REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PHILIPPINE AIRLINES, INC., Petitioner, - versus – **COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,** Respondents.	**CTA EB No. 1029** (CTA Case No. 8153)

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COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners, - versus – **PHILIPPINE AIRLINES, INC.,** Respondent.	**CTA EB Case No. 1031** (CTA Case No. 8153)

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COMMISSIONER OF CUSTOMS, Petitioner, - versus – **PHILIPPINE AIRLINES, INC.,** Respondent.	**CTA EB Case No. 1032** (CTA Case No. 8153) Present: **DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN** *JJ.* **Promulgated:** APR 30 2014 ArApolinario 9:25 a.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* are the following consolidated Petitions for Review, namely:

a. **CTA EB No. 1029** filed by Philippine Airlines, Inc. (PAL) against Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) on July 5, 2013[1];

b. **CTA EB No. 1031** filed by CIR against PAL on June 21, 2013[2]; and

c. **CTA EB No. 1032** filed by COC against PAL on July 12, 2013[3].

All petitions assail the Decision dated January 17, 2013,[4] and Resolution dated June 4, 2013,[5] both promulgated by the Special Second Division of this Court (or "Court in Division") in **CTA Case No. 8153**, entitled *"Philippine Airlines Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read as follows:

Decision dated January 17, 2013:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondents are hereby **ORDERED** to **REFUND** to petitioner in the amount of P2,094,985.21,representing petitioner's erroneously paid excise tax on September 5, 2008.
>
> **SO ORDERED**".

Resolution dated July 31, 2012:

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[1] CTA EB No. 1029, PAL's Petition for Review, Docket, pp. 42 to 68.
[2] CTA EB No. 1031, CIR's Petition for Review, Docket, pp. 1 to 22.
[3] CTA EB No. 1032, COC's Petition for Review, Docket, pp. 5 to 26.
[4] CTA EB No. 1029, Docket, pp. 71 to 95 penned by the Associate Justice Juanito Castañeda Jr. and concurred by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.
[5] CTA EB No. 1029, Docket, pp. 96 to 104.

> "**WHEREFORE**, respondent CIR's Motion for Partial Reconsideration, COC's Motion for Reconsideration and petitioner's Motion for Reconsideration are **DENIED** for lack of merit.
>
> **SO ORDERED**".

Particularly, in **CTA EB No. 1029**, petitioner PAL prays for the setting aside of the said Decision and Resolution, and for the issuance of a new Decision declaring PAL entitled to a refund, or issuance of a tax credit certificate, for the remaining amount of P4,234,750.00, representing excise taxes paid on September 5, 2008 on its importations of various alcohol and tobacco products, in addition to the amount of P2,094,985.21 already granted by the Court in Division; while, in **CTA EB No. 1031** and **CTA EB No. 1032**, both the CIR and COC pray that the assailed Decision and Resolution be reversed and set aside and judgment be rendered denying PAL's entire claim for refund.

THE PARTIES

Philippine Airline, 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, Pasay City.

The Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal revenue (BIR), the government agency tasked with the assessment and collection of all national internal revenue taxes, fees, and charges under the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), the government agency in charge of the assessment and collections of customs duties and other lawful revenues from imported articles, including the excise taxes imposed on wines and cigarettes under Section 142 and 145, respectively of the NIRC of 1997, as amended. He holds office at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

THE FACTS

As found by the Court in Division, these are the established facts of the instant consolidated cases.

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

On January 1, 2005, Republic Act No. 9334 (RA No. 9334), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 145 and 228 of the National Internal Revenue Code of 1997, as Amended" took effect.

On February 3, 2005, then BIR Commissioner Guillermo L. Parayno, Jr. wrote then BOC Commissioner George M. Jereos, calling attention to Section 6 of RA No. 9334 and the failure of the BOC to collect excise taxes 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. In the said letter, the BIR also requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to DFP and the Freeport zones be immediately collected.

On February 4, 2005, then BOC Commissioner Jereos issued a Memorandum to BOC officers and personnel, directing them to effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones.

On March 1, 2005, then COC Alberto D. Lina issued Customs memorandum Order No. 13-2005 (CMO 13-2005), which provides for 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 for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Regulation No. 12-2004.

Hence, PAL's subsequent importations of wine, liquor, and cigarettes needed for its international flights' consumption were subjected to payment of excise tax and also withheld release from the customs ports pending the payment of taxes, duties, and fees.

PAL's importation commissary supplies consisting of liquors, wines and assorted cigarettes subject of the instant claim arrived in Manila, on the following dates:

Date of Arrival	Description of Goods	Informal Import Declaration and Entry No.	Airway Bill No.	Authority to Release Imported Goods (ATRIG) No.	Excise Taxes (Php)
Oct. 3, 2007	Mild Seven Lights, Mild Seven Super Lights, Salem menthol, Salem Lights	10284	079-2999-042-4	00000811	899,070.00
Oct. 27, 2007	Mild Seven Lights, Mild Seven Super Lights, Salem Menthol, Salem Lights	11752	079-29999094-0	00000807	846,950.00
Nov. 5, 2007	West Full Flavor, West Ice	11757	079-2999106-5	00000851	416,960.00
Nov. 15, 2007	Jack Daniels Whisky, CuttySark	12345	079-2999-120-5	00008837	360,557.57
Nov. 16, 2007	Winston Red KS & Winston Lights	12048	079-2999121-6	00007636	560,290.00
Dec. 1, 2007	J&B Rare Scotch Whisky	12353	079-2999164-0	00008835	352,719.36
Dec. 3, 2007	Royal Salute Scotch Whisky, Chivas Regal	13331	079-2999163-6	00008842	500,894.15
Dec. 17, 2007	Mild Seven Super Lights, Salem Lights, Winston Red KS, Winston Lights KS	13370	079-2999174-3	00008846	1,003,310.00
Dec. 14, 2007	Camus VSOP Cognac Elegance	13359	079-3012629-4	00008843	146,313.22
Dec. 14, 2007	Camus Cognac VSOP Elegance 70cl with Camus Cognac XO Elegance 5cl	13358	079-3012630-5	00008836	164,602.37
Dec. 17, 2007	Davidoff Classic, Davidoff Lights, West Ice	13388	079-2999177-6	00008847	508,170.00
Dec. 22, 2007	Absolute Blue Vodka, Piper Heidsieck Brut	13871	079-2999181-3	00008841	569,898.54
TOTAL EXCISE TAX					**6,329,735.21**

The Authority to Release Imported Goods (ATRIG) listed in the foregoing table, issued by the BIR Commissioner and addressed to the BOC Commissioner, provided 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 and is subject to the payment of "Excise Tax under xxx of the Tax Code. Furthermore, the ATRIGs provided that the aforementioned shipment may now be released from your custody after the payment of the abovementioned taxes".

On September 5, 2008, PAL paid under protest to the BOC the amount of P6,329,735.21, representing the excise taxes on the said importation of commissary supplies consisting of liquors and assorted cigarettes.

On March 5, 3009, PAL filed an administrative claim for refund dated February 23, 2009 with the CIR for the refund of the amount of P6,329,735.21, representing its excise tax paid on September 5, 2008 through the BOC, for the subject importation of liquors and cigarettes. Due to CIR's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund under the NIRC of 1997, as amended, PAL filed a Petition for Review before the Court in Division on September 2, 2010 docketed as CTA Case No. 8153.

On September 28, 2010, CIR filed her Answer interposing certain Special and Affirmative Defenses.

On November 25, 2010, upon motion of PAL's counsel, the Court in Division declared COC in default for failure to submit his Answer and Pre-trial Brief.

During trial, PAL presented as witnesses Joseph Brian T.L. Tan, PAL's Manager-Aircraft Materials Purchasing Division; Ma. Evelyn L. Taghap, its Manager-Tax Services Division; and Victor Santos, PAL's Assistant Vice President in charge of Catering and In-flight Materials Purchasing Sub-department. Thereafter, on January 3, 2012, PAL filed its Formal offer of Evidence, submitting Exhibits "A" to "WW-4", inclusive of sub-markings, which were admitted by the Court in Division in Resolutions dated January 18, 2012, April 11, 2012 and June 25, 2012.

On the other hand, the CIR and COC, through their respective counsels, manifested that they have no witness to present. Hence, the Court in Division granted the parties thirty (30) days from April 23, 2012 or until May 23, 2012 to file their respective Memoranda.

