REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA Case No. 10311**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 3 0 2023; 2:03PM

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DECISION

MANAHAN, *J.*:

The instant case involves a claim for refund or tax credit in the aggregate amount of ₱20,059,948.44, representing excise taxes on various importations which were paid under protest on August 3, 2018.[1]

THE FACTS

Petitioner Philippine Airlines, Inc. (PAL) 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 is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[1] Nature of the Case, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1835.
[2] Par. 2, Admitted Facts, JSFI, Docket – Vol. III, pp. 1835 to 1836.

He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (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 Other Countries."*[4]

Petitioner imported various liquors and wine, as part of its in-flight and commissary supplies for the period August 2014 to February 2018.[5]

The Bureau of Customs (BOC), in separate letters, demanded the payment of excise taxes, totaling ₱20,059,948.44, for PAL's importations of liquor, wine, and tobacco, in the following respective amounts, *viz.*:

Date of the letter	***Amount***
February 27, 2018[6]	₱2,030,645.28
March 2, 2018[7]	₱1,583,077.91

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[3] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, p. 7, and Docket – Vol. III, p. 1743, respectively.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. III, p. 1836.
[5] Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24", "P-4.25", "P-4.26", "P-4.27", "P-4.28", "P-4.29", "P-4.30", "P-4.31", "P-4.32", "P-4.33", "P-4.34", "P-4.35", "P-4.36", "P-4.37", "P-4.38", "P-4.39", "P-4.40", "P-4.41", "P-4.42", "P-4.43", "P-4.44", "P-4.45", "P-4.46", "P-4.47", "P-4.48", "P-4.49", "P-4.50", "P-4.51", "P-4.52", "P-4.53", "P-4.54", "P-4.55", "P-4.56", "P-4.57", "P-4.58", "P-4.59", "P-4.60", "P-4.61", "P-4.62", "P-4.63", "P-4.64", "P-4.65", "P-4.66", "P-4.67", "P-4.68", "P-4.69", "P-4.70", "P-4.71", "P-4.72", "P-4.73", "P-4.74", "P-4.75", "P-4.76", "P-5", "P-5.1", "P-5.2", "P-5.3", "P-5.4", "P-5.5", "P-5.6", "P-5.7", "P-5.8", "P-5.9", "P-5.10", "P-5.11", "P-5.12", "P-5.13", "P-5.14", "P-5.15", "P-5.16", "P-5.17", "P-5.18", "P-5.19", "P-5.20", "P-5.21", "P-5.22", "P-5.23", "P-5.24", "P-5.25", "P-5.26", "P-5.27", "P-5.28", "P-5.29", "P-5.30", "P-5.31", "P-5.32", "P-5.33", "P-5.34", "P-5.35", "P-5.36", "P-5.37", "P-5.38", "P-5.39", "P-5.40", "P-5.41", "P-5.42", "P-5.43", "P-5.44", "P-5.45", "P-5.46", "P-5.47", "P-5.48", "P-5.49", "P-5.50", "P-5.51", "P-5.52", "P-5.53", "P-5.54", "P-5.55", "P-5.56", "P-5.57", "P-5.58", "P-5.59", "P-5.60", "P-5.61", "P-5.62", "P-5.63", "P-5.64", "P-5.65", "P-5.66", "P-5.67", "P-5.68", "P-5.69", "P-5.70", "P-5.71", "P-5.72", "P-5.73", "P-5.74", "P-5.75", "P-5.76", "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24", "P-6.25", "P-6.26", "P-6.27", "P-6.28", "P-6.29", "P-6.30", "P-6.31", "P-6.32", "P-6.33", "P-6.34", "P-6.35", "P-6.36", "P-6.37", "P-6.38", "P-6.39", "P-6.40", "P-6.41", "P-6.42", "P-6.43", "P-6.44", "P-6.45", "P-6.46", "P-6.47", "P-6.48", "P-6.49", "P-6.50", "P-6.51", "P-6.52", "P-6.53", "P-6.54", "P-6.55", "P-6.56", "P-6.57", "P-6.58", "P-6.59", "P-6.60", "P-6.61", "P-6.62", "P-6.63", "P-6.64", "P-6.65", "P-6.66", "P-6.67", "P-6.68", "P-6.69", "P-6.70", "P-6.71", "P-6.72", "P-6.73", "P-6.74", "P-6.75" and "P-6.76", Docket – Vol. III, pp. 2083 to 2313, respectively.
[6] Exhibit "P-11", Docket – Vol. III, p. 2399.
[7] Exhibit "P-11.1", Docket – Vol. III, p. 2400.

March 2, 2018[8]	₱1,453,430.94
April 13, 2018[9]	₱1,754,759.73
April 13, 2018[10]	₱1,973,623.38
April 13, 2018[11]	₱1,957,833.65
April 13, 2018[12]	₱2,376,473.57
May 24, 2018[13]	₱1,783,716.24
May 24, 2018[14]	₱3,219,267.24
May 24, 2018[15]	₱1,927,120.50

On August 3, 2018, petitioner paid under protest the excise taxes on its importation of liquors and/or cigarettes, in the total amount of ₱20,059,948.44, as follows:[16]

BOC Official Receipt Number	***Amount Paid***
01893415719[17]	₱13,129,844.46
01893415720[18]	₱ 6,930,103.98

On July 30, 2020, petitioner filed with the BIR its letter of even date,[19] requesting for the refund of, or issuance of tax credit certificate for, the amount of ₱20,059,948.44, allegedly representing excise taxes illegally assessed, levied upon, and paid by petitioner under protest on its importation of alcohol products constituting commissary and catering supplies.

Petitioner filed a *Petition for Review* with the Court of Tax Appeals (CTA) on August 3, 2020.[20]

On November 23, 2020 respondent filed his *Answer*.[21] Respondent transmitted the *BIR Records* of this case, consisting of 341 pages.[22]

[8] Exhibit "P-11.2", Docket – Vol. III, p. 2401.
[9] Exhibit "P-11.3", Docket – Vol. III, p. 2402.
[10] Exhibit "P-11.4", Docket – Vol. III, p. 2403.
[11] Exhibit "P-11.5", Docket – Vol. III, p. 2404.
[12] Exhibit "P-11.6", Docket – Vol. III, p. 2405.
[13] Exhibit "P-11.7", Docket – Vol. III, p. 2406.
[14] Exhibit "P-11.8", Docket – Vol. III, p. 2407.
[15] Exhibit "P-11.9", Docket – Vol. III, p. 2408.
[16] Exhibit "P-10", Docket – Vol. III, p. 2397.
[17] Exhibit "P-8", Docket – Vol. III, p. 2394.
[18] Exhibit "P-9", Docket – Vol. III, p. 2396.
[19] Exhibit "P-2", Docket – Vol. III, pp. 2059 to 2068.
[20] Docket – Vol. I, pp. 6 to 42.
[21] Docket – Vol. III, pp. 1743 to 1748.
[22] Docket – Vol. III, pp. 1757 to 1759.

The Pre-Trial Conference of the case was initially scheduled on March 11, 2021.[23] For lack of quorum, the same was cancelled, and was reset to, and held on, May 20, 2021.[24] Prior thereto, respondent's *Pre-Trial Brief* was submitted on December 16, 2020,[25] while petitioner's *Pre-Trial Brief* was filed *via* email on March 8, 2021 and through registered mail on March 12, 2021.[26]

On June 7, 2021, the parties submitted to this Court their *Joint Stipulation of Facts and Issues*,[27] which the Court approved in the Resolution dated June 15, 2021,[28] thereby terminating the Pre-Trial. The Pre-Trial Order was issued on October 21, 2021.[29]

As trial ensued, petitioner presented its testimonial and documentary evidence. At the hearing held on October 19, 2021, respondent's counsel manifested that she will no longer present any witness in this case.[30]

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Jonathan R. Castillo Lee,[31] the Manager for petitioner's Company Materials Handling Division; (2) Mr. Ruel Ryan O. Julian,[32] the Manager for Tax Services Division of petitioner; and (3) Ms. Cheryl V. Capinpin,[33] the Manager of the In-flight Materials Purchasing Division of petitioner.

On February 3, 2022, petitioner filed, via electronic mail, its *Formal Offer of Evidence*.[34] Respondent submitted his *Comment (Re: Formal Offer of Evidence)* on February 2, 2022.[35]

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[23] Notice of Pre-Trial Conference dated December 9, 2020, Docket – Vol. III, pp. 1751 to 1753.
[24] Notice of Resetting dated March 8, 2021, Docket – Vol. III, p. 1770; Minutes of the hearing held on, and Order dated, May 20, 2021, Docket – Vol. III, pp. 1826 to 1828, and 1831 to 1832, respectively.
[25] Docket – Vol. III, pp. 1763 to 1766.
[26] Docket – Vol. III, pp. 1772 to 1794; and 1798 to 1819.
[27] Docket – Vol. III, pp. 1835 to 1847.
[28] Docket – Vol. III, p. 1850.
[29] Docket – Vol. III, pp. 1920 to 1932.
[30] Order dated October 19, 2021, Docket – Vol. III, pp. 1912 to 1914;
[31] Exhibit "P-47", Docket – Vol. II, pp. 740 to 749; Order dated October 19, 2021, Docket – Vol. III, pp. 1912 to 1914.
[32] Exhibit "P-48", Docket – Vol. II, pp. 1089 to 1099; Order dated October 19, 2021, Docket – Vol. III, pp. 1912 to 1914.
[33] Exhibit "P-49", Docket – Vol. II, pp. 1313 to 1325; Order dated October 19, 2021, Docket – Vol. III, pp. 1912 to 1914.
[34] Docket – Vol. III, pp. 1968 to 2013.
[35] Docket – Vol. III, pp. 1964 to 1967. *cm*

In the Resolution dated March 21, 2022,[36] the Court admitted all of petitioner's offered exhibits.

On April 20, 2022, respondent's *Memorandum* was filed;[37] and on May 6, 2022, petitioner's *Memorandum* was submitted via electronic mail.[38]

This case was submitted for decision on May 30, 2022.[39]

THE ISSUE

As stipulated by the parties, the sole issue for the Court's resolution is as follows:

> "Whether PAL is entitled to the refund of excise taxes allegedly paid under protest for various importations on 03 August 2018 amounting to **TWENTY MILLION FIFTY-NINE THOUSAND NINE HUNDRED FORTY-EIGHT PESOS AND 44/100 (PHP20,059,948.44)** for its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption."[40]

Petitioner's arguments:

Petitioner argues that its importation of commissary and catering supplies are exempt from all taxes pursuant to its franchise since Republic Act (RA) No. 9334 did not repeal PD No. 1590.

Respondent's counter-arguments:

Respondent contends that PD No. 1590, particularly Section 13 thereof, had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005; that

[36] Docket – Vol. IV, pp. 2764 to 2771.
[37] Docket – Vol. IV, pp. 2772 to 2779.
[38] Docket – Vol. IV, pp. 2781 to 2799.
[39] Resolution dated May 30, 2022, Docket – Vol. IV, p. 2823.
[40] Stipulated Issue, JSFI, Docket – Vol. III, p. 1838.

petitioner's claim for refund is subject to administrative investigation/examination by respondent, and pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim; that the administrative agency concerned must be given the opportunity to ascertain the veracity and validity of the claim; that non-compliance with a condition precedent renders the *Petition for Review* dismissible; that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund; and, that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE COURT'S RULING

The present *Petition for Review* is denied.

Governing provisions for refund claims.

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

> "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 added)*
>
> "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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[41]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal.[42] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[43]

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[41] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[42] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[43] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, but it must also prove that the subject excise taxes paid are erroneous, illegal, or wrongful.

Petitioner timely filed its administrative and judicial claims.

In this case, it is shown that petitioner paid excise taxes totaling ₱20,059,948.44 to the BOC on August 3, 2018.[44] Counting from this date, petitioner had until August 3, 2020 to file its administrative and judicial claims for refund. Petitioner filed its administrative claim for refund on July 30, 2020 before respondent,[45] and the judicial claim for refund was filed before this Court on August 3, 2020.[46] Thus, both administrative and judicial claims fell within the two (2)-year prescriptive period.

Correspondingly, petitioner timely filed its administrative and judicial claims.

However, petitioner failed to prove that there was an erroneous or illegal excise tax which was collected by the government.

Respondent argues that Section 131[47] of the NIRC of 1997, as amended by RA No. 9334, reveals the unmistakable

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[44] Exhibits "P-8" and "P-9", Docket – Vol. III, pp. 2394 and 2396, respectively.
[45] Exhibit "P-2", Docket – Vol. III, pp. 2059 to 2068.
[46] Docket – Vol. I, pp. 6 to 42.
[47] "SEC. 131. **Payment of Excise Taxes on Imported Articles.** –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

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

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if intent of Congress to withdraw the conditional tax exemptions granted to petitioner under Section 13 of PD No. 1590.[48] On the other hand, petitioner contends that despite the passage of RA No. 9334, its tax exemption under PD No. 1590 remained unamended.

We agree with petitioner.

The Supreme Court has already settled the matter.

In *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*,[49] the Supreme Court said:

> "This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.

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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-Frec 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."

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

[49] G.R. Nos. 215705-07, February 22, 2017.

In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*,[50] the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:

> 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. [G.R. No. 180066, July 7, 2009, 609 Phil. 695]*:
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to 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,' 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. x x x

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

> 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.

> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. x x x

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)*[51] and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*,[52] this Court, echoing the ruling in the abovecited case of *CIR v. PAL*, held that:

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

> In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax - whichever is lower - shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, 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.

On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

> **SEC. 22.** *Franchises of Domestic Airlines.* - **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc.**, R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> **(A) The franchise tax is abolished;**
>
> **(B) The franchisee shall be liable to the corporate income tax;**
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> **(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be**

> **provided by their respective franchise agreement.**

Thus, this Court held in the abovecited PAL consolidated cases:

> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). **PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.**
>
> **It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.**" *(Emphases added)*

The foregoing jurisprudential pronouncements were reiterated in the more recent case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et seq.*,[53] declaring that:

> "PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337 further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from 'any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.'
>
> xxx xxx xxx
>
> Again, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[54] this Court maintained that **despite these amendments to the National Internal Revenue Code, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and**

[53] G.R. Nos. 206079-80 and 206309, January 17, 2018.
[54] G.R. Nos. 215705-07, February 22, 2017.

> **charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that no explicit repeals were made on Presidential Decree No. 1590.**
>
> **Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist**. xxx." *(Emphases added)*

Correspondingly, despite the enactment and effectivity of RA No. 9334, amending Section 131 of the NIRC of 1997, as amended, petitioner's tax exemptions subsist.

However, it must be emphasized that petitioner's tax exemptions are *not* without conditions.

Petitioner remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, ***provided* it pays corporate income tax as granted in its franchise agreement**; the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

In addition to the payment of the corporate income tax, Section 13(b)(2) of PD No. 1590 enumerates certain conditions that petitioner must comply with, in order to be exempt from excise tax for its imported tobacco and alcohol products, to wit:

> "SECTION 13. xxx
>
> 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, 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; **<u>provided</u>, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; x x x." *(Emphases and underscoring added)*

Thus, based on jurisprudence and the foregoing provision, the following conditions must be fulfilled by petitioner for it to be exempt from excise tax on its importation of tobacco and alcohol products, to wit:

(1) payment of the corporate income tax;
(2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities;[55] and,
(3) they are not locally available in reasonable quantity, quality or price.[56]

In this case, petitioner submitted in evidence its Original/Amended Annual Income Tax Return,[57] for taxable years 2014 to 2018 to prove payment of its corporate income tax. Such being the case, petitioner has fulfilled the *first* condition.

Parenthetically, it is noted that petitioner is a VAT-registered entity and paid its VAT for taxable years 2014 to 2018.[58]

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[55] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017; *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, August 27, 2014.

[56] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017; *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, August 27, 2014.

[57] Exhibits "P-16" and "P-16a", Docket – Vol. III, pp. 2501 to 2504, Docket – Vol. IV, 2505 to 2516; Exhibits "P-22", Docket – Vol. IV, pp. 2534 to 2541; Exhibits "P-28", Docket – Vol. IV, pp. 2561 to 2568; Exhibits "P-34" and "P-34a", Docket – Vol. IV, pp. 2586 to 2593, and 2594 to 2601, respectively; and Exhibits "P-40", "P-40a", and "P-40b", Docket – Vol. IV, pp. 2619 to 2643, 2644 to 2668, and 2669 to 2693, respectively.

[58] Exhibits "P-17", "P-17a", "P-18", "P-18a", "P-19", "P-19a", "P-20", and "P-20a" Docket – Vol. IV, pp. 2517 to 2518, 2519 to 2520, 2521 to 2522, 2523 to 2524, 2525 to 2526, 2527 to 2528, 2529 to 2530, and 2531 to 2532, respectively; Exhibits "P-23", "P-23a", "P-24", "P-24a", "P-25", "P-25a", "P-26", "P-26a", "P-26b", and "P-15-a", Docket – Vol. IV, pp. 2542 to 2543, 2544 to 2545, 2546 to 2547, 2548 to 2549, 2550 to 2551, 2552 to 2553, 2554 to 2555, 2556 to 2557, and 2558 to 2559, respectively; Exhibits "P-29", "P-29a", "P-30", "P-30a", "P-31", "P-31a", "P-32", and "P-32a", Docket – Vol. IV, pp. 2569 to 2570, 2571 to 2572, 2573 to 2574, 2575 to 2576, 2577 to 2578, 2579 to 2580, 2581 to 2582, and 2583 to 2584, respectively; Exhibits "P-35", "P-35a", "P-36", "P-36a", "P-37", "P-37a", "P-38", and "P-38a", Docket – Vol. IV, pp. 2602 to 2603, 2604 to 2605; 2606 to 2607, 2608 to 2609, 2610 to 2611, 2612 to 2613, 2614 to 2615, and 2616 to 2617; and Exhibits "P-41", "P-41a", "P-42", "P-42a", "P-43", "P-43a",

As for the second condition, the imported articles were described as *"Inflight Materials" and "Catering Materials"* under the column *"Description of Articles"* in the *Informal Import Declaration and Entry* submitted by petitioner.[59] Moreover, the *Authority to Release Imported Goods* (ATRIG) issued by the BIR itself and addressed to the Commissioner of Customs also provided that the pertinent shipment to be released at the port of Ninoy Aquino International Airport consisting of the said articles will be used exclusively for *"international inflight consumption only".* [60] Thus, the subject importations of alcohol and tobacco products are for the use of petitioner in its transport operations and thus, fulfilling the *second* condition.

However, with regard to the *third* condition, *i.e.*, the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, We find that petitioner fell short of proving compliance therewith.

"P-43b", "P-44", and "P-44a", Docket – Vol. IV, pp. 2694 to 2695, 2696 to 2697, 2698 to 2699, 2700 to 2701, 2702 to 2703, 2704 to 2705, 2706 to 2707, 2708 to 2709, and 2710 to 2711, respectively.

[59] Exhibits "P-4", "P-4.1", "P-4.2", "P-4.3", "P-4.4", "P-4.5", "P-4.6", "P-4.7", "P-4.8", "P-4.9", "P-4.10", "P-4.11", "P-4.12", "P-4.13", "P-4.14", "P-4.15", "P-4.16", "P-4.17", "P-4.18", "P-4.19", "P-4.20", "P-4.21", "P-4.22", "P-4.23", "P-4.24", "P-4.25", "P-4.26", "P-4.27", "P-4.28", "P-4.29", "P-4.30", "P-4.31", "P-4.32", "P-4.33", "P-4.34", "P-4.35", "P-4.36", "P-4.37", "P-4.38", "P-4.39", "P-4.40", "P-4.41", "P-4.42", "P-4.43", "P-4.44", "P-4.45", "P-4.46", "P-4.47", "P-4.48", "P-4.49", "P-4.50", "P-4.51", "P-4.52", "P-4.53", "P-4.54", "P-4.55", "P-4.56", "P-4.57", "P-4.58", "P-4.59", "P-4.60", "P-4.61", "P-4.62", "P-4.63", "P-4.64", "P-4.65", "P-4.66", "P-4.67", "P-4.68", "P-4.69", "P-4.70", "P-4.71", "P-4.72", "P-4.73", "P-4.74", "P-4.75", and "P-4.76", Docket – Vol. III, pp. 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, and 2159, respectively.

[60] Exhibits "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", "P-6.7", "P-6.8", "P-6.9", "P-6.10", "P-6.11", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6.19", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24", "P-6.25", "P-6.50", "P-6.26", "P-6.27", "P-6.28", "P-6.29", "P-6.30", "P-6.31", "P-6.32", "P-6.33", "P-6.34", "P-6.35", "P-6.36", "P-6.37", "P-6.38", "P-6.39", "P-6.40", "P-6.41", "P-6.42", "P-6.43", "P-6.44", "P-6.45", "P-6.46", "P-6.47", "P-6.48", "P-6.49", "P-6.51", "P-6.52", "P-6.53", "P-6.54", "P-6.55", "P-6.56", "P-6.57", "P-6.58", "P-6.59", "P-6.60", "P-6.61", "P-6.62", "P-6.63", "P-6.64", "P-6.65", "P-6.66", "P-6.67", "P-6.68", "P-6.69", "P-6.70", "P-6.71", "P-6.72", "P-6.73", "P-6.74", "P-6.75" and "P-6.76", Docket – Vol. III, pp. 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, , , 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, and 2313, respectively.

To prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, petitioner submitted the: (1) Judicial Affidavit of Ms. Cheryl V. Capinpin,[61] its Manager for In-flight Materials Purchasing Division; (2) 2014 and 2015 Price Lists of Absolute Sales Corporation;[62] (3) 2013, 2014, 2015, 2016, 2017, and 2018 Price Lists of Future Trade International Travel Retail;[63] (4) 2014, 2015, 2016, 2017, and 2018 Price Lists of Minivan Enterprise;[64] (5) 2016 and 2017 Price Lists of AB Heineken Phils., Inc.;[65] and, (6) BIR's Price List per Revenue Memorandum Circular (RMC) No. 90-2012.[66]

This Court, however, finds the foregoing evidence insufficient.

During the cross-examination of Ms. Capinpin, she testified that her observation that the imported products are not available locally in reasonable quantity, quality or price, is merely based on the price lists from Absolute Sales Corporation and Future Trade International Travel Retail, Minivan Enterprise, and AB Heineken Phils., Inc., *viz*:

> "ATTY. BABARAN:
>
> Q Now, aside from Minivan and AB Heineken did you make any request from other suppliers of alcohol products?
>
> MS. CAPINPIN:
>
> A Yes I did, Ma'am. Unfortunately, the suppliers did not respond to the request and did not submit the Price List that we requested.
>
> ATTY. BABARAN:
>
> Q May I know, Ma'am, what are these stores?

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[61] Exhibit "P-49", Docket – Vol. II, pp. 1313 to 1325; Order dated October 19, 2021, Docket – Vol. III, pp. 1912 to 1914.
[62] Exhibits "P-13" and "P-13a", Docket – Vol. III, pp. 2411 to 2416.
[63] Exhibits "P-13b", "P-13c", "P-13d", "P-13e", "P-13f", and "P-13g", Docket – Vol. III, pp. 2417 to 2467.
[64] Exhibits "P-13h", "P-13i", "P-13j", "P-13k", and "P-13l", Docket – Vol. III, pp. 2468 to 2472.
[65] Exhibits "P-13m" and "P-13n", Docket – Vol. III, pp. 2473 to 2477.
[66] Exhibit "P-14", Docket – Vol. III, pp. 2478 to 2498. cm

MS. CAPINPIN:

A We particularly requested from Duty Free Philippines, from Philippine Wine Merchants, but unfortunately we did not receive any response.

ATTY. BABARAN:

Q Was it done through a letter and you made the request, you signed the same or any other from your staff? Any other person?

MS. CAPINPIN

A I made a request through phone for the Philippine Wine Merchants.

ATTY. BABARAN:

Q So, it is only through phone, it's not a formal request?

MS. CAPINPIN

A Yes.

ATTY. BABARAN:

Q What about from Duty Free?

MS. CAPINPIN

A From Duty Free Philippines we made a written request, however, they did not respond.

xxx xxx xxx

ATTY. BABARAN:

Okay.

Q So, Ma'am, in saying that these alcohol products you purchased locally are cheaper, ah, imported are cheaper, that it is not available locally in reasonable price, quantity or quality. In saying so, you based this statement on the price that you got from these four (4) sources, am I correct?

MS. CAPINPIN

A Yes, Ma'am.

xxx xxx xxx

JUSTICE DEL ROSARIO:

Yes.
Just a few clarificatory questions.

Ms. Capinpin, follow-up on the cross-examination conducted by the respondent. Did I understand you correctly that the basis of the prices you mentioned in your Judicial Affidavit are all based on queries without actual purchase of the alcoholic products? They are just based on queries?

MS. CAPINPIN

A Yes, your Honors.

JUSTICE DEL ROSARIO:

And, the communication, whatsoever conducted with respect to wholesale purchase and as to the terms of or mode of payment or arrangement, there has been no arrangement to that effect, with respect to the supplies?

MS. CAPINPIN:

A The basis of the purchase was based on comparison from the local, (interrupted).

JUSTICE DEL ROSARIO:

Comparison from what is being sent to you, which is not under oath at that time and which is just listed, but there's actually no negotiation ever conducted between Philippine Airlines, as well as the supposed suppliers?

MS. CAPINPIN:

A There was no negotiation at that time, your Honors, because we have seen it, the prices from the local suppliers were already very high and as compared to the imported (inaudible).

JUSTICE DEL ROSARIO:

Are you involved in actual purchase? Are you involved in the actual purchase of supplies? *cm*

MS. CAPINPIN:

A Yes, your Honors.

JUSTICE DEL ROSARIO:

I'm sure you are aware that the listed price is always different from the actual purchase of any commodity by a buyer, is it not?

MS. CAPINPIN:

A Yes, your Honors. But then we requested for the, (interrupted).

JUSTICE DEL ROSARIO:

Just answer the question so as to abbreviate.

MS. CAPINPIN:

A Yes, your Honors.

JUSTCE DEL ROSARIO:

So, ordinarily, even if you look into online sales when there is an actual bulk purchase the price is always different from what is listed. That is an ordinary practice of the trade. You are aware of that?

MS. CAPINPIN:

A Yes, your Honors, I am aware of that.

xxx xxx xxx

JUSTICE DEL ROSARIO:

No. The point is, the point is not for negotiation. Is there anything in writing wherein you already make a proposed or negotiated price of the product? Because you already know in the past, in several instances that they are selling higher, so, and you already have an amount in mind that insofar as the quotation is concerned on imported products/imported beverage, you already have the price.

So there has been no instance in writing wherein you already indicated in your letter to the supplier that you are willing to purchase several beverages if they are willing to pay or to sell at a price that you already have in mind, which is lower that the imported product?

MS. CAPINPIN:

A Your Honors, we do send e-mails to negotiate and asked them to give the best price.

JUSTICE DEL ROSARIO:

Only the best price?

MS. CAPINPIN:

A The best price.

JUSTICE DEL ROSARIO:

But you never give them a price lower that the imported cost?

MS. CAPINPIN:

A No, your Honors. We don't mention any price to them. We just give them the liberty to propose to us the best price.

JUSTICE DEL ROSARIO:

Yes.

Because ordinarily, if you are a businessman you wanted to buy at a lower cost and there's nothing that would prevent you from telling your supplier already that we can purchase this imported ones at this price, now, can you give us a lower price. You never did it, correct? There has been no exercise to that effect?

MS. CAPINPIN:

A Well, we do asked them for a lower price, however, (interrupted).

JUSTICE DEL ROSARIO:

Yes. But (inaudible). The point is, I'm asking you there is already a specific price because you have been already made in all these transactions in the past. So, if it is just a pro-forma practice that you get the list but certainly you already know that the price is only going to be used for the purpose of the request but there is already in your mind a pre-determination to purchase from abroad.

That's why the Court would like to ascertain whether you are doing the right thing because there are certain government interests here, there are tax impositions. So, in fairness to you and in fairness to the government, that's why the question is like that.

So there has been no instance in writing wherein you sent communication to the sources telling them that if they are willing to sell at a price lower than the imported cost you would have purchased for them. You never did that in writing?

MS. CAPINPIN:

A We do, your Honors, we send e-mails to them.

JUSTICE DEL ROSARIO:

Specifying the price?

MS. CAPINPIN:

A Without specifying the exact price that we are buying but we are, (interrupted).

JUSTICE DEL ROSARIO:

All right.

Because you have been explaining something that is not part of the question. Just understand the question.

Anyway, more or less the Court understands now why you have been making the importations. Only, you are making the importations because you get hold of a price list from sources. From sources wherein in the past you have already determined that the prices are always higher. And, since in the past the prices are always higher you never dared to write them in writing to lower the price so that they would be competitive or that you will be able to purchase locally.

> At any rate, more or less, the Court understands now." [67]

Based on the foregoing disquisitions, petitioner failed make an effort to look for a supplier or dealer that can offer a price lower than the price of the subject imported alcohol products.

The Court cannot simply rely on the product price lists from four (4) dealers, and the testimony merely based thereon. It is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country.

Lacking corroborating evidence to prove that the price lists of Absolute Sales Corporation and Future Trade International Travel Retail, Minivan Enterprise, and AB Heineken Phils., Inc., represent the local market prices for the subject alcohol products for the period August 2014 until February 2018 vis-à-vis the totality of local suppliers who are engaged in selling similar products in the same years, this Court cannot conclude that petitioner's comparison of the prices of its imported alcohol products with that of the said dealers is deemed sufficient. Likewise, considering that RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's imported alcohol products for 2014 to 2018 with that of the said price survey.

Furthermore, as elicited from the Court's questioning of petitioner's witness, there is no showing that local suppliers cannot reasonably match their selling price to the cost of importation of the same products in the quantities and qualities purchased by petitioner.

Simply put, with the evidence presented by petitioner, the Court cannot determine, with certainty, that said products are not available locally in reasonable quantity, quality or price.

As regards its importation of tobacco products, petitioner failed to offer supporting evidence through which the Court

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[67] Transcript of Stenographic Notes (TSN) at the hearing held on October 19, 2021, pp. 14 to 20, 25 to 29.

can verify the statements made by Ms. Capinpin in her Judicial Affidavit. Petitioner failed to submit, at the very least, price lists of tobacco products which indicate the local market prices of the said products. *Apropos*, the testimony of Ms. Capinpin, standing alone, is insufficient to ascertain whether the subject tobacco products were, indeed, not locally available in reasonable quantity, quality or price.

In sum, petitioner failed to present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation. Such being the case, petitioner has not fulfilled all conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590. Thus, this Court finds no erroneous or illegal excise taxes that are refundable in favor of petitioner.

Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[68] Petitioner, unfortunately, failed to discharge this burden.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[68] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005.

Marian Ivy F. Reyes-Fajardo
(With Concurring and Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

am

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA Case No. 10311** Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 3 0 2023; 2:03PM

x---x

CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, *J.*:

I agree with the *ponencia* of my esteemed colleague Associate Justice Catherine T. Manahan that petitioner is not entitled to refund of excise taxes paid on importations of *cigarettes* because the latter failed to prove that said product are not locally available in reasonable quantity, quality, or price, as required for the tax exemption thereof, under Section 13(b)(2) of Presidential Decree (PD) No. 1590.[1]

On petitioner's refund of excise taxes paid on *wines and liquors*, imported from August 2014 to February 2018, I also concur with the *ponencia* that petitioner convincingly established: (1) its payment of pertinent corporate income tax; and (2) its supplies are imported for use in its transport or non-transport operations and other incidental activities.

My dissent lies on the *ponencia's* denial of petitioner's refund claim of excise taxes on its imported wines and liquors, because the

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

latter's evidence is deficient to demonstrate that its imported liquors and wines were *not* locally available in reasonable quantity, quality, or price.

Allow me to elaborate.

For petitioner to be exempted from the taxes it paid on its imported liquors and wines, Section 13(b) of PD No. 1590 requires that such articles are not locally available in reasonable quantity, quality, or price,[2] *inter alia. Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.* and *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al. (PAL)*[3] detailed the satisfactory proof to show that petitioner's imported wines and liquors are *not* locally available in reasonable quantity, quality, or price:

> Here, there is no question that the imported liquors, wines, and cigarettes were "inflight materials" used in PAL's transport/flight operations. Moreover, the Judicial Affidavit of Capinpin categorically stated that the imported goods, specifically the Carlsberg Beer in Can, the Absolut Vodka, and the Gordon's Gin, were not locally available in reasonable quantity, quality, or price. She testified that PAL imported the same because importation of said products is cheaper than buying them locally. We also note that the Tables of Comparison and supporting price lists submitted by PAL corroborated Capinpin's testimony that the imported items were not locally available in reasonable quantity, quality or price. Thus, in line with prevailing jurisprudence, We agree with PAL that the CTA erred in ruling that PAL has adequately shown its compliance with Section 13 (b) (2) of PD [No.] 1590 as regards the amount of ₱240,283.71.

The pieces of evidence considered acceptable by the Supreme Court in *PAL*, to exhibit the non-availability of imported wines and liquors locally, in reasonable quantity, quality, or price, were produced by petitioner here. Consider:

First. Cheryl V. Capinpin (Capinpin) declared that the imported alcohol products are *not* locally available in reasonable quantity, quality, or price.[4]

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2 *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, February 22, 2017.

3 G.R. Nos. 236372-75, Resolution dated January 17, 2023.

4 Answer to Question No. 7, Judicial Affidavit of Ms. Cheryl V. Capinpin (Exhibit "P-49"). Docket (Vol. II), p. 1314.

Second. Capinpin, too, professed that said wines and liquors, when imported, are cheaper compared to those locally available. Her declaration was arrived at, by comparing the local prices thereof vis-à-vis such articles' importation costs. [5]

Third. Capinpin's declarations here, are like what she attested in the proceedings before the Court in Division in *PAL*. [6]

Fourth. Capinpin's statements were reinforced by price lists from petitioner's various local suppliers. To be precise, these are: (1) 2014 and 2015 Price Lists from Absolute Sales Corporation;[7] (2) 2014 to 2018 Price Lists from Future Trade International Travel Retail;[8] and (3) 2014 to 2018 Price Lists from Minivan Enterprise;[9] and (4) 2016 and 2017 Price Lists from AB Heineken Phils., Inc.[10] Notably, the years stated in these price lists coincided with the periods, *i.e.*, August 2014 to February 2018, when petitioner imported its wines, and liquors.

Taking my cue from *PAL*, petitioner adequately proved that its liquors and wines, imported from August 2014 to February 2018, were *not* locally available in reasonable quantity, quality, or price.

Accordingly, I **SUBMIT** that petitioner is excused from excise tax imposition on its wines and liquors, imported from August 2014 to February 2018, pursuant to Section 13(b)(2) of PD No. 1590.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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5 Answer to Question Nos. 8 and 9, Judicial Affidavit of Ms. Cheryl V. Capinpin (Exhibit "P-49"). *Id.* at pp. 1314-1315.

6 See Answer to Question Nos. 16 and 17, Judicial Affidavit of Ms. Cheryl Capinpin in CTA Case No. 8514 (Exhibit "WWW"). Docket (CTA Case No. 8514), pp. 619-620.

7 Exhibits "P-13" and "P-13a." Docket (Vol. III), pp. 2411-2416.

8 Exhibits "P-13c," "P-13d," "P-13e," "P-13f," and "P-13g." *Id.* at pp. 2423-2467.

9 Exhibits "P-13h," "P-13i," "P-13j," "P-13k," and "P-13l." *Id.* at pp. 2468-2472.

10 Exhibits "P-13m," and "P-13n." *Id.* at pp. 2473-2476.