REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	CTA CASE NO. 8130
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondent.	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
	Promulgated:
	DEC 01 2014 12:32 p.m.

x- -x

DECISION

***Fabon-Victorino, J.*:**

The petition at bar dated July 5, 2010 was filed by Philippine Airlines, Inc. praying for the refund of the amount of P6,941,490.21, allegedly representing excise taxes paid under protest on its various importations of cigarettes, liquors and wines for international flight consumption.

Petitioner Philippine Airlines, Inc. is a domestic corporation, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.[1]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 340

National Internal Revenue Code (NIRC) of 1997, as amended.[2]

Respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) tasked to assess and collect customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended, on the basis of the delegated authority of respondent CIR through an Authority to Release Imported Goods (ATRIG) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC of 1997, as amended.[3]

On June 11, 1978, by virtue of Presidential Decree (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, which franchise is subject to amendment, alteration or repeal by competent authority when the public interest so requires. Section 13 thereof provides:

> "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

[2] Par. 2, Facts, JSFI, docket, p. 340
[3] Par. 3, Facts, JSFI, docket, p. 341

> distinction as to transport or non-transport 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:
>
> (1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;
>
> (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;"

On January 1, 2005, Republic Act (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. Section 6 thereof provides:

> "SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
>
> (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

From March to November 2007, petitioner's importations of assorted liquors, cigarettes, and wines arrived in Manila through the South Harbor and Ninoy Aquino International Airport, which were covered by various Informal Import Declarations and Entries, Air Waybills/Bills of Lading,[4] and Authorities to Release Imported Goods.[5]

[4] Exhibits "I" to "R", including sub-markings, docket, pp. 789-809
[5] Exhibits "U" to "DD", docket, pp. 811-820

Meanwhile, on February 8, 2007[6] and June 11, 2008,[7] petitioner received assessments on its alleged liability to pay excise taxes in the respective amounts of P4,121,453.10 and P2,820,037.11.

On July 7, [8] and 18, 2008[9], petitioner respectively paid under protest the assessed amounts of P4,121,453.10 and P2,820,037.11. Subsequently, it formally protested the said assessment and collection in its letters dated July 18, 2008[10] and July 25, 2008.[11]

On March 5, 2009,[12] petitioner filed its administrative claim for refund with respondent CIR in the amounts of P4,121,453.10 and P2,820,037.11 representing the assessed and collected excise taxes paid under protest over importations covered.

On July 7, 2010, petitioner instituted the present Petition for Review[13] raising as ground respondent CIR's failure to act on its claim for refund.

In her Answer filed on August 12, 2010, respondent argues that petitioner is not entitled to the refund sought invoking Republic Act (RA) No. 9334 which imposed the payment of excise taxes on imported articles thereby repealing Presidential Decree (PD) No. 1590, which provided the exemption on the payment of excise taxes on articles imported by petitioner.

Further, to be entitled, petitioner must sufficiently prove compliance with all pertinent laws and regulations, including Letter of Instruction (LOI) No. 684 on the release of its importation without payment of taxes.

---

[6] Exhibit "S", docket, p. 95
[7] Exhibit "SS", docket, p. 151
[8] Exhibit "T", docket, p. 96
[9] Exhibit "TT", docket, p. 152
[10] Exhibit "FF", docket, pp. 108-117
[11] Exhibit "GGG, docket, pp. 165-184
[12] Exhibit "GG", docket, pp. 119-128; Exhibit "HHH", docket, pp. 175-184
[13] Exhibit "LLL-1"

In his Answer[14] filed on August 31, 2010, respondent COC merely echoes his co-respondent's position that petitioner is not entitled to tax refund for excise tax payments on the subject importations as it is not exempt from excise tax either under its franchise (PD No. 1590), nor under RA No. 9334. He also states as did his co-respondent CIR, that petitioner must prove compliance with Letter of Instruction (LOI) No. 684.

After the pre-trial conference, petitioner proceeded to present its witnesses Joseph Brian T.L. Tan, Ma. Evelyn L. Taghap, and Cheryl V. Capinpin.

In his Judicial Affidavit,[15] **Joseph Brian T.L. Tan** declared that he is the Manager of petitioner's Company Materials Handling Division. From March 28, to November 10, 2007, petitioner imported several cases/packages of cigarettes, wines, liquors, and distilled spirits for its international flights. To secure the release of the said importation from the BOC's custody, petitioner paid under protest the amounts of P4,121,453.10 and P2,820,037.11 as excise taxes on July 7, and July 18, 2008, respectively. The witness claims that petitioner is exempt from the payment of excise taxes on the subject importation by virtue of its franchise under PD No. 1590. For this reason, petitioner filed a written claim for refund of the excise taxes paid under protest with respondent CIR who failed to act on the same, hence, the instant Petition for Review.

An almost regular witness of petitioner in its similar cases before the Court, Ma. Evelyn L. Taghap testified[16] that as the Manager of the Tax Services Division of petitioner, she is aware that petitioner, as a VAT-registered taxpayer, paid its income tax liability for fiscal year ending March 31, 2009. Petitioner accounted for VAT on its sale of goods, property, services and lease of property for the said fiscal year in accordance with Section 13 of PD No. 1590, as amended by RA No. 9337.

---

[14] Docket, pp. 226-255
[15] Judicial Affidavit of Joseph Brian T.L. Tan attached to Exhibit "MMM", docket, pp. 369-395
[16] Exhibit "SSS", docket, pp. 582-587

Another regular witness of petitioner is its Manager of the In-Flight Materials Purchasing Division Cheryl V. Capinpin. She testified[17] that based on comparison of the prices of wine and alcoholic products imported by petitioner with the prices of the same products from one local supplier, that of the former is definitely cheaper. The prices of the products imported by petitioner is definitely less given that local suppliers are required to pay taxes on its importation of cigarettes while the importation of the same items by petitioner is tax exempt under its franchise. In view thereof, she can safely conclude that the alcoholic and tobacco products imported by petitioner during fiscal year ending March 31, 2008 are not available locally at reasonable quantity and price.

She added that only one local supplier for wines and alcoholic products granted her request for price list. Further, the cost of petitioner's imported products does not include transportation cost from place of origin to the Philippines, except for items originating from countries where PAL flights are not available.

After petitioner rested, respondent CIR waived presentation of evidence in the absence of Report of Investigation in this case.[18] Respondent COC followed suit.[19]

After the parties' submission of the required memorandum, the case was submitted for decision.[20]

STATEMENT OF ISSUES

The following issues[21] were submitted for the resolution of the Court:

> "1. Whether or not petitioner's franchise, Presidential Decree No. 1590, exempts it from the

[17] Exhibit "TTT", docket, pp. 633-654
[18] Minutes dated March 31, 2014, docket, p. 1119
[19] Minutes dated May 8, 2014, docket, p. 1166
[20] Resolution, docket, p. 1242
[21] Issues to be Tried or Resolved, JSFI, docket, pp. 342-343

payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies.

2. Whether or not petitioner's franchise, Presidential Decree No. 1590, was amended by Republic Act No. 9334 insofar as petitioner's exemption from the payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies is concerned.

3. Whether or not all importations of cigars and cigarettes, distilled spirits, fermented liquors and wines, including petitioner's importations of liquor, wines and cigarettes, are subject to the imposition of excise taxes under Republic Act No. 9334.

4. Whether or not petitioner is exempt from payment of excise taxes on its importations of liquor, wines and cigarettes under Republic Act No. 9334.

5. Whether or not petitioner's imported in the year 2007, liquors, and cigarettes for its catering and commissary supplies its transport operations (sic).

6. Whether petitioner has complied with the Letter of Instruction No. 684 as to the release of its importation without payment of taxes.

7. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.

8. Whether or not petitioner PAL is entitled to a refund of:

(a) PHP4,121,453.10 specific tax allegedly paid under protest on 07 July 2008; and

(b) PHP2,820,037.11 specific tax allegedly paid under protest on 18 July 2008

Or a total of PHP6,941,490.21 allegedly paid before respondent Commissioner of Customs, in connection with its importations of liquors, cigarettes and wines for international flight consumption."

The RULING of the COURT

There are two main issues for resolution to determine whether petitioner is entitled to a refund, to wit:

1. Whether RA No. 9334 amended petitioner's franchise under PD No. 1590, pertaining to its exemption from excise tax on its importation of cigarette, liquor, and wine.

2. Whether petitioner satisfied the conditions set forth in PD No. 1590 for exemption from excise tax on its importation of cigarette, liquor and wine.

Anent the first issue, petitioner asserts that RA No. 9334 did not repeal PD No. 1590 based on Section 24 thereof which provides, thus:

"SECTION 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Petitioner is of the opinion that Section 24 of PD No. 1590 explicitly states that only the passage of a special law or decree may modify, amend or repeal its provisions. In support thereof, petitioner cites numerous cases,[22] which in unison decreed that RA No. 9334 did not amend PD No. 1590 pursuant to the statutory construction rule that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[23]

Both respondents CIR and COC refuse to agree saying that the NIRC already expressed the legislative intent to subject importations of cigars and cigarettes, distilled spirits and wines to all applicable taxes, duties and charges, including excise taxes, the provision of any special or general law to the contrary notwithstanding, as categorically stated in Section 131 of the Tax Code, as amended by RA No. 9334.[24]

In *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,*[25] this Court already put to rest the issue of whether RA No. 9334 amended PD No. 1590, in the following manner:

> "While it is true that Section 6 of RA No. 9334 states the all encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless

---

[22] *Commissioner of Internal Revenue vs. Philippine Airlines* (592 SCRA 237), *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 198759, July 1, 2013), *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue* (CTA Case No. 7935, December 20, 2012), and *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.* (CTA EB Nos. 920 and 922, September 9, 2013)
[23] Petitioner's Memorandum, docket, pp. 1220-1225
[24] Respondent CIR's and COC's Memoranda, docket, pp. 1127-1139 and 1182-1196
[25] CTA EB Nos. 920 and 922, September 9, 2013

> the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.
>
> Equally noteworthy is the fact that Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily 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 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."

Similarly, in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et al.*[26], the Court held that:

> "It is true that Section 6 of RA 9334 states the all-encompassing phrase 'the provision of any special or general law to the contrary notwithstanding.' However, such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to specifically identify PD 1590 as one of the

[26] CTA Case No. 7935, December 20, 2012, citing *Tan, et al. vs. Perena*, G.R. No. 149743, February 18, 2005

> acts intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. xxx"

No less than the Supreme Court sustained the foregoing stance of this Court that RA No. 9334 did not amend PD No. 1590. It explained its ruling in this wise:

> "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.
>
> 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. 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,*" <u>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</u>. x x x
>
> 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 [RA] 9334, which is a general law, the former necessary (sic) 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 (sic) 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."[27]

The Final Arbiter has spoken on the matter - RA No. 9334 did not amend PD No. 1590. This is notwithstanding the *proviso* "the provision of any special or general law to the contrary notwithstanding" in Section 6 of RA No. 9334

[27] Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., G.R. Nos. 212536-37, August 27, 2014

hinged on the hornbook statutory construction principle that a special law, such as PD No. 1590, prevails over a general law, in this case, RA No. 9334. In other words, the provisions of PD No. 1590 shall apply in determining petitioner's entitlement to the refund of the excise taxes it paid under protest.

With regard to petitioner's compliance with the requisites under PD No. 1590, Section 13 thereof provides 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 distinction as to transport or non-transport 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**;" *(Emphasis supplied)*

Evident from the afore-quoted provision that payment of basic corporate income tax or franchise tax, in lieu of all other taxes, exempts petitioner from the payment of excise tax on its importation of cigarettes, liquor and wine. However, for the exemption to apply, three requisites must be complied with by petitioner, namely:

1. The imported liquors, wines and cigarettes must be commissary and catering supplies;

2. The imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

3. The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

Insofar as the first and second requisites are concerned, petitioner witness Joseph Brian T.L. Tan testified as follows:

"Q: What is the imported product involved as shown by the informal entry and airway bill?

A: Looking at the frontpage of the informal entry, under the column labelled 'Description of Articles', **there is written 'INFLIGHT MATERIALS** LINDEMANS PREMIER CHARDONNAY LINDEMANS PREMIER CHIRAZ CABERNET PENFOLDS CHARDONNAY PENFOLDS SHIRAZ CABERNET' and under the column labelled 'No. of Packages', there is written '11'. Looking at the Airway Bill, under the column labelled 'Nature and Quantity of Goods', there is written 'AUSTRALIAN WINE' and under the column labelled 'No. of Pieces', there is written '11'.

xxx xxx xxx

Q: And what is the imported product involved as shown by the informal entry and airway bill?

A: Looking at the frontpage of the informal entry, under the column labelled 'Description of Articles', **there is written 'INFLIGHT MATERIALS** DAVIDOFF CLASSIC, WEST FULL FLAVOR, WEST LIGHTS, WEST ICE,' and under the column labelled 'No. of Packages', there is written '4'. Looking at the Airway Bill, under the column labelled 'Nature and Quantity of Goods', there is written 'CIGARETTES 9 CTNS DAVIDOFF CLASSIC, 30 CTNS WEST BOX, 14 CTNS WEST LIGHTS BOX, 30 CGTNS WEST ICE BOX, PACKED INTO 4 PALLETS', and under the column labelled 'No. of Pieces', there is written '4'.

xxx xxx xxx

Q: And what is the imported product involved as shown by the informal entry and airway bill?

A: Looking at the frontpage of the informal entry, under the column labelled 'Description of Articles', **there is written 'INFLIGHT MATERIALS** JACK DANIELS WHISKY, CHIVAS REGAL WHISKY' and under the column labelled 'No. of Packages', there is written '3'. Looking at the Airway Bill, under the column labelled 'Nature and Quantity of Goods', there is written '96 CTNS JACK DANIELS, 40 CTNS CHIVAS REGAL, PACKED IN 3 PALLETS' and under the column labelled 'No. of Pieces', there is written '3'."[28] *(Emphasis supplied)*

As testified to by the named witness and as indicated in the informal entry and airway bill documents, the imported goods were "inflight materials," hence, are commissary or catering supplies used in petitioner's transport/flight operations im compliance with the first two requisites.

The third condition requires that the imported liquors, wines and cigarettes must not be locally available in reasonable quantity, quality, or price. On the matter, regular witness of petitioner Cheryl V. Capinpin testified, thus:

"11.Q. Looking at Annex 'A' of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

11. A. The costs of importing the commissary supplies involved and listed under the column 'Product Imported', are specified under the columns labelled 'Unit Cost Per Sales Invoice', 'Unit Cost per ATRIG', short for 'Authority to Release Imported Goods', and 'Unit Cost per

[28] Judicial Affidavit of Joseph Brian T.L. Tan, attached to Exhibit "MMM", docket, pp. 371-375

Informal Import Declaration Entry No.', while the cost of locally buying the same supplies are specified under the columns labelled 'Philippine Wine Merchants 2007 Price List'. As can be readily seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

xxx xxx xxx

13. Q. How did you arrive at the unit cost per sales invoice?

13. A. As shown by the table, in the case of alcoholic products, I divided the cost per case or carton stated in the sales invoice, by twelve (12), the number of bottles per case or carton of the alcoholic product covered by the invoice, to arrive at the unit cost per bottle.

In the case of tobacco products or cigarettes, I divided the total value of the product as stated in the sales invoice, by the number of cartons or cases also stated therein, to arrive at the cost per carton. I then divided the cost per carton by fifty (50), the number of reams per cartons to arrive at the cost per ream of cigarettes. To arrive at the unit cost per pack of cigarettes, I divided the cost per ream by ten (10) which is the number of packs in a ream.

xxx xxx xxx

18. Q. What does the columns (sic) labelled 'Philippine Wine Merchants Price List 2007', contain?

18. A. Said columns contain the local unit costs per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the year 2007, of the alcoholic products sold by them.

19. Q. Showing to you this document, attached to your affidavit as Annex 'B', labelled 'Philippine Wine Merchant, 2007 Price List' with a signature appearing at the bottom of the page thereof, on top of the name Ronald Lim Joseph Philippine Wine merchants, how are they related to the local unit costs per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the year 2007, of the alcoholic products sold by them, which you mentioned?

19. A. That is the price list for the year 2007 quoted by Philippine Wine Merchant which I mentioned.

20. Q. Do you have other sources of local prices of the products involved?

20. A. **We have no other sources of said local prices because the other local wine merchants or dealers refused to give us their list of prices despite our persistent requests. We even tried getting the quotation of Duty Free Philippines, but they also refused to give us any.**

21. Q. How about the local costs of the imported cigarettes involved?

21. A. **I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the same brand of imported cigarettes who could regularly supply PAL with the quantity it regularly needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.**

22. Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

22. A. **Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL.**

On the other hand, because of its franchise, P.D. No. 1590 PAL does not have to pay any excise tax and customs duties on the imported

> **products involved.**"[29] *(Emphasis supplied)*

In sum, petitioner compared the prices of its imported wines and/or liquors with the quotation of a single supplier known in the business as the Philippine Wine Merchant. Moreover, the witness admitted that petitioner did not compare the price of its imported cigarettes against the price in the local market and merely assumed that local prices of the same products would be more expensive. Without any solid back-up, she said that no local supplier of the same brand of imported cigarettes could provide petitioner requirements on a regular basis.

Without hesitation, witness Cheryl V. Capinpin confirmed this fact during her cross examination, in the following fashion:

"Q In your affidavit, you attached therein Annex A, showing the Table of Comparison between cost of importing and cost of locally purchasing commissary and catering supplies?

A Yes, Ma'am.

Q If (sic) the preparation of the table part of your regular function, then Supervisor or now Manager of the in-flight services materials purchasing division?

A The preparation of the table part of my function?

Q Yes.

A The preparation of the table normally comes when there is a ... and normally, part of the regular function, although if it is required or

---

[29] Exhibit "TTT", Judicial Affidavit of Cheryl V. Capinpin, docket, pp. 634-636

if it is necessary then it may form part of the function.

Q Your testimony is being offered to show that it is not locally (sic) the commissary and catering supplies are not available at reasonable price quantity and price. So, for purposes of concluding that there is no locally available commissary and catering supplies at a reasonable quantity and price, naturally you will have to make this comparative table, am I correct?

A Correct.

Q Naturally, it will be a regular part of your duty for you to be able to conclude that it is not locally available at a reasonable quantity and price and not merely as it was?

A I am referring to this particular table, yes we do that in the comparison of our purchases in a different form but not in this particular kind of table.

Q Do you make a comparison but not in this particular kind of table?

A Yes.

Q How often and when do you make purchase?

A Every time we make purchase or there is a plan to make a purchase for a particular item, then it is a must that we make a canvassing.

Q In your affidavit and in the attached table, you likewise referred to a pricelist provided by the Philippine Wine Merchants, am I correct?

A Yes.

Q So, you did not obtain other sources for purposes of making a comparative price of locally available wine and alcoholic products?

A We did our best, Ma'am to obtain comparison from local sources but it is only Philippine Wine Merchants who obliged or submitted their quotation to us.

Q Can you name those local wine merchants or dealers?

A We were particularly referring to the Duty Free Philippines because that was the first supplier that we thought of because they do not pay the duties and taxes, so we asked for quotations from them for listed or enumerated or specified products for comparison but they did not reply to our request.

Q In your affidavit, you stated that with respect to cigarettes, I quote: their selling price would definitely be higher in your answer to no. 22 of page 4 of your affidavit, am I correct?

A Yes.

Q You arrived at the conclusion but you did not include a column showing the local price of cigarette available in the Philippines?

A Yes, Ma'am because we already have an idea or we have done market research also of how are the prices locally of those imported cigarettes in the local market.

Q With respect to the period material in the instant case between March 2007 to November 2007, you made that research with respect to the prices of cigarette?

A Yes, Ma'am.

Q But you did not personally or formally obtain data from the local supplier of cigarette in the Philippines, in the same manner that you tried to obtain the prices from the Duty Free Philippines and as well as Philippine Wine Merchant?

A It was only Duty Free Philippines that we visited to look at the prices on the racks to see if their prices are effective versus our prices that we got from our importer.

Q You did not formally ask then in the same manner that you asked Philippine Wine Merchant in a letter which is attached to your Affidavit?

A We did, Ma'am but they ignored the request.

Q Aside from the Duty Free Philippines, you did not try to obtain from other local suppliers with respect to the cigarette?

A Yes."[30]

Evident from the foregoing testimony is that petitioner failed to make a comprehensive study on the availability, quantity, and price of the subject imported wines or alcohol drinks and cigarettes in the local market as to justify importation of the said items. Note that insofar as the imported wines are concerned, petitioner only inquired from Philippine Wine Merchant and Duty Free Philippines in complete disregard of other suppliers of the same imported

[30] TSN dated May 7, 2012, pp. 9-17

items. The alleged inquiry could not even approximate substantial compliance with the legal requirement on the matter.

To be sure, the information gathered from the two sources insofar as imported wine and liquors are concerned are seriously deficient to justify conclusion that the said imported items are not available in reasonable quantity, quality or price in the local market.

With more reason in the case of imported cigarettes. Absent any pretension, petitioner merely assumed *sans* any basis that its requirement on imported cigarettes could not be satisfied by any local supplier. This is certainly not in accord with the conditions set forth for exemption from excise tax which must be strictly construed against the claimant.

In fine, without any study or at least solid information on the non-availability in the local market in terms of quantity, quality, and price of the subject imported cigarettes, petitioner cannot possibly claim compliance with the third requirement to justify availment of the privilege of being exempt from payment of excise tax.

As previously ruled, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption for it is a derogation of the sovereign authority.[31]

In view of the foregoing, discussion on the other issues is no longer warranted.

WHEREFORE, the Petition for Review dated July 5, 2010 filed by Philippine Airlines, Inc. is hereby **DENIED**, for lack of merit.

---

[31] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

Ma. Belen

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
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