On August 16, 2012, the case was submitted for decision taking into consideration COC's Memorandum[6] filed on June 6, 2012, CIR's Memorandum[7] filed on August 1, 2012 and PAL's Memorandum[8] filed through registered mail on August 2, 2012 and

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[6] Division Docket, pp. 788 to 816.
[7] Division Docket, pp. 830 to 854.
[8] Division Docket, pp. 855 to 874.

received by the Court on August 14, 2012.[9]

On January 17, 2013, the Court in Division rendered the assailed Decision, partially grating PAL's claim in the reduced amount of P2,094,985.21, representing excise tax paid on September 5, 2008 covering PAL's importation of liquors as commissary supplies.[10]

The CIR and COC separately filed a Motion for Reconsideration of the assailed Decision on January 31, 2013[11] and February 6, 2013[12], respectively, while PAL filed a Motion for Partial Reconsideration on February 12, 2013[13].

In the assailed Resolution dated June 4, 2013[14], the Court in Division denied all Motions for Reconsideration for lack of merit.

Unconvinced, PAL, the CIR and the COC filed separate Petitions for Review before the Court *En Banc,* docketed as CTA EB No. 1029, CTA EB No. 1031 and CTA EB No. 1032, respectively.

In the Resolution dated July 9, 2013[15], the Court *En Banc* ordered the consolidation of CTA EB Case No. 1031 with CTA EB Case No. 1029, pursuant to Section 1, Rule 31 of the Revised Rules of Court.

On July 24, 2013, the Court *En Banc* required the CIR and the COC to file their respective Comments on PAL's Petition for Review in CTA EB Case No. 1029; while PAL was directed to file its Comment on CIR's Petition for Review in CTA EB Case No. 1031, within ten (10) days from receipt of notice.[16] In compliance thereto, the CIR and the COC, respondents in CTA EB No. 1029, filed their Comment on August 14, 2013[17] and October 1, 2013, respectively; while PAL, respondent in CTA EB Case No. 1031, filed its Comment on August 27, 2013[18].

Thereafter, the Court *En Banc* ordered the consolidation of CTA EB No. 1032 with CTA EB Nos. 1029 and 1031 in the Resolution

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[9] Resolution dated August 16, 2012, Division Docket, p. 876.
[10] Division Docket, pp. 887 to 911.
[11] Division Docket, pp. 912 to 923.
[12] Division Docket, pp. 988 to 998.
[13] Division Docket, pp. 931 to 965.
[14] Division Docket, pp. 1039 to 1047.
[15] CTA EB No. 1029, Docket, pp. 263 to 264.
[16] CTA EB No. 1029, Docket, pp. 267 to 268.
[17] CTA EB No. 1029, Docket, pp. 269 to 276.
[18] CTA EB No. 1029, Docket, pp. 277 to 289.

dated September 24, 2013[19].

On October 30, 2013[20], the Court *En Banc* gave due course to the parties' Petitions for Review and directed them to submit their respective memoranda.

The CIR filed a Manifestation on November 18, 2013[21] stating that she is adopting the Petition for Review filed in CTA EB No. 1031 as her Memorandum for said case and her Comment/Opposition to the Petition for Review in CTA EB No. 1029 as her Memorandum for said entitled case, as compliance to the Court's Resolution dated October 30, 2013. Said Manifestation was noted by Court *En Banc*.[22]

Subsequently, PAL filed its Memorandum on December 5, 2013[23] while the COC filed his Consolidated Memorandum on December 12, 2013[24].

On January 22, 2014, the consolidated petitions were deemed submitted for decision.[25]

Hence, this Decision.

THE ISSUES

In **CTA EB No. 1029**, PAL raises two (2) issues in its Petition for Review, as follows:

> WHETHER PAL HAS SUFFICIENTLY PROVED THAT THE SUBJECT IMPORTED CIGARETTES ARE NOT LOCALLY AVAILABLE IN RESONABLE QUANTITY, QUALITY OR PRICE.
>
> WHETHER PAL IS ENTITLED TO THE REFUND OF EXCISE TAX IN THE AMOUNT OF P4,234,750.00 ON ITS IMPORTED CIGARETTES DESPITE THE LACK OF PRICELIST FOR LOCALLY AVAILABLE PRODUCTS.

In **CTA EB No. 1031**, the CIR raises a sole issue in her Petition

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[19] CTA EB No. 1029, Docket, pp. 308 to 309.
[20] CTA EB No. 1029, Docket, pp. 314 to 315.
[21] CTA EB No. 1029, Docket, pp. 316 to 317.
[22] CTA EB No. 1029, Docket, p. 320.
[23] CTA EB No. 1029, Docket, pp. 322 to 347.
[24] CTA EB No. 1029, Docket, pp. 348 to367
[25] CTA EB No. 1029, Docket, pp. 370 to 372.

for Review, to wit:

> WHETHER OR NOT PAL IS ENTITLED TO A TAX REFUND IN THE REDUCED AMOUNT OF P2,094,985.21 REPRESENTING ALLEGED ERRONEOUSLY PAID EXCISE TAX ON 5 SEPTEMBER 2008.

Finally, in **CTA EB No. 1032**, the COC raises the following issues in his Petition for Review, namely:

> WHETHER R.A. NO. 9334 AMENDED SECTION 13 OF P.D. NO. 1590.
>
> WHETHER THE SUBJECT ARTICLES ARE NOT LOCALY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE.

The COC argues that Sections 6 and 10 of Republic Act No. 9334 (RA No. 9334)[26] expressly modified, amended and repealed PD No. 1590 insofar as excise tax is concerned; that RA No. 9334 is a special law as it treats of a very specific matter, *i.e.* excise tax on alcohol and tobacco importations while Presidential Decree No. 1590 (PD No. 1590)[27] is a general law as it deals only with PAL's general tax privilege, without particular mention of excise tax; and that the absolute and mandatory tenor of RA No. 9334 demonstrate the intent of Congress to impose excise tax on all alcohol and tobacco importations – including PAL's.

The COC further points out that assuming arguendo that PAL is still entitled to the tax privilege under Section 13 of PD No. 1590, PAL nevertheless failed to show that the articles it imported were not locally available in reasonable quantity, quality and price. As regards PAL's importation of alcohol products, the COC avers that the comparative table presented by PAL showing the cost of importing and cost of locally purchasing the subject alcohol products has no probative value for being self-serving, incomplete, imprecise, and inaccurate. With respect to PAL's importation of tobacco products, the COC asserts that the Court in Division correctly denied PAL's claim

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[26] 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", January 1, 2005.

[27] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES, June 11, 1978.

for refund since PAL failed to present an iota of evidence showing the local prices of tobacco products to be used as basis for comparison.

Finally, the COC stresses that it was PAL's burden to prove its entitlement for refund of excise taxes paid on its importations, albeit, by mere preponderance of evidence; but in this case, PAL's evidence was unconvincing.

On the other hand, the CIR contends that Section 131 of the NIRC of 1997, as amended by RA No. 9334 expressly withdrew the conditional tax exemption granted to PAL under Section 13 of PD No. 1590; that Section 6 of RA No. 9334 repeals any inconsistent provision whether contained in general or special statues like PD No. 1590; that Section 6 mandates the collection of excise taxes on importations of cigars, cigarettes and liquors without distinction; and that in the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue*[28] the Supreme Court recognized the "express amendment" of a legislative franchise by a general law.

Moreover, the CIR maintains that even assuming that Section 13 of PD No. 1590 was not amended by RA No. 9334, PAL's claim for refund must still fail because PAL failed to prove that the commissary supplies are not local available in reasonable quantity, quality and price. According to the CIR, the testimony of PAL's own employee certifying that imported products are not locally available at reasonable price is highly self-serving.

For its part, PAL asserts that RA No. 9334 is not a special law or decree contemplated by Section 24 of PD No. 1590, which would "specifically modify, amend or repeal PAL's franchise or any section thereof." According to PAL, there is nothing in RA No. 9334 which specifically imposes any excise tax or duties on its importation of commissary supplies, much less repeal its exemption from all taxes and duties under its franchise.

PAL avers that while Section 13 of PD No. 1590 was amended by Republic Act No. 9337[29] (RA No. 9337), the amendment introduced by RA No. 9337 only abolished the franchise tax and replace the same with value-added tax; but PAL, expressly, categorically, and unequivocally remained exempt from all other taxes and duties including excise tax on cigarettes, liquors and wine subject

[28] G.R. No. L-60126 September 25, 1985.
[29] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, July 1, 2005.

of the instant case.

PAL claims that it is entitled to the refund of excise tax in the remaining amount of P4,234,750.00 on its imported cigarettes despite the lack of pricelist for locally available products. PAL submits that it has shown, through the testimony of Mr. Victor Santos, that the imported cigarettes brands could not be secured locally with regular supply and at lower prices, considering the non-availability of prices from Duty Free Philippines, which is actually the best source of comparative prices for products imported duty-free.

According to PAL, there is no legal or factual basis for the Court in Division to disregard the testimony of Mr. Santos. The value and weight of its evidence should not be discounted merely because it was rendered by PAL's own witness. It further points out that the CIR and COC never presented an iota of evidence to disprove PAL's allegations with respect to its entitlement of exemption from excise tax on the subject importations. Considering that mere preponderance of evidence is required in a claim for refund, PAL should be allegedly be considered to have sufficiently proven its entitlement for refund or tax credit of the excise taxes paid on the subject importations.

THE COURT *EN BANC*'S RULING

The Petitions are unmeritorious.

Republic Act No. 9334 did not amend or repeal Section 13 of Presidential Decree No. 1590.

PAL anchors its claim for tax exemption on Section 13 of PD No. 1590. Pertinent portions of said provision are quoted hereunder:

> "**Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources,

without distinction as to transport or nontransport operations; provided, 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;" (*Emphasis supplied*).

Relative to the foregoing, Sections 16 and 24 of the same law provide:

'**Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires.

xxx xxx xxx

Section 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Clearly, while PAL's conditional tax exemption under its charter is subject to amendment, alteration or repeal by competent authority when public interest so requires, it may only be modified, amended or repealed **expressly by a special law or decree specifically modifying, amending or repealing the franchise or any section or provision thereof.**

The CIR and COC strongly insist that RA No. 9334 is such amendatory law. The COC reasons that RA No. 9334 is a special law and Sections 6 and 10 thereof expressly amended and repealed Section 13 of PD No. 1590 insofar as excise tax is concerned.

We disagree.

First: RA No. 9334, which took effect on January 1, 2005, is to be construed as a general law because of its universal application; while PD No. 1590, enacted on June 11, 1978, is a special law which specifically pertains and exclusively applies to PAL's franchise. To be sure, a general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class; while a special statute, as it is commonly understood, relates to particular persons or things of a class or to a particular portion or section of the state only.[30]

Significantly, in construing the provisions of the National Internal Revenue Code of 1997 and PD No. 1590, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Philippine Airlines*[31] that:

> Between Presidential Decree No. [1590], on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is 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

[30] *Liwayway Vinzons-Chato vs. Fortune Tobacco*, G.R. No. 141309, June 19, 2007 citing Agpalo, Statutory Construction, second edition (1990), p. 197.
[31] G.R. No. 180066, July 7, 2009.

> as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.

In the same vein, RA No. 9334, which amends the NIRC of 1997, must yield to the specific provisions PD No. 1590. Section 13 of PD No. 1590 is to be taken as an exception to the general rule laid down in RA No. 9334.

Second: RA No. 9334 did not expressly amend or repeal PD No. 1520 or any section or portion thereof. A cursory reading of RA No. 9334 reveals that nothing therein specifically modified, amended or repealed Section 13 of PD No. 1520 in relation to PAL's excise tax exemption.

Both the CIR and COC cite Sections 6 and 10 of RA No. 9334 as relevant, *viz*:

> SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
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> > SEC. 131. *Payment of Excise Taxes on Imported Articles.* -
> >
> > (A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
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> > xxx xxx xxx
> >
> > 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: "
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> xxx xxx xxx
>
> SEC. 10. *Repealing Clause.* - 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.

Contrary to the COC and CIR's claim, Section 6 of RA No. 9334 could not have expressly amended Section 13 of PD No. 1590 to the effect of withdrawing PAL's excise tax exemption. Undeniably, the phrase "*The provision of any special or general law to the contrary notwithstanding*" appearing therein is not an express amendment inasmuch as it fails to identify specific laws or statutes which RA No. 9334 amends or modify. [32]

Furthermore, while Section 6 enumerates the statutes to which said amendatory act applies, it failed to include PD No. 1590 or any section thereof as among those statutes or provisions covered by RA 9334. Had Congress intended to subject PAL's importation of commissary supplies to excise taxes, knowing that Section 24 of its franchise requires an express amendment or repeal, it could have simply included PD No. 1590 among those laws to which excise tax on importations apply.

Neither can it be said that Section 10 of RA No. 9334 expressly repealed Section 13 of PD No. 1590. There is an express repeal when the repealing clause declares that a particular and specific law, identified by its number or title, is repealed; all other repeals are implied repeals. [33]

Anent the CIR's reliance on the case of *Cagayan Electric Power*

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[32] Agpalo, Ruben E., *Statutory Construction 6th ed.,* Rex Publishing Company, 2009, p. 530.
[33] Agpalo, Ruben E., *Statutory Construction 6th ed.,* Rex Publishing Company, 2009, p. 542.

& Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals, suffice it to state the said case is not in point.

Notably, the legislative franchise granted to Cagayan Electric Power & Light Co., Inc. (CEPALCO) was not entirely similar to PAL's franchise. This Court reiterates that Congress intended that PAL's franchise may only be modified, amended or repealed expressly by a special law or decree specifically modifying, amending or repealing any portion or section thereof – a condition not accorded to CEPALCO under its franchise.

Third: Section 22 of Republic Act No. 9337, enacted following RA No. 9334, reinforces Our finding that PAL's excise tax exemption was not withdrawn with the enactment of RA No. 9334. Apart from abolishing PAL's liability for franchise tax and in turn subjecting PAL to corporate income tax and value-added tax, RA No. 9337 acknowledged and retained PAL's exemption from taxes, duties, royalties, license and other fees and charges provided under PD No. 1590.

Section 22 of RA No. 9337 provides:

> 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.**

Therefore, the Court in Division is correct in ruling that RA No. 9334 did not expressly amend or repeal Section 13 of PD No. 1590; much less withdraw PAL's excise tax exemption under its franchise.

PAL was able to establish its entitlement to refund of excise tax paid on importations of liquors in the amount of P2,094,985.21.

In partially granting PAL's claim for refund, the Court in Division ruled:

> After a careful evaluation of the evidence presented, this Court finds that petitioner was able to substantially prove that it paid its basic corporate income tax liability for the fiscal year ending March 31, 2008, as well as the value-added tax for the fiscal year ending March 31, 2008; that the articles imported by petitioner for its commissary and catering supplies, consisting of liquors, were intended to be used in its transport and non-transport operations and other activities incidental thereto; that the imported articles were not locally available at reasonable prices, and that it paid to the Bureau of Customs the amount of P6,329.735.21, which includes the liquors as shown in the ATRIG Nos. 00008837, 00008835, 00008842, 00008843, 00008836, and 00008841.
>
> However, petitioner's claim for refund of the excise tax paid on importations of various cigarettes must fail.
>
> While petitioner substantially proved compliance with the requirements, however, it failed to discharge the burden of proof on whether the said cigarettes were not locally available in reasonable quantity, quality or price.
>
> The Court notes that petitioner failed to submit a price list of cigarettes from local suppliers or dealers.
>
> xxx xxx xxx
>
> The Court is not convinced since the said testimony are unverifiable and self-serving, as no other supporting

> documents were presented before this Court to prove that said cigarettes were not locally available in the required quantity, quality or price. It would have been useful for petitioner if for example, it presented to the Court a certification from local dealers of cigarettes that they cannot supply petitioner of enough cigarettes with said brands for its catering and inflight use. And if they had such products, a list of the corresponding selling prices should have been also presented. In the absence thereof, the Court cannot determine whether the cost of importing cigarettes is lower than purchasing then locally.

The COC and CIR argue that PAL failed to prove that the subject alcohol products are not locally available in reasonable quantity, quality or price.

On the other hand, PAL contends that in addition to the amount of P2,094,985.21, it is entitled to a refund of the remaining amount of P4.234,750.00 representing excise taxes paid on its importations of cigarette products despite the lack of pricelist for locally available products.

In order to be exempted from payment of taxes, duties, charges, royalties, or fees due on all importations commissary and catering supplies, it is imperative for PAL to prove, among others, that the imported articles, supplies or materials are **not locally available in reasonable quantity, quality or price.**

After a meticulous perusal of the totality of evidence presented in the instant case, We are convinced that PAL has sufficiently established that the alcohol products it imported are not locally available in reasonable price; but fell short of proving the non-availability of the imported cigarettes at reasonable quantity, quality or prices in the local market.

In offering as evidence the testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing, together with the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, Philippine Wine Merchant's January 11, 2007 Price List, and Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010, PAL made out a *prima facie* case that the cost of importing the subject alcohol products were indeed reasonably cheaper than purchasing them locally. And PAL's evidence remained unrebutted as both CIR and COC failed to present any controverting evidence to show otherwise.

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[34] This strict construction necessitates that the claimant create a prima facie case in his favor.

However, when a prima facie case is established, the burden of evidence or the burden of going forward with the evidence shifts to the defensive party. It is now incumbent upon the defensive party to meet the prima facie case which has been established.[35]

On the other hand, as regards its importation of cigarette products, PAL failed to offer other supporting evidence through which the Court can verify the statements made by Mr. Santos in his Judicial Affidavit. The testimony of Mr. Santos, standing alone, is insufficient to ascertain whether the subject cigarette products were, indeed, not locally available reasonable quantity, quality or price.

In the light of the foregoing discussions, the Court *En Banc* finds no cogent reason to disturb the findings of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the above-captioned Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 17, 2013 and Resolution dated June 4, 2013 promulgated by the Court in Division in CTA Case No. 8153, are hereby **AFFIRMED *in toto***.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

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[34] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.
[35] Caraig, Benjamin R., *Revised Rules Of Evidence 3rd ed.,* Caraig Publishing House, 2006, p. 306.

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC. , Petitioner,	**CTA EB NO. 1029** (CTA Case No. 8153)
- versus –	
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	

x---x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners,	**CTA EB NO. 1031** (CTA Case No. 8153)
- versus -	
PHILIPPINE AIRLINES, INC., Respondent.	

x---x

COMMISSIONER OF CUSTOMS, Petitioner,	**CTA EB NO. 1032** (CTA Case No. 8153)
	Present:
- versus -	**DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.***
PHILIPPINE AIRLINES, INC., Respondent.	**Promulgated:** APR 30 2014 9:25 a.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

In her *ponencia*, my learned and well-respected colleague, the Honorable Associate Justice Erlinda P. Uy, affirms the assailed Decision and Resolution of the Court in Division which ordered the refund of excise tax paid by Philippine Airlines, Inc. (PAL) on September 5, 2008, in the amount of P2,094,985.21, on its importations of liquors.

With utmost respect, I dissent.

The crux of the controversy boils down to whether or not the excise tax exemption granted to PAL under PD No. 1590 on its importation of cigarettes and liquors has been repealed.

On June 11, 1978, PD No. 1590 was issued wherein PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials.

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

> "**Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

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

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

With the amendments introduced by RA No. 8424, I am of the humble view that **importation by PAL of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes**. Section 131 of the 1997 NIRC provides that: OM

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

'TITLE I

Organization and Function of the Bureau of Internal Revenue

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

"SECTION 131. Payment of Excise Taxes on Imported Articles. —

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

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

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

xxx xxx xxx.

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

In other words, Section 131 of the 1997 NIRC clearly provides that importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise taxes - - *"the provision of any special or general law to the contrary notwithstanding."* The **only exceptions** specified therein are those importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the **Subic Special Economic and Freeport Zone**, the **Cagayan Special Economic** Zone and Freeport, and the **Zamboanga City Special Economic Zone**, as well as those importations of cigars and cigarettes, distilled spirits and wines **by a government-owned and operated duty-free shop**, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334, then made applicable the imposition of excise tax on importations of cigars, cigarettes, distilled spirits, fermented liquors and wines even if they are brought directly into the duly chartered or legislated freeports, *viz.*:

> "SEC. 131. Payment of Excise Taxes on Imported Articles. —
>
> (A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> **The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227, the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may**

> **hereafter be established or created by law:** Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on introduction into the Philippine customs territory.
>
> Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.
>
> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

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

Based on the foregoing, the exemption of PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 **was actually withdrawn as early as January 1, 1998 with the enactment of RA No. 8424 albeit RA No. 9334 later expanded**

the list of importations which are subject to excise taxes. Under Section 131 of the NIRC of 1997, as amended by RA No. 9334, any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, **fermented liquors** [2] and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. Fermented liquor was simply added as among the items subject of taxation.

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

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

The above-cited Section of RA No. 8424 is explicit and clear. In enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

It may not be amiss to point out that Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. **PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes.** This shows the clear intent of the legislature to withdraw the tax exemption previously granted to PAL on its importation of afore-stated articles pursuant to Section 13(2) of PD No. 1590.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[3] ("*Cagayan* om

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[2] Fermented liquors was included in the list of importations which shall be subject to excise tax.
[3] G.R. No. L-60126, September 25, 1985.

case"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> Xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1

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> to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

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

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

Sections 16 and 24 of PD No. 1590, as cited by petitioner, provide that:

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

I find the arguments raised by PAL bereft of constitutional moorings. PAL proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption in the mode or manner it deems proper. PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[4], *viz*: om

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

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

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

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

First. Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

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

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

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and

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> unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.
>
> These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**
>
> **While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked."** (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[5], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

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

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

[5] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

I take note of Section 22 of RA No. 9337[6], which took effect on July 1, 2005, abolishing the franchise tax provided under PAL's charter and subjecting PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement.

It is my view that at the time of the enactment of RA No. 9337, PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on PAL's importation of afore-stated articles was reenacted or restored, **although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334**.

While I am not unaware of the pronouncement of the Supreme Court in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*,[7] it is my position that the same is not applicable to the present case. For one, in *Philippine Airlines, Inc.*, the Supreme Court, **in re-confirming PAL's tax exemption under its franchise, made a specific reference only to PAL's excise tax exemption on petroleum products**. In contrast, the present case involves excise tax on importation of cigarettes and liquors. While Section 131 of RA No. 8424 (1997 NIRC) withdrew PAL's excise tax exemption on importation of cigarettes and liquors by the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*", PAL's exemption from both direct and indirect taxes on its importation of petroleum products remained even after the enactment of RA No. 8424 (1997 NIRC).

Note that in *Philippine Airlines, Inc.,* the Supreme Court merely clarified that with regard to PAL's purchases of *petroleum products*, LOI 1483 divested PAL of its tax exemption on purchases of domestic petroleum products for use in its domestic operations but not PAL's exemption from excise tax on its importation of petroleum products, *viz.*:

> "B. Coverage of LOI 1483.
>
> LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic

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[6] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES
[7] G.R. No. 198759, July 1, 2013.

petroleum products for use in its domestic operations. It pertinently provides:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the **tax-exemption privilege granted to PAL on its <u>purchase of domestic petroleum products for use in its domestic operations</u> is hereby withdrawn**. (Emphasis and underscoring supplied)

On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL.

The Court disagrees.

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

Viewed within the context of **<u>excise taxes</u>**, it may be observed that the **<u>first kind</u>** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **<u>second kind</u>** of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **<u>third kind</u>** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" — **which characterizes the tax privilege LOI 1483 withdrew — <u>refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale</u>** and **<u>does not, in any way, pertain to any of PAL's tax privileges concerning imported goods</u>**, may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported

> goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:
>
> ***First***, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.
>
> ***Second***, examining its context, certain "whereas clauses" in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist."

There is no dispute that PD No. 1590 is valid in so far as PAL's exemption from excise tax on its importation of aviation fuel is concerned since there is nothing in RA No. 8424 which removed said excise tax exemption. But as to PAL's importations of cigarettes and liquors, their exemption from excise tax as granted in PD No. 1590 is no longer valid as it was repealed or modified by Section 131 of RA No. 8424 (1997 NIRC) by the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*".

In fine, I submit that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of PAL from excise taxes on its importations of cigarettes and liquors has been withdrawn. Hence, when PAL paid the excise taxes on September 5, 2008 for its importations of liquors, during which Section 131 of RA No. 8424 (1997 NIRC), as amended by RA No. 9334 is effective, PAL is subject to excise tax on said importations. Accordingly, PAL is not entitled to the refund of the amount of P2,094,985.21, representing the excise taxes that PAL paid on its afore-stated importations of liquors.

In this regard, I vote to DENY the Petition for Review filed by PAL and GRANT the Petitions for Review filed by the Commissioner of Internal Revenue and the Commissioner of Customs.

ROMAN G. DEL ROSARIO
Presiding Justice