REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7966, 7990 & 8020**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE AND COMMISIONER OF CUSTOMS, Respondent.	**Promulgated:** APR 20 2016

x- -x

2:00 p.m.

DECISION

CASANOVA, *J.*:

Before the Court are consolidated cases filed by petitioner, seeking for the refund of specific taxes in the aggregate amount of One Hundred Six Million Four Hundred Six Thousand Nine Hundred Thirty One Pesos and Eight Centavos (₱106,406,931.08), broken down as follows:

CTA Case No.	Date of payment	Amount
7966	September 7, 2007	₱ 35,470,143.00[1]
7990	November 9, 2007	23,701,965.00[2]
8020	January 4, 2008	47,234,823.08[3]
TOTAL		**₱ 106,406,931.08**

The facts as found in the records of this case are as follows:

[1] Petition for Review, Docket (CTA Case No. 7966, Vol. I), pp. 1-16
[2] Petition for Review, Docket (CTA Case No. 7990), pp. 4-19
[3] Petition for Review, Docket (CTA Case No. 8020), pp. 1-18

Petitioner Air Philippines Corporation (APC) is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[4]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of ₱3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), delegated and authorized by respondent Commissioner of Internal Revenue, through an Authority to Release Imported Goods (ATRIG) (BIR Form No. 1918), to assess and collect customs duties and all other lawful revenues from imported articles, including the excise tax of ₱3.67 per liter of volume capacity on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC, with principal office at the Port Area, Manila.[6]

The Department of Energy issued a Certification dated December 20, 2002 (2002 DOE Certification) stating that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price.[7]

On January 29, 2003, respondent CIR issued BIR Ruling No. 001-03, addressed to petitioner, Philippine Airlines, Inc., Cebu Air, Inc., and Pacific Airways Corporation, the pertinent portion of which reads:[8]

> "*x x x* In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity,

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[4] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF), Docket (CTA Case No. 7966, Vol. I), pp. 260-261
[5] Par. 2, Summary of Admitted Facts, JSF, Docket (CTA Case No. 7966, Vol. I), p. 261
[6] Par. 3, Summary of Admitted Facts, JSF, Docket (CTA Case No. 7966, Vol. I), p. 261
[7] Par. 4, Summary of Admitted Facts, JSF, Docket (CTA Case No. 7966, Vol. I), pp. 261-262
[8] Exhibit "BB" (CTA Case No. 7966)

> quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. Accordingly, your importations may not be given the same tax treatment as before for as long as there is such available domestic supply of petroleum products.
>
> This Ruling, therefore, supersedes the above rulings and all such other rulings that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

The conditions which airlines must comply with to continue enjoying tax exemptions on their importation of petroleum products, referred to in the 2003 BIR Ruling, are provided in Section 13 of PAL's franchise (P.D. 1590), which took effect on June 11, 1978. Section 13 provides[9]:

> "SEC. 13. *x x x*
>
> *x x x* *x x x* *x x x*
>
> 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 but not limited to the following:
>
> (1) *x x x*;
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importation 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,

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[9] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (CTA Case No. 7990), p. 148

or materials; provided, that such articles or supplies or materials are imposed for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

(3) *xxx;*"

On the other hand, Section 15 of petitioner's franchise (R.A. No. 8339), dated 8 August 1997, provides for the applicability of PAL's exemption to petitioner, to wit[10]:

> "SEC. 15. *Interpretation of Franchise.* – This franchise shall not be interpreted to mean as an exclusive grant of the privileges herein provided for. However, in the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place herein grantee at any disadvantage, then such terms and/provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee."

However, on the basis of the 2003 BIR Ruling, respondent CIR, acting through respondent COC, assessed petitioner for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

Thus, for the following importations during the period of August to December 2007, petitioner paid the corresponding specific taxes under protest, and filed its claims for refund, detailed as follows:

Import Entry Internal Revenue Declaration No.	Date of Payment	Official Receipt No.	Quantity of Jet A-1 fuel imported	Date of filing the claim for refund with the BIR
81802305 (Exh. "D" CTA Case No. 7966)	09/07/2007	242145c (Exh. "A" CTA Case No. 7966)	9,664,889 liters	-
83807631 (Exh. "D" CTA Case	11/09/2007	137651c (Exh. "A"	6,458,301 liters	10/14/2009 (Exh. "I" CTA

[10] Par. 6, Stipulation of Facts, JSFI, Docket (CTA Case No. 7990), pp. 150-151

No. 7990)		CTA Case No. 7990)		Case No. 7990)
83837656 (Exh. "D" CTA Case No. 8020)	01/04/2008	138622c (Exh. "A" CTA Case No. 8020)	12,870,524 liters	12/23/2009 (Exh. "I" CTA Case No. 8020)

To avoid the lapse of the two-year prescriptive period provided under Section 229 of the NIRC, as amended, petitioner filed three (3) Petitions for Review on August 28, 2009 (docketed as CTA Case No. 7966)[11], November 6, 2009 (docketed as CTA Case No. 7990)[12], and January 4, 2010, (docketed as CTA Case No. 8020)[13] for the refund of the abovementioned specific taxes paid.

Respondent COC interposed similar special and affirmative defenses in the Answers filed on September 14, 2009[14], December 1, 2009[15], and January 26, 2010[16], respectively, as follows:

4. Petitioner failed to exhaust administrative remedies before seeking relief from the Honorable Court;

4.1 Petitioner argues that the Department of Energy (DOE) Certification dated December 20, 2002 which in essence stated that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, and which became the basis of BIR Ruling No. 001-2003 which removed tax benefits from importation of aviation gas, fuel and oil, was issued without giving the affected airline companies notice and an opportunity to be heard. Hence, petitioner prays for the Honorable Court to declare the said Certification as 'not valid since it was issued without due process' and 'for having no factual basis.'

4.2 In essence, petitioner is asking the Honorable Court to override the factual determination of the DOE, which it cannot do without violating the

[11] Exhibits "J & J-1" (CTA Case No. 7966)
[12] Exhibits "J & J-1" (CTA Case No. 7990)
[13] Exhibits "J & J-1" (CTA Case No. 8020)
[14] Docket (CTA Case No. 7966, Vol. I), pp. 70-78
[15] Docket (CTA Case No. 7990) pp. 74-82
[16] Docket (CTA Case No. 8020) pp. 73-81

principle of separation of powers and respect due to the factual determination of a co-equal branch of Government.

4.3 Besides, DOE is not even impleaded as a party in this case. For this Honorable Court to reverse said department's findings without giving it notice and opportunity to be heard smacks of violation of the sacred right to due process.

4.4 The proper recourse is for petitioner to appeal the action of the DOE to the Office of the President (OP). Verily, the Honorable Court is not the proper forum for petitioner to contest the administrative findings of the DOE.

4.5 For failing to appeal to the OP, petitioner failed to exhaust administrative remedies that make the present petition dismissible under Section 1(j), Rule 16 of the 1997 Rules of Civil Procedure which states:

> **SECTION 1.** *Grounds.* - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> x x x
>
> (j) That a condition precedent for filing the claim has not been complied with.

5. Similarly, petitioner failed to appeal the issuance by the Bureau of Internal Revenue of BIR Ruling No. 001-2003 dated January 29, 2003, to the Secretary of Finance pursuant to Section 4 of the National Internal Revenue Code of 1997, which states:

> **Sec. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to the review by the Secretary of Finance.
>
> x x x

6. Petitioner's resort to the present petition is unavailing because it seeks to reverse respondent's actions that are only results of prior factual determinations of another government agency.

6.1. Thus, the DOE issued the Certification dated December 20, 2002 which essentially states that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.

Pursuant thereto, the BIR issued BIR Ruling No. 001-2003 dated January 29, 2003, the pertinent portion of which reads:

> 'x x x In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies ipso facto to the other airlines. Accordingly, your importations may not be given the same tax treatment as before as long as there is such available domestic supply for petroleum products.
>
> This Ruling, therefore, supersedes the above ruling and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.'

Consistent with the DOE Certification, the BIR imposed specific taxes on petitioner's fuel importations. The Bureau of Customs presumably collected those taxes at the respective port where the fuels were delivered on different dates.

6.2 Evidently, respondents' actions are rooted on the DOE Certification, which, absent any ruling to the contrary, remains a valid administrative issuance of the government agency tasked with the management of the energy sector.

6.3 Under the premises, it would be extremely improper, not to say absolutely unjust, for the Honorable Court to nullify respondents' actions without first ruling on the property *(sic)* of the DOE Certification, which however it cannot do in this case. Respondents respectively performed their functions in the regular course. At this point, the importance of availment of administrative remedies before the present action cannot be overemphasized.

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.

7.1 Petitioner failed to show that the total amount of ₱106,406,931.08 it allegedly paid on different dates as specific taxes on the importation of fuel was erroneously or illegally collected or that the same was properly documented pursuant to the requirements of Section 204 (C) and 229 of the National Internal Revenue Code of 1997.

7.2 Tax refunds are in the nature of tax exemptions. They are regarded as in derogation of sovereign authority. Thus, as held in **Digital Telecommunications Philippinves vs. City Government of Batangas, et al., G.R. No. 156404, December 11, 2008**:

In Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue, 77 the Court ruled that 'the governing principle is that tax exemptions are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority – he who claims an exemption must be able to justify his claim by the clearest grant of statute'. A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.

Tax refunds cannot be permitted to exist upon 'vague implications' [Commissioner of Internal Revenue vs. Procter and Gamble, 204 SCRA 377 (1991)].

8. Finally, if it were true that petitioner paid specific taxes to the Bureau of Customs, the latter merely acted as a collection agency that does not have any power and jurisdiction to adjudicate any issue arising from any tax impositions and other rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions. Hence, petitioner cannot maintain a cause of action against it.

Respondent CIR, likewise, filed her Answers to the instant Petitions on September 16, 2009[17] (for CTA Case No. 7966), November 24, 2009[18] (for CTA Case No. 7990) and through registered mail on March 1, 2010[19] (for CTA Case No. 8020), and raised the following special and affirmative defenses, to wit:

For CTA Case Nos. 7966, 7990 and 8020:

1. The Petitions for Review should not be given due course as petitioner failed to exhaust all administrative remedies before elevating this case to this Honorable Court.

   1.1 Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before petitioner questioned its legality before this Honorable Court. Petitioner's precipitate act violates Section 1(j) of Rule 16 of the 1997

[17] Docket (CTA Case No. 7966, Vol. I), pp. 80-86
[18] Docket (CTA Case No. 7990), pp. 83-89
[19] Docket (CTA Case No. 8020), pp. 94-106

Rules of Civil Procedure which provides as follows:

'MOTION TO DISMISS

SECTION 1. *Grounds.* – Within the time but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

xxx xxx xxx

(j) That a condition precedent for filing the claim has not been complied with.'

1.2 Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides as follows:

'SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to the review by the Secretary of Finance.

xxx xxx xxx

2. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the NIRC of 1997.

3. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the Department of Energy, in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay

this Honorable Court from exercising jurisdiction over this petition.

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amounts of ₱35,470,143.00, ₱23,701,965.00, ₱47,234,823.08 representing specific taxes being claimed by petitioner which were allegedly paid under protest on September 7, 2007, November 9, 2007, and January 4, 2008 respectively, were 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. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the NIRC of 1997 on the prescriptive period for claiming tax 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).*

For CTA Case No. 8020:

14. Petitioner alleged that BIR Ruling No. 001-2003 dated January 29, 2003 amounts to unauthorized amendment or alteration of P.D. NO. 1590, the franchise of Philippine Airlines (PAL), in violation of Section 16 and 24 thereof. Respondent CIR humbly submits that the questioned BIR Ruling is a valid interpretation of the provisions of the NIRC of 1997. It is widely accepted that an interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by courts. Unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid and full force and effect.

Revenue Memorandum Circular (RMC) No. 44-2001 entitled Circularizing Department 23-01 providing for the Implementing Rules of the First Paragraph of Section 4 of the NIRC of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99 which was issued on October 11, 2001 provides:

> 'Section 2. Validity of Rulings. A ruling by the Commissioner of Internal Revenue shall be presumed valid unless modified, reversed or superseded by the Secretary of Finance.
>
> Section 3. Rulings Adverse to the Taxpayer. A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself of through his/its duly accredited agent or representative. The request for review shall be in writing and under oath and must:
>
> xxx xxx xxx
>
> These are mandatory requirements and failure to comply with any of the stated substantive requirements shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review.'

Petitioner is given thirty (30) days from its alleged receipt of said BIR ruling dated January 29, 2003 or until February 28, 2003 within which to exhaust the above-mentioned remedy by filing before the Secretary of Finance a request for review in writing and under oath BIR Ruling 001-2003. However, petitioner slept on its right and allowed the period within which to present its side of the case to lapse. Petitioner should therefore, suffer the consequence of its omission to exercise its rights.

Respondent CIR respectfully submits that rules and regulations issued by the administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect or partake of the nature, of a statute.

15. Ergo, in view of the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action.

16. Lastly, assuming that respondent is a proper party to the instant case, it bears stressing that the administrative claim for refund was allegedly filed with respondent only on December 23, 2009 while the Petition for Review was filed before the Honorable Court of Tax Appeals (CTA) on January 4, 2010 or barely twelve (12) days after the filing of the administrative claim. Undoubtedly, respondent was not given ample time to appropriately act on the refund being claimed before the case was elevated by petitioner to the Honorable CTA.

xxx"

Thereafter, the 3 cases were set for Pre-Trial Conference on October 8, 2009[20], January 21, 2010[21] and April 16, 2010[22].

In CTA Case No. 7990, the parties filed their Joint Stipulation of Facts and Issues on March 26, 2010[23] which was approved by the Court in a Resolution[24] dated April 7, 2010.

However, on July 21, 2010, the Court granted petitioner's Motion to Consolidate CTA Case No. 7990 with CTA Case No. 7966.[25] On the other hand, during the hearing held on July 27, 2010, CTA Case No. 8020 was consolidated with CTA Case No. 7966.[26]

Subsequently, respondent COC filed his Pre-Trial Brief[27] on August 17, 2010 while Petitioner's Consolidated Pre-Trial Brief was filed on September 13, 2010.[28]

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[20] Docket (CTA Case No. 7966, Vol. I), p. 87
[21] Docket (CTA Case No. 7990), p. 91
[22] Docket (CTA Case No. 8020), p. 108
[23] Docket (CTA Case No. 7990), pp. 148-153
[24] Docket (CTA Case No. 7990), p. 157
[25] Docket (CTA Case No. 7990), p. 192
[26] Docket (CTA Case No. 8020), p. 178
[27] Docket (CTA Case No. 7966, Vol. I), pp. 199-205
[28] Docket (CTA Case No. 7966, Vol. I), pp. 212-223

On January 20, 2011, the parties filed their Joint Stipulation of Facts on the consolidated cases.[29]

Then, the Court issued a Pre-Trial Order on February 18, 2011, which, among others, considered the pre-trial of the case terminated.[30]

During trial, petitioner presented, by way of Judicial Affidavit, the testimony of its witnesses Atty. Jonathan Andrew D. Lim[31], Mr. Edwin J. Segundo[32], Ms. Myra Celeste O. Dabalos[33], Ms. Jennifer I. Sedigo[34], Atty. Antero Jose M. Caganda[35] and Atty. Voltaire A. Almeda[36] as part of its testimonial evidence.

Petitioner also adopted the testimony of Ms. Marides C. Canillo[37] in CTA Case No. 7966 made prior to the consolidation of the instant cases. Petitioner, likewise, presented the testimony in open court of Mr. Mario V. Tiaoqui.[38]

In addition, Exhibits "A-(CTA Case No. 7966)" to "G-(CTA Case No. 8020)", "H-(CTA Case No. 7966)", "H-(CTA Case No. 7990)", "I-(CTA Case No. 7990)" to "K-3", "M", "Q" to "T", "U", "V", "V-1", "X" to "BB", "YY" to "HHH", and "JJJ", were admitted as part of the evidence for the petitioner in the Resolutions dated July 9, 2013[39], and October 17, 2013[40] while exhibits "H-(CTA Case No. 8020), "I-(CTA Case No. 7966)", "L", "N", & "N-1", "O" & "O-1", "P" & "P-1", "T-1", "T-2", "W", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX" and "III" were denied admission.

Also, petitioner filed on April 4, 2014 its request for admission of the issuance and genuineness of the February 27, 2014 Decision of the

[29] Docket (CTA Case No. 7966, Vol. I), pp. 260-263
[30] Docket (CTA Case No. 7966, Vol. I), pp. 278-282
[31] Exhibit "M" (CTA Case No. 7966)
[32] Exhibit "Q" (CTA Case No. 7966)
[33] Exhibits "V" and "GGG" (CTA Case No. 7966)
[34] Minutes of the Hearing held on October 26, 2011, Docket (CTA Case No. 7966, Vol. II), p. 709
[35] Exhibit "DDD" (CTA Case No. 7966)
[36] Exhibit "JJJ" (CTA Case No. 7966)
[37] Docket (CTA Case No. 7966, Vol. I), pp. 174-176
[38] Minutes of the Hearing held on June 11, 2012 and August 16, 2012, Docket (CTA Case No. 7966, Vol. II), p. 817 and 820, respectively
[39] Docket (CTA Case No. 7966, Vol. III), pp. 1392-1393
[40] Docket (CTA Case No. 7966, Vol. III), pp. 1462-1465

RTC, Pasay City, Branch 114 in Civil Case No. R-PSY-10-03889-CV (Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy)[41]. Respondent COC admitted its existence pursuant to its Comment (On Petitioner's Manifestation and Request for Admission dated April 4, 2014) filed on April 23, 2014[42], subject to the qualification that the same is not yet final, as the same is still the subject of a Notice of Appeal filed on March 19, 2014. Also, respondent CIR adopted the comment filed by respondent COC as per her Manifestation filed on April 25, 2014.[43]

On the other hand, respondent presented the testimonies of its witnesses, Ms. Saturnino B. Dela Cruz[44] and Ms. Zenaida Y. Monsada[45]. The Court, likewise, admitted, as part of respondent COC's documentary evidence Exhibits "1" to "6-a" and ordered both parties to file their respective memoranda pursuant to the Resolution dated April 1, 2014.[46]

The Memorandum for the Petitioner was filed on June 10, 2014[47] while respondents CIR and COC filed their Memoranda on May 7, 2014[48] and June 9, 2014[49], respectively.

In a Resolution dated June 17, 2014, the case was submitted for decision.[50]

However, on October 31, 2014, petitioner filed its Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum[51], which was denied in the Resolution dated February 24, 2015[52].

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[41] Petitioner's Manifestation and Request for Admission, Docket (CTA Case No. 7966, Vol. III), pp. 1647-1669
[42] Docket (CTA Case No. 7966, Vol. III), pp. 1672-1675
[43] Docket (CTA Case No. 7966, Vol. III), p. 1678
[44] Exhibit "1" (CTA Case No. 7966)
[45] Docket (CTA Case No. 7966, Vol. III), pp. 1486-1500
[46] Docket (CTA Case No. 7966, Vol. III), pp. 1645-1646
[47] Docket (CTA Case No. 7966, Vol. III), pp. 1770-1835
[48] Docket (CTA Case No. 7966, Vol. III), pp. 1698-1710
[49] Docket (CTA Case No. 7966, Vol. III), pp. 1722-1769
[50] Docket (CTA Case No. 7966, Vol. III), p. 1836
[51] Docket (CTA Case No. 7966, Vol. III), pp.1838-1845
[52] Docket (CTA Case No. 7966, Vol. III), pp. 1870-1874

On March 13, 2015, petitioner filed its Motion for Partial Reconsideration (on Court's Resolution dated 24 February 2015)[53]. In a Resolution promulgated on June 15, 2015, the Court granted the motion and gave petitioner ten (10) days to submit Supplemental Memorandum. Also, the Resolution dated June 17, 2014 submitting the consolidated cases for decision was recalled and set aside.[54]

Thereafter, a Supplemental Memorandum for the Petition was filed on July 3, 2015.[55] Considering the filing thereof, the consolidated cases were submitted anew for decision on August 5, 2015[56].

The parties raised the following issues in their respective Pre-Trial Briefs and Joint Stipulation of Facts and Issues in CTA Case No. 7990[57]:

For the Petitioner

1. Whether or not BIR Ruling No. 001-2003, dated 29 January 2003, is void for having been issued without factual or legal basis;

2. Whether or not petitioner is exempt by virtue of its franchise, more specifically Section 15 of R.A. 8339 (as amended by Section 11 of R.A. 9215, in relation to Section 13 of the franchise of PAL, P.D. No. 1590), from the excise tax collected on its importations of Jet A-1 fuel for domestic operation, and, therefore, entitled to the refund of the specific taxes and additional specific taxes it paid under protest.

For the Respondent Commissioner of Customs (COC)

1. Whether or not the Honorable Court may take cognizance of the present petition which was filed without petitioner having exhausted administrative remedies.

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[53] Docket (CTA Case No. 7966, Vol. III), pp. 1886-1895
[54] Docket (CTA Case No. 7966, Vol. III), pp. 1910-1913
[55] Docket (CTA Case No. 7966, Vol. III), pp. 1914-1923
[56] Docket (CTA Case No. 7966, Vol. III), p. 1925
[57] Docket (CTA Case No. 7990), pp. 151-152; Docket (CTA Case No. 7966, Vol. I), pp. 279-280

2. Whether or not petitioner is entitled to a refund of or taxes on its aviation fuel importations.

For the Respondent Commissioner of Internal Revenue (CIR)

1. Whether or not the instant petition is premature for failure of petitioner to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the NIRC of 1997.

2. Whether or not the Honorable Court has jurisdiction to act on the instant Petition for Review

3. Whether or not petitioner is entitled to a refund/tax credit of the specific taxes allegedly paid in its importations of Jet A-1 fuel for domestic operations.

The Court shall first determine petitioner's compliance with the procedures governing the filing of claims for refund under Sections 204 and 229 of the NIRC of 1997, as amended. The pertinent portion of the said Sections reads:

> "SEC.204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may—
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC.229. **Recovery of Tax Erroneously or Illegally Collected.**— No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Records of this case show that petitioner paid the excise taxes subject of the instant petitions in the amounts of ₱35,470,143.00, ₱23,701,965.00, and ₱47,234,823.08 on September 7, 2007, November 9, 2007 and January 24, 2008, respectively, detailed as follows:

Import Entry Internal Revenue Declaration No.	Date of Payment	Official Receipt No.	Amount paid
81802305 (Exh. "D" CTA Case No. 7966)	09/07/2007	242145c (Exh. "A" CTA Case No. 7966)	₱35,470,143.00
83807631 (Exh. "D" CTA Case No. 7990)	11/09/2007	137651c (Exh. "A" CTA Case No. 7990)	₱23,701,965.00
83837656 (Exh. "D" CTA Case No. 8020)	01/24/2008	138622c (Exh. "A" CTA Case No. 8020)	₱47,234,823.08

Counting from the said dates, petitioner had until September 7, 2009, November 9, 2009 and January 24, 2010, within which to file both of its administrative and judicial claims for refund. The claims for refund of the excise tax paid on November 9, 2007 and January 24, 2008 were filed in the administrative level on October 14, 2009[58] and December 23, 2009[59], while the judicial claim for refund of the said amounts were filed with this Court on November 6, 2009 and January 4, 2010, respectively. Clearly, the said claims were filed within the 2-year prescriptive period provided by law.

However, as to the amount of ₱35,470,143.00 excise tax paid on September 7, 2007, the evidence which intends to prove the filing of the administrative claim for refund of the said amount of excise tax paid was denied admission by the Court for petitioner's failure to submit the original document.[60] Hence, petitioner failed to comply with the provision under Section 229 which requires the filing of a claim for refund with the CIR before the instant proceedings for the recovery of the said tax can be maintained. Therefore, petitioner's claim for refund of the amount of ₱35,470,143.00 excise tax paid on September 7, 2007 (on the importation subject of CTA Case No. 7966) must be denied.

Now, as to the issue of whether or not the instant petitions were prematurely filed for failure of petitioner to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Court, the same will not affect the Court's determination of petitioner's entitlement to refund in the amounts of ₱23,701,965.00 and ₱47,234,823.08 since the BIR Ruling issued on 2003 does not cover the excise tax on importations paid from October 2007 to January 2008 which is the subject of the instant Petitions for Review.

As correctly argued by petitioner, the basis of the findings in BIR Ruling No. 001-2003 is the 2002 DOE Certification which only covered the year 2001 and the first half of 2002[61], while the subject importation in this case was made in the year 2007. Thus, the Court may rule on petitioner's claim for refund without ruling on the failure of petitioner to appeal the BIR Ruling No. 001-2003.

The Court shall now proceed to ascertain whether petitioner is exempt from excise tax on its importations paid on October 2007 to January 2008 and whether petitioner is entitled to a refund of the amounts ₱23,701,965.00 and ₱47,234,823.08.

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[58] Exhibit "I" (CTA Case No. 7990)
[59] Exhibit "I" (CTA Case No. 8020)
[60] As per Resolution dated July 9, 2013
[61] Judicial Affidavit of Director Zenaida Monsada dated November 8, 2013; Exhibit "6" (CTA Case No. 7966)

Petitioner claims that by express provision of its franchise, favorable terms contained in a franchise of a competing individual, partnership or corporation engaged in the same business as petitioner shall automatically be considered incorporated in the franchise of petitioner. The pertinent portion of petitioner's franchise under RA No. 8339 as amended by RA No. 9215, reads:

> "Sec. 11. Tax Provisions. - The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.** The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation." (*Emphasis supplied*)

Thus, petitioner avers that Section 13 of PD No. 1590, Philippine Airlines' (PAL) charter, which grants PAL a special tax treatment–that of having to pay the least amount of tax possible-automatically became part of petitioner's franchise.

In the case of *Davao Light and Power Co., Inc., vs. Commissioner of Customs*[62], the High Court held that the idea behind an *ipso facto* clause "is to place both competing groups or entities on equal footing and not to give one an advantage over the other".

Considering that Section 11 of RA No. 8339, as amended by RA No. 9215, clearly provides that the tax privileges enjoyed by competing corporations, such as PAL, shall *ipso facto* apply to petitioner, the Court shall now determine whether petitioner complied with the provision under Section 13 of PD No. 1590 which set forth the requirements

[62] G.R. Nos. L-28739 and L-28902, March 29, 1972

before PAL and petitioner can enjoy the tax exemption provided under the said provision.

The Court found it relevant to cite the pertinent portions of Section 13 of PD No. 1590 which 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 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
>
> 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.** (*Emphases supplied.*)

In other words, PAL and petitioner may be deemed exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aviation gas, fuel and oil upon payment by the grantee of its income tax, provided that:

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

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

It is worth mentioning that Section 22 of RA No. 9337, which took effect on July 1, 2005, abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and VAT. Nevertheless, the same Section provides that petitioner 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.

Section 22 of RA No. 9337 reads:

> "SEC. 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:
>
> (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, petitioner is only left with one option which is to pay for its basic corporate income tax and VAT. The payment of basic corporate income tax shall be in lieu of all taxes subject to certain conditions as may be provided under PAL's charter which is considered as part of petitioner's franchise.

In compliance with the foregoing, petitioner presented its Annual Income Tax Return for year ending December 2007[63]. Petitioner further presented its Certificates of Registration dated February 1, 1941 and its Quarterly Value-Added Tax Returns[64] for the four (4) quarters of the year ending December 2007.

Petitioner also presented the official receipts (OR) issued by the BOC or the Authorized Agent Banks of the BOC, the Independent Surveyor's Report (ISR), Bills of Lading, Import Declaration (ID) and Authority to Release Imported Goods (ATRIG) on the subject importations detailed as follows:

CASE NO.	DATE OF IMPORTATION	DATE OF PAYMENT	EVIDENCE
7990	October 11, 2007	November 9, 2007	OR: Exhibit A-(CTA Case No. 7990) ISR: Exhibit S-2 BL: Exhibit B-(CTA Case No. 7990) ATRIG: Exhibit F-(CTA Case No. 7990)

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[63] Exhibits "K", "K-1", "K-2", and "K-3" (CTA Case No. 7966)
[64] Exhibits "YY", "ZZ", "AAA", and "BBB" (CTA Case No. 7966)

			ID- Exhibit D-(CTA Case No. 7966
8020	December 19, 2007	January 4, 2008	OR: Exhibit A-(CTA Case No. 8020) ISR: Exhibit S-3 BL: Exhibit B-(CTA Case No. 8020) ATRIG: Exhibit F-(CTA Case No. 8020) ID: Exhibit D-(CTA Case No. 8020)

Furthermore, as per the Final Report of the Independent Certified Public Accountant[65], the amounts of specific taxes reflected in the Petitions for Review tally with the amounts shown in the original copies of official receipts issued by the Authorized Agent Banks of the Bureau of Customs (BOC), to wit :

Case No.	Issuer	OR No.	OR Date	Exhibit Reference	Specific Tax Paid in Php	Amount per Petition for Review
7966	Equitable PCI Bank	241545C	07-Sept-07	A-7966	35,470,143.00	35,470,143.00
7990	Equitable PCI Bank	137951C	09-Nov-07	A-7090	23,701,965.00	23,701,965.00
8020	Equitable PCI Bank	138622C	04-Jan-08	A-8020	47,234,823.08	47,234,823.08
Total					106,406,931.08	106,406,931.08

Moreover, as to whether or not the subject imported articles are imported for the use of the petitioner in its transport operations and other activities incidental thereto, the uncontroverted certifications from the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) and the testimony of its witnesses sufficiently prove that the importation of the subject aviation fuel is to be used in its operation. Even respondent's witness, Mr. Saturnino B. Dela Cruz, the Assistant Director General I of the Flight Standards Inspectorate Service of the CAAP, interposed "no objection" to airline companies' request to import aviation fuel as they themselves represent that they need it for their operations.[66] In the same vein, the Authority to Release Imported Goods (ATRIG) covering importations of Jet A-1 aviation fuel further states that such fuel is to be utilized exclusively for the flight operations of the importing airline company.

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[65] Exhibit "R"
[66] Exhibit "1" (CT Case No. 7966)

Clearly, the above testimonial and documentary evidence presented by petitioner sufficiently establish that the importation of aviation fuel is to be used in its transport operations and other activities incidental thereto.

That having been settled, this Court will now determine whether petitioner satisfied the other requisite that the imported articles are not locally available in reasonable quantity, quality or price.

To prove that the imported aviation fuel is not locally available in reasonable quantity, quality or price, petitioner again presented the above certifications from the ATO/CAAP. In addition to the said certifications, petitioner presented the comparison made by the court-commissioned ICPA of the cost of importation of aviation turbo jet fuel or Jet A-1 used in petitioner's domestic airline operations being claimed for refund/tax credit and the cost of domestic purchases of aviation turbo jet fuel using the price quotations issued by local oil companies such as Petron Corporation and Pilipinas Shell Petroleum Corporation to show that aviation fuel is not locally available in reasonable price.

For cost of domestic purchases, the Independent CPA presented the cost per liter in peso of aviation turbo jet fuel had petitioner purchased the same locally from Petron Corporation for the months of August to December 2007 as follows[67]:

Month of Price Quotation	Price per Liter (net of VAT)	Price per Liter (with VAT)	Exhibit Reference
August-07	₱ 30.3952	₱ 34.0426	N & N-1
October-07	₱ 31.6314	₱ 35.4272	O & O-1
December-07	₱ 35.9989	₱ 40.3188	P & P-1

As to the Pilipinas Shell Petroleum Corporation, the cost per liter in peso of aviation turbo jet fuel for the months of August to December 2007 are presented by the Independent CPA as follows[68]:

Month of Price Quotation	Price per Liter (with VAT)	Exhibit Reference

[67] Final Report on the Results of the Procedures Performed in the Verification of Documents & Schedules Supporting the Claim for Refund/Tax Credit Certificate for Specific Taxes Paid for the Period September 2007 to January 2008 (Final Report of the ICPA), pp. 5-6
[68] Exhibit "EEE" (CTA Case No. 7966)

August-07	₱ 37.7850	X-1
October-07	₱ 39.2234	X-2
December-07	₱ 44.0274	X-3

On the other hand, based on the original invoices[69] from oil traders which supports petitioner's importation of aviation fuel for the months of August to December 2007, the cost per liter in peso of importation of aviation turbo jet fuel for the said periods are presented by the Independent CPA as follows[70]:

BL Date	Oil Trader	Invoice Number	Oil Value/Product Cost per Liter (in Php)	
			(net of VAT)	(with VAT)
18-Aug-07	SK Networks Co. Ltd	RM708S018A	₱ 24.6393	₱ 28.0759
5-Oct-07	SK Networks Co. Ltd	RM710S019A	₱ 27.0020	₱ 30.6715
13-Dec-07	SK Networks Co. Ltd	RM712S039A	₱ 28.5965	₱ 32.4470

From the foregoing, the Independent CPA arrived at the following findings:

Comparison between cost per liter of importation (with VAT) and cost per liter of domestic purchase from Petron Corporation (with VAT)[71]

Case No.	Cost per Liter of Importation (with VAT)	Cost per Liter of Domestic Purchase from Petron Corporation (with VAT)	Difference-Cost per Liter of Domestic Purchase is Lower (Higher)	Percentage of Difference
	(A)	(B)	(C)=(A)-(B)	(C)/((A)
7966	₱ 28.0789	₱ 34.0426	(5.9637)	(21.24%)
7990	₱ 30.6715	₱ 35.4272	(4.7557)	(15.51%)
8020	₱ 32.4470	₱ 40.3188	(7.8718)	(24.26%)

Comparison between cost per liter of importation (with VAT) and cost per liter of domestic purchase from Pilipinas Shell Petroleum Corporation (with VAT)[72]

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[69] Exhibits "C" (CTA Case No. 7966); "C" (CTA Case No. 7990); and "C" (CTA Case No. 8020)
[70] Final Report of the ICPA, p. 5
[71] *Ibid.*, p. 6
[72] Exhibit "EEE" (CTA Case No. 7966)

Case No.	Cost per Liter of Importation (with VAT)	Cost per Liter of Domestic Purchase from Pilipinas Shell Petroleum Corporation (with VAT)	Difference-Cost per Liter of Domestic Purchase is Lower (Higher)	Percentage of Difference
	(A)	(B)	(C)=(A)-(B)	(C)/((A)
7966	₱ 28.0789	₱ 37.7850	(9.7061)	(34.57%)
7990	₱ 30.6715	₱ 39.2234	(8.5519)	(27.88%)
8020	₱ 32.4470	₱ 44.0274	(11.5804)	(35.69%)

Based above, the cost per liter of importation of aviation turbo jet fuel for the months of August to December 2007 (relating to petitioner's payments of specific taxes for the months of September 2007 to January 2008) is lower than the cost of aviation turbo jet fuel if purchased locally from Petron Corporation and Pilipinas Shell Petroleum Corporation.

As to the requirement that aviation fuel is not locally available in reasonable quantity and quality during the time of importation of the subject aviation fuel, petitioner made a comparison between total refinery production and the total industry petroleum products demand, specifically of jet fuel or kerosene, and concluded that the demand far outstripped the local refinery production, on the basis of the table on Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011[73] from the DOE. This was supported by the direct testimony of petitioner's witness, Mr. Mario V. Tiaoquio, who was the Secretary of the Department of Energy (DOE) in 1998 up to 2001[74].

Furthermore, the letter dated June 6, 2011 of the DOE[75] reflected the following table showing the total jet fuel imported by airline companies from 2001 to 2010, to wit:

Airline Companies Imports of Jet Fuel In Thousand Barrels, MB	
Year	Volume
2001	1,861
2002	1,295
2003	1,550

[73] Exhibit "X" (CTA Case No. 7966)
[74] TSN dated June 11, 2012
[75] Exhibit "Y" (CT A Case No. 7966)

2004	1,678
2005	1,300
2006	1,341
2007	1,777
2008	1,842
2009	1,715
2010	1,868

Using the data from the table on the Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011[76] and from the above letter, petitioner compared the total importations of Jet A-1 fuel made by oil companies and the total importations of jet fuel made by airline companies (including 2007 when the subject importations were made) and concluded that importations by airline companies accounted for a great majority of total Jet A-1 fuel importations. It continues that even if importations in 2007, excluding those of airline companies, were added to the total local production and beginning inventory, the total local available supply would still be insufficient to meet the total industry demand by 971,000 barrels.

As such, considering the foregoing, this Court is convinced that at the time of the importations subject of this case, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price.

WHEREFORE, in view of the foregoing, the Petitions for Review in CTA Case Nos. 7990 and 8020, respectively, are **GRANTED**.

Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **Seventy Million Nine Hundred Thirty-Six Thousand Seven Hundred Eighty-Eight Pesos and Eight Centavos (₱70,936,788.08)**, representing the specific tax paid for the importation of Jet A-1 aviation fuel stated below and computed as follows:

CTA Case No.	Date of payment	Amount
7990	November 9, 2007	23,701,965.00
8020	January 4, 2008	47,234,823.08
TOTAL		**₱ 70,936,788.08**

[76] *Supra* No. 73

On the other hand, the Petition for Review filed in CTA Case No. 7966 is hereby **DENIED** for lack of merit

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice