REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7632

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 1 2 2016

4:15 p.m.

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RESOLUTION

Submitted for the resolution of this Court are the following incidents:

I. *Motion for Partial Reconsideration (Re: Decision dated 3 May 2016)*[1] filed by respondent Commissioner of Internal Revenue (CIR) on May 11, 2016;

II. *Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence*[2] filed by petitioner Philippine Airlines, Inc., (PAL) on May 13, 2016; and

III. *Motion for Partial Reconsideration*[3] filed by respondent Commissioner of Customs (COC) on June 2, 2016.

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[1] Rollo, pp. 1932-1944.
[2] Rollo, pp. 1946-1967.
[3] Rollo, pp. 1976-2006.

On May 3, 2016, the Court rendered a *Decision*[4] partially granting PAL's claim for refund or issuance of tax credit certificate (TCC) in the amount of P88,542,854.00 representing the specific taxes paid for the importation of Jet A-1 aviation fuel for its domestic flight operations for the period of April to June 2005.

CIR's *Motion for Partial Reconsideration Re: Decision dated 3 May 2016)*[5]
and
COC's *Motion for Partial Reconsideration*[6]

The CIR prays of this Court that the *Decision* promulgated on May 3, 2016 be partially reversed and set aside and another one be rendered denying the entire claim for refund. In her *Motion for Partial Reconsideration*, the CIR manifests that: [1] contrary to the findings of this Court, PAL failed to prove that the Jet A-1 aviation fuel were actually used for its transport and non-transport operations; and [2] this Court erred in relying on the Air Transportation Office (ATO) [now Civil Aviation Authority of the Philippines (CAAP)] Certifications in ruling that Jet A-1 Aviation Fuel is not locally available in reasonable quantity, quality or price.

Respondent CIR argues that the Authority to Release Imported Goods (ATRIG) alone is not sufficient to prove that the imported Jet A-1 aviation fuel was used for its transport and non-transport operations and PAL should have presented other evidence to support the testimony of its witnesses Jonathan Chiong and Edwin Segundo. In addition, the CIR contends that: it is the Department of Energy (DOE) which is in the best position to determine whether the total supply is enough for total demand; DOE issued a Certification dated December 20, 2002 stating that aviation fuel for use in domestic operations is locally available in reasonable quantity, quality and price; the supply of Jet A-1 fuel for the years 2001 to 2010 was always higher than the demand as local available supply is the sum of refinery production, importation and inventory; and that local prices are still reasonable as defined in both the legal and economic sense.

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[4] Rollo, pp. 1900-1928.
[5] Supra, Note 1.
[6] Supra, Note 3.

In response thereto, petitioner PAL filed its *Comment/Opposition*[7] on June 7, 2016. As regards the ATRIG and testimonies of witnesses, PAL maintains that these are sufficient to prove that the Jet A-1 aviation fuel were used for PAL's operations. PAL asserts that: the ATRIGs went through the Bureau of Internal Revenue's (BIR) verification procedure, and the same clearly states that the imported Jet A-1 fuel will be used for PAL's domestic operations; the CIR did not specifically controvert PAL's compliance on the use of the imported fuel for its domestic operations; at no time during trial did PAL presented the witnesses mentioned by CIR, instead, PAL presented Mr. Elvis A. Yao and Ms. Myra O. Dabalos who both identified the ATRIGs subject of this case. Further, PAL claims that: the ATO Certifications were properly given weight; ATO is not precluded from issuing the subject Certifications relating to the availability of supply of aviation fuel; the ATO Certification specifically state that at the period of the subject importations, there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality or price; the 2002 DOE Certification was declared null by Branch 114 of Pasay Regional Trial Court in *PAL vs. Secretary of Energy*[8], and the same is based on data available for or up to the year 2002 only; and that local available supply excludes imported products; that former DOE Sec. Mario V. Tiaoqui testified that it has been historically understood that local supply refers to local domestic refinery production and excludes importation; and the local price was factually unreasonable compared to the price of imported fuel.

The COC also filed its *Motion for Partial Reconsideration* alleging that: the ATRIGs do not constitute an exception to the hearsay rule as the CIR or his/her representative has no personal knowledge of the information contained in the ATRIGs; this Court's finding that aviation fuel is not locally available in reasonable quantity, quality or price lacks legal and factual bases; the Court erroneously concluded that locally-produced aviation fuel is more expensive and equated reasonable to lower price without stating the legal basis for that interpretation.

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[7] Rollo, pp. 2012-2022.
[8] Civil Case No. R-Psy-10-03889-CV.

On the other hand, PAL asserts in its *Comment/Opposition (Re: COC's Motion for Partial Reconsideration)*[9] that: ATRIG is not hearsay, such argument creates a precedent that the content thereof even if processed, approved and issued by the BIR cannot be relied upon by the taxpayer, courts and government agencies including BIR and BOC themselves; COC did not previously dispute the ATRIGs; the 2002 DOE Certification could cover the years subsequent to its issuance; ATO, now CAAP, has the authority to issue certifications pertaining to local availability of aviation fuel in reasonable quantity, quality or price.

Based on the pieces of evidence on record, the Court stands by its ruling that petitioner PAL complied with the three (3) requisites to be exempt from all taxes under Section 13 of PD No. 1590.

With regard to the requirement that subject importations are be utilized for purposes of petitioner PAL's domestic flight operations, the ATRIGs and the testimonies of PAL's witnesses, Mr. Elvis A. Yao and Ms. Myra O. Dabalos, taken together, sufficiently prove that that the Jet A-1 aviation fuel were used for PAL's operations.

The Court maintains its finding that the ATRIGs are public documents, and thus, *prima facie* evidence of the facts stated therein.

The statement in the ATRIG's belies the COC's assertions that the ASTRIGs do not qualify as public documents for being hearsay as the CIR or his/her representative has no personal knowledge of the information contained in the ATRIGs. The ATRIGs state, "that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of xxx consisting of the above described articles, will be used exclusively for" daily domestic flight operation. Verily, it cannot be said that the ASTRIGS are hearsay as the findings therein by the CIR or his/her representative are grounded on the documents submitted by the importer.

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[9] Rollo, pp. 2056-2065.

ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGs are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Further, as public documents issued in the performance of a duty by a public officer, the subject ASTRIGs are *prima facie* evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Rules of Court, which provides that "public documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated."

The respondents failed to present any evidence which specifically controvert PAL's compliance on the use of the imported fuel for its domestic operations. Therefore, the Court reiterates its view that, in the absence of any clear and sufficient evidence to overcome the above presumptions, the testimonies of petitioner's witnesses and the statement in the ATRIGs, which provides that the shipment (Jet A-1 aviation fuel) will be used exclusively for daily domestic flight operation, are prima facie evidence that indeed the subject aviation fuel will be used exclusively in petitioner's flight operations and other activities incidental thereto.

Concerning the third requisite that the aviation fuel is not locally available in reasonable quantity, quality or price, the Court finds no reason to deviate from its finding that at the time of the importations subject of this case, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price.

Ms. Glendaly Dela Cruz ("Ms. Dela Cruz"),[10] Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the DOE, that for the period covering 2005, domestic and international demand is greater than local refinery production and that the 2002 DOE Certification could not possibly cover the years subsequent to the time of its issuance, since the data pertaining to the years subsequent to the issuance of the 2002 DOE Certification were not yet available.

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[10] Exhibit "T7".

Concerning the requirement that the aviation fuel is not locally available in reasonable quantity, the Table of Data[11] which was prepared and provided by the DOE, shows that in all years from 1998 to 2010, based on the figures for all types of petroleum products, including jet fuel or kerosene, the demand far outstripped the local refinery production. It continues that in each of the years included in the Table of Data (including the year 2005), the total refinery production was never enough to meet the total demand.

In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[12] the Supreme Court defined the word domestic, in relation to Sec. 13 of PAL's franchise, as follows:

> "xxx 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."

From the foregoing explanation of the word domestic under PAL's franchise, it follows that imported petroleum products should not be included as part of the total local supply. Thus, the Court gives credence to the Table of Data[13] and the witness' testimony that the domestic and international demand is greater than local refinery production of Jet A-1 Aviation Fuel, and hence, petitioner proved that it is not locally available in reasonable quantity.

In light of the foregoing, the CIR's *Motion for Partial Reconsideration Re: Decision dated 3 May 2016)*[14] and the COC's *Motion for Partial Reconsideration*[15] are **DENIED**.

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[11] Exhibit "S7".
[12] G.R. No. 198759, July 1, 2013, citing BLACK's LAW DICTIONARY, 9th Ed. (2009), p. 557, and http:/ fwww. merriam-webster .com/ dictionary I domestic?show=O&t= 1372905302 (visited January 25, 2013).
[13] Supra, Note 11.
[14] Supra, Note 1.
[15] Supra, Note 3.

Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence[16]

Petitioner PAL claims that: the ICPA duly verified the existence and genuineness of the official receipts (OR) and certified that the reproductions of the same are faithful reproductions of the original thereof; the best evidence rule does not apply when the subject of the inquiry is not the contents of a document; PAL presented other evidence sufficient to prove the fact of payment; and that trial should be reopened to afford petitioner an opportunity to prove the circumstances surrounding the loss of the ORs. As such, petitioner prays that the May 3, 2016 *Decision*[17] of this Court be partially reconsidered and set aside, in particular that portion of the Decision denying the claim for refund, and order the refund or the issuance of a TCC in petitioner's favor in the aggregate amount of P258,628,496.00; or in the alternative, to reopen trial to allow petitioner to present additional evidence.

For its part, respondent CIR argues that: PAL's contention is untenable; the best evidence rule should apply in the instant case; strict compliance with the rules is indispensable for the prevention of needless delays for the orderly and expeditious dispatch of judicial business; and that PAL's motion for partial reconsideration and alternative prayer to reopen proceedings must be denied. The COC argues against PAL's claims and asserts that: the alleged verification made by the ICPA became doubtful upon petitioner's failure to present the original copies of the official receipts in court; the contents of the subject official receipts are pertinent as they show details of payment that would enable the Court to rule on whether specific taxes have been paid; the testimony of Mr. Elvis A. Yao is self-serving; and that PAL has been afforded more than sufficient opportunity to rectify its evidence, but it constantly failed to do so.

After a conscientious consideration of the prevailing circumstances relevant herein, the Court is of the view that the granting of the *Motion to Reopen the Case for Presentation of Evidence* is in order.

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[16] Supra, Note 2.
[17] Supra, Note 4.

In the case of *Rene Cabarles vs. Hon. Judge Bonifacio Sanz Maceda, et al.*[18] the Supreme Court held that:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
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> xxx xxx xxx
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> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **A motion to reopen may thus properly be presented only 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. This remedy of reopening a case was meant to prevent a miscarriage of justice.**" (Emphasis and Underscoring Supplied)

Section 8 of R.A. 1125,[19] as amended, provides that "the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence",[20] this Court finds no cogent reason to deny petitioner PAL's plea. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in

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[18] G.R. No. 161330, February 20, 2007.
[19] Otherwise known as "An Act Creating the Court of Tax Appeals".
[20] *Bank of the Philippines Island vs. CIR*, G.R. No. 122480, April12, 2000.

paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."[21]

In view of the foregoing, the resolution of the petitioner's *Motion for Partial Reconsideration of Decision* shall be HELD IN ABEYANCE until the presentation of its additional evidence to prove its entitlement to the refund sought.

WHEREFORE, premises considered, the CIR's *Motion for Partial Reconsideration Re: Decision dated 3 May 2016)*[22] and the COC's *Motion for Partial Reconsideration*[23] are hereby **DENIED**.

Petitioner PAL's *Motion to Reopen the Case for Presentation of Evidence* is hereby **GRANTED**. Let the case be set for hearing on July 20, 2016 at 9:00 a.m. for the presentation of petitioner's additional evidence to prove that petitioner PAL properly paid the specific taxes on the subject importations of Jet A-1 aviation fuel. Accordingly, the resolution of petitioner's *Motion for Partial Reconsideration of Decision* is **HELD IN ABEYANCE**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[21] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009, citing *BPI-Family Savings Bank, Inc. vs. Court of Appeals,* G.R. No. 122480, April 12, 2000.
[22] Supra, Note 1.
[23] Supra, Note 3.