Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF THE BUREAU OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB CASE NO. 954
(CTA Case Nos. 7677, 7685 & 7746)

x----------------------------------x

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB CASE NO. 1046
(CTA Case Nos. 7677, 7685 & 7746)

Present:
DEL ROSARIO, *PJ.*,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, *JJ.*

Promulgated:
OCT 14 2014 4:20 p.m.

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DECISION

MINDARO-GRULLA, J.:

The consolidated[1] petitions before Us stemmed from the contending claim by Philippine Airlines, Inc. (PAL) that under its franchise (Presidential Decree No. 1590[2]), PAL is exempt from excise tax on importation of liquors, cigarettes

[1] En banc Docket (CTA EB Case No. 954), pp. 271-272.
[2] "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries"

and wines for international flight consumption, over the claim of the Commissioner of Customs (COC) and Commissioner of Internal Revenue (CIR) that under Republic Act No. 9334,[3] tax is imposed on all importations of cigars, cigarettes, distilled spirits, fermented liquor and wines which in effect repealed PAL's franchise.

The pertinent facts as narrated by this Court's Division are as follows:

> "THE PARTIES
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> Petitioner[4] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.
>
> On the other hand, respondent CIR[5] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), a government agency in charge of the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 141, 142, 143 and 145, respectively, of the National Internal Revenue Code (NIRC), as amended, with office address at the BIR National Office Building, Diliman, Quezon City, where she may be served with papers, pleadings, notices, orders, judgments, summons and other court processes.
>
> Respondent[6] Commissioner of Customs (hereafter "respondent COC") is the Commissioner of the Bureau of Customs (BOC), a government agency in charge with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 141, 142, 143 and

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[3] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended.
[4] Philippine Airlines, Inc.(PAL) was the petitioner before the Court in Division and in the petition before the Court en banc docketed as CTA EB Case No. 1046. Moreover, PAL is the respondent in the petition before the Court en banc docketed as CTA EB Case No. 954.
[5] Commissioner of Internal Revenue (CIR) was one of the respondents before this Court in Division and the Court en banc.
[6] Commissioner of Customs (COC) was one of the respondents before this Court in Division and thereafter the petitioner before this Court en banc docketed as CTA EB Case No. 954.

145 of the NIRC, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (ATRIG), duly issued by the latter, in accordance with Section 12 (a) of the same Code. He is represented by the OSG, with office address at 134 Amorsolo St., Legaspi Village, Makati City, where he may be served with summons, pleadings, notices, orders, judgments and other court processes.

THE FACTS

The facts, as culled from the records, are, as follows:

On June 11, 1978, by virtue of PD No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.

Pursuant to Section 13 of PD No. 1590, petitioner is entitled to tax exemption from all other taxes after payment of either (a) the basic corporate income tax; or (b) a franchise tax of two percent of gross revenues.

On January 1, 2005, RA No. 9334, otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect.

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes ". . . on all importations destined for Duty Free Philippines ("DFP") and the Freeport zones, such as the Subic Bay Freeport Zone", and requested the BOC to immediately collect the excise taxes due on the imported alcohol and tobacco products brought to the DFP and Freeport zones.

On February 4, 2005, then COC George Jereos issued a Memorandum to the BOC officers and personnel directing them to "effect collection of excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones."

On March 1, 2005, COC Alberto Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulations No. 12-2004."

In view thereof, petitioner's importation of assorted cigarettes, wines and liquors for use in its international flights, which arrived on different ports of entry, were subjected to excise tax and withheld from release pending payment of said taxes, duties and fees. Thus, on various dates, petitioner paid under protest the assessed specific taxes. The shipments were then released upon issuance of the corresponding ATRIGs.

Asserting its exemption from payment of specific taxes, under PD No. 1590, petitioner filed its administrative and judicial claims for refund of excise taxes paid under protest for various importations on the following dates:

DATE OF PAYMENT	AMOUNT PAID	ADMINISTRATIVE CLAIM	JUDICIAL CLAIM
September 9, 2005	P7,407,151.00	December 27, 2006	C.T.A. Case No. 7677 September 10, 200
October 8, 2005	P170,044.25	January 18, 2007	C.T.A. Case No. 7685
October 27, 2005	P4,033,434.00	January 5, 2007	October 5, 2007
April 7, 2006	P330,340.23	January 25, 2007	C.T.A. Case No. 7746
April 26, 2006	P1,250,000.00	January 25, 2007	March 31, 2008
April 26, 2006	P1,375,000.00	February 1, 2007	
April 26, 2006	P300,000.00	February 1, 2007	
April 26, 2006	P500,000.00	February 1, 2007	
April 26, 2006	P1,225,000.00	February 1, 2007	

<u>C.T.A. Case No. 7677</u>

In her Answer filed on November 27, 2007, respondent CIR alleged by way of special and affirmative defenses that there is no cogent reason to disturb the validity of RR 3-2006, implementing Section 6 of RA 9334; RA 9334 merely determined whether the two (2) conditions set forth in Section 13 (2) of PD No. 1590 exempting petitioner from taxes on its importation of cigars and cigarettes, distilled spirits, fermented liquors and wines have been met, namely (1) that the importation of such articles, supplies or materials 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; petitioner must be able to justify the supplies that are in its commissary in order to claim its exemption from import duties; petitioner failed to show that the amount of P7,407,151.00 allegedly paid as specific tax in connection with its subject importation of cigarettes and wines as part of its commissary for international flight consumption was erroneously or illegally collected or that the same was properly documented; petitioner failed to exhaust administrative remedies; an exemption provided for in a franchise may be repealed or amended, pursuant to Section 11, Article XII of the Constitution; and refunds are in the nature of tax exemptions, hence, are construed strictly against the grantee.

C.T.A. Case No. 7685

On December 14, 2007, respondent CIR filed her Answer and alleged the same special and affirmative defenses raised in C.T.A. Case No. 7677.

On the other hand, on January 8, 2008, respondent COC filed his Answer alleging the following special and affirmative defenses: PD No. 1590 did not provide that petitioner would be absolutely exempt from payment of taxes on its importation of cigarettes, wines and liquors; petitioner must first prove the existence of two (2) conditions laid down in Section 13 of PD No. 1590; petitioner failed to show that the amount of P4,203,478.25 allegedly paid as specific tax in connection with its subject importation of cigarettes and wines as part of its commissary for international flight consumption was erroneously or illegally collected or that the same was properly documented; petitioner must show compliance with Sections 204 (C) and 229 of the Tax Code; by enacting RA 9334, Congress intended to increase the tax base and thereby eliminate tax exemption privileges being enjoyed by several entities, including petitioner; and Congress has the power and prerogative to amend petitioner's charter.

C.T.A. Case No. 7746

On May 12, 2008, respondent CIR filed her Answer and alleged by way of special and affirmative defenses that she is not the proper party-in-interest considering that the authority to collect excise taxes on importation was delegated to the BOC; petitioner's alleged claim for refund is subject to administrative investigation/examination; petitioner failed to show that the amount of P4,980,340.23 allegedly paid as specific tax in connection with its importation of cigarettes and wines as part of its commissary supplies for international flight consumption was erroneously or illegally collected; Section 131 of the NIRC of 1997, as amended by RA 9334, clearly provides that the legislature intended to impose excise tax and all other applicable taxes, duties and charges on all importations of cigars and cigarettes, distilled spirits and wines; petitioner's exemption under PD No. 1590 is not absolute and irrevocable; and tax refunds are in the nature of tax exemptions and are construed strictissimi juris against the entity claiming the same.

On June 13, 2008, respondent COC filed his "Comment" claiming that he is merely an agent of the CIR deputized to collect internal revenue taxes on imported goods and that PD No. 1590 has been amended by RA 9334 insofar as petitioner's exemption from payment of excise tax is concerned.

On May 19, 2008, petitioner filed an "Omnibus Motion for Consolidation" of C.T.A. Case Nos. 7677, 7685 and 7746, pending with the former Second Division, with C.T.A. Case Nos. 7665 and 7713, pending with the former First Division. The former First Division, however, denied the motion.

On September 3, 2009, the former Second Division, instead, consolidated C.T.A. Case Nos. 7685 and 7746 with C.T.A Case No. 7677, the case bearing the lowest docket number.

Pursuant to C.T.A. Administrative Circular No. 01-2010, dated January 5, 2010, on January 11, 2010, the consolidated cases, C.T.A. Case Nos. 7677, 7685 and 7746, were transferred to the Third Division."[7]

After trial, this Court's former Third Division in the August 24, 2012 Decision [8] granted PAL's consolidated petition and ordered to refund the amount of ₱16,590,969.48, representing PAL's erroneously collected excise taxes on its importation of commissary supplies for the period April 2005 to April 2006, the dispositive portion of which reads:

Decision dated August 24, 2012: *c*

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[7] En banc Docket (CTA EB Case No. 954), pp. 70-96.
[8] Division Docket, pp. 1138-1164.

> *"**WHEREFORE**, premises considered, the Petitions for Review in the three (3) above captioned cases are hereby **GRANTED.** Accordingly, respondents Commissioner of Internal Revenue and Commissioner of Customs are hereby **ORDERED TO REFUND** to petitioner PAL the total amount of **SIXTEEN MILLION FIVE HUNDRED NINETY THOUSAND NINE HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY NINE PESOS and 48/100 (P16,590,969.48)**, representing petitioner PAL's erroneously collected excise taxes on its importation of commissary supplies for the period April 2005 to April 2006.*
>
> ***SO ORDERED."***[9]

COC [10] and CIR [11] filed their respective Motion for Reconsideration. On October 15, 2012, while CIR's Motion for Reconsideration is not yet resolved, COC's Motion for Reconsideration was denied by the former Third Division of this Court, the dispositive portion read as follows:

> *"**WHEREFORE**, premises considered, respondent Commissioner of Custom's "Consolidated Motion for Reconsideration (of the Decision dated August 24, 2012)" is* hereby **DENIED** for lack of merit.
>
> **SO ORDERED**." [12]

Thus, COC filed a petition[13] on November 16, 2012 before this Court docketed as **CTA EB CASE NO. 954.**

On November 19, 2012, this Court's former Third Division recalled[14] the Resolution dated October 15, 2012. However, in Resolution[15] dated March 22, 2013, this Court's former Third Division rendered moot and academic the COC's Motion for Reconsideration on account of COC's appeal to the Court en banc.

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[9] Ibid.
[10] Filed on September 13, 2012, Division Docket pp. 1180-1194 .
[11] Filed on September 12, 2012, Division Docket pp. 1165-1177.
[12] Division Docket, pp. 1210-1213.
[13] En banc Docket (CTA EB Case No. 954), pp. 38-69.
[14] Division Docket, pp. 1315-1317.
[15] Division Docket, pp. 1340-1341.

COC's petition docketed as **CTA EB CASE NO. 954,** assailed the Decision dated August 24, 2012 and Resolution dated October 15, 2012 of this Court's former Third Division. However, in a Decision[16] dated January 29, 2014, this Court en banc ruled that the exemption from taxes granted to respondent PAL by Presidential Decree NO. 1590 was not repealed by Republic Act No. 9334. Accordingly, COC's petition was dismissed and the Decision dated August 24, 2012 and Resolution dated October 15, 2012 was affirmed, to wit:

> ***"WHEREFORE,*** *premises considered, the Petition for Review is hereby* ***DISMISSED*** *for lack of merit. Accordingly, the August 24, 2012 Decision and October 15, 2012 Resolution of the former Third Division in CTA Case Nos. 7677, 7685 & 7746 are hereby* ***AFFIRMED.***
>
> ***SO ORDERED."***

On March 4, 2014, COC filed a Motion for Reconsideration [17] of the Court en banc Decision dated January 29, 2014 in CTA EB CASE NO. 954. In a Resolution[18] dated March 26, 2014, this Court en banc directed PAL to file a Comment on COC's Motion for Reconsideration. PAL filed a Comment on April 21, 2014[19].

On April 29, 2014, the Court En banc consolidated CTA EB CASE NO. 954 and CTA EB CASE NO. 1046.[20]

Incidentally, CIR's Motion for Reconsideration of the Decision dated August 24, 2012 of this Court's former Third Division in CTA Case Nos. 7677, 7685 & 7746 was granted. The dispositive portion of the former Third Division's Amended Decision[21] dated April 25, 2013, reads:

Amended Decision dated April 25, 2013: ¿

[16] En banc Docket (CTA EB Case No. 954), pp. 161-200.
[17] En banc Docket (CTA EB Case No. 954), pp. 205-241.
[18] En banc Docket (CTA EB CASE NO. 954), pp. 251-252.
[19] En banc Docket (CTA EB Case No. 954), pp. 253-269.
[20] En banc Docket (CTA EB CASE NO. 954), pp. 271-272.
[21] Division Docket, pp. 1343-1350.

> "***WHEREFORE***, *premises considered, respondent Commissioner of Internal Revenue's Motion for Reconsideration is hereby PARTIALLY GRANTED. The August 26, 2012 Decision of this court is hereby MODIFIED. Accordingly, respondents Commissioner of Internal Revenue and Commissioner of Customs are hereby ORDERED TO REFUND to petitioner the total reduced amount of FIFTY SEVEN THOUSAND SEVEN HUNDRED FIFTY FIVE PESOS (P57,755.00) representing petitioner's erroneously collected excise tax on its importation of commissary supplies for the period April 2005 to April 2006.*
>
> ***SO ORDERED***." [22]

Thereafter, PAL's Motion for Reconsideration [23] was denied in a Resolution dated July 2, 2013[24], the pertinent portion of which reads:

> *"Well-settled 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. Thus, the burden of proof rest upon the taxpayer to establish, by sufficient and competent evidence, its entitlement to a claim for refund. Otherwise stated, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.*
>
> ***WHEREFORE***, *premises considered, respondent Commissioner of Custom's "Consolidated Motion for Reconsideration (of the Decision dated August 24, 2012)" is hereby* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED***." [25]

On August 12, 2013 PAL filed a petition[26] before this Court docketed as CTA EB CASE NO. 1046. In a Resolution dated December 23, 2013, the Court directed the CIR to file a Comment. CIR filed a Comment [27] and thereafter manifested[28] that she is adopting the said Comment as her

[22] Ibid.
[23] Division Docket pp. 1357-1371.
[24] Division Docket pp. 1388-1392.
[25] Ibid.
[26] En banc Docket (CTA EB CASE NO. 1046), pp. 38-69
[27] En banc Docket CTA EB CASE NO. 1046, pp. 564-570.
[28] En banc Docket CTA EB CASE NO. 1046, pp. 580-854.

Memorandum in compliance with the Court's Resolution[29] dated March 26, 2014.

On April 29, 2014, the Court En banc consolidated CTA EB CASE NO. 954 and CTA EB CASE NO. 1046.[30]

ISSUES:

1. <u>CTA EB CASE NO. 954:</u>

In assailing this Court's Decision dated January 29, 2014, COC raised the following:

"I.

THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S APPLICATION FOR REFUND BECAUSE SECTION 131 OF THE NIRC, AS AMENDED BY R.A. 8424 AND R.A. NO. 9334, HAD ALREADY REPEALED SECTION 13 OF P.D. NO. 1590, CONSIDERING THAT –

A. NONE OF THE DECISIONS OF THE SUPREME COURT CITED BY THE HONORABLE COURT INVOLVE EXCISE TAXES ON IMPORTED TOBACCO AND ALCOHOL PRODUCTS FOR RESPONDENT'S COMMISSARY SERVICE AS IN THIS CASE.

B. THE FAILURE OF SECTION 131 UNDER R.A. NO. 8424 AND R.A. NO. 9334 TO INCLUDE THE IMPORTATION OF CIGARETTEES AND WINES FOR RESPONDENT'S COMMISSARY SERVICE AMONG THE GOODS LISTED AS EXEMPT FROM EXCISE TAX AMOUNTED TO AN EXPRESS REPEAL OF SECTION 6 OF P.D. NO. 1590.

C. ASSUMING ARGUENDO THERE WAS NO SUCH EXPRESS REPEAL, THE IRRECONCILLABLE

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[29] En banc Docket CTA EB CASE NO. 1046, pp. 578-579.
[30] En banc Docket (CTA EB CASE NO. 954), pp. 271-272.

DISPARITY BETWEEN SECTION 6 OF P.D. NO. 1590 AND R.A. NO. 8424 AND R.A. 9334 WOULD ESTABLISH THE MANIFEST INTENT OF CONGRESS TO REPEAL RESPONDENT'S FRANCHISE.

D. SECTION 131 OF R.A. NO. 8424, AS AMENDED BY R.A. NO. 9334, IS A SPECIAL PROVISION UNDER A GENERAL LAW WHICH PREVAILS OVER SECTION 13 OF P.D. NO. 1590, A GENERAL PROVISION UNDER A SPECIAL STATUTE.

E. SECTION 22(D) OF R.A. NO. 9337 DOES NOT SPECIFICALLY STATE THAT RESPONDENT SHALL BE EXEMPT FROM PAYMENT OF EXCISE TAX ON ITS IMPORTED CIGARS, CIGARETTES AND WINES FOR ITS COMMISSARY SUPPLIES.

F. THE LEGISLATURE CANNOT BIND A FUTURE LEGISLATURE TO A PARTICULAR MODE OF REPEAL.

II.

GRANTING ARGUENDO THAT RESPONDENT'S TAX PRIVILEGE HAD NOT BEEN REPEALED, ITS ALLEGATION THAT THE SUBJECT CATERING AND COMISSARY SUPPLIES ARE NOT AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE IS UNRELIABLE, THUS IT DESERVES SCANT CONSIDERATION.

COC maintains its arguments that Section 131 of both RA 8424 and RA 9334 shows the unmistakable intent of Congress to withdraw the tax exemptions granted to PAL. COC argues that the wordings used by RA 8424 and RA 9334 such as "the provision of any special or general law to the contrary notwithstanding", "this shall not apply to" or "this shall apply to" and the repealing clause under Section 10 of RA 9334 clearly indicate the clear intent to repeal any special law. Moreover, COC reiterates the meaning of express amendment in the case of Cagayan Electric Power &

Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals[31].

In addition, COC claims that the burden of proving the condition for entitlement of its tax privilege falls on PAL even if this Court finds that COC did not present evidence to controvert the evidence presented by PAL. COC stresses that PAL failed to prove that the imported catering and commissary supplies were not available in reasonable quantity, quality or price considering that the source of the Monthly Philippine Dealing System rates is uncertain.

2. CTA EB CASE NO. 1046:

PAL in its petition states the issues for resolution as follows:

> WHETHER PETITIONER HAS SUFFICIENTLY PROVEN THAT THE SUBJECT IMPORTED CIGARETTES, WINE AND LIQUORS ARE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE.
>
> A. WHETHER PETITIONER IS ENTITLED TO THE REFUND OF EXCISE TAX IN THE AMOUNT OF P3,258,213.04 ON CERTAIN BRANDS OF IMPORTED WINE AND LIQUORS DESPITE NON-PRESENTATION OF SALES INVOICES ON THEIR PURCHASE OR IMPORTATION.
>
> B. WHETHER PETITIONER IS ENTITLED TO THE REFUND OF EXCISE TAX IN THE AMOUNT OF P13, 275,000.00 ON ITS IMPORTED CIGARETTES DESPITE THE NON-PRESENTATION FOR LOCALLY AVAILABLE PRODUCTS.

PAL argues that the unit cost of imported wine and liquors was sufficiently proven and thus entitled to refund in

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[31] G.R. No. L-60126, September 25,1985.

the amount of P3,258,213.04. PAL claims that the valuation indicated in the IIDE is even higher than the actual prices of the subject imported goods indicated in the sales invoice since the IIDE computation includes adjustments consisting of commissions and brokerage fees, cost of containers, cost of packing, assists, royalties and license fees, cost of transport, loading and unloading and handling charges, and cost of insurance. If the actual unit cost of the subject imported articles is even lower than the values in the IIDE and the values in the IIDE are already lower than the prices of the goods if locally purchased, then, per PAL's claim, it is established that the subject imported goods are not locally available in reasonable prices.

In addition, PAL argues that the uncontroverted testimony of its lone witness sufficiently established that the imported cigarette brands cannot be secured locally.

We resolve in seriatim.

1. <u>CTA EB CASE NO. 954:</u>

In COC's Motion for Reconsideration, COC reiterate its argument of the alleged unmistakable intent of Congress to withdraw the tax exemptions granted to PAL by using the words "the provision of any special or general law to the contrary notwithstanding", "this shall not apply to" or "this shall apply to" under Section 131 of both RA 8424 and RA 9334 and the repealing clauses therein. Likewise, COC maintains its reliance in the case of Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals[32]. However, an examination of the aforestated issues and arguments raised by COC in the motion readily show that the same have already been passed upon and resolved in the assailed decision. We quote:

> "Although the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066*[33]

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[32] Ibid.
[33] July 7, 2009.

involves a different type of tax, certain pronouncements made by the Supreme Court therein are still significant and applicable in the instant case, to wit:

> *"Between Presidential Decree No. 1520, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.*
>
> *Neither can it be said that the NIRC of 1997 repealed or amended Presidential Decree No. 1590.*
>
> *While Section 16 of Presidential Decree No. 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires, Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal said franchise or any portion thereof. No such special law or decree exists herein.*
>
> *The CIR cannot rely on Section 7 (B) of Republic Act No. 8424, which amended the NIRC in 1997 and reads as follows:*
>
> > *Section 7. Repealing Clauses. —*
> > *xxx xxx xxx*
> >
> > *(B) The provisions of the National Internal Revenue Code, as amended, and all other laws,*

> *including charters of government-owned or controlled corporations, decrees, orders, or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.*

The CIR reasons that PAL was a government-owned and controlled corporation when Presidential Decree No. 1590, its franchise or charter, was issued in 1978. Since PAL was still operating under the very same charter when Republic Act No. 8424 took effect in 1998, then the latter can repeal or amend the former by virtue of Section 7 (B).

The Court disagrees.

A brief recount of the history of PAL is in order. PAL was established as a private corporation under the general law of the Republic of the Philippines in February 1941. In November 1977, the government, through the Government Service Insurance System (GSIS), acquired the majority shares in PAL. PAL was privatized in January 1992 when the local consortium PR Holdings acquired a 67% stake therein.

It is true that when Presidential Decree No. 1590 was issued on 11 June 1978, PAL was then a government-owned and controlled corporation; but when Republic Act No. 8424, amending the NIRC, took effect on 1 January 1998, PAL was already a private corporation for six years. The repealing clause under Section 7 (B) of Republic Act No. 8424 simply refers to charters of government-owned and controlled corporations, which would simply and plainly mean corporations under the ownership and control of the government at the time of effectivity of said statute. It is already a stretch for the Court to read into said provision charters, issued to what were then government-owned and controlled corporations that are now private, but still operating under the same charters.

That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. From the moment PAL was privatized, it had to be treated as a private corporation, and its charter became that of a

> *private corporation. It would be completely illogical to say that PAL is a private corporation still operating under a charter of a government-owned and controlled corporation."*[34]

The said case involves the interpretation of PD 1590 and RA 8424 specifically the provisions pertaining to the exemption granted to PAL and the repealing clauses therein. Accordingly, it is more applicable in the instant controversy than the Cagayan Case which involves the interpretation of the franchise of Cagayan Electric Power and Light Co. Inc. which is distinct and different from PAL. The Cagayan Case involves an express repeal by subjecting to income tax all corporate taxpayers not expressly exempted which is not in this case.

Specifically, Section 16 of PD 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires. Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal said franchise or any portion thereof.[35] However, the provisions under Section 31 of RA 9334 or RA 8424 do not expressly repeal the exemption granted to PAL.

Furthermore, the Supreme Court ruled that it can neither be said that RA 8424 which is a general law on national internal revenue taxes repealed or amended Presidential Decree No. 1590 which is a special law specifically governing the franchise of PAL.[36] Similarly, RA 9334 which is also a general law on national internal revenue taxes likewise can neither be said to have repealed or amended Presidential Decree No. 1590.

Indeed, it is true that there is no vested right in a tax exemption - a mere statutory privilege which may be modified or withdrawn at will by the granting authority. Congress in the legitimate exercise of its lawmaking powers can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same.[37] When RA 8424 and RA 9334 were enacted, it specifically did not intend to modify, amend, or repeal Presidential Decree No.

[34] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009.
[35] Ibid.
[36] Ibid.
[37] Republic of the Philippines, represented by the Honorable Secretary of Finance vs. Hon. Ramon S. Caguioa et. al., G.R. No.168584, October 15, 2007.

1590 or any portion thereof. On the contrary, when Republic Act No. 9337[38] (RA 9337) was enacted the intent of legislature to modify, amend, or repeal Presidential Decree No. 1590 is apparent. Section 22 of RA 9337 provides:

> *"SEC. 22. Franchises of Domestic Airlines. - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:*
>
> *(A) The franchise tax is abolished;*
>
> *(B) The franchisee shall be liable to the corporate income tax;*
>
> *(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and*
>
> *(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."*

From the foregoing, the legislature's intent to specifically modify, amend, or repeal PD 1590 through RA 8424 and RA 9334 is wanting but in RA 9337 it is very clear. RA 9337 abolished the franchise tax but in return made PAL liable to corporate income tax and value added tax. Nevertheless, the legislature retains PAL's exemption given under PD 1590. Hence, we find that the CTA former Third Division correctly ruled that there was no express repeal of *PD No. 1590* or withdrawal of the privilege granted to PAL, to wit:

[38] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

> *"Upon a careful reading of RA 9334, this Court finds no express repeal of PD No. 1590 or withdrawal of the privilege granted to petitioner, pursuant to the "in lieu of all other taxes" clause.*
>
> *xxx xxx xxx*
>
> *Although Section 6 made mention of the phrase "the provision of any special or general law to the contrary notwithstanding", this cannot be a basis for the withdrawal of the exemption granted to petitioner under PD No. 1590. Section 10 partakes of the nature of a general repealing clause. It is certainly not an express repealing clause because it fails to designate the specific act or acts that are intended to be repealed. Rather, it is a clause which predicates the intended repeal upon the condition that a substantial conflict must be found on existing and prior acts of the same subject matter. Such being the case, the presumption against implied repeal and the rule on strict construction regarding implied repeal applies ex proprio vigore. Basic is the rule on statutory construction that the legislature is presumed to know the existing laws so that if repeal of particular or specific law is intended, the proper step is to express it. Failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter unless irreconcilable inconsistency and repugnancy exists in the terms of the new and old law (Statutory Construction, Ruben E. Agpalo, 2003 ed. , p . 410).*
>
> *Moreover, it must be emphasized that RA 9334 is a general law, while PD No. 1590 is a special law. Settled is the rule that a general law cannot be construed to have repealed a special law by mere implication, unless the intent to repeal or alter is manifest and it must be convincingly demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot coexist (Laguna Lake Development Authority vs. Court of Appeals, 251 SCRA 56; Villegas vs. Subido, 41 SCRA 197)."*

In addition, the main issue as to whether the tax exemption by PAL from payment of all taxes due from importation subject to certain conditions under PD No. 1590 was withdrawn by RA 8424 and RA 9334 had already been decided by the Court en banc in favor of PAL in the following cases: Commissioner of Internal Revenue vs. Philippine Airlines, Inc., and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB CASE NO. 928 and 929 dated October 21, 2013[39]; Commissioner of Internal Revenue vs. Philippine Airlines, Inc. and Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB CASE NO. 942 and 944 dated December 9, 2013[40]; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., and Republic of the Philippines as represented by Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB CASE NO. 920 and 922 dated September 9, 2013[41].

Finally, the Supreme Court in the case of Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc. [42] affirmed this Court en banc decision[43] and instructively ruled as follows:

> *It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.*

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[39] Penned by Associate Justice Lovell R. Bautista, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concur. Presiding Justice Roman G. del Rosario and Associate Justice Ma. Belen M. Ringpis-Liban with dissenting opinion.

[40] Penned by Associate Justice Juanito C. Castañeda, Associate Justices Lovell R. Bautista, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concur. Presiding Justice Roman G. del Rosario and Associate Justice Ma. Belen M. Ringpis-Liban with dissenting opinion.

[41] Penned by Associate Cielito N. Mindaro-Grulla, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Esperanza R. Fabon-Victorino, JJ., concur. Presiding Justice Roman G. del Rosario and Associate Justice Ma. Belen M. Ringpis-Liban with dissenting opinion. Associate Justice Amelia R. Cotangco-Manalastas, was on leave.

[42] G.R. Nos. 212536-37. August 27, 2014.

[43] Commissioner of Internal Revenue vs. Philippine Airlines, Inc. and Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB CASE NO. 942 and 944 dated December 9, 2013;

> *"Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in Commissioner of Internal Revenue v. Philippine Air Lines, Inc.:*
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
>
> *To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. xxx*
>
> *xxx xxx xxx.*
>
> *Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in Philippine Airlines, Inc. v. Commissioner of Internal Revenue. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove [d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use.xxx."*

As to COC's assertion that PAL failed to prove that the imported catering and commissary supplies were not available in reasonable quantity, quality or price considering that source of the Monthly Philippine Dealing System rates is uncertain. We shall resolve them jointly with **CTA EB CASE NO. 1046.**

2. CTA EB CASE NO. 1046:

PAL claims that the valuation indicated in the Informal Import Declaration Entry (IIDE) is even higher than the actual prices of the subject imported goods indicated in the sales invoice since the IIDE computation includes adjustments consisting of commissions and brokerage fees, cost of containers, cost of packing, assists, royalties and license fees, cost of transport, loading and unloading and handling charges, and cost of insurance. If the actual unit cost of the subject imported articles is even lower than the values in the IIDE and the values in the IIDE are already lower than the prices of the goods if locally purchased, then PAL claims it has established that the subject imported goods are not locally available in reasonable prices.

We find no merit in PAL's petition. PAL claims that the valuation indicated in the IIDE is even higher than the actual prices of the subject imported goods indicated in the sales invoice. However, PAL failed to present the sales invoices or official receipts for its purchase or importation to prove that actual prices of the subject imported goods indicated in the sales invoice were indeed lower than the valuation indicated in the IIDE. Absent the sales invoices or official receipts for its purchase or importation, we cannot say that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price. Concomitantly, COC has basis in the Motion for Reconsideration that PAL failed to prove that the imported catering and commissary supplies were not available in reasonable quantity, quality or price.

In order to be exempted from payment of taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies, it is imperative for PAL to prove, among others, that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price. Thus, We find that the former Third Division aptly ruled as follows:

"Anent the second ground, we find respondent's argument that petitioner failed to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality or price to be partly meritorious.

In order to prove that the imported alcohol and tobacco products were not locally available at a reasonable quantity, quality or price, petitioner presented the judicial affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Sub-department of the petitioner. In his testimony, Mr. Santos stated that importing alcoholic products are much cheaper for the petitioner than purchasing them locally.

Mr. Santos explained that for the cigarettes, there are no local suppliers big enough to supply the various foreign brands petitioner is importing. Moreover, if ever there are local suppliers, their selling price would definitely be higher than the importation cost of petitioner because of the customs duties and excise taxes they add on cigarettes should the same be imported by them directly.

Petitioner submitted in evidence the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, invoices issued to PAL for its purchase of the subject articles, Philippine Wine Merchants' Price List for 2005 and 2006, and Monthly Philippine Dealing Systems rates for the year 2005-2006.

Upon a re-examination of the items on the table made by Mr. Santos, we note that only the local prices for JW Black, Remy Martin VSOP, Piper Heidsieck Brut, J&B Rare Whisky, Camus XO Superieur, Australian wines, Cutty Sark Scotch, and Remy Martin XO Excellence were available as reflected on the 2005 and 2006 Philippine Wine Merchants' price list.

As for the cigarettes, other than the testimony of the said witness, there is nothing in the documentary evidence presented by petitioner which would support a conclusion that the subject cigarettes are not locally available in reasonable quantity, quality or price.

Also, the Court observes that petitioner failed to present the sales invoices or official receipts for its purchase or importation of the following articles from which the local prices can be compared:

C.T.A. Case No. 7677

IMPORT ENTRY NO.	*EXHIBIT NO.*	*ARTICLE IMPORTED & QUANTITY*
4068	*I to I-2*	*Whisky JW Black, 48 cases*
4113	*J to J-2*	*Remy Martin VSOP, Piper Heidsieck Brut, 125 cartons*
7254	*M to M-2*	*JW Black and J&B Rare Whisky, 148 cases*
5238	*N to N-2*	*J&B Rare, 131 Cases*
7247	*P to P-2*	*Pinot Grigio Tamas Estates Monterey (Wines), 160 cases*
7252	*Q to Q-2*	*Hardy Wines, 200 cases*
3837	*R to R-2*	*&B Rare, 186 cases, JW Whisky, 175 cases*
7250	*S to S-2*	*Piper Heidsieck Cuvee Brut, 50 cases*
7248	*W to W-2*	*Camus XO Superieur, 26 cases*
4061	*X to X-2*	*Cabernet Sauvignon, 195 cartons*

C.T.A. Case No. 7685

IMPORT ENTRY NO.	*EXHIBIT NO.*	*ARTICLE IMPORTED & QUANTITY*
14322	*DD to DD-2*	*Australian Wines, 1,183 & 490 cartons*
7279	*HH to HH-2*	*Piper Heidsieck Brut, 85 cases*
7693	*II to II-2*	*Cutty Sark Scotch Whisky, 60 cases*
7694	*KK to KK-2*	*Tamas Estate Pinot Grigio, 160 cases*
7272	*LL to LL-2*	*Cabernet Sauvignon, 195 cases*
10385	*MM to MM-2*	*Remy Martin VSOP, 46 cases, Remy Martin XO, 8 cases*

C.T.A. Case No. 7746

IMPORT ENTRY NO.	*EXHIBIT NO.*	*ARTICLE IMPORTED & QUANTITY*
12763	*RR to TT*	*Wines, 3051 cases*

It must be noted that the Court may not consider the comparison made by petitioner between the unit cost of the articles as per Informal Import Declaration Entry Number and the local prices of the same articles considering that, per testimony of Mr. Santos, 10 the said unit costs are based on the valuations given by the Bureau of Customs from which they assessed and collected the excise tax due and thus, are not the actual cost or price of the subject imported articles.

Accordingly, only the payment of excise tax on the following importations, which was sufficiently supported by sales invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence, may be refunded:

IMPORT ENTRY NO.	*DATE OF IMPORTATION*	*ATRIG No*	*ARTICLE IMPORTED &QUANTITY*	*BOC OFFICIAL RECEIPT NO.*	*EXCISE TAX PAID*
C.T.A. Case No. 7677					
7251	*May 6, 2005 (Exh. T)*	*54528(Exh. T-2)*	*Wente Cabernet Sauvignon 2001, 195 cartons*	*126361243 (Exh. Y-1)*	*30,660.00*
C.T.A. Case No. 7685					
10384	*June 15, 2005(Exh. OO)*	*55128(Exh. OO-2)*	*Remy Martin XO, 8 cases*	*127859855 (Exh. PP-1)*	*27,095.00*
				TOTAL	*57,755.00*

A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. 13 Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption.

As required by PD No. 1590, in order to claim exemption from excise taxes, petitioner must prove that the articles imported are not locally available in reasonable quantity, quality or price. However, petitioner was able to discharge such burden of proof as regards the portions that were duly substantiated. Hence, petitioner's claim for refund of erroneously paid excise tax should be granted only in the amount of P57,755.00."

Furthermore, We find no merit in PAL's claim that the uncontroverted testimony of its lone witness sufficiently established that the imported cigarette brands cannot be secured locally in reasonable quantity, quality or price. To be clear, the uncorroborated testimony of PAL's witness, Mr. Santos, that there are no local suppliers or dealers big enough to supply various foreign brands of cigarettes is not sufficient evidence to support a conclusion that the imported cigarettes are not locally available in reasonable quantity, quality or price. Other than the testimony of PAL's witness, Mr. Santos, no other evidence was presented to support that the imported cigarettes are not locally available in reasonable quantity, quality or price.

It is a settled rule 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.[44]

In sum, We find the COC's Motion for Reconsideration in CTA EB CASE NO. 954 partly meritorious while PAL's Petition, docketed as CTA EB CASE NO. 1046, to be without merit.

WHEREFORE, all the foregoing considered, in **CTA EB CASE NO. 954,** Commissioner of Customs' Motion for Reconsideration is hereby **PARTIALLY GRANTED**. The assailed Decision dated January 29, 2014 is hereby **MODIFIED**. The August 24, 2012 Decision and October 15, 2012 Resolution of the former Third Division in CTA Case Nos. 7677, 7685 & 7746 are accordingly **MODIFIED** such that the Commissioner of Internal Revenue and Commissioner of Customs are hereby **ORDERED TO REFUND** to petitioner the total reduced amount of **FIFTY SEVEN THOUSAND SEVEN HUNDRED FIFTY FIVE PESOS (₱57,755.00)** representing petitioner's erroneously collected excise tax on its importation of commissary supplies for the period April 2005 to April 2006.

In **CTA EB CASE NO. 1046,** the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the April 25, 2013 Amended Decision and July 2, 2013 Resolution of the former Third Division in CTA Case Nos. 7677, 7685 & 7746 are hereby **AFFIRMED.**

SO ORDERED.

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

[44] ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent. G.R. No. 159490. February 18, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MARIA BELEN RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice