REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10311

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 04 2023 2:15PM

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R E S O L U T I O N

MANAHAN, *J.*:

This resolves petitioner's *Motion for Reconsideration (Re: Decision dated 30 May 2023)*,[1] filed via email on July 6, 2023 and via accredited courier on July 7, 2023, with respondent's *Opposition (Re: Motion for Reconsideration of the Decision dated 30 May 2023)*,[2] filed on July 19, 2023.

In its *Motion*, petitioner states that it has sufficiently established that the subject imported liquors, wines, and tobacco products are not locally available in reasonable quantity, quality, or price; 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. Petitioner further states that the imposition of stringent requirements in proving that the imported products are not locally available in reasonable quantity, quality or price defeats the tax exemption granted to Philippine Airlines, Inc. (PAL) under Presidential Decree (PD) No. 1590.

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[1] Docket, Vol. IV, pp. 2877-2900.
[2] Docket, Vol. IV, pp. 2905-2910.

Respondent, on the other hand, reiterated the Court's discussion and argues that petitioner has the burden of proof to establish the factual basis for the claim for tax credit or refund.

We deny the motion.

We reiterate our discussion in the assailed Decision, *to wit*:

> The Court cannot simply rely on the product price lists from four (4) dealers, and the testimony merely based thereon. It is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country.
>
> Lacking corroborating evidence to prove that the price lists of Absolute Sales Corporation and Future Trade International Travel Retail, Minivan Enterprise, and AB Heineken Phils., Inc., represent the local market prices for the subject alcohol products for the period August 2014 until February 2018 vis-à-vis the totality of local suppliers who are engaged in selling similar products in the same years, this Court cannot conclude that petitioner's comparison of the prices of its imported alcohol products with that of the said dealers is deemed sufficient. Likewise, considering that RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's imported alcohol products for 2014 to 2018 with that of the said price survey.
>
> Furthermore, as elicited from the Court's questioning of petitioner's witness, there is no showing that local suppliers cannot reasonably match their selling price to the cost of importation of the same products in the quantities and qualities purchased by petitioner.
>
> Simply put, with the evidence presented by petitioner, the Court cannot determine, with certainty, that said products are not available locally in reasonable quantity, quality or price.
>
> As regards its importation of tobacco products, petitioner failed to offer supporting evidence through which the Court can verify the statements made by Ms. Capinpin in her Judicial Affidavit. Petitioner failed to submit, at the very least, price lists of tobacco products which indicate the local

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market prices of the said products. *Apropos*, the testimony of Ms. Capinpin, standing alone, is insufficient to ascertain whether the subject tobacco products were, indeed, not locally available in reasonable quantity, quality or price.

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

We are not unaware of the Supreme Court rulings finding that the price lists and table of comparison are sufficient to prove that the imported products are not locally available in reasonable quantity, quality, or price. Nevertheless, the answers elicited from petitioner's witness also raise the need for caution against relying blindly on the alleged pricelists and tables of comparison.

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

"ATTY. BABARAN:

Q Now, aside from Minivan and AB Heineken did you make any request from other suppliers of alcohol products?

MS. CAPINPIN:

A Yes I did, Ma'am. Unfortunately, the suppliers did not respond to the request and did not submit the Price List that we requested.

ATTY. BABARAN:

Q May I know, Ma'am, what are these stores?

MS. CAPINPIN:

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

ATTY. BABARAN:

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

MS. CAPINPIN:

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

ATTY. BABARAN:

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

MS. CAPINPIN:

A Yes.

ATTY. BABARAN:

Q What about from Duty Free?

MS. CAPINPIN:

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

xxx xxx xxx

ATTY. BABARAN:

Okay.

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

MS. CAPINPIN:

A Yes, Ma'am.

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JUSTICE DEL ROSARIO:

Yes.
Just a few clarificatory questions.

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

MS. CAPINPIN:

A Yes, your Honors.

JUSTICE DEL ROSARIO:

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

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

MS. CAPINPIN: *cm*

A Yes, your Honors.

JUSTICE DEL ROSARIO:

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

Just answer the question so as to abbreviate.

MS. CAPINPIN:

A Yes, your Honors.

JUSTCE DEL ROSARIO:

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

MS. CAPINPIN:

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

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JUSTICE DEL ROSARIO:

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

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

Only the best price?

MS. CAPINPIN:

A The best price.

JUSTICE DEL ROSARIO:

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

Yes.

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

Yes. But (inaudible). The point is, I'm asking you there is already a specific price because you have been already made in all these transactions in the past. **So, if it is just a pro-forma practice that you get the list but certainly you already know that the price is only going to be used** *gm*

for the purpose of the request but there is already in your mind a pre-determination to purchase from abroad.

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

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

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

Specifying the price?

MS. CAPINPIN:

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

JUSTICE DEL ROSARIO:

All right.

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

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

At any rate, more or less, the Court understands now." [3] (*emphasis supplied)*

While PD No. 1590 grants petitioner tax exemptions, the same are still subject to conditions. Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[4] Petitioner, unfortunately, failed to discharge this burden.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision dated 30 May 2023)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(I reiterate my Dissenting Opinion in the assailed Decision)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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

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