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)

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

Promulgated:
JAN 2 9 2014 9:00 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a "Consolidated Petition for Review"[1] for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[2], as

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[1] En banc Docket, pp. 38-69.

[2] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

amended, of the Decision[3] dated August 24, 2012, rendered by the former Third Division of this Court in CTA Case Nos. 7677, 7685 & 7746 and its Resolution[4] dated October 15, 2012.

Petitioner Commissioner of Customs (COC) assailed the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated August 24, 2012:

*"**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 (₱16,590,969.48),** representing petitioner PAL's erroneously collected excise taxes on its importation of commissary supplies for the period April 2005 to April 2006.*

SO ORDERED."

Resolution dated October 15, 2012:

*"**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."

The following antecedent facts culled from the Decision are undisputed. *l*

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[3] En banc Docket, pp. 70-96.
[4] En banc Docket, pp. 97-100.

"THE PARTIES

Petitioner[5] 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 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 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 c

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[5] Philippine Airlines, Inc.(PAL) was the petitioner before this Court in Division and thereafter the respondent before this 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*.

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. c

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	₱7,407,151.00	December 27, 2006	C.T.A. Case No. 7677 September 10, 2007
October 8, 2005	₱170,044.25	January 18, 2007	C.T.A.Case No. 7685 October 5, 2007
October 27, 2005	₱4,033,434.00	January 5, 2007	
April 7, 2006	₱330,340.23	January 25, 2007	C.T.A. Case No. 7746 March 31, 2008
April 26, 2006	₱1,250,000.00	January 25, 2007	
April 26, 2006	₱1,375,000.00	February 1, 2007	
April 26, 2006	₱300,000.00	February 1, 2007	
April 26, 2006	₱500,000.00	February 1, 2007	
April 26, 2006	₱1,225,000.00	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. c

> 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.
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> 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.
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> 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.
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> 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."

After trial, this Court's former Third Division in the August 24, 2012 Decision 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 Court a quo ruled that PAL's franchise exempts PAL from paying any tax other than the option it chooses[7]. PAL has an option to pay the lower of two alternatives ("the basic corporate income tax based on PAL's annual net taxable income computed in accordance with the provisions of the NIRC or "a franchise tax of two (2%) of the gross revenue") and availment of one shall exempt the airline from payment of " all other taxes", including taxes, duties, charges, royalties, or fees on commissary and catering supplies.[8] The Court a quo found that PAL opted to pay its corporate income tax; the importation of commissary and catering supplies is exclusively for international inflight

[7] Supra Note 3
[8] Ibid.

consumption; and that the imported commissary and catering supplies are not locally available in reasonable quantity, quality or price. Thus, the Court a quo concluded that PAL complied with the requirements prescribed under its franchise for exemption from payment of excise tax on importation of commissary and catering supplies used for its inflight consumption.

Moreover, the Court a quo ruled that there was no express repeal of Presidential Decree No. 1590 (PD 1590)[9] or withdrawal of the privilege granted to petitioner by Republic Act No. 9334 (RA 9334)[10]clause. Stated differently, the exemption granted to PAL under PD 1590 was not repealed, altered or modified by RA 9334. Thereafter, COC's "Consolidated Motion for Reconsideration" was denied. Hence, this petition.

The grounds raised by COC in its petition are as follows:

"I.

THE EXEMPTION FROM TAXES GRANTED TO RESPONDENT BY P.D. NO. 1590 WAS REPEALED BY R.A. 9334.

II.

RESPONDENT'S ALLEGATION THAT CATERING AND COMMISSARY SUPPLIES ARE NOT AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE SHOULD NOT HAVE BEEN GIVEN CREDENCE, THE SAME BEING UNRELIABLE."

COC argued that Section 6 and 10 of RA 9334 are clear, it manifest the clear intention of Congress to tax all

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[9] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.
[10] 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.

importations of cigars, cigarettes, distilled spirits, fermented liquor and wines such that these provisions should be construed to have indubitably repealed respondent's franchise exempting it from all other taxes aside from the corporate income tax or franchise tax.

Anchoring on the Supreme Court decision in Cagayan Case [11], COC claims that even tax-exempt legislative franchise could be subjected to tax by way of a congressional act. COC argued that the paramount consideration is the intention of the legislature to withdraw the income tax exemption enjoyed by the taxpayer than whether an amendatory law can withdraw such exemption in accordance with the clause stated therein.

In addition, COC assails the evidence presented by PAL. COC claims that PAL failed to prove that the imported catering and commissary supplies were not available locally in reasonable quantity, quality or price. COC argues that mere declaration made in court did not make the testimony of value.

Thereafter, the parties were directed to file their respective memoranda. Both parties complied and reiterated their arguments in the petition before this Court which was apparently the same arguments previously raised before the Court a quo.

We resolve.

The exemption from taxes granted to respondent PAL by Presidential Decree NO. 1590 was not repealed by Republic Act No. 9334[12]. *c*

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[11]CAGAYAN ELECTRIC POWER & LIGHT CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE and COURT OF APPEALS, G.R. No. L-60126 September 25, 1985.
[12] 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"

Section 13 of Presidential Decree No. 1590 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 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 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

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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price****;*
xxxx." (Emphasis supplied)

The Supreme Court in interpreting the above provision established[13] that the taxation of PAL, during the lifetime of its franchise, shall be governed by two fundamental rules, particularly: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) **the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges,** except only real property tax.[14]

The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clear. The basic corporate income tax or franchise tax paid by respondent shall be "in lieu of all other taxes" including taxes due on importations by the grantee of commissary and catering supplies, provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

On the other hand Section 6 and 10 of Republic Act No. 9334 provides:

> *"**SEC. 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*

[13] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 160528, October 9, 2006; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180043, July 14, 2009; Republic of the Philippines as represented by Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 179800, February 4, 2010; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 198579, July 1, 2013.
[14] Ibid.

> *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:***
>
> *xxx xxx xxx*
>
> ***SEC. 10. Repealing Clause.*** *- All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.*

Petitioner, citing the Cagayan Case[15] and the City of San Pablo Case[16], claim that even a tax exempt legislative

[15] Supre Note 12.

franchise could be subject to a tax through a congressional act and a general law cannot be construed to have repealed a special law by mere implication unless the intent to repeal or alter is manifestly and convincingly demonstrated that the two laws are repugnant and inconsistent that they cannot co-exist. Thus, COC argued that the legislative intent to supersede all laws containing contrary provision, including PAL's charter or PD 1590 is manifest in Section 6 and 10 of RA 9334.

We disagree.

Prior to the amendment introduced by RA 9334, Republic Act No. 8424 (RA 8424)[17], otherwise known as Tax Reform Act of 1997, likewise, contains a similar provision in SEC. 131. -"Payment of Excise Taxes on Imported Articles". Specifically, said provision similarly provides that "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." Likewise, RA 8424, contain a repealing clause which provides as follows:

> *"Section 7. Repealing Clauses. -(A) 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."*

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[16] CITY GOVERNMENT OF SAN PABLO, LAGUNA, CITY TREASURER OF SAN PABLO, LAGUNA, and THE SANGGUNIANG PANGLUNSOD OF SAN PABLO, LAGUNA *vs.* HONORABLE BIENVENIDO V. REYES, in his capacity as Presiding Judge, Regional Trial Court, Branch 29, San Pablo City and the MANILA ELECTRIC COMPANY, G.R. No. 127708, March 25, 1999.

[17] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

Thus, it was of the opinion[18] that as early as January 1, 1998, with the enactment of RA 8424, the exemption granted to PAL from excise taxes on its importation of cigars, cigarettes, distilled spirits and wines under Section 13 of PD 1590 was necessarily withdrawn. Stated otherwise, it is claimed that it is not RA 9334 but rather RA 8424 that amended the exemption from taxes granted to respondent by PD 1590.

This Court, nevertheless maintain that the exemption from taxes granted to respondent PAL by PD 1590 specifically ***"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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price"*** was neither repealed by RA 9334[19] nor by RA 8424[20].

Although the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066*[21] 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*

[18] by our esteemed Justices, Presiding Justice Roman G. Del Rosario and Associate Justice Ma. Belen M. Ringpis-Liban.

[19] 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"

[20] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

[21] July 7, 2009.

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).*
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> *The Court disagrees.*
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> *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."*[22]

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

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[22] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009.

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.[23] 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.[24] 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.[25] When RA 8424 and RA 9334 were enacted, it specifically did not intend to modify, amend, or repeal Presidential Decree No. 1590 or any portion thereof. On the contrary, when Republic Act No.

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[23] Ibid.
[24] Ibid.
[25] 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.

9337[26] (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 makes 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: ℓ

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[26] 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)."*

As to COC's claim that evidence presented by PAL to prove that the imported catering and commissary supplies were not available in reasonable quantity, quality or price and argued that just because a declaration was made in court dd not make the testimony of value. We are not persuaded. Records disclose that COC present no evidence whatsoever to controvert the same. Petitioner substantially proves that the imported catering and commissary supplies were not available in reasonable quantity, quality or price. The Court a quo correctly ruled as follows:

> *"Pursuant to the above provision, in order to claim exemption from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:*
>
> > *1) it paid either the basic corporate income tax or the two percent gross revenue tax;*
> >
> > *2) such articles or supplies or materials are imported for the use of petitioner in its transport and nontransport operations and other activities incidental thereto; and*
> >
> > *3) such articles or supplies or materials are not locally available in reasonable quantity, quality, or price.*
>
> *As regards the first requisite, records show that petitioner opted to pay its corporate income tax, as evidenced by its Annual Income Tax Returns for fiscal years ended in March 2006 and March 2007 (Exhibits "XXX" and "YYY", respectively). Thus, pursuant to PD No. 1590, petitioner may claim for exemption from all other taxes in view of its payment of corporate income tax.*
>
> *As regards the second requisite that the importation of commissary and catering supplies is for the use of petitioner in its transport and nontransport operations and other activities incidental thereto, the Court finds that the various ATRIGs (Exhibits "I-2" to "X-2 " "DD-2" J J "GG-2 " to "00-2 ", "TT", "YY" "DDD" "III ", "NNN", and "SSS") presented by petitioner show that the importation thereof will be used exclusively for international inflight consumption.*
>
> *As to the third requisite that the imported commissary and catering supplies are not locally available in reasonable quantity, quality, or price, petitioner presented Victor Santos, Assistant Vice President in charge of the Catering and In-flight Sub-department of PAL, who substantially testified that the importation of alcoholic products is cheaper than buying them locally, while as regards the cigarettes, either there are no local suppliers*

> *or dealers big enough to supply various foreign brands of cigarettes or the selling prices of the local dealers are higher than the cost of importation (Exhibit "GGGG "). To bolster its claim, petitioner also presented documentary evidence, such as various price lists of different merchants selling similar commissary articles as those imported by petitioner (Exhibits "EEEE" and "FFFF"). After a careful examination of the evidence adduced by petitioner, and undisputed by respondents, the Court is convinced that the imported cigarettes and liquors used by petitioner in its inflight services are either not available in the local market or the selling prices of the local suppliers are higher than the cost of importation.*
>
> *Therefore, we find that petitioner has complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies used for its inflight consumption."*

In sum, after the disquisition of the issues, the arguments raised by the petitioner failed. Hence, we find no cogent reason to reverse the former Third Division's findings.

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.

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

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

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 NO. 954
(CTA CASE NOS. 7677, 7685 & 7746)

Present:

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

Promulgated:
JAN 2 9 2014 apolinario 9:00 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

With utmost respect, I dissent in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla.

The *ponencia* affirms the August 24, 2012 Decision and October 15, 2012 Resolution of the former Third Division of this Court in CTA Case Nos. 7677, 7685 & 7746 which ordered the refund of the amount of ₱16,590,969.48, representing Philippine Airlines' (PAL) erroneously collected excise taxes on its importation of commissary supplies for the period April 2005 to April 2006. The *ponencia* reiterates that the exemption from taxes granted to PAL by Presidential Decree (PD) No. 1590 was not repealed by Republic Act (RA) No. 9334. *om*

The issue in this case boils down to whether or not RA No. 9334 repealed the excise tax exemption granted to PAL under PD No. 1590 on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

On June 11, 1978, PD No. 1590 was issued wherein PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to 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.

Relevant portions of Section 13 of PD No. 1590 state 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 nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following**:
>
> 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

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> deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport 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, <u>commissary and catering supplies</u>, 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;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997"* took effect. RA No. 8424 amended the National Internal Revenue Code[1] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424, importation of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes. Section 131 of the 1997 NIRC provides that:

> "SECTION 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.
>
> **<u>The provision of any special or general law to the contrary notwithstanding</u>, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and**

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[1] "SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I
Organization and Function of the Bureau of Internal Revenue

'SECTION 1. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

> **duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**: Provided, however, That this shall not apply to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.
>
> Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.
>
> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphases supplied)

While Section 131 of the 1997 NIRC clearly provides that importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise

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taxes, it also recognizes certain exceptions. Taxes, duties and charges, including excise taxes shall not apply to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, and which are not transshipped to any other port in the Philippines. Moreover, importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334 states:

> "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.
>
> **<u>The provision of any special or general law to the contrary notwithstanding</u>, 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 <u>shall apply</u> 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-

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> 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 on introduction into the Philippine customs territory.
>
> Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.
>
> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphasis supplied)

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes, shall *not apply* to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically *withdrew* the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

In truth, the exemption of PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 was necessarily withdrawn as early as January 1, 1998 with the enactment of RA No. 8424 (specifically under Section 131 of the NIRC of 1997) albeit importations of aforestated items remained exempt if brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, under conditions therein specified. Eventually, Section 131 of the NIRC of 1997 was amended by Section 6 of RA No. 9334. Under Section 131 of the NIRC of

1997, as amended by Section 6 of RA No. 9334, 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. Fermented liquor was further added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, I find that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on PAL's importation under Section 13(2) of PD No. 1590. Moreover, the repealing clause of RA No. 8424 is most revealing:

> "SECTION 7. Repealing Clauses. — (A) xxx xxx xxx.
>
> 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."

Stated differently, in enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

As afore-discussed, Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes. The clear intent of the legislature to withdraw the tax exemption previously granted to PAL on its importation of aforestated articles pursuant to Section 13(2) of PD No. 1590 cannot simply be ignored.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[2] ("*Cagayan*

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

case"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> Xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1

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> to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, I am of the view that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should be construed as an express repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, when Section 131 of the 1997 NIRC specifically identified the importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges, including excise taxes, which identification did not include rPAL's importations, there is an express repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as aforestated items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. PAL also posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

I find the arguments raised by PAL bereft of constitutional moorings.

Sections 16 and 24 of PD No. 1590 cited by the Commissioner of Customs provide that:

> "**Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."
>
> "**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."

PAL essentially proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption. PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*,[3] viz:

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[3] G.R. No. 168584, October 15, 2007.

"To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

First. Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

Fourth. **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, 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 under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and

> unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.
>
> These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**
>
> **While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked."** (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[4], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

> "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.**"

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on PAL's importations.

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[4] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

Section 22 of RA No. 9337[5] which took effect on July 1, 2005 and abolished the franchise tax provided under PAL's charter and subjected PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement. Section 22 of RA No. 9337 is quoted hereunder:

> "SECTION 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."

At the time of the enactment of RA No. 9337, PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on PAL's importation of aforestated articles was reenacted or restored, although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334.

In sum, it is clear that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of PAL's importations of cigars and cigarettes, distilled spirits, fermented liquors and wines from taxes, duties, charges, including excise taxes, has been withdrawn. Hence, during the period April 2005 to April 2006, when Section 131 of the 1997 NIRC, as

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[5] 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

amended by RA No. 9334 is effective, PAL is subject to excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

Thus, it is my humble opinion that PAL is not entitled to the refund of 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. Accordingly, I VOTE to GRANT the Consolidated Petition for Review filed by the Commissioner of Customs.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF THE BUREAU OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

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

Present:

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

Promulgated:

JAN 29 2014 9:00 a.m.

X---X

DISSENTING OPINION

RINGPIS-LIBAN, J.:

The *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, dismissed the Petitions for Review filed by the the Commissioner of Customs (COC) for lack of merit. Majority of this Court sustained the findings of the former Third Division[1] that Section 6 of Republic Act (RA) No. 9334[2] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[3].

[1] Decision of the CTA former Third Division in CTA Case Nos. 7677, 7685 & 7746 dated August 24, 2012 and the Resolution dated October 15, 2012 denying the motion for reconsideration thereof.
[2] Republic Act No. 9334, 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.
[3] Presidential Decree No. 1590, An Act Granting a New Franchise to Philippine Airlines, inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

I respectfully vote to **DISAGREE** with the majority opinion for the following reasons:

The cited case in the Decision, *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[4], in analyzing the nature of PAL's charter (PD 1520) as opposed to R.A. 8424 (NIRC of 1997) in the context of statutory construction, provides:

> "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.[5]"

Applying the rules of statutory construction, then the special law -- PD 1590 -- would indeed be considered to remain an exception to RA 8424, the general law, and PAL would still be exempt from the payment of excise taxes on cigars and cigarettes, fermented spirits and wines that it imported.

However, the rule is not absolute and admits of exceptions. I believe that the case at bar falls under those exceptions.

One exception to the principle is where the special law merely establishes a general rule while the general law creates a specific and

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[4] G.R. No. 180066, July 7, 2009.

[5] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No, 159647, 15 April 2005, 456 SCRA 414, 449.

special rule, in which case the general law prevails over the special law.[6] The principle that a special law on a subject prevails over a general law on the same subject presupposes that the general law refers to the subject in general and the special law treats the same subject in particular. The rule does not apply where the situation is reverse, that is, the general law treats the subject in particular and the special law refers to it in general. In this situation, the general law prevails over the special law in the event of repugnancy or conflict between the two laws.[7]

Under PD 1590, the subject of excise taxes due on its importations of cigars and cigarettes, fermented spirits and wines, are treated generally and are considered encompassed in Section 13 thereof. In that section, in consideration of the franchise granted to PAL, it shall pay either basic corporate income tax or a franchise tax. **<u>Section 13</u>** further denotes the treatment of the tax paid, thus:

> "The tax paid by the grantee under either of the above alternatives **<u>shall be in lieu of all other taxes</u>**, 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, **<u>including but not limited to the following</u>**:
>
> x x x
>
> 2. **All taxes**, including compensating taxes, duties, charges, royalties, or fees due **<u>on all importations</u>** 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

[6] City of Manila v. Teotico, G.R. No. 23052, Jan. 29, 1968, 22 SCRA 276 (1968).
[7] Bagatsing v. Ramirez, G.R. No. 41636, Dec. 17, 1976, 74 SCRA 306 (1976).

thereto and are not locally available in reasonable quantity, quality, or price; x x x"[8]

In fact, PD 1590 does not even mention "cigars and cigarettes, distilled spirits, fermented liquors and wines" with any particularity and such items would only fall under the generic phrase **"and other articles, supplies, or materials"**. In contrast, RA 9334 specifically deals with the excise tax rates imposed on alcohol and tobacco products. The fact that Sec. 6 of RA 9334, in its third paragraph, is preceded by the phrase, **"The provision of any special or general law to the contrary notwithstanding x x x"** evinces a clear intent to withdraw prior exemptions of excise tax when it comes to "cigars and cigarettes, distilled spirits, fermented liquors and wines".

The case at bar therefore falls under the exception where a general law treats the subject in particular and the special law refers to it in general, and in such a case, the general law -- RA 8424 as amended by RA 9334 -- must prevail.

The case of ***Republic of the Philippines v. Caguioa***[9], quoted in the dissenting opinion, further elucidates the matter, especially when it emphasizes the power of Congress to withdraw an exemption previously granted.

In my opinion the case cited in the Decision[10] is inapplicable as it deals with the applicability of Minimum Corporate Income Tax (MCIT) and the liability of PAL therefore for the fiscal year ending 31 March 2001. In that case, the Supreme Court said that as R.A. 9337 which made PAL liable for both corporate income tax and the 12% VAT on its sale of services took effect on 1 July 2005, it could not be applied retroactively and any amendment introduced by the said statute affecting the taxation of PAL was immaterial in that case.

In contrast, this case involves the claim for refund for PAL's erroneously collected excise taxes on its importation of commissary

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[8] Section 13, Presidential Decree No. 1509, An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.
[9] G.R. No. 168584, October 15, 2007.
[10] *Supra* at Note 4.

supplies for the period April 2005 to April 2006. Since R.A. 9334 took effect on 1 January 2005, such law was applied prospectively.

Based on the foregoing, I vote to GRANT the instant Petition for Review filed by the Commissioner of the Bureau of Customs and vote to REVERSE and SET ASIDE the CTA's former Third Division's assailed Decision dated August 24, 2012 and the assailed Resolution dated October 15, 2012 in CTA Case Nos. 7677, 7685 & 7746.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice