REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AIR PHILIPPINES CORPORATION (APC),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734

Members:

DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

DEC 01 2015, 11:05 a.m.

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DECISION

UY, J.:

The instant case is a consolidation of six (6) Petitions for Review filed by Air Philippines Corporation (petitioner), against the Commissioner of Internal Revenue and Commissioner of Customs (respondents), praying for the refund of the aggregate amount of ₱124,220,002.99, allegedly representing specific taxes paid for its importations of Jet A-1 fuel for domestic operations on the following dates and broken down as follows:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
7630	April 15, 2005	₱ 17,698,480.00
7642	June 13, 2005	₱ 23,678,242.00
7643	June 8, 2005	₱ 11,836,539.00
7673	August 4, 2005	₱ 23,605,733.60
7712	November 28, 2005	₱ 23,707,161.39
7734	February 22, 2006	₱ 23,693,847.00
	Total	**₱124,220,002.99**

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THE FACTS

Air Philippines Corporation (APC), the petitioner in these cases, is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[1]

The Commissioner of Internal Revenue (CIR), is a co-respondent in these cases, is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of ₱3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148 of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

The Commissioner of Customs (COC), is also a co-respondent herein, is the Commissioner of the Bureau of Customs (BOC), which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise tax of ₱3.67 per liter on imported aviation turbo jet fuel imposed by Section 148 of the NIRC, as delegated and authorized by the respondent CIR through an Authority to Release Imported Goods (ATRIG) (BIR Form No. 1918) duly issued by the latter and addressed to the former.[3]

Pursuant to Republic Act (RA) No. 8339,[4] as amended by RA No. 9215,[5] petitioner APC has been granted a legislative franchise to establish, operate and maintain domestic and international air transport services. Pertinent provisions of the said law (as amended) read as follows:

"SECTION 1. *Nature and Scope of Franchise.—*

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[1] Par. 1, Facts, Consolidated Joint Stipulation of Facts and Issues (Consolidated JSFI), Docket (CTA Case No. 7630) – Vol. I, p. 220.

[2] Par. 2, Facts, Consolidated JSFI, Docket (CTA Case No. 7630) – Vol. I, pp. 220 to 221.

[3] Par. 3, Facts, Consolidated JSFI, Docket (CTA Case No. 7630) – Vol. I, p. 221.

[4] AN ACT GRANTING AIR PHILIPPINES CORPORATION (AIR PHILIPPINES), A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN DOMESTIC AND INTERNATIONAL AIR TRANSPORT SERVICES.

[5] AN ACT AMENDING REPUBLIC ACT NO. 8339, ENTITLED "AN ACT GRANTING AIR PHILIPPINES CORPORATION (AIR PHILIPPINES), A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN DOMESTIC AND INTERNATIONAL AIR TRANSPORT SERVICES".

> Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Air Philippines Corporation, hereunder referred to as the grantee, its successors or assigns, a franchise to establish, operate and maintain transport services for the carriage of passengers, mail, goods and property by air, domestic and international.
>
> xxx xxx xxx
>
> SEC. 11. *Tax Provisions.*— The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation."

On October 23, 2000, the BIR issued BIR Ruling No. 048-2000, addressed to the attention of then EVP - Chief Operating Officer, Capt. Rogelio M. Narciso, the pertinent portion of which reads as follows:

> "xxx on June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a reconsideration, the dispositive portion of which states:
>
> > 'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.

> *'In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.'*
>
> On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations or purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.
>
> In reply, please be informed that **pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL)** and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, **APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109 (e) of the Tax Code of 1997, which importations shall be used for its domestic operations**."[6] *(Emphases and underscoring supplied)*

However, on January 29, 2003, then BIR Commissioner, Guillermo L. Parayno, Jr., issued BIR Ruling No. 001-2003, addressed to petitioner, to Philippine Airlines, to Cebu Air, Inc., and to Pacific Airways Corporation, thereby superseding BIR Ruling No. 048-2000. The pertinent portion of the said BIR Ruling read as follows:

> "In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an **absence of the second condition** required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations **as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483)** and **which condition applies *ipso facto* to other airlines. Accordingly, your importations may not be given the same treatment as before for as long as there is such available domestic**

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[6] Par. 5, Facts, Consolidated Joint Stipulation of Facts and Issues (Consolidated JSFI), Docket (CTA Case No. 7630) – Vol. I, pp. 221 to 222.

<u>supply of petroleum products.</u>

This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.

This ruling takes effect immediately."[7] *(Emphases and underscoring supplied)*

Subsequently, petitioner imported Jet A-1 aviation fuel and paid under protest the specific tax assessed therefor by the pertinent Collector of Customs, detailed as follows:

Date of Importation	Date of Payment	Amount Paid	Official Receipt No.
April 15, 2005[8]	April 28, 2005[9]	₱17,698,479.58	Equitable PCI Bank 000447C
June 13, 2005[10]	June 22, 2005[11]	₱23,678,241.79	Equitable PCI Bank 000935C
June 8, 2005[12]	June 29, 2005[13]	₱11,836,539.00	Security Bank Corporation 006015
August 4, 2005[14]	August 16, 2005[15]	₱23,605,733.60	Equitable PCI Bank 042017C
November 28, 2005[16]	December 16, 2005[17]	₱23,707,161.39	Equitable PCI Bank 016311C
February 22, 2006[18]	March 9, 2006[19]	₱23,693,847.00	Equitable PCI Bank 017317C

Petitioner filed written protests with the pertinent District Collector of Customs, with requests for the refund of the above payments of specific taxes, the details of which are as follows:

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7 Pars. 4 and 5, Facts, Consolidated Joint Stipulation of Facts and Issues (Consolidated JSFI), Docket (CTA Case No. 7630) – Vol. I, pp. 221 to 222; Exhibit "A", Docket (CTA Case No. 7630) – Vol. III, pp. 1291 to 1292.
8 Exhibit "I-8", Docket (CTA Case No. 7630) – Vol. III, p. 1313.
9 Exhibit "I-7", Docket (CTA Case No. 7630) – Vol. III, p. 1312.
10 Exhibit "T-2", Docket (CTA Case No. 7630) – Vol. III, p. 1436.
11 Exhibit "J-11", Docket (CTA Case No. 7630) – Vol. III, p. 1360.
12 Exhibit "W-4", Docket (CTA Case No. 7630) – Vol. III, p. 1517.
13 Exhibit "W-3", Docket (CTA Case No. 7630) – Vol. III, p. 1516.
14 Exhibit "Z-2", Docket (CTA Case No. 7630) – Vol. III, p. 1576.
15 Exhibit "Z-1", Docket (CTA Case No. 7630) – Vol. III, p. 1575.
16 Exhibit "CC-2", Docket (CTA Case No. 7630) – Vol. III, p. 1611.
17 Exhibit "CC-1", Docket (CTA Case No. 7630) – Vol. III, p. 1610.
18 Exhibit "FF-2", Docket (CTA Case No. 7630) – Vol. III, p. 1682.
19 Exhibit "FF-1", Docket (CTA Case No. 7630) – Vol. III, p. 1681.

Date of Importation	Date of Filing of Request for Refund	Place of Filing with the Collector of Customs	Amount Involved
April 15, 2005	May 12, 2005[20]	Port of Batangas	₱17,698,479.58
June 13, 2005	July 6, 2005[21]	Port of Batangas	₱23,678,242.00
June 8, 2005	July 13, 2005[22]	Port of Subic	₱11,836,539.00
August 4, 2005	August 25, 2005[23]	Port of Batangas	₱23,605,733.60
November 28, 2005	December 22, 2005[24]	Port of Batangas	₱23,707,161.39
February 22, 2006	March 24, 2006[25]	Port of Batangas	₱23,693,847.00

In order to avoid the lapse of the two-year prescriptive period within which to file a claim for refund under Section 204(C) of the NIRC of 1997, petitioner was constrained to file written claims for refund of the above-stated payments with respondent CIR, as follows:

For the Importation on:	Date of Filing Written Claim for Refund	Amount Claimed
April 15, 2005	March 26, 2007[26]	₱17,698,480.00
June 13, 2005		₱23,678,242.00
June 8, 2005		₱11,836,539.00
August 4, 2005	August 14, 2007[27]	₱23,605,733.60
November 28, 2005	October 19, 2007[28]	₱23,707,161.39
February 22, 2006	February 4, 2008[29]	₱23,693,847.00

For the same reason and without awaiting action on the part of respondent CIR, petitioner filed separate Petitions for Review, praying for the refund of the amounts specific taxes paid under protest, to wit:

CTA Case No.	For The Amount of:	Petition for Review Filed On	CTA Division
7630	₱17,698,480.00	April 30, 2007[30]	2nd Division
7642	₱23,678,242.00	June 21, 2007[31]	1st Division
7643	₱11,836,539.00	June 27, 2007[32]	1st Division

[20] Exhibit "I", Docket (CTA Case No. 7630) – Vol. III, pp. 1300 to 1309.
[21] Exhibit "T", Docket (CTA Case No. 7630) – Vol. III, pp. 1426 to 1435.
[22] Exhibit "W", Docket (CTA Case No. 7630) – Vol. III, pp. 1504 to 1513.
[23] Exhibit "Z", Docket (CTA Case No. 7630) – Vol. III, pp. 1565 to 1574.
[24] Exhibit "CC", Docket (CTA Case No. 7630) – Vol. III, pp. 1601 to 1609.
[25] Exhibit "FF", Docket (CTA Case No. 7630) – Vol. III, pp. 1670 to 1680.
[26] Exhibit "J", Docket (CTA Case No. 7630) – Vol. III, pp. 1316 to 1325.
[27] Exhibit "AA", Docket (CTA Case No. 7630) – Vol. III, pp. 1578 to 1587.
[28] Exhibit "DD", Docket (CTA Case No. 7630) – Vol. III, pp. 1613 to 1622.
[29] Exhibit "GG", Docket (CTA Case No. 7630) – Vol. III, pp. 1684 to 1693.
[30] Exhibit "Q-1", Docket (CTA Case No. 7630) – Vol. I, p. 1.
[31] Exhibit "V-1", Docket (CTA Case No. 7642), p. 4; Docket (CTA Case No. 7630) – Vol. III, p. 1438.
[32] Exhibit "Y-1", Docket (CTA Case No. 7643), p. 4; Docket (CTA Case No. 7630) – Vol.

7673	₱23,605,733.60	August 15, 2007[33]	2nd Division
7712	₱23,707,161.39	December 10, 2007[34]	1st Division
7734	₱23,693,847.00	March 7, 2008[35]	1st Division

In her Answers in CTA Case Nos. 7630,[36] 7642,[37] 7643,[38] 7673,[39] 7712,[40] and 7734,[41] respondent CIR alleges the following Special and Affirmative Defenses, to wit:

1. The Petition for Review does not merit to be given due course. Well-settled is the rule that jurisdiction is determined by the allegations in the complaint or in this case, the petition. The allegations of petitioner point to a relief that entirely relies on the nullification of the Certification of the Department of Energy dated December 20, 2003 and the resultant BIR Ruling No. 001-2003. Aside from the allegations therein, this point is emphasized in petitioner's "Prayer" which explicitly seeks to nullify the validity of the said Certification of the Department of Energy. It then further deteriorates to a point where petitioner is asking the Court to rule that the Department's factual finding that *"aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price"*, is not correct. Finally, petitioner prays for the nullification of the resultant BIR Ruling No. 001-2003. Clear as day, petitioner is primarily seeking the nullification of these issuances. The alleged cause of action for refund of taxes being merely consequential to that primarily sought. It cannot be denied that absent the nullification of the issuances, petitioner would have nothing to base its cause of action. However, the law provides the proper administrative remedies available to petitioner in contesting these issuances and which petitioner ignored. Instead, what petitioner undertook is a procedural shortcut by filing the instant petition, and this mis-step should be viewed with utmost disfavor.[42]

III, p. 1529.
[33] Exhibit "BB-1", Docket (CTA Case No. 7673), p. 1; Docket (CTA Case No. 7630) – Vol. III, p. 1588.
[34] Exhibit "EE-1", Docket (CTA Case No. 7712), p. 4; Docket (CTA Case No. 7630) – Vol. III, p. 1654.
[35] Exhibit "II-1", Docket (CTA Case No. 7734), p. 4; Docket (CTA Case No. 7630) – Vol. III, p. 1694.
[36] Docket (CTA Case No. 7630) – Vol. I, pp. 79 to 85.
[37] Docket (CTA Case No. 7642), pp. 101 to 106.
[38] Docket (CTA Case No. 7643), pp. 75 to 80.
[39] Docket (CTA Case No. 7673), pp. 83 to 88.
[40] Docket (CTA Case No. 7712), pp. 71 to 77.
[41] Docket (CTA Case No. 7734), pp. 106 to 114.
[42] Par. 9, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, pp. 80 to 81; Par. 9, CIR's Answer, Docket (CTA Case No. 7734), pp. 107 to 108.

2. There is no cogent reason to disturb the certification and findings of the Department of Energy that *"aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price"*, the same possessing the presumption of regularity.[43]
3. Moreover, it must be stressed that no alteration or amendment was made in the franchise of petitioner by the issuance of the subject Ruling. It merely and simply determined whether the two conditions set forth in Section 13(2), Presidential Decree (PD) No. 1590, exempting petitioner from taxes on its importation of Jet A-1 fuel have been met, namely: (1) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto, and (2) in the case of importation that they are not locally available in reasonable quantity, quality, or price. On the basis of the said certification issued by the Department of Energy, the aforementioned second condition for petitioner's exemption from taxes on its importation of Jet A-1 fuel is wanting.[44]
4. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the National Internal Revenue Code (NIRC) of 1997.[45]
5. Clearly, petitioner failed to exhaust all administrative remedies before elevating this case to this Court.[46]
    - 5.1 Petitioner did not seek redress from the Department of Energy to assail the alleged invalid certification as provided under Department Circular No. 2002-07-004, which was duly issued pursuant to the provisions of Section 5(k) of Republic Act (RA) No. 7638, otherwise known as the Department of Energy Act of 1992.[47]
    - 5.2 Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is

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[43] Par. 5, CIR's Answer, Docket (CTA Case No. 7643), p. 76.

[44] Pars. 6 to 7, CIR's Answer, Docket (CTA Case No. 7643), p. 76.

[45] Par. 8, CIR's Answer, Docket (CTA Case No. 7642), p. 103; Par. 9, CIR's Answer, Docket (CTA Case No. 7643), p. 77; Par. 8, CIR's Answer, Docket (CTA Case No. 7673), p. 85; and Par. 2 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 73.

[46] Par. 12, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 82; Par. 7, CIR's Answer, Docket (CTA Case No. 7642), p. 102; Par. 7, CIR's Answer, Docket (CTA Case No. 7673), p. 84; Par. 1 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 72; and Par. 12, CIR's Answer, Docket (CTA Case No. 7734), p. 109.

[47] Par. 10, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 81; and Par. 10, CIR's Answer, Docket (CTA Case No. 7734), p. 108.

locally available in reasonable quantity, quality and price before petitioner questioned its legality before this Court. Petitioner precipitate act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure.[48]

5.3 Petitioner likewise failed to appeal to the Office of the Secretary of Finance, BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Court, in violation of Section 4 of the NIRC of 1997.[49]

6. In effect, petitioner is asking this Court to override the factual determination made by the Secretary of the Department of Energy who acted within the scope of his official functions on a matter within the sphere of his competence/specialization,[50] in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay this Court from exercising jurisdiction over this petition.[51]
7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.[52]
8. Petitioner must prove that it paid the specific taxes so alleged.[53]
9. Taxes paid and collected are presumed to have been paid in accordance with law, hence, not refundable.[54]
10. Petitioner must prove that the alleged amounts sought to be refunded was erroneously or illegally collected by respondent,

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[48] Par. 7.1, CIR's Answer, Docket (CTA Case No. 7642), pp. 102 to 103; Par. 7.1, CIR's Answer, Docket (CTA Case No. 7673), pp. 84 to 85; and Par. 1.1 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), pp. 72 to 73.

[49] Par. 11, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, pp. 81 to 82; Par. 7.2, CIR's Answer, Docket (CTA Case No. 7642), p. 103; Par. 8, CIR's Answer, Docket (CTA Case No. 7643), pp. 77 to 78; Par. 7.2, CIR's Answer, Docket (CTA Case No. 7673), p. 85; Par. 1.2 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 73; and Par. 11, CIR's Answer, Docket (CTA Case No. 7734), p. 109.

[50] Par. 13, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 83; and Par. 13, CIR's Answer, Docket (CTA Case No. 7734), p. 110.

[51] Par. 9, CIR's Answer, Docket (CTA Case No. 7642), p. 104; Par. 10, CIR's Answer, Docket (CTA Case No. 7643), p. 77; Par. 9, CIR's Answer, Docket (CTA Case No. 7673), pp. 85 to 86; and Par. 3 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 74.

[52] Par. 4, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 80; Par. 4 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 74; and Par. 4, CIR's Answer, Docket (CTA Case No. 7734), p. 107.

[53] Par. 5, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 80; Par. 11, CIR's Answer, Docket (CTA Case No. 7643), p. 74; and Par. 5, CIR's Answer, Docket (CTA Case No. 7734), p. 107.

[54] Par. 12, CIR's Answer, Docket (CTA Case No. 7643), p. 77.

or that the same were properly documented.[55]

11. Tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And if an exemption is found to exist, it must not be enlarged by construction since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute, the favor would be extended beyond dispute in ordinary cases.[56]
12. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[57]
13. In an action for refund/tax credit, the taxpayer has the burden to establish its right to refund, and failure to sustain is fatal to the claim for refund.[58]
14. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.[59]

On the other hand, respondent COC filed his separate Answers in CTA Case Nos. 7642, 7643, and 7734, substantially alleging the following Special and Affirmative Defenses:

1. While the petition is entitled "Refund of Specific Tax on Jet A-1 Importation", the primary issue to be resolved is whether the assailed BIR Ruling is valid. Otherwise stated, the resolution of whether petitioner is entitled to a tax refund it paid under protest to the BOC hinges on the issue of the validity of the assailed

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[55] Par. 6, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 80; Par. 11, CIR's Answer, Docket (CTA Case No. 7643), p. 74; Par. 5 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 74; and Par. 6, CIR's Answer, Docket (CTA Case No. 7734), p. 107.

[56] Par. 14, Docket (CTA Case No. 7734), p. 111.

[57] Par. 14, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 84; Par. 15, CIR's Answer, Docket (CTA Case No. 7643), p. 77; Par. 8 (Special and Affirmative Defenses), Docket (CTA Case No. 7712), pp. 74 to 75; and Par. 15, Docket (CTA Case No. 7734), p. 111.

[58] Par. 8, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 80; Par. 13, CIR's Answer, Docket (CTA Case No. 7643), p. 74; Par. 6 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 74; and Par. 8, CIR's Answer, Docket (CTA Case No. 7734), p. 107.

[59] Par. 7, CIR's Answer, Docket (CTA Case No. 7630) – Vol. I, p. 80; Par. 14, CIR's Answer, Docket (CTA Case No. 7643), p. 77; Par. 7 (Special and Affirmative Defenses), CIR's Answer, Docket (CTA Case No. 7712), p. 74; and Par. 7, CIR's Answer, Docket (CTA Case No. 7734), p. 107.

BIR Ruling.[60]

2. BIR Ruling No. 001-2003 did not alter or amend the franchise of petitioner. Said ruling merely and simply determined whether the two (2) conditions set forth in Section 13 of PD No. 1590, as amended by LOI 1483, to justify petitioner's exemption from taxes on its importation of Jet A-1 fuel have been met.[61] Specifically, it only confirmed the absence of the second condition, that fuel is "not locally available in reasonable quantity, quality or price" based on the DOE Certification.[62]
3. The DOE is the government agency responsible for the administration of the energy section; hence, it is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function(s).[63]
4. The Court is not the proper forum to question or contest the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price; hence the Court has no jurisdiction over the issue of whether the said DOE certification is valid.[64]
5. At all events, petitioner failed to question the said BIR Ruling within thirty (30) days from receipt thereof before the Secretary of Finance[65] as provided for under Revenue Memorandum Circular No. 44-2001 dated October 11, 2001:

   "Section 3. *Rulings Adverse to the Taxpayer.*—A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. xxx"[66]
6. Accordingly, said ruling had become final. Petitioner can no longer question the same through the present petition.[67]
7. Petitioner's failure to exhaust all administrative remedies is fatal to its cause.[68]
8. The BOC is a mere collection agency that does not have power and jurisdiction to adjudicate any issue arising from any tax imposition and other rules and regulations promulgated by the

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[60] Par. 6, COC's Answer, Docket (CTA Case No. 7734), p. 98.
[61] Par. 9, COC's Answer, Docket (CTA Case No. 7734), p. 99.
[62] Par. 7.5, COC's Answer, Docket (CTA Case No. 7642), p. 93.
[63] Par. 12, COC's Answer, Docket (CTA Case No. 7734), p. 100.
[64] Par. 14, COC's Answer, Docket (CTA Case No. 7734), p. 101.
[65] Par. 5, COC's Answer, Docket (CTA Case No. 7642), p. 89.
[66] Par. 15, COC's Answer, Docket (CTA Case No. 7734), p. 101.
[67] Par. 16, COC's Answer, Docket (CTA Case No. 7734), p. 101.
[68] Par. 11, COC's Answer, Docket (CTA Case No. 7643), pp. 101 to 102; and Par. 17, COC's Answer, Docket (CTA Case No. 7734), pp. 101 to 102.

BIR in the exercise of its quasi-judicial functions.[69]

9. In action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.[70]
10. Any claim for refund of customs duties take the nature of tax exemptions that must be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.[71]

Parenthetically, respondent COC failed to file his Answer in CTA Case Nos. 7630, 7673, and 7712; but of these cases, respondent COC was declared in default only in CTA Case No. 7712, upon oral motion of petitioner's counsel.[72]

Pursuant to separate motions filed by petitioner,[73] the instant cases were consolidated.[74]

On August 15, 2008, respondent COC filed his *Pre-Trial Brief (For Respondent Commissioner of Customs).*[75] Subsequently, petitioner filed its *Petitioner's Consolidated Pre-Trial Brief* on August 26, 2008.[76]

On April 2, 2009, the parties filed their *Consolidated Joint Stipulation of Facts and Issues*,[77] which was approved by the Court through the Resolution dated April 14, 2009, thus terminating the pre-trial stage.[78] Thereafter, petitioner presented its evidence.

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[69] Par. 9, COC's Answer, Docket (CTA Case No. 7642), p. 94; Par. 14, COC's Answer, Docket (CTA Case No. 7643), p. 103; and Pars. 7 & 8, COC's Answer, Docket (CTA Case No. 7734), pp. 98 to 99.

[70] Par. 8, COC's Answer, Docket (CTA Case No. 7642), p. 94; Par. 6, COC's Answer, Docket (CTA Case No. 7643), p. 100; and Par. 18, COC's Answer, Docket (CTA Case No. 7734), p. 102.

[71] Par. 8.2, COC's Answer, Docket (CTA Case No. 7642), p. 94; and Par. 18.1, COC's Answer, Docket (CTA Case No. 7734), p. 102.

[72] Resolution dated May 9, 2008, Docket (CTA Case No. 7712), p. 102.

[73] Motion of Consolidation, Docket (CTA Case No. 7642), pp. 144 to 147; Motion for Consolidation, Docket (CTA Case No. 7643), pp. 142 to 145; Refer to the Order dated June 5, 2008, Docket (CTA Case No. 7673), p. 118; Omnibus Motion for Consolidation, Docket (CTA Case No. 7712), pp. 103 to 108; and Omnibus Motion for Consolidation, Docket (CTA Case No. 7734), pp. 116 to 120.

[74] Resolution dated March 17, 2008, Docket (CTA Case No. 7642), p. 161; Resolution dated July 1, 2008, Docket (CTA Case No. 7712), pp. 111 to 112; and Resolution dated July 17, 2008, Docket (CTA Case No. 7734), pp. 138 to 139.

[75] Docket (CTA Case No. 7630) – Vol. I, pp. 159 to 162.

[76] Docket (CTA Case No. 7630) – Vol. I, pp. 164 to 173.

[77] Docket (CTA Case No. 7630) – Vol. I, pp. 220 to 228.

[78] Resolution dated April 14, 2009, Docket (CTA Case No. 7630) – Vol. I, p. 240.

In support of its petitions, petitioner presented the following witnesses: Jhonathan Chiong[79] – Manager of the Fuel Department of petitioner; Marides C. Canillo[80] – Manager of the Financial Planning and Analysis of petitioner; Edwin J. Segundo[81] – Supervisor of the Fuel Department of petitioner; Atty. Jonathan Andrew Lim[82] – Senior Legal Counsel of petitioner; Myra Celeste O. Dabalos[83] –Independent Certified Public Accountant (ICPA); Charleston A. Lopezgo[84] – Manager of the Fuel Purchasing and Risk Management Division of Philippine Airlines, Inc. (PAL); Mary Ann Capuchino[85] – Partner of the Tax Reporting and Operations Group of the Tax Division of SyCip Gorres Velayo & Co.; Glendalyn Dela Cruz[86] – Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the Department of Energy (DOE); Atty. John Voltaire Almeda[87] – Legal Counsel of petitioner; Jennifer I. Sedigo[88] – Financial Reporting Manager of Accounting of petitioner; Mario Tiaoqui[89] – Former Secretary of the DOE; Apolinario Gonzales[90] – Officer-in-Charge of the Legal Division of the Bureau of Customs, Port of Batangas; and Veronica Granadso[91] – Customs Acting Appraiser of the Bureau of Customs, Port of Subic.

Petitioner formally offered its evidence on March 7, 2013 through its "*Petitioner's Formal Offer of Evidence (with reservation re: BIR and BOC records)*",[92] with the respective *Comment (On*

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[79] Minutes of the Hearing held on April 20, 2009, Docket (CTA Case No. 7630) – Vol. I, p. 284.

[80] Minutes of the Hearing held on May 20, 2009, Docket (CTA Case No. 7630) – Vol. I, p. 304.

[81] Minutes of the Hearing held on June 29, 2009, August 17, 2009, and September 16, 2009, Docket (CTA Case No. 7630) – Vol. I, pp. 392, 406, and 409.

[82] Minutes of the Hearing held on March 9, 2010 and July 15, 2010, Docket (CTA Case No. 7630) – Vol. I, pp. 541 and 590.

[83] Minutes of the Hearing held on March 9, 2010, May 4, 2010, July 15, 2010, August 17, 2010, September 21, 2010, April 17, 2012, and July 26, 2012 Docket (CTA Case No. 7630) – Vols. I and II, pp. 541, 557, 590, 597, 599, 979, and 1063.

[84] Minutes of the Hearing held on October 21, 2010, Docket (CTA Case No. 7630) – Vol. I, p. 615.

[85] Minutes of the Hearing held on February 17, 2011, Docket (CTA Case No. 7630) – Vol. I, p. 671.

[86] Minutes of the Hearing held on February 17, 2011 and March 22, 2011, Docket (CTA Case No. 7630) – Vol. I, pp. 671 and 684.

[87] Minutes of the Hearing held on November 11, 2011, and February 2, 2012, Docket (CTA Case No. 7630) – Vol. II, pp. 870 and 915 to 916.

[88] Minutes of the Hearing held on March 6, 2012, Docket (CTA Case No. 7630) – Vol. II, p. 954.

[89] Minutes of the Hearing held on May 22, 2012, Docket (CTA Case No. 7630) – Vol. II, p. 1017.

[90] Minutes of the Hearing held on July 26, 2012, Docket (CTA Case No. 7630) – Vol. II, pp. 1063 to 1064.

[91] *Id.*

[92] Petitioner's Formal Offer of Evidence, Docket (CTA Case No. 7630) – Vol. III, pp.

Petitioner's Formal Offer of Evidence) of respondent CIR filed on March 22, 2013,[93] and of respondent COC filed on April 25, 2013.[94] Thereafter, on May 2, 2013, petitioner filed its *Petitioner's Supplemental Formal Offer of Evidence,*[95] with respondent *CIR's Comment (On Petitioner's Supplemental Formal Offer of Evidence)* filed on May 24, 2013[96] and respondent COC's *Comment (Petitioner's Supplemental Formal Offer of Evidence dated April 30, 2013)* filed on June 3, 2013.[97] On July 4, 2013, petitioner filed its *Reply (To The Comment on Petitioner's Formal Offer of Evidence of Respondent Commissioner of Customs Dated April 24 2013).*[98] Subsequently, on July 18, 2013, respondent COC filed a *Rejoinder (On Petitioner's Reply dated July 4, 2013).*[99]

On September 10, 2013, the Court, admitted as petitioner's evidence, Exhibits "A", "B", "C", "C-1", "D", "E", "F", "G", "G-1", "G-2", "H", "H-1", "I", "I-5", "I-6", "I-7", "I-8", "I-9", "J", "J-11", "Q", "Q-1", "T", "T-2", "T-3", "U", "V", "V-1", "W", "W-1", "W-3", "W-4", "W-5", "X", "Y", "Y-1", "Z", "Z-1", "Z-2", "Z-3", "AA", "BB", "BB-1", "CC", "CC-1", "CC-2", "CC-3", "DD", "EE", "EE-1", "FF", "FF-1", "FF-2", "FF-3", "GG", "II", "II-1", "JJ", "JJ-1", "KK", "KK-1", "RR", "SS", "VV", "WW", "XX", "YY", "HHH", "III", "KKKK", "LLLL", "MMMM", "NNNN", "UUUU", "WWWW", "XXXX", "YYYY", "YYYY-1", "ZZZZ", "ZZZZ-1", "A^5", "D^5", "E^5", "F^5", "F^5-1", "F^5-2", "F^5-3", "F^5-4", "F^5-5", "F^5-6", "F^5-7", "F^5-8", "F^5-9", "F^5-10", "G^5", "G^5-1", "G^5-2", "G^5-3", "G^5-4", "H^5", "I^5", "J^5", "N^5", "N^5-1", "P^5","P^5-1", "R^5", "S^5", "U^5", "V^5", "W^5", "W^5-1", "X^5", "Y^5", "Z^5", "A^6", "B^6", "C^6", "D^6", "E^6", "F^6", "G^6", "H^6", "I^6", "J^6", "K^6", "L^6", "M^6", "N^6", "O^6", "P^6", "Q^6", "R^6", "S^6", "T^6", "X^6", "X^6-1", "Z^6", "Z^6-1", "A^7", "A^7-1", "B^7", "B^7-1", "C^7", "D^7", "E^7", "F^7", "G^7", "H^7", "I^7", "J^7", "K^7", "K^7-1", "L^7", "L^7-1", "N^7", "N^7-1", and "O^7".[100]

However, the Court denied the admission of Exhibits "P", "P-1", "P-2", "P-3", "P-4", "HH", "HH-1" to "HH-4", "LL", "MM", "NN", "OO", "PP", "QQ", "TT", "UU", "BBB", "CCC", "DDD", "EEE", "FFF", "GGG", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "UUU", "VVV", "WWW", "XXX", "YYY", "ZZZ", "AAAA", "BBBB", "CCCC", "DDDD", "EEEE", "FFFF", "GGGG", "HHHH", "IIII",

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1242 to 1289.

[93] Docket (CTA Case No. 7630) – Vol. III, pp. 2184 to 2188.
[94] Docket (CTA Case No. 7630) – Vol. IV, pp. 2202 to 2260.
[95] Docket (CTA Case No. 7630) – Vol. IV, pp. 2263 to 2265.
[96] Docket (CTA Case No. 7630) – Vol. IV, pp. 2277 to 2279.
[97] Docket (CTA Case No. 7630) – Vol. IV, pp. 2281 to 2285.
[98] Docket (CTA Case No. 7630) – Vol. IV, pp. 2297 to 2317.
[99] Docket (CTA Case No. 7630) – Vol. IV, pp. 2318 to 2350.
[100] Resolution dated September 10, 2013, Docket (CTA Case No. 7630) – Vol. IV, pp. 2356 to 2358.

"JJJJ", "OOOO", "PPPP", "QQQQ", "QQQQ-1", "RRRR", "SSSS", "TTTT", "VVVV", "L^5", "L^5-1", "T^5", "U^6", "U^6-1", "V^6", "V^6-1", "W^6", "W^6-1", "Y^6", "M^7", "M^{7-1}", "M^{7-2}", "M^{7-3}", "M^{7-4}", and "M^{7-5}".[101]

On October 1, 2013, petitioner filed its *Motion (For Partial Reconsideration of the Court's Resolution dated 10 September 2013)*.[102] On October 24, 2013, respondent COC filed his *Comment (On Petitioner's Motion for Partial Reconsideration)*.[103] The Court granted the *Motion* in the Resolution dated February 26, 2014, admitting as petitioner's evidence, Exhibits "P", "P-1", "HH, HH-1, HH-4", "TT", "UU", "BBB", "CCC", "DDD", "EEE", "FFF", "GGG", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "JJJJ", "OOOO", "QQQQ", "RRRR", "SSSS", "L^5", "L^5-1", "U^6", "U^6-1", "V^6", "V^6-1", "W^6", "W^6-1", "M^7", "M^{7-1}", "M^{7-2}", "M^{7-3}", "M^{7-4}", and "M^{7-5}".[104]

On October 8, 2013, respondent COC filed his *Omnibus Motion (To Reset October 17, 2013 Hearing and To Adopt the Testimony of Saturnino B. Dela Cruz as Respondent COC's evidence)*[105] to which petitioner filed its *Comment* filed on October 30, 2013.[106] The Court granted the *Omnibus Motion* on November 26, 2013.[107] Thereafter, on April 7, 2014, respondent COC filed his *Urgent Omnibus Motion (a. To Adopt the Testimonies of Mr. Saturnino B. Dela Cruz and Ms. Zenaida Y. Monsada as Respondent COC's evidence, b. To Cancel the April 8, 2014 Hearing, and c. To Set a Commissioner's Hearing)*,[108] which the Court granted in the Resolution dated April 8, 2014.[109]

In the meantime, on April 4, 2014, petitioner filed its *Manifestation and Request for Admission*,[110] stating that in the February 27, 2014 Decision of the Regional Trial Court (RTC) of Pasay City in the case entitled *Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy* (RTC-Decision),[111] the RTC of Pasay City declared that the DOE Certification dated December 20, 2002 is null and void and of

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[101] *Id.*
[102] Docket (CTA Case No. 7630) – Vol. IV, pp. 2359 to 2366.
[103] Docket (CTA Case No. 7630) – Vol. IV, pp. 2380 to 2385.
[104] Docket (CTA Case No. 7630) – Vol. IV, pp. 2462 to 2464.
[105] Docket (CTA Case No. 7630) – Vol. IV, pp. 2369 to 2374.
[106] Docket (CTA Case No. 7630) – Vol. IV, pp. 2395 to 2397.
[107] Resolution dated November 26, 2013, Docket (CTA Case No. 7630) – Vol. IV, pp. 2399 to 2402.
[108] Docket (CTA Case No. 7630) – Vol. IV, pp. 2489 to 2495.
[109] Docket (CTA Case No. 7630) – Vol. IV, pp. 2503 to 2505.
[110] Docket (CTA Case No. 7630) – Vol. IV, pp. 2465 to 2468.
[111] Docketed as Civil Case No. R-PSY-10-03889-CV.

no force and effect; and praying that respondents CIR and COC admit the issuance and genuineness of the said Decision.

Respondent COC filed his *Comment (On Petitioner's Manifestation and Request for Admission dated April 4, 2014)* on April 14, 2014, admitting the existence of the RTC-Decision but subject to the qualification that the same is not yet final, as the same is the subject of a Notice of Appeal filed on March 19, 2014.[112] Respondent CIR filed her *Comment (Re: Petitioner's Manifestation and Request for Admission)* on May 5, 2014, also admitting the existence of the RTC-Decision but without, however, necessarily admitting the correctness of the contents, materiality and probative value of such.[113] The Court noted such admission by respondents in a Resolution dated June 26, 2014.[114]

On July 11, 2014, respondents CIR and COC filed their *Joint Formal Offer of Evidence.*[115] Petitioner filed its *Comment (To Respondents Joint Formal Offer of Evidence)* on July 28, 2014.[116] Subsequently, the Court issued the Resolution dated August 29, 2014, admitting Exhibits "1", "1-a", "2", "3", "3-a", "4", "5", "6", "7", and "8" as respondents' evidence.[117]

Meanwhile, petitioner filed its *Petitioner's Supplemental Formal Offer of Evidence* on August 18, 2014, offering the RTC-Decision as Exhibit "P7".[118] Respondent COC filed his *Comment (On Petitioner's Supplemental Formal Offer of Evidence)* on August 27, 2014.[119] Thereafter, the Court admitted Exhibit "P7" in the Resolution dated September 29, 2014, and directed the parties to file their respective memorandum within thirty (30) days from notice thereof.[120]

Respondent COC, petitioner, and respondent CIR filed their respective *Memorandum* on November 7, 2014, on January 5, 2015, and on January 12, 2015.[121] Correspondingly, the case was

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112 Docket (CTA Case No. 7630) – Vol. IV, pp. 2612 to 2614.
113 Docket (CTA Case No. 7630) – Vol. IV, pp. 2662 to 2664.
114 Docket (CTA Case No. 7630) – Vol. IV, pp. 2668 to 2669.
115 Joint Formal Offer of Evidence, Docket (CTA Case No. 7630) – Vol. IV, pp. 2675 to 2683.
116 Docket (CTA Case No. 7630) – Vol. IV, pp. 2686 to 2690.
117 Docket (CTA Case No. 7630) – Vol. IV, p. 2706.
118 Docket (CTA Case No. 7630) – Vol. IV, pp. 2694 to 2696.
119 Docket (CTA Case No. 7630) – Vol. IV, pp. 2701 to 2703.
120 Docket (CTA Case No. 7630) – Vol. IV, pp. 2711 to 2712.
121 Docket (CTA Case No. 7630) – Vol. IV, pp. 2731 to 2793, 2815 to 2888, and 2894 to 2906.

submitted for decision on January 22, 2015.[122]

On January 28, 2015, petitioner filed its *Motion for Leave to File Reply With Attached Reply (To Respondent CIR's Memorandum dated 27 November 2014)*,[123] which the Court granted in the Resolution issued on January 30, 2015.[124]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[125] for this Court's resolution, to wit:

> "1. Whether or not the Certification of the Department of Energy dated December 20, 2002, which is the basis of BIR Ruling No. 001-2003, dated January 29, 2003, was issued without complying with the requirements of due process.
>
> 2. Whether or not the aforesaid Certification which states that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality, and price, is correct in so far as the petitioner APC is concerned.
>
> 3. Whether or not BIR Ruling No. 001-2003, dated January 29, 2003, which is based on the subject Certification of the Department of Energy, is valid.
>
> 4. Whether or not the said BIR Ruling No. 001-2003 amounts to an unauthorized amendment or alteration of P.D. No. 1590, the franchise of PAL, in violation of Section 16 and 24 thereof, in so far as it applies the Certification of the Department of Energy to PAL and to APC.
>
> 5. Whether or not petitioner is exempt by virtue of its franchise, more specifically Section 15 of Republic Act No. 8339 (now Section 11 of R.A. 9215), in relation to

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[122] Resolution dated January 22, 2015, Docket (CTA Case No. 7630) – Vol. IV, p. 2911.
[123] Docket (CTA Case No. 7630) – Vol. IV, pp. 2912 to 2924.
[124] Docket (CTA Case No. 7630) – Vol. IV, p. 2926.
[125] Issues to be Tried or Resolved, Consolidated JSFI, Docket (CTA Case No. 7630) – Vol. I, pp. 225 to 227.

Section 13 of the franchise of Philippine Airlines, Inc. (PAL) Presidential Decree No. 1590 (PD No. 1590) from the excise tax collected on its importations of Jet A-1 fuel for domestic operation, and, therefore, entitled to the refund of the specific taxes paid by petitioner thereon under protest, to wit:

a. PHP 17,698,480.00 paid on 28 April 2005;
b. PHP 23,678,242.00 paid on 22 June 2005;
c. PHP 11,836,539.00 paid on 29 June 2005;
d. PHP 23,605,733.60 paid on 16 August 2005;
e. PHP 23,707,161.39 paid on 16 December 2005; and
f. PHP 23,693,847.00 paid on 09 March 2006.

6. Whether petitioner failed to exhaust all administrative remedies before filing the instant petition with this Honorable Court thereby making the instant petition dismissible.

7. Whether or not the instant petition is premature for failure of petitioner to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated 29 January 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the NIRC of 1997.

8. Whether the Honorable Court has jurisdiction over the instant petition.

9. Assuming that the Honorable Court has jurisdiction:

a. Whether petitioner paid the alleged specific tax on the alleged importation of Jet A-1 fuel.
b. Whether such alleged collected taxes were erroneously or illegally collected by respondent.
c. Whether the claim was filed within the two-year period prescribed in Section 229 of the Tax Code.
d. Whether respondent CIR is a proper party to the instant case."

The foregoing issues may be summed up into two (2) general issues, to wit:

1. Whether or not this Court has jurisdiction to entertain the instant consolidated cases; and

2. If in the affirmative, whether or not petitioner is entitled to a refund in the aggregate amount of ₱124,220,002.99, allegedly representing specific taxes paid for the importation of Jet A-1 fuel for its domestic flight operations on the following dates: April 15, 2005, June 13, 2005, June 8, 2005, August 4, 2005, November 28, 2005, and February 22, 2005.

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction under Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals. Petitioner points out that the primary issue sought to be resolved in these consolidated cases is petitioner's entitlement to a refund of the specific taxes it paid on various importations of Jet A-1 fuel. Petitioner also insists that contrary to respondents' contention, the principle of exhaustion of administrative remedies is not applicable in the instant case because the urgency of judicial intervention is readily apparent, considering the imminence of the expiration of the two-year prescriptive period within which to file a suit or proceeding before the courts.

Petitioner also asserts that as a public utility, it is imbued with public interest and is necessarily granted numerous incentives such as special tax privileges and benefits. Petitioner claims that it is entitled to the same tax treatment as PAL pursuant to Section 11 of its franchise, RA No. 8339, as amended, in relation to Section 13(B) (2) of PD No. 1590, as amended. It maintains that by express provision of petitioner's franchise, favorable terms contained in a franchise of a competing individual, partnership or corporation engaged in the same business as petitioner shall automatically be considered incorporated in the franchise of petitioner. Thus, the tax exemption privileges granted to PAL should operate equally in petitioner's favor.

Moreover, petitioner claims that the 2003 BIR Ruling was patently wrong and bereft of factual basis; was issued in violation of due process; and invalidly modifies or amends PD No. 1590. And in relation thereto, petitioner insists that the DOE Certification was arbitrary and is in fact contrary to the very data of the DOE itself, and that the data consistently showed that there was no locally available supply, in quantity and/or in reasonable price.

Petitioner further contends that the BIR could only withdraw PAL's and consequently petitioner's tax exemption from excise taxes on fuel importations, by proving that there was a sufficient locally available supply of jet fuel in reasonable quantity, quality and price.

Furthermore, petitioner claims that contrary to respondents' argument, "locally available supply", by definition, excludes imported products. Specifically, petitioner contends that local refinery production was insufficient to meet the quantity needed by petitioner for its operations.

Lastly, petitioner maintains that it is entitled to the refund or tax credit in the total amount of ₱124,220,002.99, representing specific taxes paid under protest corresponding to the importations of Jet A-1 fuel for its domestic operations, since it (i) has proven its entitlement to refund/tax credit; (ii) complied with the requirements for administrative claims for refund; and (iii) filed the petitions within the two-year reglementary period.

Respondent CIR's counter-arguments:

Respondent CIR primarily argues that this Court has no jurisdiction to determine the validity of the DOE Certification dated December 20, 2002 and BIR Ruling No. 001-2003. She further claims that collateral attack on presumably valid administrative issuance is not allowed.

Respondent CIR emphasizes that petitioner prematurely elevated the cases to the Court of Tax Appeals. She argues that petitioner failed to seek redress through proper administrative or judicial remedies available to petitioner in contesting such issuances. Respondent CIR contends that the claim for refund must fail because petitioner was not able to prove that aviation fuel is not locally available in reasonable quantity, quality and price. In fact, according to respondent CIR, petitioner conceded that the quality of Jet A-1 fuel is universally similar.

As for the price, respondent CIR states that reasonable price is not necessarily the lowest price, as long as it is reasonable both in the legal and economic sense.

Finally, respondent CIR avers that petitioner failed to prove that its right to tax refund indubitably exists.

Respondent COC's counter-arguments:

Respondent COC likewise argues that this Court has no jurisdiction to pass upon the validity of the DOE Certification dated December 20, 2002 and BIR Ruling No. 001-2003.

According to respondent COC, petitioner is not exempt from the payment of excise taxes on its importations of Jet A-1 fuel. Petitioner contends that in order for petitioner to avail of and enjoy the tax benefits and privileges provided to its competitors, such as PAL, it must first be established that indeed PAL receives or enjoys such tax privileges or other favorable terms which tend to place petitioner at any disadvantage. He points out that aside from petitioner's self-serving allegations, no concrete or substantial evidence was presented by petitioner to establish that PAL or any other competitors of petitioner has indeed received or enjoyed, or is receiving or enjoying, tax privileges with respect to its importations of Jet A-1 fuel.

Respondent COC also claims that petitioner is not entitled to a refund because it failed to adduce sufficient proof showing that the imported articles or supplies are not locally available in reasonable quantity, quality or price.

THE COURT'S RULING

The Court shall first resolve the critical issue as to whether or not it has jurisdiction to take cognizance of the instant consolidated Petitions for Review, before proceeding to determine whether or not petitioner is entitled to its refund claims.

Jurisdiction of the Court of Tax Appeals.

The jurisdiction of this Court is conferred by RA No. 1125, as amended by RA No. 9282. Section 7(a)(1) thereof provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (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;**" *(Emphases supplied)*

In *Banco De Oro, et al. vs. Republic of the Philippines, et al.* (hereinafter referred to as the "*BDO* case"),[126] the Supreme Court held:

> "**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals.** The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>
> **Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court**, thus:
>
> SEC. 7. *Jurisdiction.* The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal as herein provided:
>
> 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 or other laws administered by the Bureau of Internal Revenue*;
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> ....
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.— Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue*, the Commissioner of Customs, the

[126] G.R. No. 198756, January 13, 2015.

> Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ....
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.— No civil proceeding involving matters arising under the National Internal Revenue Code,* the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal,*[127] citing *Rodriguez v. Blaquera,*[128] this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that* ***the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals,*** *not the RTC.*
>
> The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops...
>
> xxx xxx xxx." *(Emphases supplied)*

Thus, considering that what is being assailed is a ruling of respondent CIR embodied in BIR Ruling No. 001-2003, this Court is undoubtedly vested with jurisdiction to rule on the validity thereof. Nevertheless, even without the issue of whether or not the said BIR Ruling is valid, this Court is still empowered to decide on the propriety of the refund claim. In other words, the jurisdiction of this Court over

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[127] 440 Phil. 477 (2002), cited in *Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.*, 565 Phil. 255, 268-269 (2007).

[128] 109 Phil. 598 (1960).

rulings of respondent is one thing, and over petitioner's claim for refund is quite another. As for the latter, this Court is undoubtedly has jurisdiction.

Timeliness of filing of the Petitions for Review.

Sections 204(C) and 229 of the NIRC of 1997 provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:**

> *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the above-quoted provisions, both the administrative claim and the judicial claim (via a Petition for Review) for refund must be made within two years from taxpayer's payment of tax.

In *Gibbs, et al. vs. Collector of Internal Revenue*,[129] the Supreme Court said:

> "xxx. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue[130] within 2 years from the date of his payment of the tax, as required by said Section 306[131] of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. **If however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.**" *(Emphasis supplied)*

This is precisely the reason why the filing of the instant consolidated Petitions for Review was justified. In the *BDO* case, the High Court said:

> "xxx. The remedy within the administrative machinery must be resorted to first and pursued to its appropriate conclusion before the court's judicial power can be sought.

[129] G.R. No. L-13453, February 29, 1960.
[130] Now the Commissioner of Internal Revenue.
[131] Now Section 229 of the NIRC of 1997.

Nonetheless, **jurisprudence allows certain exceptions to the rule on exhaustion of administrative remedies**:

> [The doctrine of exhaustion of administrative remedies] is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial setting of a case. Hence, **it is disregarded xxx *when there are circumstances indicating the urgency of judicial intervention.*** xxx
>
> xxx xxx xxx." *(Emphases supplied)*

In these consolidated cases, the dates of filing of petitioner's administrative and judicial claims for refund and the dates of expiration of the two-year prescriptive period for filing the same, are summarized as follows:

CTA Case No.	Amount Involved (in Pesos)	Date of Payment Under Protest	Date of Expiration of 2-Year Prescriptive Period	Date of Filing Written Claim for Refund with the CIR	Date of Filing of Petition for Review
7630	17,698,479.58	April 28, 2005	April 28, 2007	March 26, 2007[132]	April 30, 2007[133]
7642	23,678,242.00	June 22, 2005	June 22, 2007	March 26, 2007[134]	June 21, 2007[135]
7643	11,836,539.00	June 29, 2005	June 29, 2007	March 26, 2007[136]	June 27, 2007[137]
7673	23,605,733.60	August 16, 2005	August 16, 2007	August 14, 2007[138]	August 15, 2007[139]
7712	23,707,161.39	December 16, 2005	December 16, 2007	October 19, 2007[140]	December 10, 2007[141]
7734	23,693,847.00	March 9, 2006	March 9, 2008	February 4, 2008[142]	March 7, 2008[143]

From the above table, it appears that all of petitioner's claims were filed within the two-year prescriptive period, except for the claim in the amount of ₱17,698,479.58 docketed as CTA Case No. 7630, as it has been filed only on April 30, 2007, or two days after the lapse of the said two-year prescriptive period. However, it is noteworthy that April 28, 2007 fell on a Saturday, and that April 30, 2007 was the

[132] Exhibit "J", Docket (CTA Case No. 7630) – Vol. III, pp. 1316 to 1325.
[133] Exhibit "Q", Docket (CTA Case No. 7630) – Vol. I, pp. 1 to 16.
[134] Exhibit "J", Docket (CTA Case No. 7630) – Vol. III, pp. 1316 to 1325.
[135] Exhibits "V" and "V-1", Docket (CTA Case No. 7630) – Vol. III, pp. 1438 to 1453.
[136] Exhibit "J", Docket (CTA Case No. 7630) – Vol. III, pp. 1316 to 1325.
[137] Exhibits "Y" and "Y-1", Docket (CTA Case No. 7630) – Vol. III, pp. 1529 to 1544.
[138] Exhibit "AA", Docket (CTA Case No. 7630) – Vol. III, pp. 1578 to 1587.
[139] Exhibits "BB" and "BB-1", Docket (CTA Case No. 7630) – Vol. III, pp. 1588 to 1600.
[140] Exhibit "DD" (CTA Case No. 7630) – Vol. III, Docket, pp. 1613 to 1622.
[141] Exhibits "EE" and "EE-1", Docket (CTA Case No. 7630) – Vol. III, pp. 1654 to 1669.
[142] Exhibit "GG", Docket (CTA Case No. 7630) – Vol. III, pp. 1684 to 1693.
[143] Exhibits "II" and "II-1", Docket (CTA Case No. 7630) – Vol. III, pp. 1694 to 1709.

next working day. Correspondingly, petitioner's judicial claim in CTA Case No. 7630 for refund must perforce be likewise considered as timely filed.

Finding that the instant judicial claims for refund were all timely filed, We shall proceed to determine whether petitioner is entitled thereto.

Petitioner's entitlement to the refund claims.

According to the aforequoted Section 229 of the NIRC of 1997, a taxpayer may recover any national internal revenue tax that has been erroneously paid or illegally collected, any penalty claimed to have been collected without authority, or any sum that has been excessively or in any manner wrongfully collected. In cases of refund of erroneously paid or illegally collected taxes, the burden of proof to establish the factual basis of the claim for tax credit or refund lies with the claimant.[144] As a rule, tax refunds are in the nature of tax exemptions, and thus, they are to be construed *strictissimi juris* against the claimant.[145]

In determining whether or not the taxes have been erroneously paid by petitioner, it is imperative to ascertain whether or not petitioner is exempt from specific tax on its importations of Jet A-1 fuel for domestic operations.

Section 11 of RA No. 8339 (APC's legislative franchise), as amended by RA No. 9215, states:

> "SEC. 11. *Tax Provisions.* – The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then**

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[144] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.

[145] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

such provisions shall be deemed *ipso facto* part hereof and <u>shall operate equally in favor of the grantee</u>.

The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation." *(Emphasis and underscoring supplied)*

Relative thereto, Section 13 of PD No. 1590 (PAL's franchise) provides:

"SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited to the following**:

xxx xxx xxx

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the

> grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, **aviation gas, fuel, and oil, whether refined or in crude form** and other articles, supplies, or materials; ***provided*, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;
>
> xxx xxx xxx."

Based on Section 13 of PD No. 1590, for PAL to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following requisites must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions provided in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

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

Thus, for APC to be exempt from the payment of the subject excise taxes, it must be able to show that it has complied, in turn, with the foregoing requisites.

First Requisite: ***Basic Corporate Income Tax must be paid.***

Records show that APC filed its Annual Income Tax Returns for calendar years 2005[146] and 2006[147] on April 12, 2006 and April 11, 2007, respectively. Since APC paid its basic corporate income tax for the said years, it has satisfied the said first requisite.

[146] Exhibit "A7", Docket (CTA Case No. 7630) – Vol. III, pp. 2139 to 2140.
[147] Exhibit "B7", Docket (CTA Case No. 7630) – Vol. III, pp. 2141 to 2146.

Second Requisite: *The subject imported Jet A-1 fuel must be for use in APC's transport and non-transport operations and other activities incidental thereto.*

As regards the second requisite, to prove that the subject imported Jet A-1 fuel was for its transport and non-transport operations and other activities incidental thereto, APC submitted the corresponding Authority to Release Imported Goods (ATRIG), and presented its witnesses, Jhonathan Chiong and Edwin Segundo.

All of the said ATRIG, which were issued by the Commissioner of Internal Revenue, are all to the effect that the Jet A-1 fuel imported by the APC are for its transport or flight operations, to wit:

Date of Importation	ATRIG No.	Statements found in the ATRIG
April 15, 2005	2000-00047628[148]	"...please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of BATANGAS consisting of the above described articles, **will be used exclusively for DOMESTIC FLIGHT OPERATION...**" *(Emphasis supplied)*
June 13, 2005	2000-00054942[149]	"...please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, **will be used exclusively for company's domestic flight operations...**" *(Emphasis supplied)*
June 8, 2005	2000-00055006[150]	"...please be informed that according to the documents

[148] Exhibit "I-9", Docket (CTA Case No. 7630) – Vol. III, p. 1315.
[149] Exhibit "T-3", Docket (CTA Case No. 7630) – Vol. III, p. 1437.
[150] Exhibit "W-5", Docket (CTA Case No. 7630) – Vol. III, p. 1518.

		submitted by abovementioned importer, the shipment to be released at the Port of Subic consisting of the above described articles, **will be used exclusively for domestic flight operations...**" *(Emphasis supplied)*
August 4, 2005	2000-00056124[151]	"...please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, **will be used exclusively for domestic flight operation...**" *(Emphasis supplied)*
November 28, 2005	2000-00071586[152]	"...please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, **will be used exclusively for domestic flight operation...**" *(Emphasis supplied)*
February 22, 2006	2000-00073403[153]	"...please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Batangas consisting of the above described articles, **will be used exclusively for domestic flight...**" *(Emphasis supplied)*

Furthermore, in his Judicial Affidavit,[154] Mr. Chiong testified as follows:

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151 Exhibit "Z-3", Docket (CTA Case No. 7630) – Vol. III, p. 1577.
152 Exhibit "CC-3", Docket (CTA Case No. 7630) – Vol. III, p. 1612.
153 Exhibit "FF-3", Docket (CTA Case No. 7630) – Vol. III, p. 1683.
154 Exhibit "JJ", Docket (CTA Case No. 7630) – Vol. I, pp. 249 to 279.

"ATTY. JACLYN MARIE S. ARELLANO-TAN
Q: Mr. Chiong, what is your present occupation?

JHONATHAN CHIONG
A: I am the Manager of the Fuel Department of Air Philippines Corporation (APC).

Q: Can you mention some of your more important functions?

A: **My more important functions as such Manager include the procurement both by importation and local purchase of aviation fuel, also known as Jet A-1, for the operations of APC. I am also the custodian of all documents and records covering the procurement both by importation and local purchase of Jet A-1 for prior years.**

15 April 2005 Importation

Q: Do you remember a shipment of Jet A-1 imported by APC which arrived at Pinamucan, Batangas on 15 April 2005?

A: Yes, ma'am. **That shipment involved 4,822,474 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel M/T Kirana Dwitya.

Q: **How did you come to know about the said shipment?**

A: **I am the custodian of the records and documents of the said importation.**

xxx xxx xxx

13 June 2005 Importation

Q: Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Pinamukan, Batangas City, on 13 June 2005. Do you remember said importation?

A: Yes, ma'am. **That shipment involved 6,451,837 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel

M/T Kirana Dwitya.

xxx xxx xxx

08 June 2005 Importation

Q: Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Subic Bay Freeport Zone, Zambales, on 08 June 2005. Do you remember said importation?

A: Yes, ma'am. **That shipment involved 3,225,215 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel M/T Ocean Marlin.

xxx xxx xxx

04 August 2005 Importation

Q: Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Pinamucan, Batangas City, on 04 August 2005. Do you remember said importation?

A: Yes, ma'am. **That shipment involved 6,432,080 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel M/T Kirana Dwitya.

xxx xxx xxx

28 November 2005 Importation

Q: Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Pinamucan, Batangas City, on 28 August 2005. Do you remember said importation?

A: Yes, ma'am. **That shipment involved 6,459,717 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel M/T Kirana Dwitya.

xxx xxx xxx

22 February 2006 Importation

Q: Another importation by APC, which is a subject of this consolidated case, is a shipment which arrived at Pinamucan, Batangas City, on 22 February 2006. Do you remember said importation?

A: Yes, ma'am. **That shipment involved 6,456,089 liters of Jet A-1, which APC imported for its domestic operations,** and which arrived on board the vessel M/T Kirana Dwitya.

xxx xxx xxx." *(Emphases supplied)*

Thus, on the basis of the corresponding ATRIG for the subject importations, coupled by the foregoing undisputed testimony of Mr. Chiong, APC has complied with the second requisite, *i.e.*, that the subject imported Jet A-1 fuel must be for use in its transport operations.

<u>Third Requisite</u>: *The imported articles must not be locally available in reasonable quantity, quality or price.*

With regard to the third requisite, APC was able to show compliance thereon with respect to the following importations: on April 15, 2005, June 13, 2005, August 4, 2005, November 28, 2005 and February 22, 2006, which are covered by Bill of Lading Nos. 42636,[155] 0506-2-04371-E,[156] 05/746,[157] 504710-00006492,[158] and 06/139,[159] respectively. This must be so because said importations are supported by Certifications dated April 14, 2005,[160] August 8, 2005;[161] November 30, 2005;[162] and February 21, 2006,[163] all of

[155] Exhibit "I-5", Docket (CTA Case No. 7630) – Vol. III, p. 1310.
[156] Exhibit "F^5-7", Docket (CTA Case No. 7630) – Vol. III, p. 1793.
[157] Exhibit "F^5-8", Docket (CTA Case No. 7630) – Vol. III, p. 1794.
[158] Exhibit "F^5-9", Docket (CTA Case No. 7630) – Vol. III, p. 1795.
[159] Exhibit "F^5-10", Docket (CTA Case No. 7630) – Vol. III, p. 1796.
[160] Exhibit "KKKK" in relation to Exhibits "I-9" (ATRIG) and "I-8" (IEIRD), and Exhibit "NNNN" in relation to Exhibits "T-3" (ATRIG) and "T-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1873, 1315, 1313, 1877,1437, and 1436, respectively.
[161] Exhibit "RRRR" in relation to Exhibits "Z-3" (ATRIG) and "Z-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1882, 1577, and 1576, respectively.
[162] Exhibit "WWWW" in relation to Exhibits "CC-3" (ATRIG) and "CC-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1887, 1612 and 1611.
[163] Exhibit "S^5" in relation to Exhibits "FF-3" (ATRIG) and "FF-2" (IEIRD), Docket (CTA Case No. 7630) – Vol. III, pp. 1911, 1683, and 1682.

which were issued by the Air Transportation Office (ATO), through its Assistant Secretary, Nilo C. Jatico, stating to the effect that the imported Jet A-1 aviation fuel under the aforementioned Bills of Lading were not locally available in reasonable quantity, quality and price and is necessary/incidental for the operation of Air Philippines Corporation.

The said ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court, which provides:

> "SEC. 44. *Entries in official records.*—Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated."

As for the importation made on June 8, 2005, there was no equivalent ATO Certification. Thus, for this importation, there was no compliance with the third requisite.

In sum, the following table summarizes APC's compliance or non-compliance with the requisites to be entitled to PAL's excise tax exemption, pursuant to Section 11 of RA No. 8339, as amended by RA No. 9215, in relation to Section 13 of PD No. 1590, to wit:

CTA Case No.	**Amount involved**	**APC's compliance/non-compliance with the three (3) requisites**		
		1st requisite	**2nd requisite**	**3rd requisite**
7630	₱17,698,480.00	Complied	Complied	Complied
7642	₱23,678,242.00	Complied	Complied	Complied
7643	₱11,836,539.00	Complied	Complied	Not complied
7673	₱23,605,733.60	Complied	Complied	Complied
7712	₱23,707,161.39	Complied	Complied	Complied
7734	₱23,693,847.00	Complied	Complied	Complied

Based on the foregoing table, the amount of ₱11,836,539.00 (CTA Case No. 7643) may **not** be refunded to APC, since it was not able to comply with the said third requisite. As for the rest of the refund claim, the same are refundable because APC was able to establish full compliance with all of the above-stated requisites under Section 11 of RA No. 8339, as amended by RA No. 9215 in relation to Section 13 of PD No. 1590.

WHEREFORE, all the foregoing considered, the Petitions for Review in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734 are hereby **GRANTED**.

Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner Of Customs are **ORDERED** to refund to Air Philippines Corporation the aggregate amount of **ONE HUNDRED TWELVE MILLION THREE HUNDRED EIGHTY THREE THOUSAND FOUR HUNDRED SIXTY THREE PESOS and NINETY NINE CENTAVOS (₱112,383,463.99)**, representing the specific tax APC paid for the importation of Jet A-1 aviation fuel on the dates stated below and computed as follows:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
7630	April 15, 2005	₱ 17,698,480.00
7642	June 13, 2005	₱ 23,678,242.00
7673	August 4, 2005	₱ 23,605,733.60
7712	November 28, 2005	₱ 23,707,161.39
7734	February 22, 2006	₱ 23,693,847.00
	Total	**₱112,383,463.99**

On the other hand, the Petition for Review in CTA Case No. 7643 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice