Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case No. 8644

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALSTAS, *JJ.*

Promulgated:

MAY 2 5 2015
2:10 p.m.

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DECISION

CASANOVA, *J.:*

This is a Petition for Review[1] filed by petitioner Philippine Airlines, Inc. ("PAL"), praying for the refund or issuance of certificate of tax credit in the aggregate amount of **Nine Million Seven Hundred Sixty Six Thousand Seven Hundred Thirty One and 05/100 (P9,766,731.05)**, representing the alleged excise taxes paid by petitioner in connection with its importations of liquor, wine and cigarettes for its catering and commissary supplies for international consumption for the period April 20, 2011 to August 5, 2011.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[2]

Respondent Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), a government agency tasked

[1] Docket (Vol. I), pp. 8-31
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues ("JSFI"), Docket (Vol. II), p. 1175

with the assessment and collection of all national internal revenue taxes, fees, charges, including the excise taxes paid on wines, liquors and cigarettes imposed under Section 142 and 145, respectively, of the National Internal Revenue Code ("NIRC") of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent Commissioner of Customs ("COC") is the head of the Bureau of Customs ("BOC"), the government agency vested with the power and duty to, among others, assess and collect lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the Tariff and Customs Code, with principal office at the G/F OCOM Bldg., Bureau of Customs, Port Area, Manila.[4]

On June 11, 1978, by virtue of Presidential Decree No. 1590 ("PD No. 1590"), otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.[5]

On January 1, 2005, Republic Act No. 9334 ("RA No. 9334"), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect. Section 6 of RA No. 9334 provides:

> "**SEC. 6.** Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> > 'SEC. 131. *Payment of Excise Taxes on Imported Articles.*
> >
> > '(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the

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[3] Par. 2, Ibid, pp. 1175
[4] Par. 3, Id., p. 1176
[5] Par. 4, Id., p. 1176

release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

'In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

'The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.'

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

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

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

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

On February 3, 2005, then CIR Guillermo Parayno sent a letter to then COC George M. Jereos, noting that the BOC was "not collecting the excise tax on all importations of alcohol and tobacco products destined for Duty Free Philippines ("DFP") and the freeport zones such as the Subic Bay Freeport Zone."[6]

Thereafter, on February 4, 2005, COC Jereos issued a **Memorandum** addressed to the officers and personnel of the BOC, directing them to "effect the collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport zones, pursuant to RA No. 9334."[7]

On March 1, 2005, Customs Memorandum Order No. 13-2005 ("CMO 13-2005") was issued pursuant to RA No. 9334 and BIR Revenue Regulation No. 12-2004. It directed the immediate collection at the port of discharge of duties, taxes and other charges, including excise tax due on all importations of alcohol and tobacco products destined to Duty Free Shops and Freeport zones.[8]

On different dates from 2006 to 2010, petitioner's importations of assorted cigarettes, liquors and wines arrived at the Ninoy Aquino International Airport ("NAIA") which are covered by various Informal Import Declarations and Entries ("IIDEs"),[9] Air Waybills/Bills of Lading,[10] and Authority to Release Imported Goods ("ATRIGs"),[11] as follows:

Port of Entry	Arrival Date	IIDE No.	Air Waybill/Bill of Lading No.	Excise Taxes Paid (Php)
NAIA	June 12, 2006	5470	079-2790-4903	6,400.80
NAIA	October 9, 2006	10834	079-2790-5673	6,400.80
NAIA	November 13, 2006	12532	079-2646-4841	6,400.80
NAIA	July 31, 2007	8306	079-2975-5202	12,801.60
NAIA	November	11667	079-2975-5880	5,600.70

[6] Par. 5, Id., p. 1176
[7] Par. 6, Id., p. 1176
[8] Par. 7, Id., p. 1176
[9] Exhibits "P-29" to "P-80"
[10] Exhibits "P-81" to "P-132"
[11] Exhibits "P-133" to "P-184"

	1, 2007			
South Harbor	February 11, 2008	1492	079-2975-6226	5,600.70
NAIA	February 26, 2008	1995	079-2975-7265	5,600.70
South Harbor	August 14, 2008	8412	079-2975-8190	5,600.70
NAIA	February 1, 2010	848	079-3289-3210	22,780.35
NAIA	February 2, 2010	862	079-3289-3394	106,404.47
NAIA	February 3, 2010	863	079-3289-3405	177,533.72
NAIA	February 12, 2010	845	079-3348-4511	115,222.52
NAIA	February 12, 2010	1207	079-3348-4500	316,274.06
NAIA	February 28, 2010	1604	079-3401-9823	74,285.10
NAIA	March 3, 2010	1613	079-3289-3814	118,453.76
NAIA	March 3, 2010	2158	079-3289-3836	236,321.75
NAIA	March 3, 2010	2157	079-3289-3840	275,119.20
NAIA	March 10, 2010	2107	079-3401-9860	22,010.40
NAIA	March 11, 2010	2273	079-3289-3954	285,180.00
NAIA	March 16, 2010	2176	079-3289-4050	38,211.55
NAIA	March 4, 2010	2159	079-3289-3851	275,119.20
NAIA	March 31, 2010	2711	079-3402-1212	20,176.20
NAIA	April 8, 2010	2727	079-3289-4411	543,200.00
NAIA	April 11, 2010	2739	079-3289-4503	687,798.00
NAIA	April 21, 2010	2972	079-3402-1245	64,197.00
NAIA	April 23, 2010	2991	079-3289-4691	98,762.16
NAIA	May 2, 2010	3031	079-3289-4750	601,972.40
NAIA	May 3, 2010	3591	079-3289-4772	488,880.00
NAIA	May 4, 2010	3593	079-3289-4783	434,560.00
NAIA	May 13, 2010	3638	079-3366-5940	284,529.08
NAIA	May 27, 2010	4616	079-3289-4971	106,404.47
NAIA	May 30, 2010	4037	079-3366-6496	15,284.62
NAIA	May 30,	4038	079-3366-6485	39,387.29

	2010			
NAIA	June 4, 2010	4617	079-3357-0062	165,188.66
NAIA	June 11, 2010	4415	079-3357-0246	687,798.00
NAIA	June 19, 2010	4694	079-3413-8171	35,950.32
NAIA	June 25, 2010	4704	079-3366-6916	67,605.05
NAIA	June 25, 2010	4705	079-3366-6905	284,529.08
NAIA	June 27, 2010	4745	079-3357-0456	118,749.74
NAIA	June 27, 2010	4732	079-3357-0434	285,699.96
NAIA	July 4, 2010	5595	079-3357-0552	704,260.16
NAIA	July 12, 2010	5630	079-3357-0655	271,600.00
NAIA	July 16, 2010	5700	079-3357-0703	95,233.32
NAIA	July 17, 2010	5675	079-3414-0304	85,932.27
NAIA	July 18, 2010	5685	079-3357-0692	747,172.87
NAIA	January 10, 2010	61	079-3316-1251	76,119.30
NAIA	January 20, 2010	563	079-3289-3092	168,718.08
NAIA	January 21, 2010	560	079-3289-3125	105,814.80
NAIA	January 25, 2010	561	079-3289-3173	105,814.80
NAIA	January 27, 2010	562	079-3289-3206	105,814.80
NAIA	January 28, 2010	847	079-3289-3280	105,814.80
NAIA	January 29, 2010	1251	079-3289-3324	46,440.94
TOTAL				**9,766,731.05**

On October 18, 2010, petitioner's importations were assessed for the aforementioned excise tax, through letters from Ms. Gilda L. Cinco, Acting Chief, WAU of the BOC, addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customshouse.[12]

[12] Exhibits "P-1" to "P-7"

From April 20, 2011 to August 5, 2011, petitioner paid under protest the above enumerated excise taxes as evidenced by the following BOC Receipts,[13] to wit:

Date of Payment	Amount Paid in Php	O.R. No.
April 20, 2011	54,406.80	01816598480
May 31, 2011	930,953.98	01818326368
July 1, 2011	1,695,338.30	01819067620
July 1, 2011	2,660,698.64	01819067608
July 1, 2011	1,117,618.41	01819067585
August 5, 2011	2,593,177.40	01820042120
August 5, 2011	714,527.52	01820042131

Accordingly, on various dates from April 20, 2011 to August 5, 2011, petitioner wrote several letters to Mrs. Silveria Salazar, Chief of the Collection Division of the BOC, to formally protest the assessment and collection of the excise taxes.[14]

Thereafter, on different dates, petitioner filed administrative claims for refund with respondent CIR, by way of letters,[15] as follows:

Date of Payment Under Protest	Date of Filing of Administrative Claim for Refund with the CIR	Amount Involved in Php
April 20, 2011	September 7, 2011	54,406.80
May 31, 2011	September 7, 2011	930,953.98
July 1, 2011	September 7, 2011	1,695,338.30
July 1, 2011	September 7, 2011	2,660,698.64
July 1, 2011	September 7, 2011	1,117,618.41
August 5, 2011	October 11, 2011	2,593,177.40
August 5, 2011	October 11, 2011	714,537.52

[13] Exhibits "P-15" to "P-21"
[14] Exhibits "P-8" to "P-14"
[15] Exhibits "P-22" to "P-28"

Petitioner alleges that, due to the inaction of respondent CIR on its administrative claim for refund, it filed the instant Petition for Review[16] on April 19, 2013, praying that it be declared exempt from the payment of specific taxes on all its importations of liquor, cigarettes and wine for international flight consumption, and for respondents to refund the excise tax erroneously paid in the aggregate amount of P9,766,731.05.[17]

In her **Answer**[18], filed on August 2, 2013, respondent CIR interposed the following special and affirmative defenses:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> 5. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 6. The claim for refund in the amount of Nine Million, Seven Hundred Sixty-Six Thousand, Seven Hundred Thirty-One and 5/100 Pesos (Php9,766,731.05) being claimed by petitioner as paid under protest is not warranted.
>
> 7. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 8. To support its claim, it is imperative for petitioner to prove that the two (2) conditions set forth in Section 13 of P.D. No. 1590 exempting petitioner from taxes on its importation of cigarettes, liquors and wine for its catering and commissary supplies have been met, namely: a) that the importation of such articles, supplies or materials shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and b) in the case of importation, that they are not locally available in reasonable quantity, quality or price.
>
>> 8.1 An examination for the subject Petition for Review will show that petitioner failed to mention or indicate ample proof to support their claim.

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[16] Docket (Vol. I), pp. 8-31
[17] Par. 18, III. Statement of Facts and the Case, Memorandum, Docket (Vol. III), p. 1563
[18] Docket (Vol. I), pp. 458-465

9. Petitioner claims that a reading of Section 6 of RA 9334 shows that it merely subjects previously tax-free and duty-free importations of cigarettes and wine by freeports and duty-free shops (excluding them) to all applicable taxes and duties, as the case may be. Respondent disagrees and avers that Section 6 of RA 9334 explicitly subjected to tax petitioner's importation of cigar/cigarettes and liquor/wines.

9.1 Section 6 of RA 9334 provides:

> 'Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
>> 'x x x The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and

'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. x x x'

9.2 There is nothing in the language of the above-quoted paragraph of Section 6 of RA 9334 that *confines* its application to freeports and duty-free shops. A rule on statutory construction provides that a statute is construed as a whole so the sense and meaning of the law is collected by viewing all the parts together. Since Section 6 does not categorically state that the above-quoted paragraph is applicable to freeports and duty-free shops, it is erroneous for the petitioner to conclude on such point.

10. In connection thereto, *Section 10 of RA 9334* provides:

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

On the other hand, Presidential Decree 1590 (P.D. 1590) currently exists which granted to petitioner the franchise to operate air-transport services. Among the provisions of P.D. No. 1590 is Section 13, to wit:

'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 x x x.'

Consequently, Section 13 of P.D. 1590 had already been expressly repealed, amended or otherwise modified accordingly since it is inconsistent with the above-quoted paragraph of Section 6 of RA 9334.

11. Petitioner failed to exhaust all administrative remedies before elevating this case to this Honorable Court.

11.1 All claims for refund are governed by one same rule: that respondent still has to investigate and ascertain the veracity of the claim. As the Supreme Court stated in one case, 'A corporate taxpayer's option to avail of tax credit does not, however, mean that it is ipso facto granted.' Hence, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

11.2 It is interesting to note that the alleged written claim for refund dated September 2, 2011 and filed September 7, 2011 involving the amount of Php54,406.80 is not found in the BIR Records.

11.3 A careful reading of the petition for review shows that petitioner failed to submit the complete supporting documents to warrant the granting of the application for tax refund. Petitioner alleges that written claims for refund were filed with the BIR dated September 2, 2011 and October 6, 2011. However, a perusal of the BIR Records will show that as of February 20, 2013, petitioner failed to submit the complete supporting documents needed to audit their claim for refund. It is as if petitioner treated the administrative claim for refund as an empty remedy, having filed it to merely comply with the procedural rules but not actually pursuing it to give respondent a chance to resolve the subject claim.

11.4 Considering that petitioner failed to submit supporting documents to respondent after requests for presentation of records, it deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. Absent the submission of complete supporting documents, the respondent cannot act on the administrative application for refund.

11.5 It must be remembered, that in *Laguna CATV Network, Inc. vs. Hon. Alex E. Maraan, Regional Director, Region IV, DOLE*, the Supreme Court stated that 'a party with an administrative remedy **must not merely initiate** the prescribed administrative procedure to obtain relief, **but also pursue it to its appropriate conclusion before seeking judicial intervention** in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.' [Emphasis supplied]

11.6 The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

11.7 Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, *i.e.,* the claimed cause of action is not ripe for judicial determination and for that a party has no cause of action to ventilate in court. The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action.'

12. The right of taxation cannot easily be surrendered as taxes are essential to a government's existence. Since tax refunds are in the nature of tax exemptions, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

13. It is a well-settled principle that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

14. Petitioner failed to prove that its right to tax refund indubitable exists. Since taxes collected are presumed to be in accordance with laws and regulations, failure to defeat such presumption is fatal to petitioner's claim."

On the other hand, respondent COC submitted in his **Answer/Comment**[19] dated November 7, 2013, the following arguments:

"ARGUMENTS

I.

UNDER SECTION 6 OF R.A. NO. 9334, PETITIONER IS LIABLE FOR EXCISE TAX ON ALL ITS IMPORTATIONS INCLUDING THE SUBJECT LIQUOR, WINE AND CIGARETTES.

II.

PETITIONER HAS NOT SHOWN THAT IT IS EXEMPT FROM EXCISE TAX ON THE SUBJECT IMPORTATIONS AND THAT IT IS ENTITLED TO A REFUND ON THE EXCISE TAXES IT ALLEGEDLY PAID."

On November 14, 2013, respondent COC filed his **Pre-Trial Brief**,[20] while Respondent CIR filed her **Respondent's Pre-Trial Brief**[21] on

[19] Docket (Vol. I), pp. 491 to 505

November 15, 2013. Also, the **Pre-Trial Brief For Petitioner**[22] was filed on November 15, 2013.

As directed by the Court, the parties submitted a **Joint Stipulation of Facts and Issues**[23] on December 23, 2013, which the Court adopted in its **Pre-Trial Order**[24] dated January 14, 2014.

In support of its Petition, petitioner presented the following witnesses: 1) Mr. Jonathan Castillo Lee[25] – Manager of Company Material Handling Division of Petitioner, 2) Ms. Ma. Evelyn Taghap[26] – Manager of petitioner's Tax Services and Compliance Department, 3) Ms. Cheryl V. Capinpin[27] – Manager of the In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-department of PAL, and 4) Mr. Emmanuel Y. Mendoza[28] – Independent Certified Public Accountant.

Petitioner formally offered its documentary evidence[29] on October 2, 2014 while respondent CIR filed her **Comment (On Petitioner's Formal Offer of Evidence)**[30] on October 13, 2014, and respondent COC failed to file his comment per Records Verification dated October 21, 2014. Exhibits "P-1" to "P-301" were admitted by the Court in its **Resolution**[31] dated November 10, 2014.

On the other hand, respondents CIR and COC waived their right to present evidence and witnesses.[32]

As directed by the Court,[33] petitioner filed its **Memorandum**[34] on December 9, 2014, which the Court noted in an **Order**[35] dated December 12, 2014. Respondent COC filed, through registered mail, his **Memorandum**[36] on December 15, 2014 while respondent CIR filed her

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[20] Docket (Vol. II), pp. 508 to 513
[21] Ibid, pp. 514 to 519
[22] Id., pp. 520 to 537
[23] Id., pp. 1175 to 1179
[24] Docket (Vol. III), pp. 1181-1184
[25] Minutes of the Hearing dated February 3, 2014, Ibid, p. 1185
[26] Minutes of the Hearing dated April 2, 2014, Id., p. 1206
[27] Minutes of the Hearing dated March 3, 2014, Id., p. 1198
[28] Minutes of the Hearing dated June 5, 2014 and July 21, 2014, Id., pp. 1266 and 1283
[29] Id., pp. 1337 to 1491
[30] Id., pp. 1541 to 1544
[31] Id., pp. 1548 to 1549
[32] Minutes of the Hearing dated November 10, 2014, Id., p. 1550
[33] *Id.*
[34] Id., pp. 1556 to 1589
[35] Id., p. 1595
[36] Id., p. 1601 to 1616

Memorandum[37] on February 11, 2015. The case was then submitted for decision in a **Resolution**[38] dated February 13, 2015.

The parties submitted the following issues[39] for this Court's disposition:

> "1) Whether or not petitioner is liable for excise tax on all its importations, including the subject liquor, wine, and cigarettes, under Section 6 of Republic Act No. 9334;
>
> 2) Whether or not petitioner is exempt from the payment of excise tax on the subject importations;
>
> 3) Whether or not petitioner is entitled to the refund of excise taxes in the total amount of P9,766,731.05 paid on the importation of cigarettes, liquor, and wine for its in-flight and catering supplies for international consumption for the period April 20, 2011 to August 5, 2011."

Ultimately, the main issue is whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the aggregate amount of P9,766,731.05, representing excise taxes, paid by petitioner on its importations of liquor, wine and cigarettes for its catering and commissary supplies for international consumption for the period April 20, 2011 to August 5, 2011.

First, the Court will determine if it has jurisdiction over the case.

Jurisdiction of the Court of Tax Appeals

The NIRC of 1997, as amended, grants the CIR the authority to compromise, abate, refund or credit erroneously or illegally received taxes, or penalties imposed without authority. Section 204 (C) of the NIRC of 1997, as amended, provides:

[37] Docket (Vol. III), pp. 1629 to 1656
[38] Ibid, p. 1657
[39] Stipulation of Issues, JSFI, Docket (Vol. II), p. 1177

"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.*]**

Likewise, Section 229 of the NIRC of 1997, as amended, provides the rules in recovering erroneously or illegally collected taxes. It states:

"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 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*]

From the foregoing, it can be seen both the administrative claim for refund with the BIR and the subsequent judicial claim or appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

In the instant case, the dates of filing of petitioner's administrative and judicial claim for refund *vis a vis* the 2-year prescriptive period for filing such, are summarized as follows:

Amount Involved in Php	**Date of Payment Under Protest**	**Date of Expiration of 2-Year Prescriptive Period**	**Date of Filing Written Claim for Refund with the CIR (Administrative Claim)**	**Date of Filing of Petition for Review with the CTA (Judicial Claim)**
54,406.80	April 20, 2011	April 20, 2013	September 7, 2011	April 19, 2013
930,953.98	May 31, 2011	May 31, 2013	September 7, 2011	April 19, 2013
1,695,338.30	July 1, 2011	July 1, 2013	September 7, 2011	April 19, 2013
2,660,698.64	July 1, 2011	July 1, 2013	September 7, 2011	April 19, 2013
1,117,618.41	July 1, 2011	July 1, 2013	September 7, 2011	April 19, 2013
2,593,177.40	August 5, 2011	August 5, 2013	October 11, 2011	April 19, 2013
714,537.52	August 5, 2011	August 5, 2013	October 11, 2011	April 19, 2013

Based on the foregoing, petitioner paid under protest the subject excise taxes on various dates from April 20, 2011 to August 5, 2011.[40] Petitioner had two years[41] or until April 20, 2013 to August 5, 2013, within which to file its administrative and judicial claims.

Since petitioner filed its claims for refund with respondent CIR on September 7, 2011 and October 11, 2011,[42] and the instant Petition for

[40] Exhibits "P-15" to "P-21"
[41] Section 229 of the NIRC of 1997, as amended
[42] Exhibits "P-22" to "P-28"

Review on April 19, 2013,[43] the same were well within the two-year prescriptive period. Thus, the Court has jurisdiction over the case.

PAL's Exemption from Taxes Granted Under PD No. 1590 Not Repealed by Section 6 of RA No. 9334

Petitioner claims that the exemption from excise taxes on its importations of commissary and catering supplies for international consumption, granted by PD No. 1590, was not repealed or withdrawn by RA No. 9334.[44] Meanwhile, both respondents CIR and COC argue that Section 6 of RA No. 9334, which amends Sec. 131 of the NIRC of 1997, as amended, expressly withdrew the conditional tax exemption granted to petitioner.[45]

As correctly maintained by petitioner, this Court, in a number of similar cases, has already settled the exemption granted to petitioner under PD No. 1590 which has not been withdrawn by Sec. 6 of RA 9334,[46] to wit:

> "While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied

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[43] Docket (Vol. I), pp. 8-31
[44] Par. 26, Discussion Memorandum, Docket (Vol. III), p. 1567
[45] Memorandum, Docket (Vol. III), p. 1606; Memorandum, Docket (Vol. III), pp. 1633 to 1634
[46] Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, CTA, Case Nos. 7665 and 7713, April 17, 2012; CTA EB Case No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 & 7746, August 24, 2012); CTA EB Case Nos. 942 & 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 & 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012).

> repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.
>
> Equally noteworthy is the fact that Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case."

Moreover, in the recent case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippines Airlines, Inc.*,[47] involving the same parties, the Supreme Court upheld petitioner's entitlement to exemption under P.D. 1590. According to the Supreme Court:

> "It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in Commissioner of Internal Revenue v. Philippine Air Lines, Inc:
>
>> 'That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to

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[47] G.R. Nos. 212536-37, August 27, 2014

> let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x'

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same Commissioner of Internal Revenue case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states 'that the provisions of any special or general law to the contrary notwithstanding', <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed</u>. x x x'

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

Thus, from all the foregoing, the exemption granted to petitioner under PD No. 1590 is still effective.

PAL Not Entitled To Refund

Section 13 of PD No. 1590 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
> >
> > (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:
>
> 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 transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;"

From the foregoing, it can be concluded that for petitioner to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, it must be able to prove three requisites, to wit:

1. It paid its corporate income tax and VAT liabilities for the subject period of importation;

2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

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

Petitioner contends that it has sufficiently proven that it complied with the conditions for exemption on its importation of commissary supplies, for its international flight consumption.[48]

To support the claim that it paid its corporate income tax and VAT liabilities for the subject period of importation, petitioner submitted its Annual Income Tax Returns for the FYs ended March 31, 2007,[49] March 31, 2008,[50] March 31, 2009,[51] and March 31, 2011.[52] Likewise, petitioner proved that it is a VAT-registered entity and that it accounted and paid for the VAT on its sales/receipts, by submitting as evidence, its BIR Certificate of Registration dated August 18, 2007,[53] Certificate of Registration dated August 6, 2004,[54] Payment Forms No. 0605,[55] and

[48] Par. 37, V. Discussion, Memorandum, Docket (Vol. III), pp. 1573 to 1588
[49] Exhibit "P-256" and "P-257"
[50] Exhibit "P-258", "P-259", "P-260", "P-261", and "P-262"
[51] Exhibit "P-263"
[52] Exhibit "P-264"
[53] Exhibit "P-254"
[54] Exhibit "P-255"
[55] Exhibits "P-286", "P-287", "P-288", and "P-289"

VAT Returns for the FYs 2007, 2008, 2009, 2010, and 2011.[56] Thus, the first requisite is satisfied.

Petitioner, likewise, complied with the second requisite. As stated in the "Informal Import Declaration and Entry" (IIDE) documents[57] submitted by petitioner, the imported articles were described as "inflight materials". Also, in the ATRIGS[58] issued by the respondent CIR addressed to respondent COC, it was indicated that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption".

In support of the third requisite, petitioner submitted the Judicial Affidavit[59] and Supplemental Judicial Affidavit[60] of Ms. Cheryl V. Capinpin, petitioner's Manager for In-flight and Commissary Materials Purchasing Division, Corporate Logistics and Services Department, the Revised Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies,[61] the Philippine Wine Merchants 2010 Price List dated January 8, 2010,[62] Future Trade International Price List covering the years 2006-2013, dated July 15, 2013,[63] a Letter-response from the National Tobacco Administration ("NTA") to PAL dated July 12, 2013,[64] a Letter-Request of PAL to NTA for price list dated July 11, 2013,[65] various Invoices,[66] the Monthly Philippine Dealing System (PDS) rates for the years 2006 to 2013,[67] monthly Booking Rates for the years 2006 to 2008,[68] Exchange Rates – Philippine Peso per US Dollar,[69] Cross Rates of the Peso,[70] a Summary List of Imported Liquor, Wines, and Cigarettes, which do not have any price quotation of FTI, PWN and 2010 BIR Price Survey,[71] and a document called 2010 Price Survey,[72] to support the claim that the imported articles were not locally available in reasonable quantity, quality or price.

[56] Exhibits "265" to "285"
[57] Exhibits "P-29" to "P-80"
[58] Exhibits "P-133" to "P-184"
[59] Docket (Vol. II), pp. 559 to 583
[60] Docket (Vol. III), pp. 1289 to 1293
[61] Exhibit "P-186"
[62] Exhibit "P-187"
[63] Exhibit "P-188"
[64] Exhibit "P-189"
[65] Exhibit "P-190"
[66] Exhibit "P-191" to "P-245"
[67] Exhibit "P-246"
[68] Exhibit "P-247" to "P-253"
[69] Exhibit "P-297-1"
[70] Exhibit "P-297-2"
[71] Exhibit "P-298"
[72] Exhibit "P-299"

On the other hand, respondents COC and CIR claim that, assuming that Section 13 of PD No. 1590 was not amended by RA No. 9334, petitioner was not able to submit sufficient evidence showing that it is exempt from the payment of excise tax on the subject importations, and consequently entitled to a refund on the excise taxes it allegedly paid. They argue that petitioner was not able to prove that the commissary supplies are not locally available in reasonable quantity, quality and price.[73]

Respondent COC argues that in attempting to discharge the burden of proving that the subject articles are not locally available in reasonable quantity, quality or price, petitioner merely presented its own Revised Table of Comparison, price lists of two liquor distributors, and a letter-response from the National Tobacco Administrator ("NTA"). According to respondent COC, the table presented was purely self-serving as most of the data contained therein have been supplied by petitioner itself. He claims that the price lists also do not represent the average prices of the subject liquors throughout the country, since there are other distributors which may sell said products at lesser prices. Finally, he argues that the letter-response of the NTA does not have any data regarding the respective prices of the imported tobacco products inquired of by petitioner.[74]

Respondent CIR posits that as to the reasonableness of the price, petitioner misguidedly equated reasonableness with cheaper prices. She claims that reasonable price is the decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit, as defined by the Black's Law Dictionary, or high enough to cover a seller's cost and a reasonable margin, but not high enough for the seller to realize monopolistic profit, as defined by the Business Dictionary.[75]

It is a well-known principle in taxation that tax refunds or credits, like tax exemptions, are strictly construed against taxpayers. Thus, the claimant-taxpayer has the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[76]

Notwithstanding petitioner's submission of the abovementioned evidence, it still failed to prove that the imported articles, supplies or

[73] Memorandum, Docket (Vol. III), p. 1613; Memorandum, Docket (Vol. III), p. 1650
[74] Memorandum, Ibid, p. 1613
[75] Memorandum, Id., p. 1651
[76] *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013

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

An examination of the Judicial Affidavit of Ms. Cheryl Capinpin shows that petitioner compared the prices of its imported wines and liquors only with the price lists of two liquor distributors, namely Philippine Wine Merchants, and Future Trade International Price List, the Summary List of Imported Liquor, Wines, and Cigarettes, which do not have any price quotation of FTI, PWN and 2010 BIR Price Survey, and the 2010 Price Survey the BIR Price Survey, *viz:*

"14. Q: For the importations subject of this case, why did PAL import those in-flight and commissary supplies?

A: PAL's primary consideration in such importations was the price of the alcohol and tobacco products. The cost was cheaper when the products were imported from foreign suppliers than if they were purchased from local suppliers. The said alcohol and tobacco products were not locally available in reasonable prices.

15. Q: What was your basis, if any, in stating that the importation cost of said alcohol and tobacco products was cheaper than purchasing the same locally?

A: The attached comparative table, entitled 'Table of Comparison between Cost of Importing and Cost of Locally Purchasing In-flight and Commissary' ('Table of Comparison') already marked as Exhibit 'P-186' shows that the importation cost of said alcohol and tobacco products is cheaper than purchasing them locally.

16. Q: Looking at Table of Comparison, how do you show that the cost of importing the various in-flight and commissary supplies involved in this case is much lower than the cost of buying them locally?

A: The costs of importing the commissary and catering supplies involved and listed under the column 'Product Imported', are specified under the columns labelled 'Unit Cost Per Sales Invoice', 'Unit Cost per ATRIG (Authority to Release Imported Goods', and 'Unit Cost Per Informal Import Declaration Entry No.' The cost of locally purchasing the same products is specified under the columns labeled 'BIR Price Survey', 'Philippine Wine Merchants Price List', and 'Future Trade International Price List'. As can be seen from this table, the cost of importing the supplies are significantly cheaper than the costs of locally purchasing them.

17. Q: As shown in the table, what is the basis of the costs of importing the products involved?

A: The unit cost of the product per sales invoice is based on the sales invoices of PAL's suppliers of the imported alcohol and tobacco products.

As shown in the table, in the case of alcohol products, to arrive at the unit cost per bottle, I divided the cost per case or carton stated in the sales invoice, by the number of bottles or cans per case or carton of the alcohol product covered by the invoice. This can be twenty four (24), twelve (12), or six (6) bottles/cans per case/carton depending on the alcohol product involved.

As regards tobacco products, to arrive at the cost per carton, I divided the total value of the product as reflected in the sales invoice, by the number of cartons or cases stated therein. To arrive at the cost per ream, I then divided the cost per carton by fifty (50) which is the number of reams per carton. To finally arrive at the unit cost per pack of tobacco product, I divided the cost per ream by ten (10) which is the number of packs per ream.

18. Q: Under the column 'Unit Cost Per ATRIG', how did you arrive at the unit cost of the imported product?

A: Every importation is covered by an Authority to Release Imported Goods (ATRIG) which is a numbered document issued by the Bureau of Internal Revenue. Among the information stated in an ATRIG are the quantity and value of the imported products. To arrive at the unit cost, I divided the value by the quantity stated therein.

For alcohol products, the quantity may either be expressed in (i) number of cases or (ii) number of bottles. To arrive at the unit cost per bottle, computation is made as follows:

(i) Quantity expressed in number of cases

$$\frac{\text{Value of importation stated in ATRIG}}{\text{Number of Cases}} = \text{Cost per case}$$

$$\frac{\text{Cost per case}}{\text{24 or 12 or 6 bottles (cans) / case}} = \text{Cost per bottle}$$

(ii) Quantity expressed in number of bottles or cans

$$\frac{\text{Value of importation stated in ATRIG}}{\text{Number of bottles}} = \text{Cost per bottle}$$

For tobacco products, the quantity is usually expressed in number of cases. To arrive at the unit cost per pack of tobacco or cigarette products, the computation is made as follows:

$$\frac{\text{Value of importation stated in ATRIG}}{\text{Number of Cases}} = \text{Cost per case}$$

$$\frac{\text{Cost per case}}{\text{50 reams/ case}} = \text{Cost per ream}$$

$$\frac{\text{Cost per ream}}{\text{10 packs/ream}} = \text{Cost per pack}$$

However, there are ATRIGs that cover different kinds of imported products and do not indicate the value of each kind of product. In such cases, the unit cost shown in the column 'Unit Cost per ATRIG' is the average cost per unit quantity. Not being the real unit cost of each product, I did not use this average cost in reporting the unit cost of the imported product.

19\. Q: How about the 'Unit Cost per Informal Import Declaration and Entry No.'? How did you arrive at the unit cost of the imported product?

A: Every importation is covered by an Informal Import Declaration and Entry (IIDE) form *(sic)* which is a numbered document issued by the Bureau of Customs. Among the information stated in an IIDE are the quantity and value of the imported products. To arrive at the unit cost, I divided the value by the quantity stated therein.

I followed the same formula abovementioned as applied in ATRIGs in computing for the unit cost of the imported product. For importations of different kinds of products in a single shipment/transaction documented in a single Informal Import Declaration and Entry form, the unit cost shown in the column 'Unit Cost per Informal Import Declaration and Entry No.' is the average cost per unit quantity, which I also did not use as the unit cost of the imported product under the same reasoning as stated in the previous question involving ATRIG.

20\. Q: Why do you still have the unit cost per ATRIG and IIDE in addition to your unit cost per sales invoice when the unit costs reflected in all these three columns have insubstantial differences i.e. unit costs in all three columns are more or less the same?

A: I am showing the said unit costs to show the cost of importing the same product as determined and indicated in (i) private documents as documented in the sales invoices and in (ii) official documents of the Bureau of Internal Revenue, as documented in the ATRIG, and of the Bureau of Customs, as documented in the IIDE.

I am showing these different documentations of importation costs to show that the pricing of the alcohol products of PAL's foreign suppliers are close approximations to the valuations indicated in the official documents of the Bureau of Internal Revenue and of the Bureau of Customs. There is minimal difference in the unit cost of the alcohol products as can be seen from the columns 'Unit Cost per Sales Invoice' 'Unit Cost per ATRIG' and 'Unit Cost per IIDE'. These differences are sometimes attributable to discrepancies due to conversion of valuation from a foreign currency other than USD to USD.

I am stating this parallelism to stress that the values in all three different documents are approximately the same (if not exactly the same) both in currency and numerical figures or if not of the same currency then the equivalence in value after conversion, especially in instances when the sales invoices of PAL's foreign supplier are no longer available for presentation in connection with this claim for refund or tax credit.

21. Q: What do the columns labeled 'BIR Price Survey', 'Philippine Wine Merchants Price List' and 'Future Trade International Price List' refer to?

A: These columns contain information pertaining to the unit cost per bottle of alcohol and tobacco products.

The column labeled 'BIR Price Survey' contains the data obtained from the price surveys conducted by the Bureau of Internal Revenue in 2010. The results of these price surveys conducted may be found in both the actual price survey results and in the following issuances of the Bureau of Internal Revenue: Revenue Regulations ('RR') No. 22-03 (for cigarette and tobacco products), Revenue Memorandum Order ('RMO') No. 6-03 and Revenue Memorandum Circular ('RMC') No. 90-2012. In the Table of Comparison, we subdivided the column labeled 'BIR Price Survey' into two sub-columns. One column, labeled as 'Including VAT and Excise Tax', pertains to the retail price per bottle of alcohol product plus the amount of excise tax and value-added tax to be paid on such product. The other sub-column, on the other hand, labeled as 'Excluding VAT and Excise Tax' pertains to the unit cost per bottle of alcohol product net of the amount of excise tax and value-added tax. In making the comparison, petitioner used the price indicated in the sub-column labeled 'Including VAT and Excise Tax' since this is the price that petitioner would have to pay to purchase said products locally. However, even without the excise tax and value-added tax, the cost of importing the products is still lower.

On the other hand, the columns labeled **'Philippines Wine Merchants Price List' and 'Future Trade International Price List' containing information pertaining to the unit cost per bottle of alcohol products as quoted by such local sellers in their price**

> **lists for the years 2006, 2007, 2008 and 2010**, which are the years covering the importations subject of this claim for refund.' (Emphasis Supplied)

22. Q: I am showing to you a document in the letter-head of Philippine Wine Merchants, dated January 8, 2010, signed by Ronald Lim Joseph with the marking 'Certified True Copy' found on the upper right hand portion, previously marked as Exhibit 'P-187', and attached to this judicial affidavit. How is this document related to the price list you mentioned earlier?

A: This document is the price list of the Philippine Wine Merchants quoted for 2010 and the information in this price list is the same information found in Exhibit 'P-186'. This price lists were furnished to us by the Philippine Wine Merchant upon our request.

23. Q: I am showing to you a document in the letterhead of Future Trade International, dated July 15, 2013, signed by Analu G. Santos in her capacity as Sales Manager of Future Trade International with the marking 'Certified True Copy' found on the lower right hand portion, previously marked as Exibit 'P-188', and attached to this judicial affidavit. How is this document related to the price list you mentioned earlier?

A: This document is the price list of Future Trade International quoted for the years 2006 to 2013 and the information in this price list is the same information found in Exhibit 'P-186'. This price lists were furnished to us by Future Trade International upon our request."

Meanwhile, no data regarding the prices of tobacco products were submitted, as shown by Ms. Capinpin's testimony, as follows: a

"24. Q: Other than the price list provided by Philippine Wine Merchant and Future Trade International, does PAL have any other source of prices from local suppliers or dealers of alcohol products and tobacco products?

A: In relation to the tobacco products, as Manager of petitioner's In-flight Materials Purchasing Division, I requested from the National Tobacco Administration ('NTA') a list of the retail prices of different cigarette brands.

25. Q: What is the result of such request, if any?

A: I signed a formal letter request addressed to NTA for the information needed and instructed my assistant Ms. Manuela Elsa C. Diaz to follow up on such request. NTA addressed as letter to Ms. Diaz in response to our request for the price list of cigarettes and tobacco products.

26. Q: What is NTA's response, if any?

A: On July 12, 2013, Mr. Edgardo D. Zaragoza in his capacity as Administrator and Vice-Chairman of the Governing Board of NTA responded to our request. He stated that **NTA does not have any data series (2005-2013) on the retail prices of different cigarette brands requested.** (Emphasis Supplied)

27. Q: I am showing to you a document in the letterhead of National Tobacco Administration, dated July 12, 2013, signed by Mr. Edgardo D. Zaragoza in his capacity as Administrator and Vice-Chairman of the Governing Board with the marking 'Administrative Services Division Certified Xerox Copy' found on the bottom right hand portion, previously marked as Exhibit 'P-189', and attached to this judicial affidavit. How is this document related to the letter response you got the *(sic)* from the NTA?

A: This document, with the marking Exhibit 'P-189', is the same document as the letter response we received from the NTA.

28. Q: I am showing to you a document in the letterhead of Philippine Airlines, Inc. signed by Ms. Cheryl V. Capinpin, addressed to the National Tobacco Administration with the marking 'Certified True Copy' previously marked as Exhibit 'P-190' and attached to this judicial affidavit. How is this document related to the letter request your office sent to the NTA?

A: This document, with the marking Exhibit 'P-190', is the same document as the letter request we sent to the NTA.

xxx

30. Q: How about for tobacco products?

A: **For petitioner's imported tobacco products, such brands were not available in the BIR Price Survey. This is the reason why petitioner, through my division, requested for data of retail prices of these tobacco products from the NTA hoping that the NTA has such data being the government agency entrusted with the power to administer and regulate the tobacco industry in the Philippines. However, as earlier mentioned, the request yielded negative results.**" (Emphasis Supplied)

It is worthy to note that petitioner's witness herself admitted that the Table of Comparison presented as evidence does not, and could not present the comparative prices for all of the imported alcohol and tobacco products vis-à-vis its local prices because the local suppliers carry a limited selection of all the alcohol and tobacco products available worldwide. She states:

"29. Q: Based on the various documents you obtained as sources of local prices of alcohol and tobacco products, were you able to determine the local prices of petitioner's imported alcohol and tobacco products?

A: In most of petitioner's imported alcohol products subject of this instant claim for refund, I was able to match the imported products with the various documents showing the local prices of alcohol products based on the product, content per bottle, alcohol content and to the products' specific type.

However, for alcohol products which are not carried/sold by Philippine Wine Merchants and Future Trade International and not found in the BIR Price Survey, the price comparison made and reflected in the Table of Comparison is based on the price of the alcohol product using the closest comparable factors such as, but not limited to the following:

(i) Brand of the alcohol product
(ii) Type of alcohol product
(iii) Content per bottle/can
(iv) Alcohol content
(v) Origin of the alcohol product
(Emphasis Supplied)

xxx

31. Q: Given the various sources for local prices of alcohol and tobacco products, how is it that the Table of Comparison cannot reflect the prices of all of petitioner's imported alcohol and tobacco products?

A: **The attached Table of Comparison does not, and could not present the comparative prices for all of petitioner's imported alcohol and tobacco products vis-à-vis its**

> **local prices because the local suppliers/dealers of these products carry a limited selection of all the alcohol and tobacco products available worldwide. Even the result of the price surveys conducted by the Bureau of Internal Revenue itself does not cover all these products.**" (Emphasis Supplied)

From all the foregoing, it can be seen that petitioner failed to prove that the commissary supplies are not locally available in reasonable price. Since petitioner was not able to prove that it has satisfied all the requirements for tax exemption, the refund claim in the amount of **Nine Million Seven Hundred Sixty Six Thousand Seven Hundred Thirty One and 05/100** (**P9,766,731.05**) cannot be granted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice