REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8340

Members:

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

Promulgated:
OCT 05 2023
1:10 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, J.:

The Case

This is a remanded case for the determination of the final amount to be refunded to petitioner Philippine Airlines, Inc., ("PAL") pursuant to the Supreme Court Resolution dated July 09, 2018 rendered in G.R. No. 238163,[1] and this Court *En Banc's* Resolution dated May 25, 2022.[2]

The Facts

To recall, on September 23, 2011, petitioner PAL filed a *Petition for Review* before this Court,[3] praying for it to be declared under its franchise, Presidential Decree ("PD") No. 1590, exempt from specific tax on its importation of liquor,

[1] Rollo (CTA EB No. 1347).
[2] Docket (CTA Case No. 8340), pp. 1200-1203.
[3] *Id.*, pp. 6-24.

wine and cigarettes for international flight consumption and therefore entitled to the refund of:

a) Php2,630,868.83 specific tax paid under protest on September 23, 2009; and

b) Php2,922,755.57 specific tax paid under protest on September 23, 2009,

or a total of Php5,553,624.40 all paid to the respondent Commissioner of Customs ("COC").

Petitioner further prays that respondents COC and Commissioner of Internal Revenue ("CIR") be ordered to refund the total amount of Php5,553,624.40 specific taxes, which was erroneously collected from petitioner in connection with its subject importations of assorted liquor, wine and cigarettes for international flight consumption.

On February 17, 2015, the Third Division, promulgated its Decision,[4] denying petitioner's *Petition for Review*, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review filed by Philippine Airlines, Inc. on September 23, 2011 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."

Petitioner then filed its *Motion for Partial Reconsideration [of the Decision dated 17 February 2015] via* registered mail on March 10, 2015.[5] Respondent COC failed to file comment on the said *Motion*.[6] For his part, respondent CIR filed a *Comment / Opposition (Re: Motion for Reconsideration of the Decision promulgated 17 February 2015)* on April 21, 2015,[7] praying that petitioner's *Motion for Partial Reconsideration* be denied for lack of merit.

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[4] *Id.*, pp. 1086-1120; Penned by Associate Justice Esperanza R. Fabon-Victorino (Retired), and concurred by Associate Justice Lovell R. Bautista (Deceased) and Associate Justice Ma. Belen M. Ringpis-Liban.

[5] *Id.*, pp. 1130-1140.

[6] *Id.*, Records Verification Report dated May 04, 2015 issued by the Judicial Records Division of this Court, p. 1159.

[7] *Id.*, pp. 1145-1151.

In the Resolution dated July 22, 2015,[8] the Third Division denied petitioner's *Motion for Partial Reconsideration*, the dispositive portion of which reads:

> "**WHEREFORE,** finding no valid justification to compel a modification or reversal of the assailed Decision, petitioner Philippine Airlines, Inc.'s Motion for Partial Reconsideration posted on March 10, 2015, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Consequently, petitioner filed with the Court *En Banc* a *Motion for Extension of time to File Petition for Review* on August 20, 2015,[9] and later, its *Petition for Review,* on September 3, 2015.[10] The case was docketed as CTA EB No. 1347.

In the Resolution dated December 09, 2015,[11] the Court *En Banc* ordered respondents to file their comment, not a motion to dismiss, within ten (10) days from receipt thereof. Respondent CIR complied and submitted his *Comment (Re: Petition for Review)* on December 22, 2015,[12] while respondent COC filed a *Motion for Extension of Time to file Comment* on December 29, 2015[13] which was granted in the Minute Resolution dated January 08, 2016.[14] Thereafter, respondent COC posted his *Comment* on February 01, 2016.[15]

In the Resolution dated March 22, 2016,[16] the Court *En Banc* gave due course to the *Petition for Review*, and required the parties to submit their respective memorandum within thirty (30) days from notice.

Petitioner filed its *Memorandum* on April 29, 2016,[17] while respondents CIR and COC separately filed their *Manifestation* and *Manifestation (in Lieu of Memorandum)* on April 04, 2016,[18] and May 03, 2016,[19] respectively, stating to the effect that they are adopting their respective comment to the *Petition for*

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8 *Id.*, pp. 1154-1158.
9 Rollo (CTA EB No. 1347), pp. 1-5.
10 *Id.*, pp. 49-64.
11 *Id.*, pp. 367-368.
12 *Id.*, pp. 369-374.
13 *Id.*, pp. 376-378.
14 *Id.*, p. 382.
15 *Id.*, pp. 383-401.
16 *Id.*, pp. 406-407.
17 *Id.*, pp. 413-430.
18 *Id.*, pp. 408-410.
19 *Id.*, pp. 433-435.

Review as their memoranda. The case was then submitted for decision on June 01, 2016.[20]

On August 30, 2017, the Court *En Banc* rendered its Decision,[21] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Court in Division's Decision and Resolution promulgated on February 17, 2015 and July 22, 2015, respectively, are hereby **REVERSED AND SET ASIDE**. The case is **REMANDED** to the Court in Division for the determination of the amount of refund due to petitioner.
>
> **SO ORDERED.**"

Respondent CIR then filed a *Motion for Partial Reconsideration* with the Court *En Banc* on September 29, 2017,[22] while respondent COC filed his *Motion for Reconsideration* on October 03, 2017.[23] Petitioner, for its part, posted its *Comment/ Opposition* on November 20, 2017.[24]

In the Resolution dated February 21, 2018,[25] the Court *En Banc* denied respondents CIR and COC's motions for reconsiderations, the dispositive portion of which states:

> "**WHEREFORE**, premises considered, respondents CIR and COC's Motions for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On April 20, 2018, respondent filed with the Supreme Court a *Petition for Review on Certiorari* entitled *"Commissioner of Internal Revenue and Commissioner of Customs, Petitioners, versus Philippine Airlines, Inc., Respondent"*. The case was docketed as G.R. No 238163.[26]

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20 *Id.*, Resolution dated June 01, 2016, pp. 441-442.
21 *Id.*, pp. 445-461.
22 *Id.*, pp. 488-501.
23 *Id.*, pp. 503-515.
24 *Id.*, pp. 521-527.
25 *Id.*, pp. 534-536.
26 *Id.*

On July 09 2018, the Supreme Court rendered a Resolution,[27] denying the *Petition for Review on Certiorari*, the pertinent portions of which read:

> "The Court further resolves to **DENY** the present petition for review on *certiorari* assailing the Decision dated August 30, 2017 and Resolution dated February 21, 2018 of the CTA *En Banc* in CTA EB No. 1347 for failure of petitioners (a) to sufficiently show that the CTA *En Banc* committed any reversible error in the challenged decision and resolution xxx.
>
> xxx xxx xxx
>
> The CTA *En Banc's* decision is clearly supported by evidence. In its evaluation, the CTA *En Banc* found it fit to grant PAL's claim only to the extent of the refund of taxes paid on imported liquors, **because its evidence only established that the cost of importing alcohol for its commissary and catering supplies is lower than purchasing them locally.** It did not prove the same as to its imported cigarettes. Thus, the remand of the case for the reception of evidence on this point is likewise proper.
>
> **SO ORDERED**. xxx."

In the Resolution dated May 25, 2022,[28] the Court *En Banc* noted the receipt of the above Resolution, as well as the Entry of Judgment dated November 25, 2020, which states that the Resolution rendered in G.R. No. 238163 has become final and executory and recorded in the Books of Entries of Judgment on November 25, 2020. Thus, the Court *En Banc* remanded the present case to the Court's Third Division for the determination of the final amount to be refunded to petitioner.

Subsequently, the Third Division issued the Resolution dated August 02, 2022,[29] directing the parties to submit within five (5) days from notice a manifestation, informing this Court of any supervening event that may affect the disposition of CTA Case No. 8340, and whether they intend to present evidence pertaining to petitioner's claim for refund on its importation of cigarettes, in order to afford them the fullest opportunity to establish the merits of their claim or defense for the proper and just determination of the present case.

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27 *Id.*
28 Docket (CTA Case No. 8340), pp. 1200-1203.
29 *Id.*, pp. 1205-1206.

Petitioner then posted its *Compliance* on September 19, 2022,[30] stating that it is not aware of the occurrence of any supervening event that may affect the disposition of the instant case, and that it does not intend to present further evidence pertaining to its claim for refund on its importation of cigarettes. Respondents, however, failed to comply with the said Resolution dated August 02, 2022.[31]

In the Resolution dated October 25, 2022,[32] the Court noted petitioner's *Compliance*, and submitted the case for decision once again for the proper determination of the final amount to be refunded to petitioner, in accordance with Resolution dated May 25, 2022 of this Court *En Banc* in CTA EB No. 1347.

Discussion/Ruling

The present *Petition for Review* is **PARTIALLY GRANTED**.

As previously mentioned, the Supreme Court, in G.R. No 238163, pursuant to its Resolution dated July 09, 2018,[33] denied respondents CIR and COC's *Petition for Review on Certiorari,* which assailed the Decision dated August 30, 2017 and Resolution dated February 21, 2018 of the CTA *En Banc* in CTA EB No. 1347, for failure to sufficiently show that the CTA *En Banc* committed any reversible error in the challenged Decision and Resolution. The Supreme Court also found that the CTA *En Banc's* Decision is clearly supported by evidence, and that a remand of the case for the reception of evidence on petitioner's importation of cigarettes is likewise proper.

Pursuant to the above Supreme Court Resolution, the Court *En Banc* issued the Resolution dated May 25, 2022,[34] remanding the present case to the Court's Third Division, the pertinent portions of which read:

> "xxx xxx xxx
>
> Here, the only thing the Court *En Banc* can do is to remand CTA Case No. 8340 to the court of origin (Court of Tax Appeals Third Division) for the reception of evidence pertaining to

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30 *Id.*, pp. 1208-1209.
31 *Id.*, Records Verification Report dated October 05, 2022 issued by the Judicial Records Division of this Court, p. 1207.
32 *Id.*, pp. 1215-1216.
33 Docket (CTA EB No. 1347), pp. 445-461.
34 Docket (CTA Case No. 8340), pp. 1200-1203.

petitioner Philippine Airlines, Inc's imported cigarettes, and consequently, for the proper determination of the amount of refund to which petitioner is entitled.

WHEREFORE, premises considered, CTA Case No. 8340, entitled *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs,* is **REMANDED** to this Court's Third Division for the determination of the final amount to be refunded to petitioner Philippine Airlines, Inc.

SO ORDERED."

From all the foregoing, it can be deduced that the Supreme Court, in effect, upheld the Court *En Banc's* Decision dated August 30, 2017, and that the case was remanded to the Court's Third Division for: (1) the reception of evidence pertaining to petitioner's imported cigarettes, and consequently, (2) the proper determination of the amount of refund to which petitioner is entitled, both for its importation of cigarettes and alcohol products.

Accordingly, the Court shall confine the succeeding discussions on the findings of the Court *En Banc* dated August 30, 2017, and the determination of the above matters as ordered by the Supreme Court and Court *En Banc.*

Governing provisions for refund claims.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 read:

"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."[35]
>
> "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."[36]

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[37]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or

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[35] *Emphasis supplied.*
[36] *Emphasis supplied.*
[37] *Commissioner of Internal Revenue v. San Miguel Corporation, Et. Al.,* G.R. Nos. 180740 and 180910, November 11, 2019.

by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[38]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

The timeliness of petitioner's refund claim has already been addressed in the Court's Decision dated February 17, 2015. Thus, the determination of this Court shall only be on the issue of whether petitioner was able to establish that the subject excise taxes paid are "erroneous or illegal".

Requisites in claiming exemption under Section 13 of PD No. 1590.

In the Court *En Banc's* Decision dated August 30, 2017,[39] it was stated that there is no question that the tax privilege of petitioner provided under Section 13 of PD No. 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of Republic Act No. 9334. Also, this matter has already been settled and exhaustively discussed in the Court's Third Division Decision dated February 17, 2015.[40] As ruled therein, petitioner's tax privilege under Section 13 of PD No. 1590 still applies, subject however to certain conditions.

To recall, the pertinent portions of Section 13 of PD No. 1590 provide as follows:

> "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

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38 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

39 Docket (CTA EB No. 1347), pp. 445-461.

40 Docket (CTA Case No. 8340), pp. 1086-1119.

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.

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 transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.**"[41]

Based on the above provision, for exemption to apply, three (3) requisites must be complied with by petitioner, namely:

1. it paid its corporate income tax and VAT liabilities for the subject period of importation;

2. the imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. the imported articles, supplies or materials are not locally available in reasonable quantity, quality, or price.

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41 *Emphasis supplied.*

It must be pointed out that this Court's Decision promulgated on February 17, 2015 has already ruled that petitioner complied with the *first* and *second* requisites,[42] which was later upheld by the Court *En Banc* in its Decision dated August 30, 2017. Thus, the Court shall proceed to discuss petitioner's compliance with the *third* requisite.

Petitioner complied with the third requisite for its importation of alcohol products.

The Court *En Banc,* in its August 30, 2017 Decision,[43] explicitly stated that as to the *third* requisite, petitioner has sufficiently established that the alcohol products it imported were not available in reasonable quantity, quality or price in the local market. The pertinent portions of the said Decision is hereunder quoted for easy reference:

> "In a catena of cases involving Philippine Airlines, Inc., although involving different taxable periods, the Court En Banc had consistently ruled that the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the **Philippine Wine Merchants' Price List and/or Duty Free Philippines Retail Prices, coupled with the testimony of petitioner's witness**, were deemed sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally.
>
> The Supreme Court even affirmed the factual findings of the Court of Tax Appeals in *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.*, where We ruled that the 'tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally x x x and **Price List for 2005 of Duty-Free Philippines**,' together with the testimony of petitioner's witness, were sufficient in proving that the subject imported articles were not locally available in reasonable quantity, quality or price.
>
> Similarly, in the more recent case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*, the Second Division of the Supreme Court acknowledged the factual determinations of this Court in the consolidated cases of *Philippine*

[42] *Id.*, pp. 1109-1110.
[43] Docket (CTA EB No. 1347), p. 458.

Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., and Commissioner of Customs vs. Philippine Airlines, Inc., docketed as CTA EB Nos. 1029, 1031 and 1032, that PAL made a prima facie case that the cost of importing the alcohol products were reasonably cheaper than purchasing them locally through the following evidence: (a) testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing; (b) Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; (c) Philippine Wine Merchant's January 11, 2007 Price List; and, (6) Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010.

Therefore, **it is of no moment even if petitioner will compare the prices of its imported wines and liquor with only one supplier.**

Applying the foregoing, the **<u>Court En Banc is convinced that petitioner has sufficiently established that the alcohol products it imported were not available in reasonable quantity, quality or price in the local market</u> through the following: testimony of Ms. Cheryl V. Capinpin, petitioner's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department; Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; sales invoices issued by foreign suppliers; Philippine Wine Merchants Price Lists for 2007, 2008 and 2009; Future Trade International Price list dated April 8, 2009; Booking Rates-August 2007; and, Monthly Philippine Dealing System (PDS) rates.**

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. And, when a prima facie case is established, the burden of evidence or the burden of going forward with the evidence shifts to the defensive party.

However, the afore-mentioned evidence presented by petitioner remained unrebutted as both respondents CIR and COC failed to present any controverting evidence to refute petitioner's claim."[44]

In other words, the Court *En Banc*, in its determination of petitioner's satisfaction of the *third* requisite, gave evidentiary weight to petitioner's documentary and testimonial evidence relating to its importation of alcohol products.

Thus, in compliance with the Court *En Banc's* Decision and Resolution dated August 30, 2017 and May 25, 2022, respectively, as well as the Supreme Court Resolution dated July 09, 2018 in G.R. No. 238163, the same evidence shall be considered in ascertaining the amount of excise tax to be refunded to petitioner in this case.

To recall, a closer review of the records would show that petitioner presented the following evidence to prove its compliance with the *third* requisite:

1. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;[45]

2. Philippine Wine Merchants (PWM) Price List for Year 2007[46], 2008[47] and 2009[48];

3. Affidavit of Gilbert M. Galedo, petitioner's Senior Planning & Purchasing Specialist of Catering & In-flight Materials Purchasing Sub-Department Corporate Logistics & Service Department[49];

4. Future Trade International Price List dated April 08, 2009.[50]

5. Letter of Ms. Marianne C. Raymundo, petitioner's Vice President for Financial Services with the subject "Booking Rates-August 2007"[51];

[44] *Id.*, Decision dated August 30, 2017, pp. 457-459; *Emphasis and underscoring supplied.*
[45] Docket (CTA Case No. 8340), Exhibit "DDD-2", pp. 542-549.
[46] *Id.*, Exhibit "DDD-3", p. 601.
[47] *Id.*, Exhibit "DDD-4", p. 602.
[48] *Id.*, Exhibit "DDD-5", p. 603.
[49] *Id.*, Exhibit "DDD-6", pp. 604-605.
[50] *Id.*, Exhibit "DDD-7", p. 886.
[51] *Id.*, Exhibit "DDD-8", pp. 887-891.

6. Monthly Philippine Dealing System (PDS) rates for the years 2000 to 2010[52];

7. Judicial Affidavit of Mr. Jonathan Castillo Lee, petitioner's Manager for Company Materials Handling Division;[53] and

8. Judicial Affidavit of Ms. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division, Catering & In-Flight Materials Purchasing Sub-Department;[54]

As borne by the records, on September 23, 2009, petitioner paid under protest[55] the excise taxes on its cigarette and alcohol importations in the total amount of Php5,553,624.40, broken down as follows:

BOC Form No. 38-A	Amount Paid
167361092[56]	Php2,630,868.83
167361083[57]	2,922,755.57
Total	**Php5,553,624.40**

The above excise tax of Php5,553,624.40 is supported by Informal Import Declarations and Entries (IIDE),[58] Airway Bills/Bills of Lading (AWB/BL),[59] Authority to Release Imported Goods (ATRIG)[60] and Sales Invoices,[61] which were identified by petitioner's witnesses, Ms. Cheryl V. Capinpin, petitioner's Manager-In-Flight Materials Purchasing Division, Catering and Inflight Materials Purchasing Sub-Department, in her Judicial Affidavit dated August 13, 2012,[62] and Mr. Jonathan Castillo Lee, petitioner's Manager for Company Materials Handling Division, per his Judicial Affidavit dated February 06, 2012.[63]

52 *Id.*, Exhibit "DDD-9", p. 613.
53 *Id.*, Exhibit "BBB", pp. 303-321.
54 *Id.*, Exhibit "DDD", pp. 522-541.
55 *Id.*, Exhibits "CC", "DD" and "EE", and "XX", "YY", and "ZZ", pp. 727-747, and 782-801, respectively.
56 *Id.*, Exhibit "S", p. 717.
57 *Id.*, Exhibit "OO", p. 773.
58 *Id.*, Exhibits "I", "J", "K", "L", "M", "N", "O", "P", "Q", "FF", "GG", "HH", "II", "JJ", "KK", "LL", and "MM", pp. 690, 692, 695, 698, 701, 704, 707, 710, 713, 748, 751, 754, 757, 760, 763, 766, and 769, respectively.
59 *Id.*, Exhibits "I-1", "J-1", "K-1", "L-1", "M-1", "N-1", "O-1", "P-1", "Q-1", "FF-1", "GG-1", "HH-1", "II-1", "JJ-1", "KK-1", "LL-1", and "MM-1", pp. 691, 693, 696, 699, 702, 705, 708, 711, 714, 749, 752, 755, 758, 761, 764, 767 and 770, respectively.
60 *Id.*, Exhibits "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", and "WW", pp. 718-726, and, 774-781, respectively.
61 *Id.*, Exhibits "I-2", "J-2", "K-2", "L-2", "M-2", "N-2", "O-2", "P-2", "Q-2", "FF-2", "GG-2", "HH-2", "II-2", "JJ-2", "KK-2", "LL-2", and "MM-2", pp. 691, 694, 697, 700, 703, 706, 709, 712, 715, 750, 753, 756, 759, 762, 765, 768, and 771, respectively.
62 *Id.*, Exhibit "DDD", pp. 522-541.
63 *Id.*, Exhibit "BBB", pp. 303-321.

Below is the summary of the value of imported wines, liquors and cigarettes as indicated in the IIDE/ATRIG and the corresponding excise taxes paid:

Arrival Date	IIDE (Exhibit)	AWB/BL (Exhibit)	ATRIG (Exhibit)	Invoice (Exhibit)	Description	Value	Amount of Excise Taxes Paid Under Protest
August 18, 2007	"I"	"I-1"	"T"	"I-2"	Lindemans Premier Shiraz Cabernet	$ 4,054.62	Php 27,513.00
August 20, 2007	"J"	"J-1"	"U"	"J-2"	Carlos I Brandy	11,904.00	395,048.64
August 26, 2007	"K"	"K-1"	"V"	"K-2"	Camus Cognac XO Superieur	3,150.00	21,163.32
August 27, 2007	"L"	"L-1"	"W"	"L-2"	Chivas Regal Whisky	32,400.00	546,121.94
October 26, 2008	"M"	"M-1"	"X"	"M-2"	West Red KS Full Flavor	3,375.00	217,280.00
November 6, 2008	"N"	"N-1"	"Y"	"N-2"	West KS	9,000.00	217,280.00
					Davidoff Lights		108,640.00
					Davidoff Classic		95,060.00
November 21, 2008	"O"	"O-1"	"Z"	"O-2"	Chivas Regal Whisky	6,600.00	100,100.80
December 6, 2008	"P"	"P-1"	"AA"	"P-2"	Chivas Regal Whisky	6,600.00	100,230.13
December 19, 2008	"Q"	"Q-1"	"BB"	"Q-2"	Piper Heidsieck Brut	32,812.50	802,431.00
Sub-Total (BOC OR No. 167361092)						***109,896.12***	***2,630,868.83***
December 17, 2008	"FF"	"FF-1"	"PP"	"FF-2"	Lindemans Premier Chardonnay	29,268.00	20,176.20
					Lindemans Premier Shiraz Cabernet		29,347.20
					Penfolds Chardonnay		20,176.20
					Penfolds Shiraz Cabernet		34,849.80
January 16, 2009	"GG"	"GG-1"	"QQ"	"GG-2"	West KS	16,740.00	434,560.00
					West Menthol		108,640.00
					West Ice		162,960.00
					Davidoff Classic		190,120.00
January 15, 2009	"HH"	"HH-1"	"RR"	"HH-2"	Ballantines Scotch Whisky 17 YO	37,857.60	106,406.47
					Ballantines Scotch Whisky 21 YO		127,567.79
					Carlos 1		355,661.35
January 21, 2009	"II"	"II-1"	"SS"	"II-2"	Camus Cognac VSOP Elegance	6,168.00	47,617.47
					Camus Cognac XO Superieur		28,217.76
February 4, 2009	"JJ"	"JJ-1"	"TT"	"JJ-2"	Piper Heidsieck Brut	10,312.50	252,192.60
February 5, 2009	"KK"	"KK-1"	"UU"	"KK-2"	Piper Heidsieck Brut	10,312.50	252,192.60
February 10, 2009	"LL"	"LL-1"	"VV"	"LL-2"	West Menthol	10,800.00	298,760.00
					West Ice		353,080.00

December 11, 2008	"MM"	"MM-1"	"WW"	"MM-2"	Chivas Regal Whisky	6,600.00	100,230.13
Sub-Total (BOC OR No. 167361083)						***128,058.60***	***2,922,755.57***
					TOTAL	**$237,954.72**	**Php5,553,624.40**

It must be noted however that as to cigarettes, the Court *En Banc* held that petitioner fell short in proving the non-availability of imported cigarettes at a reasonable quantity, quality or price in the local market.[64] Notably also, even after the Supreme Court and the CTA *En Banc's* order to remand the case for reception of evidence on this matter,[65] petitioner manifested that it does not intend to present further evidence pertaining to its claim for refund on its importation of cigarettes.[66]

Considering petitioner's failure to present evidence to show compliance with the *third* requisite relating to its importation of cigarettes, the Court *En Banc's* ruling in its August 30, 2017 Decision, stating that the claimed excise tax on cigarettes should be denied by the Court, is reiterated. Thus, petitioner's claim corresponding to the excise taxes paid for importation of cigarettes amounting to Php2,186,380.00 shall be denied, *viz.*:

Arrival Date	IIDE (Exhibit)	AWB/BL (Exhibit)	ATRIG (Exhibit)	Invoice (Exhibit)	Description	Value	Amount of Excise Taxes Paid Under Protest
October 26, 2008	"M"	"M-1"	"X"	"M-2"	West Red KS Full Flavor	$3,375.00	Php 217,280.00
November 6, 2008	"N"	"N-1"	"Y"	"N-2"	West KS	9,000.00	217,280.00
					Davidoff Lights		108,640.00
					Davidoff Classic		95,060.00
Sub-Total (part of BOC OR No. 167361092)						***$12,375.00***	***Php 638,260.00***
January 16, 2009	"GG"	"GG-1"	"QQ"	"GG-2"	West KS	$16,740.00	Php 434,560.00
					West Menthol		108,640.00
					West Ice		162,960.00
					Davidoff Classic		190,120.00
February 10, 2009	"LL"	"LL-1"	"VV"	"LL-2"	West Menthol	10,800.00	298,760.00
					West Ice		353,080.00
Sub-Total (part of BOC OR No. 167361083)						***27,540.00***	***1,548,120.00***
TOTAL						**$39,915.00**	**Php 2,186,380.00**

On the other hand, in order to ascertain whether petitioner was able to establish that the imported wine and liquor products were not locally available in

64 Docket (CTA EB No. 1347), p. 459.
65 Refer to Supreme Court's Resolution in G.R. No. 238163 dated July 09, 2018 and CTA EB No. 1347 Resolution dated May 25, 2022.
66 Docket (CTA Case No. 8340), pp. 1208-1209.

reasonable quantity, quality or price, the Court compared the cost per bottle of importation against the prices provided by the Philippine Wine Merchants for the years 2007, 2008 and 2009; and Future Trade International for the year 2009, to wit:

Description	Amount of Excise Taxes Paid Under Protest (A)	Value (US$) (B)	No. of Bottles (C)	Ave. Purchase price per bottle in US$ (D=B/C)	US$ Conversion rate per PDS Rates (Exhibit "DDD-9") (E)	Average Purchase Price per Bottle (F=DxE)	Ave. Excise Tax per Product (G=A/C)	Total Purchase Price per Importation (H=F+G)
Lindemans Premier Shiraz Cabernet (Australian Wine)	Php 27,513.00	4,054.62	1,800	2.25	46.664	Php105.11	15.29	**Php 120.40**
Carlos I Brandy	395,048.64	11,904.00	1,200	9.92	46.664	462.91	329.21	**792.11**
Camus Cognac XO Superieur	21,163.32	3,150.00	90	35.00	46.664	1,633.24	235.15	**1,868.39**
Chivas Regal Whisky	546,121.94	32,400.00	2,880	11.25	46.664	524.97	189.63	**714.60**
Chivas Regal Whisky	100,100.80	6,600.00	528	12.50	49.471	618.39	189.58	**807.97**
Chivas Regal Whisky	100,230.13	6,600.00	528	12.50	47.647	595.59	189.83	**785.42**
Piper Heidsieck Brut	802,431.00	32,812.50	2,100	15.63	47.647	744.48	382.11	**1,126.59**
Sub-Total	***Php1,992,608.83***							
Lindemans Premier Chardonnay (Australian Wine)	Php 20,176.20	4,884.00	1,320	3.70	47.647	Php176.29	15.29	**Php 191.58**
Lindemans Premier Shiraz Cabernet (Australian Wine)	29,347.20	7,104.00	1,920	3.70	47.647	176.29	15.29	**191.58**
Penfolds Chardonnay (Australian Wine)	20,176.20	6,336.00	1,320	4.80	47.647	228.71	15.29	**243.99**
Penfolds Shiraz Cabernet (Australian Wine)	34,849.80	10,944.00	2,280	4.80	47.647	228.71	15.29	**243.99**
Ballantines Scotch Whisky 17 YO	106,406.47	10,584.00	300	35.28	47.340	1,670.16	354.69	**2,024.84**
Ballantines Scotch Whisky 21 YO	127,567.79	16,560.00	360	46.00	47.340	2,177.64	354.35	**2,531.99**
Carlos 1	355,661.35	10,713.60	1,080	9.92	47.340	469.61	329.32	**798.93**
Camus Cognac VSOP Elegance	47,617.47	1,968.00	144	13.67	47.340	646.98	330.68	**977.66**
Camus Cognac XO Superieur	28,217.76	4,200.00	120	35.00	47.340	1,656.90	235.15	**1,892.05**
Piper Heidsieck Brut	252,192.60	10,312.50	660	15.63	48.662	760.34	382.11	**1,142.45**
Piper Heidsieck Brut	252,192.60	10,312.50	660	15.63	48.662	760.34	382.11	**1,142.45**

Chivas Regal Whisky	100,230.13	6,600.00	528	12.50	47.647	595.59	189.83	**785.42**
Sub-Total	***Php1,374,635.57***							
TOTAL	**Php3,367,244.40**							

Arrival Date	**Description**	**Amount of Excise Taxes Paid Under Protest**	**Total Purchase Price per Importation**	**Price per PWM (Exhibits "DDD-3"; "DDD-4"; and "DDD-5")**	**Per Future Trade International (Exhibit "DDD-7")**
August 18, 2007	Lindemans Premier Shiraz Cabernet (Australian Wine)	Php 27,513.00	**Php 120.40**	Php267.50	*None*
August 20, 2007	Carlos I Brandy	395,048.64	**792.11**	1,099.00	*None*
August 26, 2007	Camus Cognac XO Superieur	21,163.32	**1,868.39**	4,200.00	*None*
August 27, 2007	Chivas Regal Whisky	546,121.94	**714.60**	1,100.00	*None*
November 21, 2008	Chivas Regal Whisky	100,100.80	**807.97**	1,100.00	*None*
December 6, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	*None*
December 19, 2008	Piper Heidsieck Brut	802,431.00	**1,126.59**	2,540.00	*None*
Sub-Total (part of BOC OR No. 167361092)		***1,992,608.83***			
December 17, 2008	Lindemans Premier Chardonnay (Australian Wine)	20,176.20	**191.58**	267.50	*None*
	Lindemans Premier Shiraz Cabernet (Australian Wine)	29,347.20	**191.58**	267.50	*None*
	Penfolds Chardonnay (Australian Wine)	20,176.20	**243.99**	267.50	*None*
	Penfolds Shiraz Cabernet (Australian Wine)	34,849.80	**243.99**	267.50	*None*
January 15, 2009	Ballantines Scotch Whisky 17 YO	106,406.47	**2,024.84**	*None*	*None*
	Ballantines Scotch Whisky 21 YO	127,567.79	**2,531.99**	*None*	*None*
	Carlos 1	355,661.35	**798.93**	1,099.00	*None*
January 21, 2009	Camus Cognac VSOP Elegance	47,617.47	**977.66**	1,800.00	*None*
	Camus Cognac XO Superieur	28,217.76	**1,892.05**	4,200.00	*None*
February 4, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
February 5, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
December 11, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	*None*
Sub-Total (part of BOC OR No. 167361083)		***1,374,635.57***			
	TOTAL	**Php3,367,244.40**			

While the above table of comparison shall be considered in determining whether the cost of importing commissary and catering supplies is lower than purchasing them locally, pursuant to the Court *En Banc's* Decision dated August 30, 2017, the determination is limited, however, to imported wine and liquor products with costs that can be compared with the local prices for the same brand or products. As to those imported wine and liquor products without comparative prices from the Philippine Wine Merchants or Future Trade International Travel, the lack of comparative prices from said establishments is not conclusive proof of the products' unavailability in the local market.

In fine, petitioner complied with the *third* requisite, but only to the extent of the imported wine and liquor products that are supported by evidence showing that the cost per bottle of importing the same is lower than purchasing them locally, and, thus, should be exempt from excise tax, to wit:

Arrival Date	**Description**	**Amount of Excise Taxes Paid Under Protest**	**Total Purchase Price per Importation**	**Price per PWM (Exhibits "DDD-3"; "DDD-4"; and "DDD-5")**	**Per Future Trade International (Exhibit "DDD-7")**
August 18, 2007	Lindemans Premier Shiraz Cabernet (Australian Wine)	Php 27,513.00	**Php 120.40**	Php 267.50	***None***
August 20, 2007	Carlos I Brandy	395,048.64	**792.11**	1,099.00	***None***
August 26, 2007	Camus Cognac XO Superieur	21,163.32	**1,868.39**	4,200.00	***None***
August 27, 2007	Chivas Regal Whisky	546,121.94	**714.60**	1,100.00	***None***
November 21, 2008	Chivas Regal Whisky	100,100.80	**807.97**	1,100.00	***None***
December 6, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	***None***
December 19, 2008	Piper Heidsieck Brut	802,431.00	**1,126.59**	2,540.00	***None***
December 17, 2008	Lindemans Premier Chardonnay (Australian Wine)	20,176.20	**191.58**	267.50	***None***
	Lindemans Premier Shiraz Cabernet (Australian Wine)	29,347.20	**191.58**	267.50	***None***
	Penfolds Chardonnay (Australian Wine)	20,176.20	**243.99**	267.50	***None***
	Penfolds Shiraz Cabernet (Australian Wine)	34,849.80	**243.99**	267.50	***None***
	Carlos 1	355,661.35	**798.93**	1,099.00	***None***
January 21, 2009	Camus Cognac VSOP Elegance	47,617.47	**977.66**	1,800.00	***None***
	Camus Cognac XO Superieur	28,217.76	**235.15**	4,200.00	***None***
February 4, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
February 5, 2009	Piper Heidsieck Brut	252,192.60	**1,142.45**	2,540.00	2,365.00
December 11, 2008	Chivas Regal Whisky	100,230.13	**785.42**	1,100.00	***None***
	TOTAL	**Php3,133,270.14**			

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Verily, the excise tax in the amount of **Php3,133,270.14** constitutes erroneously paid excise tax which is refundable pursuant to Sections 204 and 229(C) of the NIRC of 1997, as amended.

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice