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. 8340**

Members:

**RINGPIS-LIBAN,** *Chairperson*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:
JAN 12 2024 3:49 pm

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# RESOLUTION

***RINGPIS-LIBAN, J.:***

Submitted before this Court is respondent Commissioner of Internal Revenue ("CIR")'s **Motion for Reconsideration (Re: Amended Decision promulgated 5 October 2023)** filed on October 23, 2023, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration dated 16 October 2023)** filed on November 17, 2023.

On October 5, 2023, the Court promulgated an Amended Decision partially granting petitioner's claim for refund of erroneously paid excise tax pursuant to Sections 204 (C) and 229 of the National Internal Revenue Code ("NIRC") of 1997, as amended, the dispositive portion of which states as follows:

> "**WHEREFORE**, in view of the foregoing, petitioner's claim for refund is **PARTIALLY GRANTED**. Accordingly, the Decision dated February 17, 2015 of this Court in Division is **AMENDED** to read as follows:

'**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** petitioner the amount of **Php3,133,270.14**, representing the latter's erroneously paid excise tax on its importations of wine and liquor products for its international flight consumption.

**SO ORDERED.**'

**SO ORDERED.**"

In his Motion, respondent CIR cites the ruling in the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10311, May 30, 2023*, wherein the Special First Division of this Court categorically ruled that the Court cannot simply rely on the product price lists from four (4) dealers since it is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country. Furthermore, the Court also found that, as elicited from the witness, there is no showing that local suppliers cannot reasonably match their selling price to the cost of importation of the same products. Thus, with the evidence presented by Philippine Airlines, Inc. ("PAL"), and the lack of corroborating evidence to substantiate its claim, the Special First Division held that it cannot determine, with certainty, that the imported products are not locally available in reasonable quantity, quality or price.

Comparing the aforementioned case herein, respondent CIR points out that petitioner compared the prices of its imported wines and/or liquors with the quotation of only two (2) suppliers known in the business as the Philippine Wine Merchants and Future Trade International. Considering that the Special First Division in the above case denied petitioner's claim for refund in spite of presenting product price lists from four (4) suppliers, respondent CIR asserts that the Amended Decision be reversed and set aside and a new one be rendered denying petitioner's entire claim for refund for its failure to present sufficient and convincing evidence showing that it has fulfilled all conditions to be entitled to the tax exemption granted under Section 13 of Presidential Decree ("PD") No. 1590.

On the other hand, in its Comment, petitioner stresses that respondent CIR's Motion for Reconsideration is absolutely devoid of merit seeing that the Amended Decision merely executed the already final and executory judgment of the Supreme Court in G.R. No. 238163 (CIR, et al. v. PAL [CTA EB Case No. 1347; CTA Case No. 8340]). Petitioner asserts that G.R. No. 238163 became final and executory via the Supreme Court Resolution dated November 25, 2020, which denied with finality respondents' (petitioners therein) Motion for Reconsideration and ordered that an Entry of Judgment be issued immediately. Petitioner continues that when a judgment is final and executory, it becomes immutable and unalterable and the court which rendered judgment only has the ministerial duty to issue a writ of execution. As such, petitioner maintains that the Court, in the exercise of its ministerial duty, has rightfully executed the same through the Amended Decision.

The Court finds respondent CIR's Motion for Reconsideration bereft of merit.

To recall, in the Court of Tax Appeals ("CTA") *En Banc* Decision dated August 30, 2017, the Court *En Banc* already found that petitioner has sufficiently established that its imported alcohol products were not available in reasonable quantity, quality or price in the local market – and what was only left to determine was the amount to be refunded. As such, the case was remanded to the Court in Division for the determination of the amount of refund due to petitioner.

Thereafter, the said CTA *En Banc* Decision was affirmed by the Supreme Court in its Resolution dated July 9, 2018,[1] by denying herein respondents' *Petition for Review on Certiorari* for failing to sufficiently show that the CTA *En Banc* committed any reversible error in the challenged decision and resolution. The Supreme Court further held that, "[t]he CTA *En Banc's* decision is clearly supported by evidence. In its evaluation, the **CTA *En Banc* found it fit to grant PAL's claim only to the extent of the refund of taxes paid on imported liquors, because its evidence only established that the cost of importing alcohol for its commissary and catering supplies is lower than purchasing them locally.** It did not prove the same as to its imported cigarettes. Thus, the remand of the case for the reception of evidence on this point is likewise proper."

Subsequently, the Supreme Court issued a Resolution dated November 25, 2020,[2] denying herein respondents' Motion for Reconsideration of the Resolution dated July 9, 2018. The Supreme Court held, "to ***DENY*** reconsideration with ***FINALITY***. That ***NO FURTHER*** pleadings or motions shall be entertained herein. Let an ***ENTRY*** of judgment in this case be issued immediately." As such, an Entry of Judgment was issued for G.R. No. 238163, stating that the Resolution dated July 9, 2018 has, on *November 25, 2020*, become final and executory and is hereby recorded in the Book of Entries of Judgments.

From the foregoing, it is clear that the Supreme Court's Resolution dated July 9, 2018 in G.R. No. 238163 has become final and executory. The Supreme Court, in effect, upheld the CTA *En Banc's* Decision dated August 30, 2017, which already found that petitioner complied with the third requisite for its

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[1] Docketed as G.R. No. 238163.
[2] Docket (CTA Case No. 8340) – Vol. III.

importation of alcohol products, *i.e.*, the imported articles, supplies or materials are not locally available in reasonable quantity, quality, or price. Simply put, in ascertaining the amount of excise tax to be refunded to petitioner, the Court merely complied, via the Amended Decision, with the CTA *En Banc's* Decision dated August 30, 2017 and Supreme Court Resolution dated July 9, 2018 in G.R. No. 238163.

*Apropos*, a judgment becomes "final and executory" by operation of law.[3] A judgment that lapses into finality becomes immutable and unalterable. It can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law. Parties cannot circumvent this principle by assailing the execution of the judgment. What cannot be done directly cannot done indirectly.[4]

With regard to respondent CIR's reliance in the *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10311, May 30, 2023*, as basis for the reversal of the assailed Amended Decision, suffice it to state that CTA decisions do not constitute precedents, and do not bind the Supreme Court or the public. Notably, CTA decisions are appealable to the Supreme Court, which may affirm, reverse, or modify the CTA decisions as the facts and the law may warrant.[5] Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

Moreover, as pointed out by petitioner, the CTA Case aforequoted by respondent CIR is currently still on appeal.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent CIR in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Amended Decision promulgated on October 5, 2023.

**WHEREFORE**, premises considered, respondent CIR's Motion for Reconsideration (Re: Amended Decision promulgated 5 October 2023) is **DENIED** for lack of merit.

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[3] *Social Security System vs. Isip*, G.R. No. 165417, April 3, 2007.
[4] *Mercury Drug Corporation, et al. vs. Spouses Huang, et al.*, G.R. No. 197654, August 30, 2017.
[5] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[6] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July, 15, 2003.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

We Concur:

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice