REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA CASE NO. 8495**
-versus-	Members: **BAUTISTA**, Chairperson **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, *Respondents.*	**Promulgated:** APR 05 2017 10:30 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This is a claim for refund or issuance of tax credit certificate in the amount of One Hundred Thirty-Seven Million Ninety-nine Thousand One Hundred Forty-four Pesos (₱137,099,144.00) allegedly representing Philippine Airlines, Inc.'s (PAL's) erroneously paid excise taxes imposed on its importations of Jet A-1 fuel for its domestic operations from the period of April 2010 to July 2010.

THE PARTIES

PAL is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its registered address is at the 8th Floor, PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, 1300, Pasay City.[1]

Respondent Commissioner of Internal Revenue (CIR) is the head 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,

[1] Petition for Review, *docket*, p. 6.

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) of 1997, as amended, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful charges from imported articles, including the excise tax of P3.67 per liter on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC of 1997. He holds principal office at the Port Area, Manila.

THE FACTS

Section 13 of PAL's franchise, PD No. 1590[2], which took effect on June 11, 1978, provides for the conditions which airlines are required to comply with in order to continue enjoying tax exemptions on their importation of petroleum products, to wit:

> "SECTION 13.
>
> xxx xxx xxx
>
> 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:
>
> xxx xxx xxx
>
> (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 or materials; provided, that such articles or supplies or materials are imposed for the use of the grantee in

[2] Exhibit "B", *docket*, Vol. 3, pp. 1253-1260.

> its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price; x x x"

On November 1, 1985, Letter of Instructions (LOI) No. 1483 withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations. LOI No. 1483 provides in part:

> "WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn.
>
> This Letter of Instructions shall take effect on November 1, 1985."[3]

On January 29, 1999, respondent CIR issued BIR Ruling No. 013-99, which reads:

> "It is represented that Sec. 13(b) Par. 1 and 2 of PD No. 1590, provides among others, that purchases by PAL of aviation gas, fuel and oil to be used in its transport and non-transport operations are exempt from the payment of all taxes, duties, charges, royalties or fees; that since then, PAL had been enjoying this tax-exemption privileges until the same was withdrawn partially when LOI No. 1483 was issued by the President of the Philippines, the main text of which is quoted as follows:
>
> > '...the tax exemption privilege granted to PAL on its *purchase of domestic petroleum products for use in its domestic operations* is hereby withdrawn' (emphasis supplied)

[3] Exhibit "D", *id.*, p. 1264.

that the wordings of LOI No. 1483 is very clear that the tax exemption privilege being withdrawn refers specifically to the purchase of domestic petroleum products by PAL for use in its domestic operations, that it does not include purchases from abroad or foreign countries, and that it is for this reason that the Bureau of Customs does not impose any tax or customs duties on arrivals of petroleum products imported or purchased by PAL from abroad.

In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations."[4]

The Secretary of Finance issued a letter on September 8, 1999 to confirm BIR Ruling No. 013-99, which provides:

"I confirm BIR Ruling, dated January 29, 1999, which confirms PAL's exemption from specific and *ad valorem* taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights."[5]

However, on January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-2003, addressed to petitioner, to Philippine Airlines (PAL), to Cebu Air, Inc. (CAI), and to Pacific Airways Corporation, the significant parts of which read as follows:

"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 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

[4] Exhibit "C", *id.*, pp. 1261-1263.
[5] Exhibit "E", *id.*, pp. 1265-1269.

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 ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."[6]

On the basis of BIR Ruling No. 001-2003, 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.

From April 2010 to July 2010, petitioner made the following importations and corresponding payments under protest of the specific tax assessed by the Collector of Customs of the Port of Batangas, Batangas City. The payment made by petitioner is evidenced by the respective Philippine National Bank official receipts (ORs), as follows:

Date of Importation	Date of Payment	Amount Paid in Php (₱)	OR No.
April 23, 2010[7]	May 20, 2010[8]	68,111,897.00	C872[9]
June 27, 2010[10]	July 29, 2010[11]	68,987,247.00	C001371[12]

Accordingly, petitioner filed with the District Collector of Customs, Port of Batangas, Batangas City, formal written protests for the refund of the respective specific taxes on the following dates:

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest	Amount Involved in Php (₱)
April 23, 2010	May 20, 2010	June 3, 2010[13]	68,111,897.00
June 27, 2010	July 29, 2010	August 11, 2010[14]	68,987,247.00

Petitioner alleges that the protests were not acted upon by respondent COC,[15] so to avoid the lapse of the two-year prescriptive period within

[6] Exhibit "A", *id.*, pp. 1251-1252.
[7] Exhibit "N-5", BOC Records, p. 18.
[8] Exhibits "N-2", "N-2-a", and "N-2-b", *id.*, p. 14.
[9] *Id.*
[10] Exhibit "O-4", *id.*, p. 36.
[11] Exhibit "O-1", *id.*, p. 33.
[12] *Id.*
[13] Exhibit "N", *id.* at Note 8, pp. 1314-1319.
[14] Exhibit "O", *id.* at Note 13, pp. 21-32.
[15] *Id.* at Note 2, p. 7.

which to file a refund claim under Section 204(C) of the NIRC of 1997[16], it was constrained to file a written claim for refund for the specific taxes paid for both importations on May 17, 2012 with respondent CIR.[17]

Claiming inaction on the part of respondent CIR, petitioner filed with this Court on May 21, 2012 its judicial claim via its Petition for Review docketed as CTA Case No. 8495.[18]

Both respondents moved for extensions of time to file their respective Answers[19] which were granted by the Court. The Court granted the CIR until July 26, 2012 within which to file an Answer[20] and the COC was granted until August 3, 2012[21] within which to file an Answer as well.

On July 26, 2012, respondent CIR filed her Answer[22], alleging the following Special and Affirmative Defenses:

1) the Court has no jurisdiction over the subject matter as petitioner primarily seeks the nullification of BIR Ruling No. 001-2003 and its failure to appeal the same to the Office of the Secretary of Finance or to seek redress from the Department of Energy's Certification as provided under Department Circular No. 2002-07-004[23], which was duly issued pursuant to the provisions of Section 5(k) of R.A. 7638, otherwise known as the Department of Energy Act of 1992, is a failure to exhaust administrative remedies, hence, the petition must be dismissed;

2) Presidential Decree No. 1590 *(PD 1590 for brevity)* does not serve to provide petitioner a blanket tax exemption which will bar any act of the government to enforce its power to tax;

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[16] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – 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 stamps 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.
[17] Exhibit "M", *docket*, Vol. 3, pp. 1288-1313.
[18] *Id.*, Vol. I, pp. 6-107.
[19] CIR's Motion for Extension of Time to File Answer, *id.*, pp. 110-114; COC's Motion for Extension of Time to File Answer, *id.*, pp. 117-118.
[20] *Id.*, p. 116.
[21] *Id.*, p. 122.
[22] *Id.*, pp. 123-135.
[23] Rules of Practice and Procedure Before the Department of Energy.

3) Congress intended to withdraw the tax privilege of the petitioner upon the occurrence of the conditions provided under Section 13(1) and (2) of the PD 1590;

4) BIR Ruling No. 001-03 declared the absence of the second condition required for petitioner to continue to enjoy tax exemptions on their importations of petroleum products for domestic operations and, thus, gave rise to the extinguishment of its tax privilege;

5) BIR Ruling No. 001-03 is a valid delegation of power as Congress may delegate to an administrative agency the power to ascertain facts as basis to determine when a law may take into effect or whether a law may be suspended or come to an end, in accordance with the purpose or policy of the law and the standard for the exercise of the power delegated;

6) unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Ruling No. 001-03 shall be considered valid in full force and effect;

7) BIR Ruling No. 001-03 effectively revoked and superseded BIR Ruling No. 013-99 and all other rulings contrary thereto;

8) by virtue of BIR Ruling No. 001-03, petitioner cannot validly claim tax exemptions on specific tax on Jet A-1 fuel importation;

9) petitioner failed to present proof that it filed an administrative claim for refund with the BOC and that the excise taxes it allegedly paid were actually remitted by the BOC to the BIR;

10) petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

11) taxes collected are presumed to be in accordance with laws and regulations;

12) exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;

13) petitioner miserably failed to prove that it is entitled to its claim and that all requisites for a claim for refund were not complied with; and

14) tax exemptions are to be construed *strictissimi juris* against the person or entity claiming the exemption.

On August 2, 2012, respondent COC filed his Answer[24], alleging the following Special and Affirmative Defenses:

1) the second condition in Section 13 of PD 1590 which is that the imported petroleum products are not locally available in reasonable quantity, quality or price is not present to exempt petitioner from the payment of specific taxes;

2) the BIR Ruling No. 001-2003 which relied on the 2002 DOE Certification is valid as the DOE's competence to issue such certification is beyond question, being a specialized government agency;

3) the CTA is not the proper forum to question the administrative finding of the DOE 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 the CTA has no jurisdiction over the issue;

4) BIR Ruling No. 001-2003 is an interpretative ruling which does not need notice, hearing and publication to be valid[25];

5) BIR Ruling No. 001-2003 has long become final as petitioner failed to question it before the Secretary of Finance within thirty (30) days from receipt thereof as provided for under RMC NO. 44-2001 dated October 11, 2001; and, finally,

6) in an action for tax refund/credit, the taxpayer has the burden to establish his right to refund and failure to sustain the burden is fatal to his claim for refund.

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[24] *Id.*, pp. 136-148.

[25] Citing Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, Commmissioner of the Bureau of Internal Revenue (BIR), and Revenue District Officer, BIR Misamis Oriental, G.R. No. 108524, November 10, 1994.

On September 5, 2012, respondent CIR filed her Pre-Trial Brief.[26] Petitioner filed its Pre-Trial Brief on September 10, 2012[27] while respondent COC filed his Pre-Trial Brief on September 24, 2012.[28]

During the Pre-Trial conference held on September 27, 2012, the parties were ordered to submit their Joint Stipulation of Facts & Issues (JFSI) by October 17, 2012. However, despite having been granted an extension until October 27, 2012 to file the same[29], the parties were unable to submit a JFSI due to the difference in their respective positions.[30]

On November 16, 2012, the Court issued the Pre-Trial Order. On November 29, 2012, however, respondent CIR filed a "Motion to Modify Pre-Trial Order" to include the issue of jurisdiction of the Court as an issue.[31] During the hearing held on December 6, 2012, the Court granted this motion[32] and embodied its order in Resolution dated December 17, 2012.[33]

During trial, petitioner presented the following witnesses together with their respective Judicial Affidavits: (1) Mr. Elvis A. Yao, Senior Assistant Vice President – Fuel Management Department of PAL[34], (2) Ms. Ma. Evelyn L. Taghap, Manager-Tax Services and Compliance Department of PAL[35], (3) Atty. Antero Jose M. Caganda, Senior Partner of Zambrano and Gruba Law Offices[36], (4) Ms. Myra Celeste O. Dabalos, Court Commissioned Independent Certified Public Accountant (ICPA)[37], (5) Mr. Fredieric B. Landicho, Court Commissioned Independent Certified Public Accountant (ICPA)[38], and (6) Mr. Mario Tiaoqui, an expert witness whose entire testimony given at the joint hearing of the consolidated cases of CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, 7518, the consolidated cases of CTA Case Nos. 7670, 7818, 7869, 7954, 8034, CTA Case No. 8143, and CTA Case No. 8220 on June 11, 2012 and August 16, 2012, was made part of the record of this case in a Resolution dated December 6, 2013.[39]

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[26] *Id.* at Note 18, pp. 272-278.
[27] *Id.*, pp. 286-303.
[28] *Id.*, pp. 307-311.
[29] *Id.*, p. 333
[30] Manifestation of petitioner, *id.*, p. 340-343.
[31] *Id.*, pp. 527-530.
[32] *Id.*, p. 540.
[33] *Id.*, pp. 542-543.
[34] Exhibits "XXX" and "XXX-1", docket, pp. 366-380 with last page bearing signature and notarial seal unmarked.
[35] Exhibits "YYY" and "YYY-1", *id.*, Vol. 2, pp. 553-579.
[36] Exhibits "ZZZ" and "ZZZ-1", *id.*, pp. 618-627.
[37] Exhibit "BBBB", *id.*, pp. 731-786.
[38] Exhibits "JJJJ", *id.*, Vol. 3, pp. 1468-1474; and "SSSS" and "SSSS-1", *id.*, Vol. 3, pp. 1139-1200.
[39] *Id.*, Vol. 2, pp. 1023-1024.

Ms. Myra Celeste O. Dabalos was commissioned by the Court as an Independent Certified Public Accountant pursuant to a motion filed by petitioner on May 29, 2013[40] which was accompanied by her Judicial Affidavit in support thereof.[41] The motion was granted during the hearing held on June 3, 2013 and, on June 24, 2013, Ms. Dabalos submitted her ICPA report to the Court.[42]

On July 24, 2013, petitioner filed a "Manifestation with Motion (to Reset Hearing on 27 July 2013)" wherein it manifested, among others, that Ms. Dabalos was in the process of preparing a Supplemental ICPA Report and that she would be presented as a witness again.[43]

On August 28, 2013, respondents filed their "Opposition/Objection" to the recall of Ms. Dabalos[44], but despite that, the Court granted petitioner's motion in a Resolution dated October 3, 2013.[45]

In a Manifestation filed on February 20, 2014, petitioner manifested that despite exerting effort to get in touch with Ms. Dabalos regarding her Supplemental Report, it was unable to reach her,[46] but that they would continue to exert effort to do so.

In a turn of events, however, petitioner filed on July 3, 2014, a "Manifestation and Motion" that Ms. Dabalos could no longer perform the duties and responsibilities of a court-appointed ICPA with a prayer that she be discharged and that it be allowed to select a new ICPA.[47] Petitioner's motion was granted by the Court in a Resolution dated August 26, 2014.[48]

On September 8, 2014, petitioner filed a "Motion to Re-Commission an Independent Certified Public Accountant" and moved that Mr. Fredieric B. Landicho be appointed as the new ICPA for the purpose of preparing a Supplemental ICPA Report.[49] The Court granted petitioner's motion in a Resolution dated October 13, 2014.[50] Subsequently, on September 26, 2014[51]

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[40] *Id.*, pp. 661-665.
[41] *Id.*, pp. 666-678.
[42] *Id.*, pp. 684-725.
[43] *Id.*, pp. 788-792.
[44] *Id.*, pp. 800-810.
[45] *Id.*, pp. 1002-1004.
[46] *Id.*, pp. 1026-1028.
[47] *Id.*, Vol. 3, pp. 1108-1115.
[48] *Id.*, pp. 1126-1127.
[49] *Id.*, pp. 1128-1132.
[50] *Id.*, p. 1149.
[51] *Id.*, pp. 1137-1145.

and on November 10, 2014[52], petitioner submitted the Judicial Affidavits of Mr. Landicho.

On December 22, 2014, petitioner filed its Formal Offer of Evidence[53] offering Exhibits "A" to "SSSS-1", inclusive of sub-markings, as its documentary evidence.

Accordingly, in the Resolution[54] dated May 20, 2015, this Court admitted petitioner's exhibits except for Exhibits "D", "E", "F", "G", "H", "I", "J", "L", "N-1", "N-2", "N-2-a", "N-2-b", "N-5", "N-6", "O", "O-1", "O-1-a", "O-1-b", "P", "T", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", UU", "VV", "WW", "XX", "YY", "ZZ", "AAA", "BBB", "CCC", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "UUU", "VVV", "WWW", and "JJJJ-1".

Petitioner then moved for reconsideration[55] for the denied exhibits on June 8, 2015. After due consideration, this Court granted petitioner's Motion for Reconsideration in the Resolution[56] dated October 29, 2015, thereby admitting the previously denied exhibits except for Exhibits "EE" to "ZZ", Exhibits "AAA" to "CCC", and Exhibits "VVV" and "WWW".

On November 4, 2015, petitioner filed a "Motion for Partial Reconsideration (Re: Resolution dated 29 October 2015)"[57] which the Court granted in its Resolution[58] dated January 21, 2016 wherein Exhibits "NN", "PP". "QQ", "TT", and "CCC" to "VVV" were admitted by the Court.

During the hearing held on February 1, 2016, respondents manifested, through their respective counsels, that they would no longer present any evidence, but would file Memoranda instead.[59] The Court noted said manifestations and ordered the parties to submit their respective Memorandum.[60]

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[52] *Id.*, pp. 1158-1200.
[53] *Id.*, pp. 1220-1530.
[54] *Id.*, Vol. 4, pp. 1646-1648.
[55] *Id.*, pp. 1652-1658-a.
[56] *Id.*, pp. 1685-1687.
[57] *Id.*, pp. 1688-1715.
[58] *Id.*, pp. 1734-1735.
[59] *Id.*, p. 1736.
[60] *Id.*, p. 1739.

Complying therewith, respondent COC submitted his Memorandum[61] on March 30, 2016 while petitioner submitted its Memorandum[62] on March 31, 2016. As regards respondent CIR, however, the Judicial Records Division issued a Records Verification Report[63] dated March 23, 2016 stating that respondent CIR failed to file his Memorandum within the period granted.

After the submission of the parties' respective Memorandum, this Court, in its Resolution[64] dated April 6, 2016, deemed the case submitted for decision.

ISSUES

The following issues were submitted by the parties for the consideration of the Court:

1) whether or not petitioner is entitled to a refund of or issuance of tax credit certificate on the specific tax paid on petitioner's importations of Jet A-1 fuel or aviation fuel;

2) whether or not BIR Ruling No. 001-2003 was validly issued; and

3) whether or not the Court has jurisdiction over the case.

The above-enumerated issues may be summarized into one main issue: whether or not petitioner is entitled to a refund or issuance of a TCC equivalent to the amount of ₱137,099,144.00 representing excise taxes paid for the importation of Jet A-1 fuel for its domestic flight operations from April 2010 to June 2010.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court has jurisdiction under Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals, which was promulgated pursuant to Section 8 of RA No. 1125, as further amended by Republic Act No. 9282.[65] Meanwhile, respondents contend that the Court may not take cognizance of the Petition because petitioner failed to appeal BIR Ruling

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[61] *Id.*pp. 1755-1776.
[62] *Id.*, pp. 1777-1832.
[63] *Id.*, p. 1754.
[64] *Id.*, p. 1834.
[65] Memorandum for the Petitioner, *id.*, p. 1787.

No. 001-2003 to the Office of the Secretary of Finance, before questioning its legality before this Court.

Petitioner points out that this argument is misplaced because the primary issue sought to be resolved in this case is petitioner's entitlement to a refund of the specific taxes it paid on various importations of Jet A-1 aviation fuel. Accordingly, it is incumbent upon petitioner to prove the propriety of the refund by contesting the very issuances and rulings on which the assessments are based. Petitioner alleges that contrary to respondents' contention, the principle of exhaustion of administrative remedies is not applicable in the instant case because the urgency of judicial intervention is readily apparent, considering the imminence of the expiration of the two-year prescriptive period, within which to file a suit or proceeding before the courts.[66]

Petitioner explains that as a public utility, it is imbued with public interest and is necessarily granted numerous incentives such as special tax privileges and benefits from the time of its predecessors and since its inception.[67] Petitioner insists that it is entitled to exemption under Section 13(B)(2) of PD No. 1590, as amended by LOI 1483, for its importations of petroleum products for use in its domestic operations.[68]

Petitioner likewise contends that its exemption was arbitrarily taken away by the mere issuance of the 2003 BIR Ruling.[69] Petitioner points out that the 2003 BIR Ruling is void for being patently wrong and bereft of factual basis, for being an unauthorized amendment of PD No. 1590 and for having been issued without due process.[70]

Moreover, it points out that the sole basis for the 2003 BIR Ruling is the 2002 DOE Certification. Petitioner claims that the BIR did not even inform petitioner of the issuance of the 2002 DOE Certification, which would have given petitioner a reasonable opportunity to contest the same prior to the issuance of the 2003 BIR Ruling.[71] It stresses that the 2002 DOE Certification is arbitrary, as it consists merely of two sentences and does not elaborate on the basis for its issuance other than simply stating that it was based on data and reports, without disclosing concrete details and attaching supporting documents.[72] Petitioner adds that the 2002 DOE

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[66] *Id.*, pp. 1789-1790.
[67] *Id.*, p. 1791.
[68] *Id.*, p. 1792-1796.
[69] *Id.*, p. 1796.
[70] *Id.*, p. 1797.
[71] *Id.*
[72] *Id.*, p. 1798.

Certification is contrary to the very data of DOE itself.[73] In fact, it was already declared null and void in a decision rendered by the RTC of Pasay City on February 27, 2014.[74]

Petitioner maintains that the BIR could only withdraw PAL's exemption from excise taxes on fuel importations, by proving that there was a sufficient locally available supply of jet fuel in reasonable quantity, quality and price. Petitioner asserts that the data consistently showed that there was no locally available supply, in reasonable quantity and/or in reasonable price.[75] It further claims that contrary to respondents' argument, "locally available supply", by definition, excludes imported products.[76]

Petitioner maintains that it has proven its entitlement to a refund, having complied with the requirements for administrative claims for refund. It also notes that the Petitions for Review were filed within the two-year reglementary period.[77]

RESPONDENT CIR'S ARGUMENTS

Respondent CIR contends that the Petition for Review primarily seeks the nullification of the 2002 DOE Certification and BIR Ruling No. 001-2003, and that the refund of taxes is a mere consequence.[78] As petitioner failed to appeal to the Secretary of Finance BIR Ruling No. 001-2003 and did not seek redress from the Department of Energy to assail the 2002 DOE Certification, petitioner failed to exhaust all administrative remedies before elevating the case to this Court.[79] Respondent contends, therefore, that the petition must be dismissed as the Court has no jurisdiction over the same.[80]

Respondent CIR also argues that PD 1590 did not serve to provide petitioner a blanket tax exemption which will bar any act of the government to enforce its power to tax.[81] As discussed in BIR Ruling No. 001-2003, the absence of the second condition required for petitioner to enjoy tax exemptions on their importations of petroleum products for domestic operations gave rise to the extinguishment of its tax privilege.[82]

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[73] *Id.*, p. 1799-1800.
[74] *Id.*, p. 1798-1799.
[75] *Id.*, p. 1808-1817.
[76] *Id.*, pp. 1800-1808.
[77] *Id.*, pp. 1824-1829.
[78] *Id.*, Vol. 1, p. 124.
[79] *Id.*, pp. 125-126.
[80] *Id.*, p. 126.
[81] *Id.*, p. 128.
[82] *Id.*, p 129.

Moreover, Congress may delegate to an administrative agency the power to ascertain facts as basis to determine when a law may take into effect or be suspended as part of how the law will be enforced which is permissible. As such, BIR Ruling No. 001-2003 is valid and it effectively revoked and superseded BIR Ruling No. 13-99 and all other rulings contrary thereto.[83] By virtue of BIR Ruling No. 001-2003, petitioner cannot validly claim tax exemptions on its fuel importations for the subject period.

Respondent CIR also asserts that petitioner failed to present proof that they filed an administrative claim with the Bureau of Customs; that, in any case, it would be subject to administrative routine investigation by the BIR; that taxes collected are presumed to be in accordance with law and regulation; and, finally, that tax exemptions are highly disfavored and that he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. Petitioner, therefore, failed to prove its entitlement to a refund.[84]

RESPONDENT COC'S ARGUMENTS

On the other hand, respondent COC argues that BIR Ruling No. 001-2003 remains to be valid and subsisting. It is an interpretative ruling which re-examined and clarified the tax exemption given to petitioner under PD 1590 in view of the issuance of LOI No. 1483 withdrawing its tax exemption privileges under applicable laws.[85] Petitioner's belated questioning of the subject BIR Ruling is violative of the doctrine of exhaustion of administrative remedies which is fatal to its cause.[86]

Respondent COC also asserts that the DOE Certification on which the BIR Ruling No. 001-2003 was based on was validly issued as the DOE's competence to issue such certification is beyond question, being a specialized government agency. As such, this Court is not the proper forum to question the administrative finding of the DOE 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 this Court has no jurisdiction over the issue.[87]

Finally, respondent COC contends that petitioner failed to establish that there is no locally available Jet A-1 fuel in reasonably quantity, quality or

[83] *Id.*, pp. 129-131.
[84] *Id.*, pp. 131-133.
[85] *Id.*, pp. 1764-1768.
[86] *Id.*, p. 1769.
[87] *Id.*, pp. 1769-1771.

price and, hence, the second condition in Section 13 of PD is not present to exempt petitioner from the payment of specific taxes.[88]

THE RULING OF THE COURT

The Court will determine first the timeliness of the filing of the Petition for Review.

Timeliness of Filing the Petition for Review

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> 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 stamps 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." *(Emphasis supplied)*
>
> "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.

[88] *Id.*, pp. 1771-1773.

> **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 therefor, 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." *(Emphasis supplied)*

Based on the above-quoted provisions, both administrative and judicial claims for refund must be made within two (2) years from petitioner's payment of tax. Thus, the two-year period must be applied to the filing of an administrative claim for refund before respondent CIR, and a Petition for Review before this Court.

Here, the dates of filing of petitioner's administrative and judicial claims for refund vis-à-vis the 2-year prescriptive period for filing such, are summarized as follows:

Date of Importation	Date of Payment Under Protest	Date of Protest with BOC	Date of Filing the Claim for Refund with the CIR	Date of Expiration of 2-Year Prescriptive Period	Date of Filing of Petition for Review
April 23, 2010[89]	May 20, 2010[90]	June 3, 2010[91]	May 17, 2012[92]	May 19, 2012	May 21, 2012
June 27, 2010[93]	July 29, 2010[94]	August 11, 2010	May 17, 2012[95]	July 28, 2012	May 21, 2012

In the case of the April 23, 2010 importation for which payment was made on May 20, 2010, the expiration of the two-year prescriptive period fell on May 19, 2012. However, that day also fell on a Saturday, hence, the filing of the Petition for Review was due the following Monday, on May 21, 2012.

[89] Exhibits "N-3" to "N-6".
[90] Exhibits "N-2", "N-2-a", and "N-2-b".
[91] Exhibit "N".
[92] Exhibit "M".
[93] Exhibits "O-2", "O-3", and "O-5".
[94] Exhibit "O".
[95] *Id.* at Note 139.

Based on the foregoing, it appears that petitioner's judicial claim for refund in the total amount of ₱137,099,144.00, which was paid under protest on May 20, 2010 and July 29, 2010 was timely filed.

Jurisdiction of the Court of Tax Appeals

The Court of Tax Appeals (CTA) is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[96] The jurisdiction of the CTA is conferred by RA No. 1125, as amended by RA No. 9282. Section 7 of RA No. 1125, as amended, provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction** by the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes, fees or other charges,** penalties in relations thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x" *(Emphasis ours)*

[96] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 717 (CTA Case No. 7876), April 17, 2012.

Based on the above-quoted provision, the CTA has the power to determine whether petitioner is entitled to the refund of the allegedly paid specific taxes, since it lies within the jurisdiction of the Court.[97]

As to the issue of whether or not the Petition was 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 since the BIR Ruling issued on 2003 does not cover the excise tax on importations paid from April 2010 to June 2010 which is the subject of the Petition for Review.

The basis of the findings in BIR Ruling No. 001-2003 is the 2002 DOE Certification. As testified to by Mr. Tiaoqui, petitioner's expert witness, the DOE bases any of its conclusions on historical or past data, and it does not make projections.[98] This positive testimony has not been controverted by respondents who opted to not present any evidence during trial. The DOE Certification, therefore, cannot be a prediction of future availability of local supply or a projection of future levels of supply and demand, but instead, certifies to a fact that was existing at the time it was issued. The importations subject of this case were made in the year 2010. 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.

Subject to the Conditions Stated in Sec. 13 of PD 1590, PAL is Exempt from Taxes on Its Importations of Jet A-1 Fuel

Section 13 of PD 1590 specifically provides 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

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[97] Section 3, Rule 4, Revised Rules of the Court of Tax Appeals.
[98] TSN dated June 11, 2012 at pp. 68-83 (adopted as testimony of petitioner's witness, Mr. Tiaoqui, per *Order* dated December 6, 2013).

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price** x x x;" *(Emphases Ours)*

An analysis of Section 13 of PD No. 1590 shows that to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

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

First Requisite: Basic Corporate Income Tax or Franchise Tax must be paid

Petitioner filed its Annual Income Tax Return[99] for fiscal year ended March 31, 2011 on July 15, 2011. In fact, petitioner made an overpayment of ₱65,246,488.27 as can be seen on the face of the return and as testified to by Ms. Evelyn Taghap.[100]

Likewise, to prove that it accounted for the VAT on its sales/receipts, petitioner submitted the following documents:

PARTICULARS	EXHIBIT
Quarterly VAT Return for the First Quarter of FY 2011	"V"
Amended Quarterly VAT Return for the First Quarter of FY 2011	"W"
Amended Quarterly VAT Return for the First Quarter of FY 2011	"X"
Quarterly VAT Return for the Second Quarter of FY 2011	"Y"
Amended Quarterly VAT Return for the First Quarter of FY 2011	"Z"
Quarterly VAT Return for the Third Quarter of FY 2011	"AA"
Amended Quarterly VAT Return for the Third Quarter of FY 2011	"BB"
Amended Quarterly VAT Return for the Fourth Quarter of FY 2011	"CC"
Quarterly VAT Return for the Fourth Quarter of FY 2011	"DD"

Since it was able to prove that its basic corporate income tax and VAT liabilities were paid, the first requisite has been satisfied.

Second Requisite: Imported Jet A-1 fuel must be for use in its Transport and Non-Transport Operations

To prove the fact of importations of Jet A-1 fuel, petitioner submitted its Bills of Lading[101], Commercial Invoices[102], and Import Declarations[103]. As regards the question of whether such imported Jet A-1 fuel was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner submitted ATRIGs[104] and presented Mr. Elvis A. Yao as witness. In his Judicial Affidavit, Mr. Yao made the following statements:

[99] Exhibit "U".
[100] Exhibit "YYY", *docket*, p. 555.
[101] Exhibits "N-3" and "O-2".
[102] Exhibits "N-4" and "O-3".
[103] Exhibits "N-5" and "O-4".
[104] Exhibits "N-6" and "O-5".

"Q2: What is your present occupation?

A: I am the Senior Assistant Vice President – Fuel Management Department of Philippine Airline, Inc. ("PAL").

Q3: Since when have you been such Senior Assistant Vice President?

A: Since 1997

Q4: Can you mention some of your more important functions?

A: I am in charge of the procurement both by importation and by local purchase, of aviation fuel also known as Jet A-1 fuel, for both the international and domestic operations of PAL. Because of this, I am familiar with relevant documents, the BIR Rulings and Government Certification's affecting PAL's importation of Jet A-1 fuel.

xxx xxx xxx

Q5: Do you remember shipments of Jet A-1 aviation fuel imported by PAL which arrived at Pinamucan, Batangas on 23 April 2010 and 27 June 2010?

A: **Yes, we imported these Jet A-1 aviation fuel for use in PAL's transport operations**." *(Emphasis supplied)*

With the aforequoted testimony of petitioner's witness that the shipments of Jet A-1 aviation fuel were imported for petitioner's domestic flight operations, petitioner has been able to prove that such fuel was actually used for its transport and non-transport operations or other activities incidental thereto. Hence, the second requisite has been complied with.

Third Requisite: Imported Articles must not be 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 presented certifications from the Air Transportation Office (ATO), now the CAAP. A review of the ATO Certifications shows that the ATO interposed no objections to the importations made. Said ATO Certifications[105] state:

> "TO WHOM IT MAY CONCERN:
>
> This is to certify that the Authority interposes no objection for importation of Jet A-1 (Aviation Fuel) under B/L No. x x x covered by Invoice No. x x x. This is not locally available (in reasonable quantity, quality and price) but is necessary/incidental for the operation of Philippine Airlines."

Petitioner also 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 outweighed the local refinery production, on the basis of the table on Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011[106] from the DOE.

For the year 2010, the following data was culled from the table:

	2010		
DETAILS	**Jet Fuel**	**Kerosene**	**Kero-Jet**
Inventory (Beginning)	577	321	898
Production Local	6,103	1,067	7,190
Importation	3,519	289	3,808
Total Local Available Supply	10,199	1,697	11,896
Demand	9,617	1,159	10,776
Export	59		59
+(-) Local Available Supply vs. Demand	582	538	1,061

In determining Total Local Available Supply, the sum of the Inventory (Beginning), Production Local and Importation were considered. Thus, the Total Local Available Supply of all three kinds of fuels for the year 2010 exceeded the demand.

[105] Exhibits "VVV" and "WWW", *id.*, pp. 1413-1414.
[106] Exhibit "T", *id.*, p. 647.

However, in *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*[107], this Court has previously held that importations are excluded in determining locally available fuel. *We* quote:

> "As this Court has held in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[108], in determining local availability of Jet A-1 fuel, the term "locally available" cannot include imported Jet A-1 fuel. In that case, *We* held:
>
> > 'In *PAL v. CIR*[109], the Supreme Court held that domestic petroleum products excluded imported products, as follows:
> >
> > > *First,* examining its phraseology, the word "domestic", which means "of or relating to one's own country" or "an article of domestic manufacture", clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. <u>In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.</u>
> >
> > Applying the foregoing to the present case, in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is

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[107] CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.
[108] CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851, June 10, 2016.
[109] G.R. No. 198759, July 1, 2003, 700 SCRA 322.

locally available in reasonable quantity, quality, or price.' *(Emphasis in the original)*

To appreciate the import of the conclusions of the Supreme Court in the *PAL vs. CIR* case (PAL Case) further, *We* quote:

'Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **all taxes** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on PAL's local purchase of aviation gas, fuel and oil;[110] (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL;[111] and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.[112]

Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the

[110] The pertinent portion of PAL's franchise reads:
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 x x x. (Emphasis and underscoring supplied)
[111] The pertinent portion of PAL's franchise reads:
x x x 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; (Emphasis and underscoring supplied)

x x x x
[112] The pertinent portion of PAL's franchise reads:
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; (Emphasis and underscoring supplied)

x x x x

applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **<u>second kind</u>** of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **<u>third kind</u>** of tax privilege which applies **when PAL itself acts as the importer of the foregoing petroleum products**. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, **it stands as the statutory taxpayer directly liable to the government for the same.**[113]

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" ***<u>– which characterizes the tax privilege LOI 1483 withdrew – refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale[114] and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods[115]</u>***, may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) **PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege).**

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[113] See SEC. 129 in relation to SEC. 131 of the NIRC.

[114] The first tax exemption under the second kind of tax privilege, relating to the first type of excisable articles under SEC. 129 of the NIRC.

[115] The second type of excisable articles under SEC. 129 of the NIRC.

Both textual and contextual analyses lead to this conclusion:

First, examining its phraseology, the word "domestic," which means "of or relating to one's own country"[116] or "an article of domestic manufacture,"[117] clearly **pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition**[118] as opposed to things imported.[119] **In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.**

Second, examining its context, certain "whereas clauses"[120] in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported).[121] In other words, LOI 1483 was

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[116] BLACK'S LAW DICTIONARY, 9th Ed. (2009), p. 557.

[117] (visited January 25, 2013).

[118] The first type of excisable articles under SEC. 129 of the NIRC.

[119] The second type of excisable articles under SEC. 129 of the NIRC.

[120] WHEREAS, by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;

WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises; (Emphasis and underscoring supplied)

x x x x

[121] By way of background, the Subject DOF Ruling was issued in response to a letter seeking for the DOF's opinion regarding the scope of the "imposition of the specific tax on aviation gasoline and other fuels purchased locally by airline companies direct from local sources of production for use in domestic flight operations." The conflict stemmed from the import of BIR Ruling No. 65-116, issued on October 5, 1965, which "exempted from the specific tax aviation fuel and other fuel oils imported by [PAL], and similar franchise grantees but not those locally purchased by them for use in domestic flight operations." Through the Subject DOF Ruling, the DOF eventually overturned BIR Ruling No. 65-116, clarifying that PAL's franchise also conferred upon it tax exemption privileges concerning aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales and not only to those imported. The DOF stated:

> meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 **could only refer to "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported."** In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.'

As evident from the above discourse, what qualifies as domestic petroleum products, which in this case is aviation fuel, cannot include those that are imported. It is necessarily excluded from the term."

Given the foregoing, a reproduction of the table above that does not include Importations as an addend in computing the Total Local Available Supply would yield different results, to wit:

	2010		
DETAILS	**Jet Fuel**	**Kerosene**	**Kero-Jet**
Inventory (Beginning)	577	321	898
Production Local	6,103	1,067	7,190
Importation	*3,519*	*289*	*3,808*
Total Local Available Supply	**6,680**	**1,388**	**8,088**
Demand	***9,617***	***1,159***	***10,776***
Export	59		59
+(-) Local Available Supply vs. Demand	582	538	1,061

In view thereof, and considering that Ruling No. 65-116 of the [BIR] is not in harmony with the established doctrine laid down by the Supreme Court on the matter, this Department hereby modifies the same and rules that aviation gasoline and other fuel oils directly purchased for domestic consumption by airline companies which are exempt from the payment of specific tax pursuant to their franchise are also exempt from the payment of specific tax on their domestic purchases of the same articles provided such airline companies are already owners and possessors of such products prior to or at the time of their removal from the place of production or bonded warehouses of the local refineries. x x x (See Subject DOF Ruling, p. 3-4; emphasis and underscoring supplied)

As can be seen above, in the case of Jet Fuel for the year 2010, the Demand in the amount of 9,617 MB clearly exceeds the Total Local Available Supply of 6,680 MB. As the Jet-A1 fuel petitioner imported was not locally available in reasonable quantity, this gives rise for petitioner's entitlement to the tax exemption because it is sufficient for petitioner to be able to prove even just one qualification.

In *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[122] the Court *En Banc* held that the qualifications for exemption in Section 13(2) of PD 1590 are **alternative and not cumulative.** Relevant portions of the decision are quoted below:

> "In recent cases decided by the Court[123] interpreting the very same provision, the Court held that the law imposes an alternative, not cumulative qualification for the determination of whether importations under Sec. 13(2) of PD 1590 will be subject to the exemption and that it would suffice for petitioner to be able to prove even just one qualification out of the three -- not locally available in reasonable a) quantity, b) quality, or c) price.
>
> In *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[124], the Court ratiocinated thus:
>
>> 'To allow petitioner's exemption from excise taxes under PD 1590, the third condition must be present, *i.e.* 'the articles materials or supplies should not be locally available in reasonable quantity, quality **or** price.'
>>
>> The word **"or"** signifies that a preference can be made among the presented alternatives. While initially confusing because the phrase is couched in the negative, simply put, as long as petitioner is able to prove the absence of one condition (**either** reasonable quantity, quality, **or** price), the exemption applies. Petitioner is not

[122] CTA EB Nos. 1308, 1309 & 1311, February 27, 2017.

[123] *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851, June 10, 2016; CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

[124] CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

required to prove the absence of all three conditions.

This was likewise the conclusion of the Supreme Court in the case of *Saludaga vs. Sandiganbayan*[125] where both petitioners were charged with having violated Section 3(e) of Republic Act No. 3019, by causing undue injury to the government, and the Court construed whether or not each of the acts mentioned in the subsection constituted a different offense for which they could be charged separately. The Supreme Court held:

"In a string of decisions, the Court has consistently ruled:

> R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term or connotes that either act qualifies as a violation of Section 3 paragraph (e), or as aptly held in Santiago, as two (2) different modes of committing the offense. **This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.**[126]

The afore-stated ruling is consistent with the well-entrenched principle of statutory construction that [t]he word *or* is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it

[125] G.R. No. 184537, April 23, 2010.
[126] Citing *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214; *Bautista v. Sandiganbayan*, G.R. No. 136082, May 12, 2000, 332 SCRA 126; *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377.

should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word.[127]'(Boldface and italics in the original)

Jurisprudence prior to *Saludaga* reveals similar findings by the Supreme Court. In the case of *Martin Centeno vs. Honorable Victoria Villalon-Pornillos, et al.*[128], a discourse on how the word "or" is to be used also obtains, to wit:

'In its elementary sense, "or" as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.' (Emphasis supplied)

Similarly, in *Aquilino Q. Pimentel, Jr. vs. COMELEC*[129], the word **"or"** is further defined as provided in statutory construction, thus:

'A rule in statutory construction is that the word or is a disjunctive term signifying **dissociation and independence of one thing from other things enumerated** unless the context requires a different interpretation.' (Emphasis supplied)

To require petitioner to prove the absence of all three conditions -- locally available supply in reasonable quantity, quality and price -- would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.

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[127] Citing AGPALO, STATUTORY CONSTRUCTION, 2003, p. 204; see also *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009.
[128] G.R. No. 113092, September 1, 1994.
[129] G.R. No. 126394, April 24, 1998.

At this juncture, it is worth noting that petitioner is a **public utility**. A public utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, **transportation**, telephone or telegraph service.[130] It exists for public use and public service and its services cannot be denied to anyone who is willing to pay for it. More than that, aside from being a public utility, petitioner is also a **common carrier**. Relevant provisions thereto under the Civil Code are as follows:

> 'Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of **carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.**
>
> Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe **extraordinary diligence** in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. x x x
>
> x x x x x x x x x
>
> Art. 1755. A common carrier is bound to carry passengers safely as far as human care and foresight can provide, using the **utmost diligence of very cautious persons**, with a due regard for all the circumstances.' (Emphasis supplied)

It is evident from the above-quoted provisions that the law exacts from common carriers extraordinary diligence in its affairs, and the utmost diligence of very cautious persons when it comes to the safety of its passengers. As such, **the interpretation of the words "reasonable quantity, quality**

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[130] *JG Summit Holdings, Inc. vs. Court of Appeals, et al.*, G.R. No. 124293. September 24, 2003, citing Almario, Generoso O., Transportation and the Public Service Law, 3rd ed. (1977), p. 267 citing 73 CJS 990-991; *Albano v. Reyes*, 175 SCRA 264 (1989) citing Am Jur. 2d v. 64, p. 549; *NAPOCOR v. Court of Appeals*, 279 SCRA 506 (1997).

> **or price" must be one that carries out the mandate of the law to common carriers and one that affords it the most advantageous conditions of operations for its success. This would include an adequate source of materials of good quality, in adequate quantities, and at the lowest possible price, especially since that price is passed on to the public, its ultimate consumers.**
>
> In exchange for the standard of diligence that the law requires that common carriers exercise, and considering the fact that, as a public utility, its operations are imbued with public service, the law grants the airline a concession -- that it can import the materials it needs tax-free, if the materials cannot be supplied by local industry in 'reasonable quantity, quality **or** price.'
>
> Keeping in mind that all three factors must be taken into consideration when evaluating the viability of a supplier of such materials, as petitioner has manifested, the absence of one factor would disqualify such a supplier. The airline can then import the materials tax-free and need not show that the local suppliers fail in all the three criteria, otherwise the concession for the higher standard and the great responsibility that the law demands of them, will be for naught. It would be akin to 'what the left hand giveth, the right hand taketh away.'(Emphasis supplied)[131]"

Nonetheless, petitioner also proved the unavailability of locally supplied Jet A-1 fuel at reasonable price. In Mr. Tiaoqui's testimony on June 11, 2012, he stated that Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) are now the only two (2) local refiners in the Philippines, as Caltex had closed down its refinery.[132] Those two corporations, therefore, are the only possible sources of locally supplied aviation fuel whose prices are to be used in benchmarking.

Both court-commissioned ICPAs, Ms. Dabalos and Mr. Landicho, came to the conclusion that based on the comparison of the cost of importation of Jet A-1 fuel and the cost of domestic purchases of Jet A-1 fuel using the price quotations issued by Petron and Shell, the cost per liter of importation of Jet A-1 fuel for the subject period is consistently lower than the cost of Jet A-1 fuel if purchased locally from either Petron or Shell.

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[131] *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

[132] TSN of August 16, 2012 at pages 80-84, adopted as testimony of petitioner's witness per *Order* dated December 6, 2013.

Ms. Dabalos' findings included the following:

> "The cost per liter of importation of aviation turbo jet fuel or Jet A-1 per liter for the period from April and June 2010 (relating to Petitioner's payments of Specific Taxes for the period from May and July 2010) is consistently lower than the cost of aviation turbo jet fuel or Jet A-1 if purchased locally from Petron Corporation and/or Pilipinas Shell Petroleum Corporation (PSPC). Based on our comparisons, **by importing rather than purchasing locally from either Petron or PSPC, Petitioner was able to save P 126,252,129.46 and P 159,254,152.60, respectively on said importations**."[133] *(Emphasis supplied)*

Mr. Landicho arrived at similar findings as well. He concluded:

> "x x x [T]he costs per liter of importation of aviation turbo jet fuel or Jet A-1 fuel for the months of April 2010 and June 2010 are consistently lower than the costs of aviation turbo jet fuel or Jet A-1 fuel if purchased locally either from Petron Corporation or Pilipinas Shell Corporation. Had PAL purchased locally from Petron Corporation the total volume of 37,356,715 liters of aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010, it would have cost PAL an additional PhP126,252,129.46 (Exhibit No. "QQQQ"). Likewise, had PAL purchased locally from Pilipinas Shell Petroleum Corporation the total volume of 37,356,715 liters of aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010, it would have cost PAL an additional PhP342,461,205.36 (Exhibit No. "RRRR"). Clearly the costs of importing aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010 is consistently lower than purchasing them locally either from Petron Corporation or Pilipinas Shell Petroleum Corporation."[134] *(Emphasis supplied)*

Considering that petitioner has proven that Jet A-1 fuel was not locally available in reasonable quantity ***and*** price, proving the existence of two conditions when merely one is required, *We* **GRANT** the Petition.

[133] Exhibit "BBBB", p. 8.
[134] Exhibit "JJJJ", pp, 6-7.

WHEREFORE, the Petition for Review is **GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Philippine Airlines, Inc. in the amount of **ONE HUNDRED THIRTY-SEVEN MILLION NINETY-NINE THOUSAND AND ONE HUNDRED FORTY-FOUR PESOS (₱137,099,144.00)** representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period April 2010 to June 2010.

SO ORDERED.

Ma. Belen M. R-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case No. 8495

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 05 2017
10:30 a.m.

x- -x

DISSENTING OPINION

***Fabon-Victorino, J.*:**

With due respect, I dissent to the ruling of the majority that petitioner was able to sufficiently prove that its importations of Jet-A fuel during the relevant period were used for its transport and non-transport operations.

To prove compliance with the second requisite, petitioner presented during the trial various Bills of Lading, Commercial Invoices, Import Declarations and the Authority to Release Imported Goods (ATRIGs), as well as the testimony of its Senior Assistant Vice President – Fuel Management Department Elvis Yao, who testified that petitioner imported the Jet A-1 aviation fuel **intended** for use in its transport operation. If at all, the said evidence will only tend to prove that petitioner imported Jet-A fuel during the period April 2010 to July 2010 and precisely the reason for their payment of excise tax which it claims to have been erroneously collected.

Not even a hint that the subject imported Jet-A fuel were used for petitioner's transport and non-transport operations is found in the cited documents and testimony of its witness.

The evidence simply stop there - that petitioner imported the Jet A-1 aviation fuel **intended** for use in its transport operation. Standing alone and without any other evidence to substantiate this allegation, the said pieces of evidence are not sufficient to establish petitioner's compliance with the second requisite. Note that a legal and valid conclusion cannot be made to rest on mere assumptions or bare allegations in the pleading or of the witnesses.

Hence, I vote to DENY the present Petition for Review.

ESPERANZA R. FABON-VICTORINO
Associate Justice