REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,
CTA EB No. 942 (CTA Case No. 7868)

-versus-

PHILIPPINE AIRLINES, INC. (PAL), Respondent.

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COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners,
CTA EB No. 944 (CTA Case No. 7868)

-versus-

PHILIPPINE AIRLINES, INC., Respondent.

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

DEC 09 2013 [signature] 8:30 a.m.

x===x

DECISION

CASTAÑEDA, JR., *J.*:

This is a consolidation of two Petitions for Review, assailing the Decision[1] of the Court of Tax Appeals – Second Division (CTA-Second Division) in CTA Case No. 7868 dated June 22, 2012 and the Resolution[2] dated September 20, 2012 denying the motion for reconsideration thereof.

[1] Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., and Cielito N. Mindaro-Grulla concurring.
[2] CTA EB 942 *Rollo*, pp. 38-47.

The dispositive portion of the questioned Decision and Resolution states:

> June 22, 2012 Decision:
>
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED TO REFUND** to petitioner the amount of P4,550,858.85, representing petitioner's erroneously paid excise taxes.
>
> **SO ORDERED.**[3]
>
> September 20, 2012 Resolution:
>
> **WHEREFORE**, premises considered, respondent-COC's Motion for Reconsideration filed on July 10, 2012 and respondent-CIR's Motion for Reconsideration filed on July 2, 2012 are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

THE FACTS

As culled from the records and found by the CTA-Second Divsion:

> Petitioner Philippine Airlines, Inc. (PAL) (herein respondent) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City, (now 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City).
>
> Respondent Commissioner of Internal Revenue (CIR; herein petitioner) is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes imposed on wines and cigarettes under Sections 142 and 145 of the National Internal Revenue Code, as amended, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Respondent Commissioner of Customs (COC; also herein petitioner) is the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes

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[3] Id., at 36.
[4] Id., at 46.

imposed on wines and cigarettes under Sections 142 and 145 of the 1997 NIRC, as amended, on the basis of the delegation and authority of the CIR through an Authority to Release Imported Goods duly issued by the CIR addressed to COC in accordance with Section 12(a) of the 1997 NIRC as amended.

On June 11, 1978, by virtue of Presidential Decree No. 1590 (PD No. 1590), PAL was granted a franchise to operate air transport services domestically and internationally.

On January 1, 2005, Republic Act No. 9334 (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 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.'"

Pursuant to the above-quoted provisions of law, and despite the exemption granted to PAL by its franchise under PD No. 1590, PAL was subjected to excise tax due on its importation of various commissary supplies used in its international flights. Petitioner paid under protest the said excise taxes, the details of which are as follows:

BOC OFFICIAL RECEIPT NUMBER	DATE OF PAYMENT	AMOUNT PAID
138110892	February 5, 2007	P1,497,182.00
138348761	February 26, 2007	P1,525,480.00
138773503	March 23, 2007	P1,528,196.85

Thereafter, PAL filed its separate administrative claims for refund before the Bureau of Internal Revenue for the alleged excise taxes it erroneously paid on February and March 2007.

However, CIR failed to act on PAL's administrative claims. Thus, on February 4, 2009, PAL filed the instant Petition for Review.

In her answer, CIR interposed the following defenses, to wit:

> "4. PAL's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P4,550,858.85 being claimed by PAL as alleged specific taxes paid on 5 February 2007, 26 February 2007 and 23 March 2007 was not properly documented.
>
> 6. 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.
>
> 7. 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)*."

On the other hand, COC raised the following arguments in his Comment to the Petition for Review:

> "1. The Commissioner of Customs is merely an agent of the Commissioner of Internal Revenue deputized to collect internal revenue taxes on imported goods.
>
> 2. PD No. 1590 has been amended by RA 9334 in so far as its exemption from payment of excise tax is concerned."

During trial, PAL presented its testimonial and documentary evidence. On the other hand, upon manifestation by CIR and COC that they have no witnesses to present in this case and, upon motion by both parties, the CTA-Second Division ordered the parties to file their respective memorandum. The case was submitted for decision on April

> 23, 2012, taking into consideration the Commissioner of Internal Revenue's "Memorandum" filed on March 13, 2012, Commissioner of Custom's "Memorandum" filed on April 2, 2012 and PAL's "Memorandum" filed through registered mail on April 16, 2012.

The CTA-Second Division promulgated a Decision granting PAL's petition and consequently ordering the CIR and COC to refund PAL the amount of P4,550,858.85 representing PAL's erroneously paid excise taxes.

Aggrieved from the abovementioned Decision, both CIR and COC filed their respective Motions for Reconsideration. However, in a resolution dated September 20, 2012, the CTA-Second Division denied both motions for lack of merit.

Thus, on October 8, 2012, respondent CIR filed her petition for review before the Court *en banc* and the same was docketed as CTA EB No. 942.[5]

In a resolution dated November 12, 2012, this Court ordered the respondent to file its Comment on the petition within ten (10) days from receipt thereof. Thereafter, respondent filed its Comment on the Petition within the mandated period.[6]

Parenthetically, on October 25, 2012, petitioner COC likewise filed his separate Petition for Review likewise assailing the decision in CTA Case No. 7868.[7] His Petition was docketed as CTA EB No. 944.

Considering that the petitions individually filed by the COC and CIR are appeals from the same decision in CTA Case No. 7868, the Court ordered that CTA EB No. 944 be consolidated with CTA EB No. 942, a case bearing the lower docket number.[8]

On December 20, 2012, acting on the petition in CTA EB No. 944, the Court ordered respondent PAL to Comment on the same.[9] There being no comment filed by respondent PAL on COC's petition,[10] on March 22, 2013, the Court considered the consolidated cases submitted for Decision.[11] However, on May 9, 2013, respondent sought for reconsideration on the March 22, 2013 resolution and prayed that the attached Comment/Opposition be admitted.[12]

Thus, on June 19, 2013, this Court resolved to admit respondent's Comment/Opposition and on even date, the case is submitted anew for decision.[13]

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[5] CTA EB 942 *Rollo*, pp. 1-20.
[6] Id., at 52-53.
[7] CTA EB 944 *Rollo*, pp. 1-22.
[8] *Supra* at note 5 p. 54.
[9] CTA EB 942 *Rollo*, pp. 71-72.
[10] Id., p. 84.
[11] Id., pp. 88-89.
[12] Id., pp. 90-93.
[13] Id., pp. 103-104.

Hence, this Decision.

THE ISSUES

The petitioner in CTA EB No. 942 submits her core issue for our disposition as follows:

> **WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX REFUND IN THE AMOUNT OF P4,550,858.85 ALLEGEDLY REPRESENTING ERRONEOUSLY PAID EXCISE TAXES.**

On the other hand, petitioner in CTA EB No. 944 raises his sole issue for the Court's consideration, to wit:

> **WHETHER OR NOT SECTION 13 OF P.D. NO. 1590 WAS AMENDED BY SECTION 6 OF R.A. NO. 9334.**

Petitioners' arguments

Petitioner CIR argues that a second hard look of the third paragraph of Section 131 of the National Internal Revenue Code, as amended by Republic Act No. 9334 (RA 9334) reveals the unmistakable intent of Congress to withdraw the conditional tax exemptions granted to respondent under Sec. 13 of Presidential Decree No. 1590 (PD 1590). She claims that Sec. 6 of RA 9334 employs the clear and all-encompassing phrase "The provision of any special or general law to the contrary notwithstanding," therefore, repeals any inconsistent provision whether contained in general or special statutes like PD 1590. Moreover, Sec. 6 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction.

In essence, both the CIR and COC argue that Sec. 13 of PD 1590 was amended by Sec. 6 of RA 9344 due to the following considerations: First, the legislative intent of RA 9344 is manifest in the plain and unmistakable language used in Sec. 6 – that all importations of alcohol and tobacco products are subject to excise tax notwithstanding the provision of <u>any prior law</u> – special or general. Moreover, consistent with Sec. 6 of the same law, Sec. 10 provides that all laws inconsistent with RA 9344 is considered as repealed, amended or otherwise modified accordingly. Second, RA 9344 is a special law which specifically treats of excise tax on alcohol and tobacco products which is in all fours with the present controversy and finally, the absolute and mandatory tenor of RA 9334 demonstrates the intent of Congress to impose excise tax on all alcohol and tobacco products.

Respondent's arguments

On the other hand, respondent argued that as aptly ruled by the CTA-Second Division, Sec. 6 of RA 9334 cannot be considered as an express repeal of the exemptions granted under its franchise and that had Congress intended to repeal PD 1590, it could have easily included it among the enumeration of those liable for such excise tax not only under RA 9334 but also under the later law, RA 9337. Moreover, RA 9334 did not in any way repeal nor withdraw the exemption from excise taxes on commissary or catering supplies imported by respondent for use in its international flights under Sec. 13 PD 1590. Finally, respondent argues that while Sec. 13 of PD 1590 was amended by RA 9337, Sec. 22 of the latter law expressly provides, in no uncertain terms, that respondent shall remain exempt from any taxes x x x as may be provided by their respective franchise agreement.

THE COURT'S RULING

Both petitions are unmeritorious.

While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding,*" such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of legislators is manifest.[14]

Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by RA 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land, and other as the law of a particular case.[15]

Considering petitioners' failure to prove that the exemption granted to PAL under PD 1590 was already repealed by RA 9334, the Court shall proceed to determine whether PAL is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise.

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[14] *Leonardo Tan et al. v. Socorro Y. Pereña,* G.R. No. 149743, February 18, 2005, 452 SCRA 53.
[15] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.,* G.R. No. 180066, July 7, 2009, 592 SCRA 237.

Section 13 of PD 1590 provides:

> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of 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 percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax;
>
> 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:
>
> x x x x
>
> 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;

In other words, PAL may be exempted from paying all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies and other articles, supplies, or materials upon payment by the grantee under either of the abovementioned alternatives, provided that:

1. Such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and *gz*

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

In addition, as held in the recently promulgated case of *Philippine Airlines, Inc., v. Commissioner of Internal Revenue*:[16]

> x x x It may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. **If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax.** On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.
>
> x x x x
>
> **Based on [Sec. 13, PD 1590], PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.** The phrase "in lieu of all other taxes" includes but is not limited to taxes that 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 purchase or cost thereof or by mutual agreement or other arrangement." **In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying**: (a) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (b) **the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products** either as part of the purchase price or by mutual agreement or other arrangement. x x x (emphasis supplied)

Let it be noted that Section 22 of RA 9337, which took effect on July 1, 2005, abolished the franchise tax provided under respondent's charter and subjected it to corporate income tax and value-added tax (VAT). Nevertheless, the same Section provides that respondent shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided its franchise agreement. For ease of reference, Sec. 22 of RA 9337 is quoted hereafter:

> SECTION 22. Franchises of Domestic Airlines. – The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air,

[16] G.R. No. 198759, July 1, 2013.

> Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.

Accordingly, respondent is only left with one option, which is to pay for its basic corporate income tax; the payment of which shall be in lieu of all taxes with the exception of corporate income tax and VAT, and subject to certain conditions as may be provided under respondent's charter.[17]

Hence, we see no cogent reason to disturb the findings of the CTA-Second Division, to wit:

> In the case at bar, petitioner was able to establish that it has chosen to pay the basic corporate income tax for the fiscal year ending March 2007 as evidenced by its Annual Income Tax Return and Amended Income Tax Return that showed a Negative Income Tax Payable in the amount of P3,476,209.55. Petitioner likewise proved, through its various Authority to Release Imported Goods issued by the BIR, that the imported articles subject of the instant petition would be used exclusively for international consumption. Furthermore, in order to satisfactorily prove that the said supplies were not locally available at a reasonable quantity, quality or price, petitioner presented the affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight-Sub-department of the petitioner. In his affidavit, Mr. Santos stated that importing the subject supplies is much cheaper for the

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[17] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, CTA EB Nos. 920 & 922, September 9, 2013.

> petitioner than purchasing them locally as shown by the various price lists attached to his affidavit. Thus, *We* find that petitioner fully complied with the requirements of PD No. 1590.

Finally, the Court also finds no reason to deviate on the ruling of the CTA-Second Division as to PAL's compliance with Sec. 22 of RA 9337, to wit:

> To show compliance with the aforementioned law, petitioner submitted in evidence the following documents: a) Certificate of Registration dated December 18, 2007; b) Certificate of Registration dated August 6, 2004; c) Payment Form No. 0605; and d) Quarterly VAT Return for the 4th Quarter of 2007. These documents proved that petitioner is a VAT registered entity and that it paid the VAT for the fiscal year ending March 2007.
>
> Lastly, petitioner was able to prove that it paid the corresponding excise taxes for the said supplies as evidenced by the official receipts issued by the Bureau of Customs as shown below:

Exhibit	**OR Number**	**OR Date**	**Specific Taxes**
R	138110892	2/5/2007	P1,497,182.00
KK	138348761	2/26/2007	P1,525,480.00
EEE	138773503	3/23/2007	P1,528,196.85
			P4,550,858.85

In view of the foregoing discussions, the Court sees no reason to modify, much less, reverse the assailed Decision and Resolution dated June 22, 2012 and September 20, 2012 respectively.

WHEREFORE, the consolidated Petitions for Review are **DISMISSED** for lack of merit. Accordingly, the assailed Decision dated June 22, 2010 and Resolution dated September 20, 2012 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro, Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court *en banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, **Petitioner,** **-versus-** **PHILIPPINE AIRLINES, INC. (PAL),** **Respondent.**	**CTA EB NO. 942** **(CTA Case No. 7868)**

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COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, **Petitioner,** **- versus -** **PHILIPPINE AIRLINES, INC. (PAL),** **Respondent.**	**CTA EB NO. 944** **(CTA Case No. 7868)** *Present:* **DEL ROSARIO,** ***PJ,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** ***and*** **RINGPIS-LIBAN,** ***JJ.*** **Promulgated:** DEC 09 2013 apolinario 8:30 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

In the *ponencia* of my esteemed colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Commissioner of

Customs (COC), are both dismissed for lack of merit. The Decision of the former Second Division of this Court ("CTA-Second Division") dated June 22, 2012 and its Resolution dated September 20, 2012, in CTA Case No. 7868, are affirmed. The *ponencia* sustained the findings of the CTA-Second Division that Section 6 of Republic Act (RA) No. 9334[1] did not repeal the tax exemption granted to respondent Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590.[2]

It is with utmost respect that I express my dissent in the *ponencia.*

The issue that needs to be resolved is whether or not RA No. 9334 repealed the excise tax exemption granted to respondent PAL under PD No. 1590 on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

On June 11, 1978, PD No. 1590 was issued wherein respondent PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by respondent PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to 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.

Relevant portions of Section 13 of PD No. 1590 state as follows:

> "**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,

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[1] 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".

[2] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

> 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, <u>commissary and catering supplies</u>, 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;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997"* took effect. RA No. 8424 amended the National Internal Revenue Code[3] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424 (1997 NIRC), importation of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes. Section 131 of the 1997 NIRC provides that: CM

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[3]"SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I
Organization and Function of the Bureau of Internal Revenue

'SECTION 1. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

"SECTION 131. 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 customshouse, 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 importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

<u>The provision of any special or general law to the contrary notwithstanding</u>, 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: Provided, however, That this <u>shall not apply</u> 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': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphases supplied)

Noticeably, Section 131 of the 1997 NIRC clearly provides that *"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 are subject to all applicable taxes, duties and charges, which include excise taxes. The only exception to the taxability of such importation are those specifically mentioned therein, that is - - the importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, and which are not transshipped to any other port in the Philippines. Moreover, 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 also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334 states:

> "SEC. 131. 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 customshouse, 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

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considered the 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 on introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphasis supplied)

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes, shall *not apply* to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically *withdrew* the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

In truth, the exemption of respondent PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 was necessarily withdrawn with the enactment of the 1997 NIRC (specifically under Section 131) albeit importations of afore-stated items remained exempt if brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, under conditions therein specified. Eventually, Section 131 of the 1997 NIRC was amended by Section 6 of RA No. 9334. Under Section 131 of the 1997 NIRC, as amended by Section 6 of RA No. 9334, 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. Fermented liquor was further added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, it is my humble view that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on respondent PAL's importation under Section 13(2) of PD No. 1590. Moreover, the repealing clause of RA No. 8424 is most revealing:

> "SECTION 7. Repealing Clauses. — (A) xxx xxx xxx.
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly."

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Otherwise stated, in enacting the 1997 NIRC, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

As afore-stated, Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. Respondent PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes. The clear intent of the legislature to withdraw the tax exemption previously granted to respondent PAL on its importation of afore-mentioned articles pursuant to Section 13(2) of PD No. 1590 cannot simply be ignored.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[4] ("*Cagayan case*"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
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> xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it

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[4] G.R. No. L-60126, September 25, 1985.

> was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, my position is that that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should be construed as an effective repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, when Section 131 of the 1997 NIRC specifically identified the importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges, including excise taxes, which identification did not include respondent PAL's importations, there is a repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as said items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, respondent PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. Respondent PAL also posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

I am of the view that the arguments raised by respondent PAL are bereft of constitutional moorings. Sections 16 and 24 of PD No. 1590 provide that:

> "**Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."
>
> "**Section 24.** This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Respondent PAL essentially proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption. Respondent PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[5], *viz*:

> "To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.
>
> On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.
>
> Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.
>
> *First.* Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.
>
> ***Second.* 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**

[5] G.R. No. 168584, October 15, 2007.

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.

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

Fourth. **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.

These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**

While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked." (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[6], the Supreme Court clarified that the power of the

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[6] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280,

legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

> "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes**."

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on respondent PAL's importations.

It should be noted that Section 22 of RA No. 9337[7], which took effect on July 1, 2005, abolished the franchise tax provided under respondent PAL's charter and subjected respondent PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that respondent PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement. Section 22 of RA No. 9337 is quoted hereunder:

> "SECTION 22. Franchises of Domestic Airlines. — The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

[7] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

At the time of the enactment of RA No. 9337, respondent PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by the 1997 NIRC. Truth to tell, there is nothing in RA No. 9337 which shows that the tax exemption on respondent PAL's importation of afore-stated articles was reenacted or restored, although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by Section 131 of the 1997 NIRC.

In sum, it is clear that as early as January 1, 1998, when the 1997 NIRC took effect, the exemption of respondent PAL's importations of cigars and cigarettes, distilled spirits, fermented liquors and wines from taxes, duties, charges, including excise taxes, has been withdrawn. At the time that respondent PAL paid excise taxes on February 5, 2007, February 26, 2007 and March 23, 2007 in connection with its importation of various commissary supplies, respondent PAL is already subject to excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

Accordingly, it is my humble opinion that respondent PAL is not entitled to the refund of the amount of Php4,550,858.85, representing excise taxes paid by respondent PAL on February 5, 2007, February 26, 2007 and March 23, 2007 on its importations of various commissary supplies. In this regard, I vote to grant the instant Petitions for Review respectively filed by petitioner CIR and petitioner COC.

ROMAN G. DEL ROSARIO
Presiding Justice

> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

At the time of the enactment of RA No. 9337, respondent PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by the 1997 NIRC. Truth to tell, there is nothing in RA No. 9337 which shows that the tax exemption on respondent PAL's importation of afore-stated articles was reenacted or restored, although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by Section 131 of the 1997 NIRC.

In sum, it is clear that as early as January 1, 1998, when the 1997 NIRC took effect, the exemption of respondent PAL's importations of cigars and cigarettes, distilled spirits, fermented liquors and wines from taxes, duties, charges, including excise taxes, has been withdrawn. At the time that respondent PAL paid excise taxes on February 5, 2007, February 26, 2007 and March 23, 2007 in connection with its importation of various commissary supplies, respondent PAL is already subject to excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

Accordingly, it is my humble opinion that respondent PAL is not entitled to the refund of the amount of Php4,550,858.85, representing excise taxes paid by respondent PAL on February 5, 2007, February 26, 2007 and March 23, 2007 on its importations of various commissary supplies. In this regard, I vote to grant the instant Petitions for Review respectively filed by petitioner CIR and petitioner COC.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB NO. 942
(C.T.A. CASE NO. 7868)

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

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioner,

- versus -

PHILIPPINES AIRLINES, INC. (PAL),
Respondent.

CTA EB NO. 944
(CTA Case Nos. 7868)

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

Promulgated:

DEC 09 2013 apolinario 8:30 a.m.

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DISSENTING OPINION

RINGPIS-LIBAN, J.:

The *ponencia* of my esteemed colleague, the Honorable Associate Justice Juanito C. Castañeda, dismissed the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Commissioner of Customs (COC) for lack of merit. Majority of this Court sustained the findings of the CTA-Second Division[1] that Section 6 of Republic Act (RA) No. 9334[2] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[3].

I respectfully vote to **DISAGREE** with the majority opinion and join the Honorable Presiding Justice Roman G. Del Rosario in his dissent.

It is a well-settled principle in statutory construction that, "When there are two statutes, the earlier special and the later general -- the terms of the general broad enough to include the matter provided for in the special -- the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case."[4]

In fact, this was determined to be a core issue of the matter at hand -- whether Sections 6 and 10 of RA 9334 (the provisions requiring payment of excise tax on imported articles) have repealed Section 13 of PD 1590 (provisions of tax exemptions under PAL's franchise). It is also on this basis that the *ponencia* upheld the former Second Division's Decision[5] dated May 18, 2012 in CTA Case No. 7843, and its Resolution[6] dated August 3, 2012.

The majority opinion further holds that although Sec. 6 of RA 9334 states the all-encompassing phrase "the provision of any special or general law to the contrary notwithstanding", such phrase could not be considered an express repeal of the exemptions granted under PAL's franchise because it failed to expressly mention PD 1590 with respect to paying the government excise tax.

On the one hand, we have PD 1590 which granted PAL its franchise and contains tax exemption provisions. Because such enactment is only applicable to PAL, it is, by all means, considered a special law. A special statute, as the term is generally understood, is one which relates to particular person or things of a class[7] or to a particular portion or section of the state only.[8]

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[1] Decision of the CTA-Second Division in CTA Case No. 7868 dated June 22, 2012 and the Resolution dated September 20, 2012 denying the motion for reconsideration thereof.
[2] 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.
[3] Presidential Decree No. 1590, An Act Granting a New Franchise to Philippine Airlines, inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.
[4] Manila Rairoad Co. v. Rafferty, 40 Phil. 224
[5] En Banc docket, pp. 36-64, *Annex "A"*.
[6] En Banc docket, pp. 65-73, *Annex "B"*.
[7] Valera v. Tuason, 80 Phil. 823 (1948).
[8] U.S. v. Serapio, 23 Phil. 584 (1912).

On the other hand, we have RA 9334 an act which specifically increases excise tax rates imposed on alcohol and tobacco products and which amended several sections of the National Internal Revenue Code of 1997 (RA 8424), including Section 131 thereof. RA 9334 is considered to be an amendatory statute. Amendments are to be construed together with the original act to which they relate as constituting one law, and also with other statutes on the same subject, as part of a coherent system of legislation.[9] RA 9334, therefore, must be read together with RA 8424 which is a general statute. A general statute is a statute which applies to all of the people of the state or to all of a particular class of person in the state with equal force.[10] It is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.[11]

Applying the rules of statutory construction, then the special law -- PD 1590 -- would indeed be considered to remain an exception to RA 8424, the general law, and PAL would still be exempt from the payment of excise taxes on cigars and cigarettes, fermented spirits and wines that it imported.

However, the rule is not absolute and admits of exceptions. I believe that the case at bar falls under those exceptions.

One exception to the principle is where the special law merely establishes a general rule while the general law creates a specific and special rule, in which case the general law prevails over the special law.[12] The principle that a special law on a subject prevails over a general law on the same subject presupposes that the general law refers to the subject in general and the special law treats the same subject in particular. The rule does not apply where the situation is reverse, that is, the general law treats the subject in particular and the special law refers to it in general. In this situation, the general law prevails over the special law in the event of repugnancy or conflict between the two laws.[13]

Under PD 1590, the subject of excise taxes due on its importations of cigars and cigarettes, fermented spirits and wines, are treated generally and are considered encompassed in Section 13 thereof. In that section, in consideration of the franchise granted to PAL, it shall pay either basic

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[9] *Statutory Construction*, Rodriguez, Rufus B. 1999, citing 82 C.J.S. Statutes § 384.
[10] U.S. v. Serapio, 23 Phil. 584 (1912).
[11] Valera v. Tuason, 80 Phil. 823 (1948); Villegas v. Subido, G.R. No. 31711, Sept. 30, 1971, 41 SCRA 190 (1971).
[12] City of Manila v. Teotico, G.R. No. 23052, Jan. 29, 1968, 22 SCRA 276 (1968).
[13] Bagatsing v. Ramirez, G.R. No. 41636, Dec. 17, 1976, 74 SCRA 306 (1976).

corporate income tax or a franchise tax. **Section 13** further denotes the treatment of the tax paid, thus:

> "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**:
>
> x x x
>
> 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; x x x"[14]

In fact, PD 1590 does not even mention "cigars and cigarettes, distilled spirits, fermented liquors and wines" with any particularity and such items would only fall under the generic phrase **"commissary and catering supplies"** which would consist of many other products than just alcohol and tobacco. In contrast, RA 9334 deals with the excise tax rates imposed on, specifically, alcohol and tobacco products. The fact that Sec. 6 of RA 9334, in its third paragraph, is preceded by the phrase, **"The provision of any special or general law to the contrary notwithstanding x x x"** evinces a clear intent to withdraw prior exemptions of excise tax when it comes to "cigars and cigarettes, distilled spirits, fermented liquors and wines".

The case at bar therefore falls under the exception where a general law treats the subject in particular and the special law refers to it in general, and in such a case, the general law -- RA 8424 as amended by RA 9334 -- must prevail.

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[14] Section 13, Presidential Decree No. 1509, An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.

The case of ***Republic of the Philippines v. Caguioa***[15] elucidates the matter further. In that case, the petitioners, via a Petition for Certiorari and Prohibition, sought to annul the orders of Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City which granted a writ of preliminary injunction to respondents, in effect staying the implementation of RA 9334. On a head-on collision with RA 9334 was RA 7227 (The Bases Conversion and Development Act of 1992) which, among other things, created the Subic Special Economic and Freeport Zone (SBF) and the Subic Bay Metropolitan Authority (SBMA).

Private respondents in the *Caguioa* case were all domestic corporations doing business at the Subic Bay Freeport. They applied for and were granted Certificates of Registration and Tax Exemption by the SBMA which allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, **including alcohol and tobacco products**, and **uniformly granted them tax exemptions for such importations** as contained in their respective Certificates.

Although the Supreme Court in the *Caguioa* case limited itself to resolving the most pertinent and justiciable matter at hand, i.e. the propriety of preliminary injunction granted to respondents, it however opined, thus:

> "It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.
>
> By subsequently enacting R.A. No. 9334, however, **Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines**. Juxtaposed to show this intention are the respective provisions of Section 131 of the NIRC before and after its amendment by R.A. No. 9334:

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[15] G.R. No. 168584, October 15, 2007.

Sec. 131 of NIRC before R.A. No. 9334	**Sec. 131, as amended by R.A. No. 9334**
Sec. 131. 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 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. Provided, however,	Sec. 131. 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 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**

/wy

That **<u>this *shall not apply* to cigars and cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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, 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, 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 labeled "tax and duty-free" and "not for resale": Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally,	**taxes due thereon. <u>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 Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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 "tax and 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. x x x x.

That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. x x x x.	(Emphasis and underscoring supplied)

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF."[16]

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, the Supreme Court went on to state several basic principles and observations, the relevant ones of which, I find, should also shed light on the case at bar, to wit:

"*Second.* 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[17], a tax exemption may be modified or withdrawn at will by the granting authority.[18]

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

[16] *Supra.*
[17] *Supra*; citing United Paracale Mining Co. v. De la Rosa, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.
[18] *Supra*; citing Abakada Guro Party List Officers v. Ermita, G.R. Nos. 168056, 168207, 168461 and 168463, September 1, 2005, 469 SCRA 1, 134.

searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.[19]

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[20] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.[21] In case of doubt, non-exemption is favored.[22]

Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal.[23] Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI[24] of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334."

Based on the foregoing, I vote to grant the instant Petitions for Review respectively filed by the CIR and the Republic of the Philippines, as represented by the COC.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[19] *Supra*; citing Tio v. Videogram Regulatory Board, G.R. No. L-75697, June 18, 1987, 151 SCRA 208, 215.
[20] *Supra*; citing Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152; Philippine Long Distance Telephone Company, Inc. v. City of Davao, 447 Phil. 571, 584 (2003); Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc., G.R. No. L-71122, March 25, 1988, 159 SCRA 199, 210; City of Baguio v. Busuego, L-29772, September 18, 1980, 100 SCRA 116, 123.
[21] *Supra*; citing Caltex Philippines, Inc. v. Commission on Audit, G.R. No. 92585, May 8, 1992, 208 SCRA 727, 753.
[22] *Supra*; citing Benguet Corporation v. Central Board of Assessment Appeals, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 587.
[23] *Supra*; citing Commissioner of Internal Revenue v. Court of Appeals, February 6, 1997, citing Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc., 88 SCRA 294, 452.
[24] Sec. 28 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.