REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case No. 8495

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 10 2017 11:55 a.m.

X--X

RESOLUTION

RINGPIS-LIBAN, *J.*:

Before this Court are the following:

1. respondent Commissioner of Internal Revenue's (CIR's) **Motion for Reconsideration[1],** filed on May 5, 2017, with petitioner's **Comment/Opposition[2],** filed on June 6, 2017; and

2. Respondent Commissioner of Customs' (COC's) **Motion for Reconsideration[3]** filed by registered mail on April 24, 2017, with petitioner's **Comment/Opposition[4]**, filed on June 9, 2017.

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[1] Docket, pp. 1875-1886.
[2] Docket, unpaginated.
[3] Docket, pp. 1889-1899.
[4] Docket, unpaginated.

The Motions for Reconsideration by both respondents seek the re-evaluation of the Court's Decision[5] dated April 5, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE,** the Petition for Review is **GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Philippine Airlines, Inc. in the amount of **ONE HUNDRED THIRTY-SEVEN MILLION NINETY-NINE THOUSAND AND ONE HUNDRED FORTY-FOUR PESOS (₱137,099,144.00)** representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period April 2010 to June 2010.
>
> **SO ORDERED."**

As grounds for the CIR's Motion for Reconsideration the CIR claims that: 1) the Court has no jurisdiction to declare the assailed DOE Certification and BIR Ruling No. 001-2003 as invalid; 2) BIR Ruling No. 001-2003 is valid and enforceable; 3)PD 1590 did not provide petitioner a blanket tax exemption which bars the act of the government to enforce its power to tax; 4) the petitioner failed to exhaust all administrative remedies before elevating the case to CTA; 5) and tax exemptions are construed strictly against the taxpayers and liberally in favor of the government.

In its Comment/Opposition, petitioner states that the CIR's contentions in its motion are misplaced because 1) the Court has jurisdiction over the subject matter of the petition as the primary issue to be resolved is its entitlement to refund; 2) BIR Ruling No. 001-2003 is void for being issued without due process and for being patently wrong and bereft of any factual basis; 3) petitioner sufficiently proved compliance with the two conditions for tax exemption under PD 1590; 4) the DOE Certification is void for being arbitrarily issued; and 5) the urgency of judicial intervention justified petitioner's resort to this Court.

On the other hand, the COC's Motion for Reconsideration is based on the following grounds: 1) there is no sufficient proof which would show that petitioner used the imported Jet A-1 fuel in its transport and non-transport operations; 2) tax refunds are in the nature of tax exemptions and, as such, are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the claimant; 3) petitioner was not able to prove that there is no locally available Jet A-1 fuel in reasonable quantity, quality or price at the time of the subject importations; 4) the term "locally available supply" should

[5] Docket, pp. 1836-1870.

include importations already in the Philippines; 5) credence should not have been given to the certifications issued by the Air Transportation Office (ATO), now the CAAP, the DOE is the only government instrumentality in charge with administration of programs dealing with energy resources of all forms; and 6) petitioner has not shown its right to exemption from payment of specific taxes on the subject importations.

In its Comment/Opposition, petitioner states that the COC's contentions in its motion are misplaced because: 1) the Authority to Release Imported Goods (ATRIG) and the testimony of Mr. Elvis A. Yao (Mr. Yao) sufficiently prove that petitioner used the imported Jet A-1 fuel in its transport and non-transport operations; 2) petitioner sufficiently proved that there is no locally available Jet A-1 fuel in reasonable quantity, quality or price; 3) the ATO/CAAP had authority to issue the subject certifications which were properly given weight by this Court; 4) the ICPA's findings clearly established that the cost of importing Jet A-1 fuel is reasonably lower than the cost of purchasing the same fuel locally.

After considering the arguments of the parties, it is apparent to this Court that, indeed, the arguments raised by the CIR and the COC in their respective Motions for Reconsideration are not new. They have been previously discussed and considered prior to rendering our Decision April 5, 2017.

Considering that no new matters have been raised, the CIR and the COC's respective Motions for Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I maintain my position as indicated in my Dissenting Opinion.
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice