Ms. Cheryl V. Capinpin is highly self-serving for being PAL's employee and, thus, is not the kind of evidence that will shift the burden of evidence on the CIR and COC, *We* see no merit in such allegation. In this aspect, the case of *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated*[5] is instructive on the matter:

> "'The common objection known as 'self-serving' is not correct because almost all testimonies are self-serving. The proper basis for objection is 'hearsay' (Wenke, Making and Meeting Objections, 69).
>
> Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a

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[4] G.R. Nos. 209353-54, 211733-34, July 6, 2015

[5] CTA EB NO. 883, February 14, 2013 (CTA Case No. 7415); *citing* Danilo Hernandez vs. Court of Appeals, et al., G.R. No. 104874, December 14, 1993

> party out of court advocating his own interest; they do not include a party's testimony as a witness in court (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).
>
> Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.'

Thus, a self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in Court.[6] Tested against these standards, the testimonies of the eleven (11) witnesses are not self-serving and are admissible in evidence."

Having been affirmed in open Court and, thereafter, subjected to cross-examination, *We* find that the testimony of Ms. Cheryl V. Capinpin is relevant and material to PAL's claim. Accordingly, *We* find no reason to deviate from the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, the instant Motions for Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[6] People vs. Villarama, G.R. No. 139211, February 12, 2003

(On Leave)
ERLINDA P. UY
Associate Justice

(I concur with the Dissenting Opinion of Justice Liban)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
(I maintain my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice