REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

-*versus*-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1537
(CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851)

x- x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

-*versus*-

AIR PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1550
(CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

NOV 22 2018 3:18 p.m.

x- x

RESOLUTION

MANAHAN, J.:

The following motions filed by the petitioners are submitted for the Court's consideration:

1) Petitioner Commissioner of Internal Revenue (CIR)'s *Motion for Reconsideration*[1] filed on June 7, 2018;

2) Petitioner Commissioner of Customs (COC)'s *Motion for Reconsideration (re: Decision dated May 21, 2018)*[2] filed through registered mail on July 5, 2018, and received by the Court on July 11, 2018; and

3) Respondent Air Philippines Corporation (APC)'s *Consolidated Comment (To CIR's Motion for Reconsideration dated 05 June 2018 and COC's Motion for Reconsideration dated 28 June 2018)*[3] filed on September 10, 2018.

In their motions, the CIR and COC both seek reconsideration of the Court *En Banc*'s Decision[4] dated May 21, 2018, and praying that the grant of APC's claim for refund be reconsidered, reversed, and set aside. The dispositive portion of the said Decision states:

> **WHEREFORE**, the instant Petitions for Review filed by the Commissioner of Internal Revenue and Commissioner of Customs, docketed as CTA EB Nos. 1537 and 1550, respectively, are **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[5]

The above-quoted Decision effectively affirmed the Court in Division's Decision,[6] dated June 10, 2016, which disposed of the case, as follows:

> **WHEREFORE**, the Petitions for Review in CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851 are hereby **GRANTED**. Respondent Commissioner of

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[1] *Rollo*, pp. 318-327.
[2] *Rollo*, pp. 328-353.
[3] *Rollo*, pp. 361-378.
[4] *Rollo*, pp. 294-313.
[5] *Rollo*, p. 312.
[6] *Rollo*, pp. 53-107.

Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Air Philippines Corporation in the amount of NINETY-FOUR MILLION SIX HUNDRED EIGHTY-NINE THOUSAND ONE AND 50/100 PESOS (Php94,689,001.50) representing the excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period March to November 2006.

SO ORDERED.[7]

Petitioner CIR argues that the Court erred in relying on the Air Transportation Office (ATO) Certifications in ruling that Jet A-1 aviation fuel is not locally available in reasonable quantity, quality or price. Petitioner argues that under the law, the monitoring of supply and demand of fuel is the function of the Department of Energy (DOE). Petitioner CIR also questions the Court's findings that the imported Jet A-1 aviation fuel was used for APC's transport and non-transport operations based on the submitted Authority to Release Imported Goods (ATRIG).

Petitioner COC argues that the claim for refund must be dismissed for lack of cause of action and for APC's resort to deliberate forum shopping when it filed its protest before the BOC then subsequently filed a written request for refund with the BIR. Petitioner COC also argues that it is the DOE that has the authority to issue certifications with respect to the availability of aviation fuel in reasonable quantity, quality and price. Finally, petitioner COC states that the ATRIGs are self-serving pieces of documents.

In its Consolidated Comment, respondent APC states that neither the CIR nor the COC raised any new issue or matter; that the petitioners raised issues that are a mere rehash of their respective arguments before the Court in Division; and, that petitioner's respective *Motions for Reconsideration* deserve no further consideration and should be denied. Respondent APC also counters that the ATO Certifications were properly given weight by the Court; that APC did not commit forum shopping; that the 2002 DOE Certifications cannot be relied upon having been declared null and void by the Regional Trial Court and Court of Appeals, and were based on data from years 2001 and 2002 only.

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[7] *Rollo*, p. 107.

Respondent APC further argues that the ATRIGs are not self-serving, and when considered with the testimonies of respondent's and petitioner's witnesses, are sufficient to establish APC's compliance with the requisites for tax exemption.

After a careful review of the grounds raised in the CIR's and COC's respective *Motions for Reconsideration*, and the counter-arguments presented by respondent APC, the Court finds no reason to reverse nor modify its conclusions in the Decision dated May 21, 2018, which were also the same findings made by the Court in Division.

Thus, it is reiterated that ATRIGs are *prima facie* evidence, in the absence of contrary evidence, that the subject aviation fuel will be used exclusively in petitioner's flight operations and other activities incidental thereto. Further, this Court has consistently given the ATRIGs evidentiary weight as proof that the imported articles, supplies or materials are to be used for transport and non-transport operations and other activities incidental thereto.[8]

As to the issue on who has authority to issue certifications on the availability or non-availability of aviation fuel, the Court reiterates the discussion in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*,[9] wherein the Court's Special Second Division resolved as follows:

> Basically, in their respective Motions, the *crux* of respondents' arguments revolve around the adequacy of the Air Transportation Office (now Civil Aviation Authority of the Philippines or CAAP) certifications and the significance of the Authority to Release Imported Goods (ATRIGs) in sustaining petitioner's exemption from excise taxes. In disputing the Air Transportation Office (ATO) certifications, respondent COC cited Republic Act (RA) No. 776, which created, among others, the Civil Aeronautics Administration (CAA) who is tasked to administer all laws relating to civil aviation in the Philippines. In this regard, respondent COC claims that nowhere in the powers and duties granted to the CAA does it provide the power to issue

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[8] *Air Philippines Corporation v. Commissioner of Internal Revenue*, CTA Case Nos. 7252, 7362, 7445, 7494, 7517, 7521 and 7566, May 8, 2017.
[9] Amended Decision, CTA Case Nos. 7966, 7990 and 8020, March 15, 2017.

> certification concerning the availability or non-availability of aviation fuel, such as Jet A-1 fuel.
>
> This Court does not agree.
>
> It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497, are not, by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same. As correctly pointed out by petitioner, perusal of the charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel. In fact, Section 35(a) of RA No. 9497, which essentially reiterated Section 32(1) of RA No. 776, as amended, states that the CAAP is vested with "authority to take charge of the technical and operational phase of civil aviation matters" which, naturally, include aircraft fuel and oil.
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> Also, the 1st Indorsement dated August 31, 2007, October 23, 2007, and January 3, 2008, respectively, issued by the Department of Finance, categorically states that "[t]he ATO certification is deemed sufficient for purposes of the tax exemption x x x." Furthermore, as to which office should certify the availability/non-availability of aviation jet A-1 fuel, the said indorsements state, "x x x addressed to the Department of Transportation and Communications and its attached agencies, the Civil Aeronautics Board and the Air Transportation Office, as it relates principally to the availment by the airline concerned of incentives for its operation pursuant to the exercise by these agencies of general supervision and regulation of air carriers." Thus, in view of the foregoing, this Court believes that the ATO/CAAP has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel.

Considering the foregoing, the Court finds no merit in petitioners' respective Motions for Reconsideration.

WHEREFORE, the Commissioner of Internal Revenue's Motion for Reconsideration filed on June 7, 2018, and the Commissioner of Customs' Motion for Reconsideration (re:

Decision dated May 21, 2018) filed through registered mail on July 5, 2018, are hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice