REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**C.T.A. CASE NO. 7508**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 3 0 2009 4:00 p.m.

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DECISION

UY, J.:

This Petition for Review involves a claim for refund of excise taxes allegedly paid to respondent, Commissioner of Internal Revenue, through Caltex (Philippines), Inc., (Caltex for short), on the latter's importation of Jet A-1 fuel on July 26, 27, 28, and 29, 2004, in the total amount of **Two Million Nine Hundred Fifty Two Thousand Thirty Seven Pesos and Ninety Centavos (₱ 2,952.037.90).**

THE FACTS

Culled from the records of this case and as stipulated by the parties in the Joint Stipulation of Facts and Issues, the facts of the case are as follows.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the Philippine Airlines Center, Legaspi Street, Legaspi Village, Makati City.[1] On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws, including, *inter alia*, the power to grant claims for refund of any internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[2]

On June 11, 1978, Presidential Decree No. (PD) 1590, the operating franchise of petitioner, was signed by then President of the Republic of the Philippines, Ferdinand E. Marcos. Section 13(1) of PD 1590 grants, among others, a tax free benefit to petitioner on the local purchase of: (a) petroleum products, whether refined or in crude form, which were previously imported by third parties, or (b) petroleum products which were refined/produced in the Philippines by local oil refineries, to wit:

> "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:
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> (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
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> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without

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[1] Joint Stipulation of Facts and Issues (JSFI), SUMMARY OF ADMITTED FACTS (SAF), par. Docket, pp. 159-160.
[2] JSFI, SAF, par. 2. Docket, p. 160.

> distinction as to transport or nontransport 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.
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> 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.
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> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee and nontransport operations and other activities incidental thereto;[3]
>
> 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 were imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;"

Sometime in November 1985, Letter of Instruction (LOI) 1483 was issued, partially amending PD 1590 by withdrawing the tax exemption privileges granted to petitioner on its purchases of domestic petroleum products for use in its domestic operations, thus:

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[3] JSFI, SAF, par. 3. Docket, pp. 161.

> "WHEREAS, the payment of specific and ad valorem taxes on domestic petroleum products is the direct liability of the manufacturer or producer thereof;
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> WHEREAS, by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;
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> WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.
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> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn."[4]

For the period from July 24 to 28, 2004, Caltex withdrew imported Jet A-1 fuel from its Ninoy Aquino International Airport (NAIA) Bonded Warehouse Stockpile facilities.[5] On the same dates, Caltex sold and delivered 804,370 liters of Jet A-1 fuel to petitioner.[6] On July 26, 27, 28, and 29, 2004, Caltex electronically filed with the BIR its Excise Tax Returns for Petroleum Products, by declaring as excise taxes due the amounts of ₱1,231,798.80[7], ₱686,767.10[8], ₱623,422.90[9], and ₱433,904.10[10], respectively, or a total amount of ₱2,975,892.90.

On August 3, 2004, petitioner received from Caltex an Aviation Billing Invoice[11] for the period July 23, 2004 to July 31, 2004, wherein petitioner was

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[4] JSFI, SAF, par. 4 Docket, pp. 161.
[5] Exhibits "B" to "F" (including its submarkings)-[Withdrawal Certificates-Manufactured Petroleum Products (BIR Form No. 267)]. Docket, pp. 259-263.
[6] Exhibits "HHH", "G" to "BBB" (including its submarkings). Docket, pp. 322, 264-311, respectively.
[7] Exhibit "RRR". Docket, pp. 349 to 352.
[8] Exhibit "PPP". Docket, pp. 339 to 342.
[9] Exhibit "SSS". Docket, pp. 354 to 357.
[10] Exhibit "QQQ". Docket, pp. 344 to 347.
[11] Exhibit "CCC". Docket, pp. 312-313.

billed the total amount of US$ 313,949.54, wherein the amount of US$52,669.33 purportedly represented the excise tax. Subsequently, Caltex issued a Certification[12] on August 20, 2004 stating that it sold and delivered to petitioner 804,370 liters of imported tax paid Jet A fuel from July 24 to 28, 2008 for use in its domestic flights; that the excise tax paid for the transaction was ₱ 2,952,037.90; and that the excise tax paid were passed on to petitioner and no claim for refund was filed thereon by Caltex with the Bureau of Internal Revenue.

On October 29, 2004, petitioner filed a Letter-request[13] dated October 15, 2004 with respondent for the refund of the excise taxes paid on the purchase of the said petroleum products on the ground that its operating franchise exempted it from the payment of excise taxes, even those passed on by the seller as part of the price or cost of the petroleum products, and that it has the personality to file the claim for refund.

Due to inaction of respondent, petitioner filed the instant Petition for Review with this Court on July 25, 2006, pursuant to Section 7(a)(2) of Republic Act No. (RA) 1125, as amended by RA 9282, to preserve its right to pursue its claim for refund on the excise taxes it allegedly paid to respondent, Commissioner of Internal Revenue, through Caltex, on the importation of Jet A-1 fuel on July 26, 27, 28, and 29, 2004 in the total amount of Two Million Nine Hundred Fifty Two Thousand Thirty Seven Pesos and Ninety Centavos (P2,952.037.90).

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[12] Exhibit "HHH". Docket, p. 322.
[13] Exhibit "A" (including its submarkings). Docket, pp. 402-409.

In the Answer[14] filed by respondent on October 6, 2006, it is alleged by way of special and affirmative defense that petitioner has no cause of action against respondent as the excise tax claimed for refund was not paid by petitioner, but by Caltex.

After pre-trial held on February 8, 2007, the parties filed their Joint Stipulation of Facts and Issues[15] on March 1, 2007. During trial, petitioner presented testimonial and documentary evidence primarily aimed at proving that petitioner, on certain dates, purchased from Caltex imported Jet A-1 fuels; and that Caltex billed petitioner, and the latter paid, the corresponding excise taxes thereon. Thereafter, petitioner filed its Formal Offer of Evidence on October 5, 2007,[16] without comment or opposition filed thereto filed by respondent within the given period. In the Resolution dated December 13, 2007, the Court admitted petitioner's documentary evidence and considered petitioner to have rested its case.[17]

At the hearing held on June 18, 2008 for the initial presentation of respondent's evidence, counsel for respondent manifested that respondent is waiving his right to present evidence.[18] Upon motion of both parties' respective counsel, they were granted thirty (30) days from said date to file their respective Memorandum. Only petitioner filed its Memorandum on August 7, 2008,[19] while respondent failed to do so within the given period, and this case was submitted for decision on August 12, 2008.[20]

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[14] Docket, pp. 102-105.
[15] Docket, pp. 159-160.
[16] Docket, pp. 230-250
[17] Docket, pp. 394-396
[18] Minutes of the hearing held on June 18, 2008, Docket, p. 423
[19] Docket, pp. 428-460
[20] Resolution dated August 12, 2008, Docket, p. 462.

THE ISSUES

The stipulated issues by the parties are as follows:

1. Whether petitioner is the proper party to file the claim for refund for excise taxes paid by Caltex Philippines, Inc.;

2. Whether the claim for refund was filed on time;

3. Whether petitioner submitted complete documents in support of its alleged claim for refund;

4. Whether LOI 1483 withdrew the exemption of petitioner from excise taxes on all local petroleum purchases, or only on purchases of domestic petroleum products.[21]

The Court notes that although it has already been jointly stipulated by the parties that *"LOI 1483 partially amended PD 1590 by withdrawing the tax exemption privileges granted to petitioner on its purchases of domestic petroleum products for use in its domestic operations,"*[22] petitioner however submits the argument in the instant petition that LOI 1483 cannot amend PD 1590.[23]

In view thereof, the issue on whether LOI 1483 amended PD 1590 shall be added, shall be addressed jointly with the fourth issue, after the first issue, while the remaining issues shall likewise be tackled jointly.

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[21] JSFI, ISSUES TO BE RESOLVED. Docket, p. 162.
[22] *Id. Rollo,* pp. 160-161.
[23] Petitioner's Memorandum, p. 9.

Petitioner's Arguments

Petitioner submits that it is the proper party to file the instant claim for refund[24] relying on the case of *Maceda vs. Macaraig, Jr.*[25] wherein the Supreme Court allegedly held that a purchaser enjoying exemption from direct and indirect taxes is entitled to reimbursement of excise taxes paid and remitted to the BIR by an oil company seller but passed-on by the same. According to petitioner, since it enjoys exemption from both direct and indirect taxes (except for the regular corporate tax or franchise tax, whichever is lower), it is entitled to the reimbursement of excise taxes paid and remitted to the BIR by the oil company Caltex.

Petitioner also points out that it filed its claim for refund on time as both the administrative and judicial claims for refund were filed within two years from the date of payment of excise tax; that the subject excise taxes were paid on the following dates:

Date of Withdrawal	Date Return Filed	Filing Reference No.
24 and 25 July 2004	26 July 2004	07400000178825
26 July 2004	27 July 2004	07040000179115
27 July 2004	28 July 2004	07040000179294
28 July 2004	29 July 2004	07040000179586

and that thereafter, it filed its administrative claim for refund on October 29, 2004, its judicial claim for refund via Petition for Review on July 25, 2006,[26] and emphasizes that it has submitted the complete documents in support of the claim for refund.[27]

[24] Petitioner's Memorandum, par. 64. Docket, p. 451.
[25] G.R. No. 88291, June 8, 1993.
[26] Petitioner's Memorandum, pars. 68-69. Docket, pp. 455-456.
[27] *Id.*, par. 67. Docket, pp. 453-455.

According to petitioner, LOI 1483 is a mere administrative issuance which cannot amend a law, such as PD 1590. Even assuming, without allegedly conceding, that LOI 1483 is a law, petitioner contends that what it amended were laws (Act No. 1471 and PD 1924) which have nothing to do with petitioner; and granting again, without allegedly conceding, that LOI 1483 amended PD 1590, LOI 1483 only repealed its tax exemption as regards local purchase of domestic petroleum products, while its tax exemption as regards local purchase of imported petroleum products, allegedly remained as is.

Respondent's Counter-Argument

In respondent's Answer, it is alleged that petitioner has no cause of action against respondent as the excise tax claimed for refund was not paid by petitioner but by Caltex.[28]

THE COURT'S RULING

Is petitioner the proper party to file the claim for refund for excise taxes paid by Caltex Philippines, Inc.

The issue at hand is not one of first impression. It is one of the common issues raised by party-litigants involving similar claims for refund of excise tax, not only before this Court but also before the highest court of the land.

In *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*[29], in affirming a ruling of this Court, the Supreme Court categorically ruled that *"the proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who*

[28] Docket, p. 103.
[29] G.R. No. 173594, February 6, 2008.

paid the same even if he shifts the burden thereof to another." It further ruled that even if the seller of the jet fuel passed on the burden of the tax, the additional amount billed to the airline buyer is not a tax but part of the price which said airline buyer had to pay as a purchaser.

Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[30]

In *Maceda vs. Macaraig, Jr.*[31], it was specifically mentioned that excise tax is an example of an indirect tax where the tax burden can be shifted to the buyer:

> "xxx, 'indirect taxes are primarily paid by persons who can shift the burden upon someone else'. For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau of Internal upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the cash and/or 'selling price.'"

However, even if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that Caltex, on whom the excise tax is imposed, can shift the tax burden to its purchasers (such as

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[30] *Commissioner of Internal Revenue vs. Philippine Long Distance Company,* G.R. No. 140230, December 15. 2005.
[31] G.R. No. 88291, May 31, 1991.

petitioner) does not make the latter the taxpayers and the former the withholding agent.

Clearly therefore, although petitioner, as the purchaser and the supposed end-consumer, ultimately bears the tax burden, this does not transform its status into a statutory taxpayer. This was the ruling of the Supreme Court in the recent case of *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*[32], to wit:

> "***In the refund of indirect taxes, the statutory taxpayer is the proper party who can claim the refund.***
>
> Section 204(c) of the NIRC provides:
>
> > Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. The Commissioner may –
> >
> > x x x
> >
> > (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 and underscoring supplied)
>
> The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax.' In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

[32] G.R. Nos. 171383 & 172379, November 14, 2008.

> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax.[33]

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the 'person subject to tax.' In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the 'person liable for tax.' Petitioner is neither a 'person liable for tax' nor 'a person subject to tax.' There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts and invoices issued to its customers, Petron (Caltex in this case) remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron (Caltex in this case), as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.

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xxx. As correctly suggested by the CTA, petitioner should invoke its tax exemption to Petron before buying the aviation jet fuel. Petron, however, remains the statutory taxpayer on those excise taxes.

Revenue Regulations No. 3-2008 (RR 3-2008) provides that 'subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies.' The Department of Finance and the BIR recognize the tax exemption granted to international carriers but they consistently adhere to the view that manufacturers of articles subject to excise tax are the statutory taxpayers that

[33] G.R. No. 66838, December 2, 1991.

> are liable to pay the tax, thus, the proper party to claim any tax refunds."

Furthermore, nowhere in PD 1590 was it indicated that petitioner becomes a statutory taxpayer in claiming tax refunds or credits, notwithstanding its exemption from, *inter alia*, *"(a)ll taxes...on local purchases...of aviation gas, fuel, and oil... whether such taxes... are directly due from or imposable upon the...seller...or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof"*, subject to the proviso that the aviation gas, fuel, or oil *"shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto"*, upon payment of the tax by petitioner under either of the alternative taxes stated in Section 13 thereof.

In the light of the foregoing discussion and jurisprudential pronouncement, this Court finds that petitioner is not the proper party to file the instant claim for refund for the excise taxes paid by Caltex.

Can LOI 1483 amend PD 1590, and can it withdraw the exemption of petitioner from excise taxes on all local petroleum purchases, or only on purchases of domestic petroleum products.

Section 13 of PD 1590 imposes upon petitioner the payment of either the basic corporate income tax or a franchise tax, whichever will result in a lower tax. The payment of either of the said taxes shall be "in lieu of all other taxes", including all taxes due on local purchases and all importations by petitioner of aviation gas, fuel, and oil, subject to certain conditions.

The pertinent questions then are: Can LOI 1483 amend such Section 13 of PD 1590 and accordingly, withdraw certain tax exemption privilege of petitioner? And if so, which tax exemption privilege was withdrawn or removed from petitioner by LOI 1483?

Petitioner argues that *"Letters of Instruction are presumed to be mere administrative issuances, and not laws."*[34] It anchors this stance on the ruling of the High Court in *Philippine Association of Services Exporters, Inc. vs. Torres*[35], to wit:

> *As we view it, LOI 1190 simply imposes a presidential review of the authority of the Minister of Labor and Employment to grant licenses, hence, directed to him alone. Since this is undoubtedly an administrative action, LOI 1190 should properly be treated as an administrative issuance. Unlike Presidential Decrees which by usage have gained acceptance as laws promulgated by the President, Letters of Instruction are presumed to be mere administrative issuances except when the conditions set out in* Garcia-Padilla v. Enrile[36] *exist. Consequently, to be considered part of the law of the land, petitioners must establish that LOI 1190 was issued in response to "a grave emergency or a threat or imminence thereof, or whenever the interim Batasan Pambansa or the regular National Assembly fails or is unable to act adequately on any matter." The conspicuous absence of any of these conditions fortifies the opinion that LOI 1190 cannot be any more than a mere administrative issuance.*
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> *In arguing that LOI 1190 was issued to cope with "a grave emergency," petitioners point to the 3rd "Whereas" clause*[37] *which speaks of the concern of the state against cut-throat competition seriously affecting the integrity and viability of the overseas recruitment industry, and the difficulty in the regulation and supervision of agencies and the protection of the welfare of the workers. The petitioners' appraisal that the 3rd "Whereas" manifests a grave emergency situation is as good as anybody else's contrary view. Moreover, even if we treat as emergency the "situation which has seriously affected the integrity and*

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[34] Petitioner's *Memorandum*, pp.17 to 18.
[35] G.R. No. 98472, August 19, 1993
[36] G.R. No. 61388, April 20, 1983.
[37] "WHEREAS, the proliferation of recruitment agencies has resulted in cut-throat competition for foreign employers and employees, a situation which has seriously affected the integrity and viability of the overseas employment industry and has rendered more difficult the regulation and supervision of private sector participation, including the protection of workers from prohibited and exploitative practices at the hands of recruiters;"

> *viability of the overseas employment industry," there is no indication that in the judgment of the President it is grave.*

According to petitioner, *"(a)pplying the above standard, LOI 1483 is thus a mere administrative issuance. Its whereas clause which comes closest to being an 'emergency' and a 'serious situation' reads* 'WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises'. *Following the* Philippine Association of Service Exporters *case, even if the said clause is treated as an emergency, there is no indication in the judgment of then President Marcos that the emergency is grave."*[38]

We are not persuaded.

The pronouncement of the Supreme Court, in the *Philippine Association* case, that *"Letters of Instruction are presumed to be mere administrative issuances except when the conditions set out in* Garcia-Padilla vs. Enrile *exist"* cannot be taken as an absolute rule. This must be so because the same case recognizes that there were LOIs which have been *"issued to repeal, modify or amend laws."*[39] Also, in certain cases, namely: *People of the Philippines vs. Gacott, et al.*[40] and *Aquino, et al. vs. COMELEC, et al.*[41], the Supreme Court declared that *"all promulgations, orders,* ***instructions****, acts promulgated, issued, or done by the former President are part of the law of the land".*[42]

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[38] Petitioner's *Memorandum*, Par. 46. Docket, p.445.
[39] Footnote no. 2, Philippine Association of Services Exporters, Inc. vs. Torres, G.R. No. 98472, August 19, 1993, citing *De Leon, Hector, S., Textbook on the Philippine Provisional Constitution, 1986 ed., p. 506.*
[40] G.R. No. 116049, March 20, 1995.
[41] No. L-40004, January 31, 1975.
[42] Emphasis supplied.

Parenthetically, under Article XVIII, Section 3, of the 1987 Constitution, it is stated that:

> *All existing laws, decrees, executive orders, proclamations,* ***letters of instructions****, and other executive issuances not inconsistent with this Constitution* ***shall remain operative until amended, repealed, or revoked****.* (Emphases supplied)

Thus, it is without doubt that LOI 1483 remains operative since there is no showing that it has been amended, repealed or revoked.

Section 6 of the 1976 Amendment to the 1973 Constitution states when a letter of instruction forms part of the law of the land. It reads:

> *Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the* interim Batasang Pambansa *or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or* ***letters of instructions****, which shall form part of the law of the land.* (Emphasis supplied)

Based on the aforequoted provision, the President (Prime Minister) may issue the necessary decrees, orders, or letters of instruction, whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action. Thus, this Court cannot subscribe to petitioner's proposition to treat such LOI as a mere administrative issuance.

A cursory reading of LOI 1483 would reveal that there was an intent, on the part of then President Marcos, to modify or amend the tax incentive of petitioner which he previously granted under PD 1590 by withdrawing the *"the tax-exemption privilege* xxx *on its purchase of domestic petroleum products for use in its domestic operations"*, which he did through the issuance of a letter of instruction. This, he was empowered to do under Section 6 of the

1976 amendment to the 1973 Constitution which provides that an LOI, among other presidential issuances, form part of the law of the land not only when *"there exists a grave emergency or a threat or imminence thereof"*, but also, in the alternative, *"whenever the* interim Batasang Pambansa *or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in (the) judgment* (of the President) *requires immediate action"*[43].

For easy reference We quote the provisions of LOI 1483, to wit:

LETTER OF INSTRUCTIONS NO. 1483

TO: The Minister of Finance
The Commissioner of Internal Revenue
The Chairman, Philippine Airlines, Inc. (PAL)

WHEREAS, there is a need for government-owned or controlled corporations and all other units of government enjoying tax privileges to share in the requirements of our economic recovery program;

WHEREAS, Philippine Airlines, Inc. (PAL), pursuant to its franchise, Act No. 1471, as amended by P.D. 1924, is subject to the payment of either a quarterly tax on its gross revenues or the basic corporate income tax, whichever is lower, in lieu of all other taxes, duties and fees that may be imposed by the State;

WHEREAS, under the aforesaid franchise, the tax-exemption privilege of PAL refers only to taxes directly payable by it;

WHEREAS, the payment of specific and ad valorem taxes on domestic petroleum products is the direct liability of manufacturer or producer thereof;

WHEREAS, by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;

[43] Underscoring supplied.

> WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn.
>
> This Letter of Instructions shall take effect on November 1, 1985.
>
> DONE in the City of Manila, this 31st day of October, in the year of Our Lord, nineteen hundred and eighty-five."

Looking at the fifth whereas clause of LOI 1483, it is noted that there has been a ruling of the Department of Finance as early as November 17, 1969, or even before the effectivity of PD 1590, that domestic petroleum products sold to petitioner for use in its domestic operations are already exempt from the payment of specific and *ad valorem* taxes. This ruling is presumed to be known by the legislature (then the *Batasang Pambansa* or the National Assembly), consistent with the doctrine that it is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law[44].

It is likewise noted in the whereas clauses of the same LOI that the said tax exemption privilege *"has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises"*, and that *"there is a need for government-owned or controlled corporations and all other*

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[44] *Laxamana vs, Baltazar,* G.R. No. L-5955, September 19, 1952.

units of government enjoying tax privileges to share in the requirements of our economic recovery program".

Thus, with the foregoing circumstances, it can be said that the legislature failed or was unable to act adequately on such resultant *"serious tax base erosions and distortions"* which then President Marcos opted to address by withdrawing certain tax exemption privileges of petitioner, through the issuance of LOI 1483.

Undoubtedly, therefore, LOI 1483 formed part of the law of the land as it complied with the condition set forth by Section 6 of the 1976 Amendment to the 1973 Constitution. Consequently, it has the effect of amending PD 1590.

Furthermore and most glaringly, the parties, as pointed out earlier, have already jointly stipulated that *"LOI 1483 partially amended PD 1590 by withdrawing the tax exemption privileges granted to petitioner on its purchases of domestic petroleum products for use in its domestic operations"*[45]. The said stipulated fact constituted a judicial admission by both parties which, under Section 4, Rule 129 of the Rules of Court, not only does not require proof but more importantly, "*cannot be contradicted* unless previously shown to have been made through palpable mistake."[46] As borne out by the records of this case, there is no indication that the same stipulated fact has been made through palpable mistake. In fact, petitioner's witness, Mr. Elvis A. Yao, even testified that LOI 1483 *"subsequently withdrew the exemption with respect to the purchase of <u>domestic</u> petroleum products for*

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[45] *Id.*, Docket, pp. 160-161.
[46] *Lim vs. Jabalde*, No. L-36786, April 17, 1989.

use in domestic operations."[47] And also, in its earlier Memorandum, petitioner stated that *"LOI 1483 issued on November 1985 partially amended P.D. No. 1590..."*[48] Thus, said stipulated fact cannot be contradicted.

It must also be emphasized that this is not the first time where petitioner and respondent were in one accord that LOI 1483 had the effect of amending PD 1590. Apropos, the Court takes judicial notice of BIR Ruling No. 013-99 dated January 29, 1999, wherein the following are stated, *viz*:

> *"xxx xxx xxx*
>
> *PHILIPPINE AIRLINES*
> *Post Office Box 1955*
> *Manila*
>
> *Attention: Mr. Elvis A. Yao*
> *Senior Asst. Vice President*
> *Fuel Management Department*
>
> *Gentlemen:*
>
> *This refers to your letters dated July 23, 1997 and November 14, 1998 requesting for a ruling on the tax exemption privileges of Philippine Airlines, Inc. (PAL), granted under Presidential Decree (PD) No. 1590 dated June 11, 1978, in relation to Letter of Instruction (LOI) No. 1483 dated October 31, 1985.*
>
> *It is represented that Sec. 13(b) Par. 1 and 2 of PD No. 1590, provides among others, that purchases by PAL of aviation gas, fuel and oil to be used in its transport and non-transport operations are exempt from the payment of all taxes, duties, charges, royalties or fees; that since then, PAL had been enjoying this tax-exemption privileges* ***until the same was withdrawn partially when LOI No. 1483 was issued by the President of the Philippines****, the main text of which is quoted as follows:*
>
> > *'...the tax exemption privilege granted to PAL on its* purchase of domestic petroleum products for use in its domestic operations *is hereby withdrawn' (emphasis supplied)*

[47] Docket, p. 325.
[48] Docket, p. 382.

> ***that the wordings of LOI No. 1483 is very clear that the tax-exemption privilege being withdrawn refers specifically to the purchase of domestic petroleum products by PAL for use in its domestic operations****; that it does not include purchases from abroad or foreign countries; and that it is for this reason that the Bureau of Customs does not impose any tax or customs duties on arrivals of petroleum products imported or purchased by PAL from abroad.*
>
> *In reply, please be informed that* ***we confirm*** *your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase.* ***The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations.***
>
> *xxx xxx xxx.*
>
> *Very truly yours,*
>
> *(Signed)*
> *BEETHOVEN L. RUALO*
> *Commissioner of Internal Revenue"*

(Emphasis supplied)

Based on the foregoing, it cannot be gainsaid that petitioner's argument, which is only stated in its later memorandum, that LOI 1483 cannot amend PD 1590, is a mere afterthought.

Was the claim for refund filed on time; and Did petitioner submit complete documents in support of its alleged claim for refund.

The above finding that petitioner is not the proper party to file the instant claim for refund is sufficient to deny the instant Petition for Review.

However, even if We assume that it is the proper party, petitioner still failed to establish its tax exemption privilege under PD 1590, and to prove its entitlement to the said claim.

As cases filed before this Court are litigated *de novo*, party-litigants shall prove *every minute aspect* of their cases.[49]

In this connection, We hereby reiterate this Court's consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[50]

A careful reading of Section 13 of PD 1590 would reveal that it is only when the basic corporate income tax or franchise tax, whichever is lower, is paid by petitioner would the "in lieu of all other taxes" clause come into play. In other words, the said clause basically exempts petitioner from paying all other kinds of taxes for as long as it pays the basic corporate income tax or franchise tax, whichever is lower. However, in this case, petitioner failed to establish the payment of either of the said taxes, thereby failing to establish its exemption from, *inter alia*, *"(a)ll taxes...directly due from or imposable upon the...seller...or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof"*.

Moreover, Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides:

> 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

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[49] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[50] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

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> 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: xxx (Emphasis supplied)

Based on the foregoing, the reckoning of the two-year prescriptive period shall commence from *"the payment of the tax"*. Thus, before such prescriptive period is applied, it must be first determined whether there is payment of the excise tax being sought to be refunded.

To prove that the tax sought to be refunded in this case was paid to the government, petitioner submits primarily in evidence Exhibits "PPP", "QQQ", "RRR", and "SSS"—the Excise Tax Returns filed by Caltex.[51]

However, We entertain grave doubts that the excise tax sought to be refunded in this case are the very same taxes that were declared in the said Returns. This must be so because of the following reasons:

First, the amount of excise taxes due declared in the said Returns are different from the amount sought to be refunded. In the Returns, the total amount of the excise taxes due is ₱ 2,975,892.90, while the amount of the refund being claimed is ₱ 2,952.037.90.

Second, since Section 131(A) of the NIRC of 1997 states that the excise tax on imported products is due *"before the release of such articles from the customshouse"*, then it follows that the excise taxes sought to be

[51] Petitioner's *Memorandum*, Par. 68, Docket, pp. 455 to 457.

refunded should have been paid **before** the same Jet A-1 fuel was withdrawn from the NAIA Bonded Warehouse Stockpile facilities.

It must remembered that the withdrawal of the subject Jet A-1 fuel was made from July 24 to 28, 2008; while the Returns were filed only beginning July 26, 2008 up to July 29, 2008. It cannot be said that Caltex was late in filing the said Returns because such Returns do not indicate any "penalties" that were charged for the late filing thereof.

Last and most worthy of note, is the fact that the supposed Withdrawal Certificates-Manufactured Petroleum Products (BIR Form No. 267)[52] corresponding to the said withdrawal of Caltex of the subject Jet A-1 fuel is to the effect: *"SOURCES OF REMOVAL: **TAX-FREE** PRODUCT"*[53].

Having failed to establish the fact of payment of either the basic corporate income tax or franchise tax, whichever is lower, pursuant to Section 13 of PD 1590, and of the excise tax sought to be refunded, it becomes unnecessary to address the issue on the timeliness of the filing of the instant claim for refund.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

[52] Exhibits "B" to "F" (including its submarkings), Docket, pp. 259-263.
[53] Emphasis supplied.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice