REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Petitioners,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB Case No. 1018
(CTA Case No. 7935)

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

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB Case No. 1021
(CTA Case No. 7935)

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

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB Case No. 1022
(CTA Case No. 7935)

Present:

Del Rosario, *PJ.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:
MAR 3 0 2015
11:50 a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves the Commissioner of Internal Revenue's "Motion for Reconsideration", Commissioner of Customs' "Motion for Reconsideration", and Philippine Airlines, Inc.'s "Motion for Partial Reconsideration" filed on July 18, 2014, August 1, 2014 and August 4, 2014, respectively, assailing the Decision dated July 2, 2014 with the corresponding Comments thereto.

The Court *en banc* Decision dated July 2, 2014 affirming the Court in Division's Decision dated December 20, 2012 and Resolution dated May 14, 2013 which, in effect ordered the Commissioner of Internal Revenue ("CIR") and Commissioner of Customs ("COC") to refund Philippine Airlines ("PAL") the amount of P1,508,991.84 representing erroneously paid excise taxes on June 25, 2007, July 20, 2007 and July 30, 2007.

In her Motion for Reconsideration, the CIR raises the following grounds:

> I. Section 6 of R.A. 9334 (Section 131 of the NIRC) mandates that all importations of cigarettes, liquor and wine shall be subject to the applicable taxes.
>
> II. Section 131 of the NIRC of 1997 as amended by R.A. No. 9334 expressly withdrew the conditional tax exemption granted to respondent.
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> III. The letter of the law should prevail over rules of construction.
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> IV. Assuming there is ambiguity and rules of construction must be utilized, petitioner submits that as to the subject matter, R.A. 9334 is the more specific law on the tax treatment of imported cigarettes, liquor and wine products. Jc

V. The exemption granted to respondent is not absolute.

VI. The Honorable Court erred in ruling that the commissary supplies are not locally available in reasonable quantity, quality and price.

VII. The exemption granted to respondent is not absolute. However, to sustain respondent's misguided and self-serving interpretation of its franchise provisions would ultimately convert the conditional exemption to one that is absolute in perpetuity.[1]

The COC alleges in his Motion for Reconsideration the following grounds:

I.

SECTION 6 OF RA NO. 9334 HAD AMENDED SECTION 13 OF PD NO. 1590 AND WITHDRAWN PAL'S EXCISE TAX EXEMPTIONS.

II.

PHILIPPINE AIRLINES, INC. HAS NOT SUFFICIENTLY PROVED THAT THE SUBJECT IMPORTED CIGARETTES, WINES AND LIQUORS ARE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY AND PRICE.[2]

PAL on the other hand, interposes the following grounds:

A.

PAL IS ENTITLED TO THE REFUND OF EXCISE TAX IN THE AMOUNT OF P4,718,180.88 ON CERTAIN BRANDS OF IMPORTED WINE AND LIQUORS DESPITE THE NON-PRESENTATION OF SALES INVOICES ON THEIR PURCHASE OR IMPORTATION.

[1] Rollo, pp.186, 188, 197, 198, 201, 202 & 203.
[2] Rollo, p.216.

B.

PAL IS ENTITLED TO THE REFUND OF EXCISE TAX IN THE AMOUNT OF P4,662,500.00 ON ITS IMPORTATION OF CIGARETTES DESPITE THE ABSENCE OF PRICE LIST FOR LOCALLY AVAILABLE PRODUCTS.

C.

RESPONDENT COMMISSIONER OF INTERNAL REVENUE ALREADY ADMITTED THAT THE COST OF IMPORTING THE COMMISSARY SUPPLIES IS ALWAYS CHEAPER THAN PURCHASING THEM LOCALLY. [3]

The grounds raised by CIR, COC and PAL have been extensively discussed in the assailed Decision.

The Court *en banc* reiterates the following salient points:

I. Subsequent legislation did not repeal PD 1590. PAL's charter, PD 1590 remains effective as affirmed by the Supreme Court in the recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*[4] where it was explained that:

> 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** ✓

[3] Rollo, pp. 231, 236 & 240.
[4] G.R. Nos. 212536-37, August 27, 2014. See G.R. No. 198759, July 1, 2013, 700 SCRA 322 & G.R. No. 180066, July 7, 2009, 592 SCRA 237.

> **rights and privileges under the terms and conditions stated in said charter.** xxx

> 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. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding,*" such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. xxx

> **Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted 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 other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.** (Emphasis supplied.)

II. In order to be entitled to exemption from excise tax on importations of commissary supplies, PAL must be able to prove, as one of the conditions set forth in Section 13 of PD 1590, that the imported commissary supplies are not locally available in reasonable quantity, quality or price.

IIA. PAL employee, Mr. Victor Santos' testimony alone on the lack of pricelist from Duty Free Philippines concerning locally available cigarettes is not sufficient to prove that imported cigarettes are unavailable at reasonable quantity, quality or price in the local market.

III. Regarding imported wine and liquor, according to Mr. Santos, the unit costs of the articles as per Informal Import Declaration Entry are valuations given by the Bureau of Customs, and are not actual cost or price of the subject imported articles.[5]

IV. To compare the purchase price *vis-à-vis* local price, the best evidence to show the actual price would be the source documents, i.e., sales invoices and/or official receipts. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[6]

V. This Court cannot give weight to the National Tobacco Administration's ("NTA") List which provides that the brands of cigarettes PAL allegedly imported under Import Entry Nos. 3722, 3990, 14309, 3729, 4056, 14307 and 14346 are not among locally manufactured cigarettes. The NTA list was neither identified during trial nor attached to the present motion for reconsideration. Moreover, the NTA list was not formally offered, nor was it classified as among the documents not required to be formally offered. "A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial". The formal offer of evidence "allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court".[7]

VA. Evidence not formally offered may be admitted if the following requisites are present: "first, the same must have

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[5] Rollo, p. 157.
[6] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417.
[7] *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571 (2005) cited in *Commissioner of Internal Revenue v. United Salvage and Towage (Philippines)*, G.R. No. 197515, July 2, 2014.

been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case".[8]

The Court sees no cogent reason to reverse, much less, modify the assailed Decision.

WHEREFORE, premises considered, the Motions for Reconsideration filed by COC and CIR and Motion for Partial Reconsideration filed by PAL are hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[8] *Vda. de Oñate v. Court of Appeals,* 320 Phil. 344 (1995) *cited in Commissioner of Internal Revenue v. United Salvage and Towage (Philippines)*, G.R. No. 197515, July 2, 2014.

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice