REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
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AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7252, 7362 7383, 7445, 7494, 7517, 7521 & 7566**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** AUG 11 2017 2:47 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. Respondent Commissioner of Customs' **Motion for Reconsideration** filed on May 24, 2017, with petitioner Air Philippines Corporation's **Comment (to the Commissioner of Custom's** *[sic]* **Motion for Reconsideration dated 24 May 2017)** filed on June 27, 2017; and

2. Respondent Commissioner of Internal Revenue's **Motion for Partial Reconsideration Re: Amended Decision dated May 8, 2017** filed, through registered mail, on May 24, 2017, with petitioner Air Philippines Corporation's **Comment (to the Commissioner of Internal Revenue's Motion for Partial Reconsideration dated 24 May 2017)** filed on July 6, 2017.

On May 8, 2017, this Court promulgated an Amended Decision in the present consolidated cases granting petitioner's claims for refund of specific taxes it paid for various importations of Jet A-1 aviation fuel from 2003 to 2005, the *fallo* of which reads as follows:

"**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration of the Decision dated 02 October 2015** is hereby **GRANTED.** Accordingly, the Decision dated October 2, 2015 is amended to read as follows:

'**WHEREFORE,** in view of the foregoing, the Petitions for Review are **GRANTED.**

Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to petitioner Air Philippines Corporation the aggregate amount **Two Hundred Thirty-Five Million Six Hundred Thirteen Thousand One Hundred Thirty-Four Pesos and Forty-Seven Centavos (₱235,613,134.47),** representing the specific taxes paid under protest for the importation of Jet A-1 aviation fuel stated below and computed as follows:

CASE NO.	DATE OF IMPORT ENTRY	EXCISE TAXES PAID
7252	5/30/2003	29,176,500.00
	6/12/2003	14,588,250.00
	6/27/2003	14,588,250.00
	subtotal	**₱ 58,353,000.00**
7362	11/7/2003	**11,670,600.00**
7383	12/12/2003	21,494,389.94
	12/19/2003	21,494,389.94
	subtotal	**₱ 42,988,779.88**
7445	4/29/2004	14,790,905.57
	4/16/2004	14,790,905.56
	subtotal	**₱ 29,581,811.13**
7494	6/24/2004	14,827,258.75
	6/29/2004	14,827,258.75
	subtotal	**₱ 29,654,517.50**
7517	8/31/2004	14,800,180.00
	9/14/2004	14,800,180.00
	subtotal	**₱ 29,600,360.00**
7521	9/22/2004	**17,031,376.34**
7566	1/12/2005	**16,732,689.72**
	TOTAL	**₱235,613,134.57***

**with 0.10 rounding off difference compared to the subject claim.*

SO ORDERED."

SO ORDERED.

Thereafter, both respondents filed their respective Motions for Reconsideration on May 24, 2017.

In his Motion, respondent Commissioner of Customs (COC) prays that the above Amended Decision be reconsidered and a new one be rendered dismissing petitioner's consolidated Petitions for Review. Respondent COC primarily based his Motion on two grounds, *to wit:* (1) that this Court has no authority to hear and decide the present consolidated Petitions for Review considering that the assessment and collection of petitioner's excise taxes on its importation of Jet A-1 aviation fuel had long become final and immutable; and, (2) that at any rate, petitioner failed to prove its exemption from paying the assessed and collected excise taxes.

While, in its Comment, petitioner claims that respondent COC's allegations are bereft of merit and that his Motion for Reconsideration should be denied for lack of merit. Petitioner submits that jurisdiction of the present cases properly lies with this Court under Section 3(a)(1)[1] Rule 4 of the Revised Rules of the Court of Tax Appeals[2]. Petitioner further points out that respondent COC's arguments are inapplicable in the present consolidated cases since the subject matter of the controversy are claims for refund and not assessment. Petitioner likewise claims that it had sufficiently proved its entitlement for refund since it has complied with the requisites under Presidential Decree (PD) No. 1590[3].

On the other hand, in his Motion, respondent Commissioner of Internal Revenue (CIR) asserts that this Court erred in ruling that petitioner had sufficiently proven that the imported Jet A-1 aviation fuel a

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[1] **SEC. 3.** ***Cases within the jurisdiction of the Court in Divisions.*** – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[2] A.M. No. 05-11-07-CTA, November 22, 2005

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

were actually used for its transport and non-transport operations. He also insists that the said imported fuel were, in fact, locally available in reasonable quantity, quality or price.

In response, petitioner, in its Comment, basically reiterated the arguments it raised in the comment filed with respondent COC's Motion. It also prays that respondent CIR's Motion for Partial Reconsideration be denied for lack of merit and the Amended Decision dated May 8, 2017 be affirmed and upheld.

After due consideration of the arguments advanced by the respondents, this Court finds no merit in their respective Motions.

This Court shall first address respondent COC's Motion for Reconsideration. To begin with, respondent COC insists that the petitioner failed to timely pay the docket fees and other legal fees as required under Section 2308, in relation to Sections 3301 and 3303 of the Tariff and Customs Code of the Philippines (TCCP), as amended, when it filed several formal protests assailing the validity of the assessment and collection of excise taxes in the importation of Jet A-1 aviation fuel. Respondent COC also claims that the Bureau of Internal Revenue (BIR) has no authority to entertain petitioner's claims for refund since the subject matter thereof involves duties and taxes on imported goods whose enforcement rests upon the Bureau of Customs (BOC) and, which is, specifically covered by the TCCP, as amended. Henceforth, this Court has no jurisdiction over the consolidated Petitions for Review since the assessment and collection of petitioner's excise taxes had long become final and immutable.

Indeed, there is no question that a party aggrieved by an assessment issued by the Collector of Customs may assail the said assessment by filing a written protest thereof; otherwise, the action of the Collector shall become final and unappealable. If the Collector's decision is adverse to the party aggrieved, the latter can then appeal the matter to the COC, whose decision can be elevated before this Court for review. More so, an appeal to the COC shall only be perfected upon filing of a written notice of appeal; and, payment of appeal docket fee in accordance with the prescribed rates within fifteen (15) days from receipt of the notice of decision. This is the recognized procedure under the TCCP, as amended, as stated in the following provisions:

"**Section 2308.** ***Protest and Payment of Protest in Civil matter.*** — When a ruling or decision of the Collector is made whereby liability for duties, fees or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefore. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301."

"**Sec. 2312.** ***Decision or Action by Collector in Protest and Seizure Cases.*** — When a protest in proper form is presented in a case where protest in required, the Collector shall reexamine the matter thus presented, and if the protest is sustained, in whole or in part, he shall enter the appropriate order, the entry reliquidated if necessary.

In seizure cases, the Collector, after a hearing, shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper."

"**Sec. 2313.** ***Review by Commissioner.*** — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision."

"**Sec. 3301.** ***Other Fees and Charges.*** — For services rendered and documents issued by the Bureau of Customs the following fees shall be charged and collected, by affixing the documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner; and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: *x x x*"

"**Sec. 3303.** ***Effect of Failure to Affix Stamp upon Document.*** — No document or any other paper upon which no documentary customs stamps have been affixed and cancelled shall be received or recognized by any customs official."

However, emphasis must be placed on the fact that the foregoing is applicable only to protestable and seizure cases. Unfortunately, it finds no application in the present consolidated cases since the controversy involved herein are claims for refund of erroneously paid taxes. This Court finds the ruling in the case of *PILIPINAS SHELL PETROLEUM CORPORATION vs. COMMISSIONER OF CUSTOMS, ET AL.*[4], as instructive on the matter, *viz:*

"*x x x* payment of the assessed taxes as a prerequisite to the filing of a protest requires that the case must be the subject of a protest or a protestable case. Apropos thereto, the protest mechanism mentioned in the above-cited provisions applies when the liability for duties, taxes, fees or other money charge is determined. **In other words, the protest contemplated under Section 2308 of the TCCP, as amended, refers to goods that are still within the customs territory which first requires payment of duties and taxes pending its release thereof. As stated in the said Section, *'at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter.'* Even so, the very fact that PSPC had secured Authority To Release Imported Good (ATRIG) from public petitioners confirms that the present controversy is not the one covered by the protest mechanism referred above.**

Similarly, the case of *Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Customs,* contemplates the scenario when the protest mechanism applies, *viz*:

'A reading of the said provisions of law <u>clearly shows that the requirement of a prior protest as an exclusive remedy in protestable cases applies only to a</u>

[4] CTA EB Case Nos. 1007 & 1003 (CTA Case No. 8004), September 5, 2016

> situation 'whereby liability for duties, taxes, fees and other charges are determined'. This necessarily refers to a situation where a particular shipment has arrived and there is a dispute between the importer and the Collector as to the correct determination of duties, taxes, fees and other charges. That is why the law requires the importer to file a protest 'at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter.' . . . .' (Underscoring Ours)
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> **In the same vein, considering that there was no protest to speak of under Section 2308 of the TCCP, as amended, or a protestable case for that matter, the requirement of payment of documentary customs stamps under Section 3301, in relation to Section 3303 of the TCCP, as amended and CAO No. 2-2001 is necessarily not applicable for the simple reason that there were no services rendered or documents issued by the BOC to warrant its application."** *(Emphases ours and citations omitted)*

To reiterate, the present consolidated cases are petitioners' claims for refund of erroneously paid taxes and not protestable and seizure cases where there is a finding of unpaid taxes due to the government. As such, Section 1708 of the TCCP, as amended, should instead apply on the matter and not Section 2308 as respondent COC would want to have it.

As to respondent COC's claim that it has the exclusive authority, to the exclusion of the CIR, over petitioner's claims for refund since the subject matter involves duties and taxes on imported goods under the TCCP, as amended, this is Court is not swayed. The issue has long been laid to rest under the delegated authority of the CIR under Section 12 (a) of the NIRC of 1997, as amended, which provides that:

> "**SEC. 12. Agents and Deputies for Collection of National Internal Revenue Taxes** – The following are hereby constituted agents of the Commissioner:(a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;(b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and(c) Banks duly accredited by the Commissioner with respect to receipt of payments internal revenue taxes authorized to be made thru

> bank. Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code."

Continuing thereon, anent respondent COC's allegation that petitioner failed to prove its exemption from paying the subject excise taxes, respondent COC points out that petitioner's Motion to Reopen the Case for further Presentation of Evidence[5] filed on October 20, 2015, should not have been considered by this Court in its Resolution[6] dated February 16, 2016. This is so because petitioner already had previously filed a similar Motion to Reopen the Trial on October 31, 2014 which was then denied *via* Resolution dated January 21, 2015. Thus, considering that petitioner failed to properly file a Motion for Reconsideration for the said January 21, 2015 Resolution, the denial of its Motion to Reopen Trial has long become final.

This Court is not convinced.

Verily, there is no specific provision in the Rules of Court governing motions to reopen trial, the courts are given a wide latitude in exercising their sound judicial discretion. Quoting an excerpt from this Court's Resolution dated February 16, 2016, "[a] motion to reopen trial may properly be presented after either or both parties had formally offered and closed their evidence but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice. *x x x* Considering that Section 8 of R.A. 1125, as amended, provides that 'the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence', this Court finds no cogent reason to deny petitioner's plea." To stress, the only controlling guideline regarding a motion to reopen trial is the paramount interest of justice. And, unless there is a clear abuse of judicial discretion, this Court's decision stands.

That having been settled, this Court shall now discuss respondent CIR's Motion.

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[5] Docket (Vol. V), pp. 1968-1983
[6] *Id.*, pp. 2011-2014

Respondent CIR claims that the Authority to Release Imported Goods (ATRIG) certificates, Air Transport Office (ATO), now the Civil Aviation Authority of the Philippines, certifications, and First Endorsements issued by Department of Finance are insufficient proofs that the imported Jet A-1 fuel were indeed used for petitioner's transport and non-transport operations. Respondent CIR also insists that the testimony of petitioner's witness, Ms. Glendalyn P. Dela Cruz is self-serving evidence.

While this Court agrees that the ATRIG Certificates, ATO certifications, and First Endorsements are not sufficient to prove that the imported Jet A-1 fuel are to be actually used for petitioner's transport and non-transport operations, the same, however, is only true if the foregoing documents stand by themselves. If they are corroborated by other evidence on record, such as numerous uncontroverted testimonial evidence, the same may be given evidentiary weight and credence by this Court.

In the present case, petitioner offered the testimonies of Mr. Jonathan Chiong[7] – Manager of the Fuel Department of petitioner, Ms. Marides C. Canillo[8] – Financial Planning and Analysis Manager of petitioner, and Mr. Edwin J. Segundo[9] – Supervisor of the Fuel Department of petitioner, who all uniformly testified by way of Judicial Affidavits, that the Jet A-1 fuel importations from May 2003 to December 2004 are to be used for petitioner's domestic operations. In addition to that, petitioner also presented the findings of the Court-Commissioned Independent Certified Public Accountant (ICPA), Mr. Prudencio F. Tatunay, who examined other additional documents[10] to prove that the imported Jet A-1 fuel were indeed used by petitioner for

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[7] Exhibit "Q7"
[8] Exhibit "L7"
[9] Exhibit "J5"
[10] Revenue Officer on Premises (ROOP) Daily Monitoring Report-Finished Product Bonded Account (Jet A-1) – Schedule of Receipts and Summary of Receipts for January 2003 to May 2005, offered as Exhibits "S8" to "U9" and Exhibit "O8", Annexes Binder of ICPA Report dated August 4, 2016 (Exhibit "X7"); ROOP Daily Monitoring Report-Finished Product Bonded Account (Jet A-1) – Schedule of Removals and Summary of Withdrawals (Removal) for January 2003 to May 2005, offered as Exhibits "Z9" to "B11" and Exhibit "V9", Annexes Binder of ICPA Report dated August 4, 2016 (Exhibit "X7"); Official Register Book (ORB) Imported Jet A-1 Fuel - Air Philippines and Summary of ORB for January 2003 to May 2005, offered as Exhibits "D11" to "F12-4" and Exhibit "C11", Annexes Binder of ICPA Report dated August 4, 2016 (Exhibit "X7"); Fuel Issue Slips (FIS), which show the issuance of Jet A-1 fuel to the ultimate user AirPhil aircrafts, offered as Exhibits "J13" to "V13-428", "H12" to "H12-220", Annexes Binder of ICPA Report dated August 4, 2016 (Exhibit "X7"); and ROOP Daily Monitoring Report – Application of Excise Tax for January 2003 to May 2005[10], offered as Exhibits "L12" to "I13", Annexes Binder of ICPA Report dated August 4, 2016 (Exhibit "X7")

its domestic operations. As held in the Amended Decision dated May 8, 2017 reads as follows:

> "Upon examination and verification of the said documents, the ICPA was able to account the movement of the imported Jet A-1 fuel from transfers from Supplier's Depot, to receipts at PAL Tanks, to subsequent issuance to petitioner's aircraft for its exclusive consumption on its domestic operations.[11] Accordingly, the ICPA found that all transfers of imported Jet A-1 fuel from Supplier's Depot to PAL Tanks were properly recorded, duly authorized by the BIR and were fully accounted for. As a matter of fact, all transfers of imported Jet A-1 fuel from PAL Tanks to petitioner's aircraft were fully accounted for – for its domestic consumption.
>
> Thus, absent any proof to the contrary, the testimonies of petitioner's witnesses, ATRIGs, ATO Certifications, First Endorsements and ICPA findings, taken altogether, has sufficiently proven that the imported Jet A-1 fuel was used for its flight operations and other activities incidental thereto."

With regard to respondent CIR's claim that the testimony of petitioner's witness, Ms. Glendalyn P. Dela Cruz is self-serving evidence, this Court finds the case of *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated*[12], as instructive on the matter:

> "'The common objection known as 'self-serving' is not correct because almost all testimonies are self-serving. The proper basis for objection is 'hearsay' (Wenke, Making and Meeting Objections, 69).
>
> Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).

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[11] Exhibit "X7", ICPA Report, Pages 6-9 of 16
[12] CTA EB NO. 883, February 14, 2013 (CTA Case No. 7415); *citing* Danilo Hernandez vs. Court of Appeals, et al., G.R. No. 104874, December 14, 1993

> Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.'
>
> Thus, a self-serving declaration is one that is made by a party, out of court and in his favor. **It does not include the testimony he gives as a witness in Court.**[13] Tested against these standards, the testimonies of the eleven (11) witnesses are not self-serving and are admissible in evidence."

Henceforth, based on the foregoing, this Court finds no cogent reason to deviate from the conclusions reached in the assailed Amended Decision.

WHEREFORE, premises considered, respondents' respective Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

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

CATHERINE T. MANAHAN
Associate Justice

[13] People vs. Villarama, G.R. No. 139211, February 12, 2003