REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2639
(CTA Case No. 9913)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
SEP 30 2025 3:05 PM

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RESOLUTION

***FERRER-FLORES, J.*:**

For this Court's resolution are the following:

1. **Motion for Reconsideration (Re: Amended Decision promulgated 28 May 2024)** filed by Commissioner of Internal Revenue (CIR/respondent) on June 14, 2024 *("CIR's Motion for Reconsideration")*, with **Comment (To: Respondent's Motion for Reconsideration)** filed by Philippine Airlines Inc. (PAL/petitioner) on September 16, 2024; and,

2. **Motion for Reconsideration (Re: Amended Decision dated 28 May 2024)** filed by PAL on June 28, 2024, with **Opposition (Re:**

Motion for Reconsideration of the Decision dated 28 May 2024) filed by the CIR on August 30, 2024.

Both parties move for reconsideration of the *Amended Decision* dated May 28, 2024 (**assailed Amended Decision**),[1] wherein the Court partially granted PAL's *Motion for Reconsideration*, the dispositive portion of which reads:

> **WHEREFORE**, petitioner Philippine Airlines, Inc.'s *Motion for Reconsideration (Re: Decision dated June 22, 2023)* is **PARTIALLY GRANTED**. Let this case be **REMANDED** to the Court in Division for the determination of the refundable amount insofar as the excise taxes erroneously paid on its importation of alcohol products from **January to March 2013**.
>
> **SO ORDERED.**

To recall, in the assailed Amended Decision, this Court held that PAL was able to sufficiently prove its compliance with the *third* condition for exemption from excise tax pursuant to Section 13(b)(2) of Presidential Decree (P.D.) No. 1590[2] — that the imported articles were not locally available in reasonable quantity, quality or price — **but only insofar as the 2013 importations of alcohol products are concerned**.

Hence, the instant *Motions for Reconsideration*.

PAL's Motion for Reconsideration

In its *Motion for Reconsideration*, PAL insists that the Court erred in partially denying its claim for refund of excise taxes on its importations of alcohol products as part of its in-flight and commissary supplies in 2012 ("2012 importations") for failure to prove compliance with the *third* condition. PAL points out that the *2010 BIR Price Survey* or Revenue Memorandum Circular (RMC) No. 90-2012,[3] taken together with the 2013 Price Lists, are sufficient to determine that the alcohol products imported in 2012 were not locally available in reasonable quantity, quality, or price. According to PAL, the previous PAL cases cited by this Court made no distinction as to the period covered by the price lists so long as it is clear from the entirety of the evidence presented that local prices are significantly higher than those of PAL's imported products. PAL claims that, in a number of PAL cases before this Court, the price lists, albeit for different periods, were

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[1] *Rollo*, pp. 141 to 168.
[2] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.
[3] Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, December 27, 2012.

deemed sufficient proof of the *third* condition. PAL avers that, should the Court impose stringent and unreasonable requirements on PAL's tax exemption, it would be difficult, if not impossible, for PAL to exercise the privilege its franchise sought to achieve.

On the other hand, the CIR avers that it is incumbent upon PAL to prove that it is entitled to the refund sought and that PAL failed to discharge its burden of establishing its claim for a tax refund or credit. Being in the nature of tax exemptions, claims for refund are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

The CIR's Motion for Reconsideration

In his *Motion for Reconsideration*, the CIR heavily relies on the discussion of the Court in different cases[4] involving the similar claims for refund based on PAL's exemption from excise taxes on its imported alcohol products. Particularly, the CIR cites the discussions therein on the third condition for the excise tax exemption which PAL allegedly failed to comply with (i.e., that the imported articles were not locally available in reasonable quantity, quality or price). Accordingly, the CIR argues that it is incumbent upon PAL to prove that it is entitled to the refund sought and that PAL failed to discharge its burden of establishing its entitlement to the same.

On the other hand, PAL counters that the case cited by the CIR is not yet final and still under appeal; thus, it still lacks legal weight to serve as reliable basis for the CIR's *Motion*. Furthermore, PAL also points out that the Dissenting Opinions cannot be cited as precedents and do not constitute legal doctrine. Instead, PAL emphasizes that, in several decisions of the Supreme Court involving the same parties and the same issues, the High Court has ruled, with finality, that the *Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies* is more than sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.

We resolve.

After an evaluation of the respective arguments raised by the parties, this Court finds both parties' *Motions for Reconsideration* bereft of merit.

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[4] *Philippines Airlines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 10311, May 23, 2023; Dissenting Opinion of Associate Justice Catherine T. Manahan in *Philippines Airlines, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 2639, June 22, 2023; Dissenting Opinion of Associate Justice Jean Marie A. Bacorro-Villena in the assailed Amended Decision.

The Court shall first delve into the CIR's *Motion for Reconsideration.* A cursory reading of the said *Motion* would reveal that the arguments therein involve matters which have already been considered and exhaustively discussed by this Court in the assailed Amended Decision insofar as the sufficiency of PAL's evidence in relation to its 2013 importations are concerned.

In *Department of Energy vs. Commissioner of Internal Revenue*,[5] the Supreme Court, citing *Shangri-la International Hotel Management, Ltd. vs. Developers Group of Companies, Inc.*,[6] held that, while a motion for reconsideration, by its nature, may tend to dwell on issues already resolved in the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration, petitioners must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.

Clearly, the CIR's *Motion* failed to raise matters which are compelling enough to warrant any modification of the assailed Amended Decision.

We shall now proceed with PAL's *Motion for Reconsideration.*

PAL takes exception to this Court's conclusion that the prices of the imported products should be compared with the prices per price list covering periods which coincide with the period of importation considering that the Supreme Court, in the PAL cases, did not make a distinction as to the period of the price lists which it deemed to be sufficient as proof of the *third* condition. As such, on the basis of the 2013 price lists and *2010 BIR Price Survey*, the Court should have considered the *third* condition to have been complied with insofar as the 2012 importations are concerned. Moreover, PAL asserts that the absence of the local price list for a covered year should not be the sole consideration in determining sufficiency of proving the *third* condition.

The Court is not convinced.

At the outset, the exemption from excise tax under P.D. No. 1590 is premised on the non-availability of the imported products at a reasonable quantity, quality, or price, among others. To prove compliance with the *third* condition, PAL compared the local prices of the alcohol products with the cost of the imported products to show that the cost of importing the products are

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[5] G.R. No. 260912 (Resolution), August 30, 2023.
[6] G.R. No. 159938 (Resolution), January 22, 2007.

lower than purchasing them locally; thus, PAL concluded that the imported products are not locally available in reasonable price. The Court, however, emphasizes that, much like any other commodity, the price of alcohol products may change. Thus, it is necessary to present price list/s showing the **prevailing local price** of the subject alcohol at the time of importation in order to justify the grant of concession in the form of exemption from excise taxes. Clearly, the Court cannot just rely on the 2013 price lists as basis for transactions which occurred in the 2012 without supporting evidence that the prices therein were also the prevailing price of a specific product in 2012.

Furthermore, the Court clarifies that the absence of price list/s for the year 2012 was not the sole basis for the Court's disallowance of PAL's claim for refund of excise taxes paid on its 2012 importations. Rather, the Court found that (1) the totality of evidence presented was insufficient to establish that the alcohol products imported during 2012 were not available in reasonable price based on a validly comparable price list or any other similar document; and, (2) that the absence of certain alcohol products from the available price lists does not necessarily prove its unavailability in the local market at a reasonable quantity, quality, or price, absent any categorical statement from local suppliers attesting to such fact.

As such, the Court maintains that PAL fell short in proving that, during 2012, its imported products were not locally available in reasonable quantity, quality, or price.

All told, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Amended Decision.

WHEREFORE, premises considered, the respondent's *Motion for Reconsideration (Re: Amended Decision promulgated 28 May 2024)* and petitioner's *Motion for Reconsideration (Re: Amended Decision dated 28 May 2024)* are both **DENIED** for lack of merit.

SO ORDERED.

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

I reiterate my position joining Justice Manahan's Dissenting Opinion promulgated on June 22, 2023
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I maintain my Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

I reiterate my Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

With due respect, I reiterate my position joining Justice Manahan's D.O.

HENRY S. ANGELES
Associate Justice