Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,	**CTA CASE NO. 9435**
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., *Chairperson*, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 6 2019 10:02 AM

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner Philippine Airlines, Inc.'s (PAL) "Motion for Reconsideration" of the Decision dated August 8, 2019, the dispositive portion of which states:

> "***WHEREFORE***, *premises considered, instant Petition for Review is* ***DENIED,*** *for lack of merit.*
>
> ***SO ORDERED."***

In assailing this Court's Decision, PAL asserts that the administrative claim for refund with the CIR was filed prior to the filing of the present judicial claim for refund in compliance with the procedural rules laid down in Section 229; that the subject imported wines, liquors, and cigarettes were proven to be exclusively used for its flight and non-flight operations and other incidental activities; and that subject imported wines, liquors, and cigarettes were proven not locally available in reasonable quantity, quality or price.

On September 3, 2019, the Court directed respondent Commissioner of Internal Revenue (CIR) to file Comment on PAL's "Motion for Reconsideration" within ten (10) days from receipt otherwise the motion shall be deemed submitted for resolution. In compliance, respondent CIR filed its "Opposition (Re: Motion for Reconsideration of the Decision promulgated 8 August 2019)" on September 13, 2019.

We resolve to deny PAL's "Motion for Reconsideration".

After a careful examination of petitioner's motion for reconsideration, the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and discussed by the Court's Decision promulgated on August 8, 2019.

To reiterate, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA pursuant to Section 229. In Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue[1], the Supreme Court had the occasion to explain anew Section 229 and denied a refund claim of final withholding tax for the taxpayer's failure to comply with the requisites therein:

> *"As may be gleaned from the foregoing provisions, **a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA**. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code - then Section 306 of the old Tax Code - however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)- year prescriptive period expire without the appropriate judicial claim being filed." (Emphasis and underscoring supplied)*

Records show that petitioner PAL paid under protest[2] the excise tax of ₱2,537,519.62 [3], ₱1,953,486.64 [4],

[1] G.R. No. 182582, April 17, 2017.
[2] Exhibits "P-154" to "P-158".
[3] Exhibit "P-159".

₱1,196,135.69[5], ₱1,767,691.11[6] and ₱1,529,918.87[7] or a total of ₱8,984,751.93 to the Bureau of Customs on August 22, 2014. Thereafter, petitioner simultaneously filed both its administrative claim[8] and judicial claim[9] on August 22, 2016.

Clearly, petitioners failed to establish that prior to the judicial claim for refund, administrative claims for refund were in fact filed with the respondent CIR in compliance with Section 229. There is non-compliance considering that both the administrative claim and the judicial claim for refund was simultaneously filed on August 22, 2016. Evidently, there is a violation of Section 229 of the law which requires that an administrative claim be filed prior to the judicial claim.

Thus, the primary purpose of the requirement that an administrative claim be filed prior to the judicial claim- that is to serve as a notice of warning to the CIR that court action would follow unless the tax alleged to have been collected erroneously or illegally is refunded, was defeated. A taxpayer should initially file the claim for refund before the Bureau of Internal Revenue (BIR). Failure to seek relief initially at the administrative level would result in dismissal of the judicial claim for refund once it is elevated to the Court of Tax Appeals (CTA).

Moreover, the Court finds that the claim for refunds are unsupported by substantial evidence. The Supreme Court in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.* [10] categorically declared that the enactment of R.A. No. 9334 did not repeal the tax exemption privileges of respondent under P.D. No. 1590. The privilege however is not without limitation. In order for petitioner to be exempt from excise taxes on its imported wines, liquors and cigarettes respondent must demonstrate by convincing proof that subject imported articles are to be exclusively used in its flight and non-flight operations and other incidental activities;

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[4] Exhibit "P-160".
[5] Exhibit "P-161".
[6] Exhibit "P-162".
[7] Exhibit "P-163".
[8] Exhibit "P-2".
[9] Docket Vol. I, pp. 10-214.
[10] G.R. Nos. 212536-37. August 27, 2014.

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and the articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

To prove that the subject imported articles are to be used in its flight and non-flight operations and other incidental activities, petitioner presented various documents such as Informal Import Declaration and Entry[11] designating the imported commodities as "inflight materials," and Authority to Release Imported Goods ATRIGs [12] bearing notations that such articles would be for international inflight consumption, as well as the testimony of its Manager of the In-flight Materials Purchasing Division Cheryl V. Capinpin who testified that the imported tobacco and alcohol products were part of its commissary and catering supplies for use international flights. However, said evidence will only tend to prove the fact that that petitioner imported said articles and the reason for their payment of excise tax which it claims to have been erroneously collected.

There is no iota of evidence that said imported tobacco and alcohol articles were exclusively used for petitioner's transport and non-transport operations. Neither is there evidence that said alcohol and tobacco supplies has been part of the inventory of its commissary and catering supplies. An allegation that said alcohol and tobacco supplies has been used as commissary and catering supplies is just an allegation. We must delineate that not all importation of alcohol and tobacco product shall automatically privilege petitioner from the payment of excise tax. **Petitioner has the burden to prove that the same were exclusively used and part of its commissary and catering supplies**. Without any other evidence to substantiate that the imported tobacco and alcohol products were exclusively used for petitioner's transport and non-transport operations, the said pieces of evidence are not sufficient to establish petitioner's compliance.

In addition, to prove that the imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price, among others, petitioner presented the testimony of its Manager of the In-flight Materials Purchasing Division Cheryl V.Capinpin, who

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[11] "P-5" to "P-52".
[12] "P-218.3.1" to "P-218.3.47".

compared the prices of its tobacco and alcohol products with the local price list of Philippine Wine Merchants, Future Trade International, and Revenue Memorandum Circular 90-2012[13] . However, without evidence to prove that the list of prices of Philippine Wine Merchants and Future Trade represent the local market price for the subject goods in 2012, meaning the totality of local suppliers who are engaged in selling similar products that comprise the local market for these goods, we cannot conclude concluded that "petitioner's comparison of the price of its imported wines and liquor is deemed sufficient. The prices list of two supplier do not represent the local market price of the subject goods. Similar with RMC 90-12 considering that the price list there on was based on 2010 BIR price survey. In sum failed to present sufficient evidence to prove that the imported tobacco and alcohol products were not locally available in sufficient quantity, quality, or price at the time of importation.

Taxpayers must prove not only their entitlement to a refund, but also their compliance with the procedural due process as nonobservance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of their claims.[14]

Petitioners, unfortunately, failed to discharge this burden. Claims for tax refunds are in the nature of tax exemptions, and as such, should be construed *strictissimi juris* against the taxpayers and liberally in favor of the government.

In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on August 8, 2019.

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[13] Revised Tax Rates of Alcohol and Tobacco Products under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as The National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes." Issued on 27 December 2012 by the Commissioner of Internal Revenue.
[14] Commissioner of Internal Revenue v. Manila Electric Company, G.R. No. 181459, June 9, 2014; Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

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WHEREFORE, the "Motion for Reconsideration" of the Decision promulgated August 8, 2019 is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice