REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 7677

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PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 7685

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 7746

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
AUG 24 2012
ABFernando 4:25 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

Before us are consolidated Petitions for Review filed by Philippine

Airlines, Inc. (hereafter "petitioner") praying for the refund of the aggregate amount of P16,590,969.48, representing excise taxes paid under protest, on its importation of commissary supplies for the period April 2005 to April 2006.

THE PARTIES

Petitioner 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 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.

<u>THE FACTS</u>

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 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,*

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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 "xxx 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 Regulation 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.

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	P7,407,151.00	December 27, 2006	C.T.A. Case No. 7677 September 10, 2007
October 8, 2005	P170,044.25	January 18, 2007	C.T.A. Case No. 7685 October 5, 2007
October 27, 2005	P4,033,434.00	January 5, 2007	
April 7, 2006	P330,340.23	January 25, 2007	C.T.A. Case No. 7746 March 31, 2008
April 26, 2006	P1,250,000.00	January 25, 2007	
April 26, 2006	P1,375,000.00	February 1, 2007	
April 26, 2006	P300,000.00	February 1, 2007	
April 26, 2006	P500,000.00	February 1, 2007	
April 26, 2006	P1,225,000.00	February 1, 2007	

C.T.A. Case No. 7677

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.* Qbe

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 *strictisimi juris* against the entity claiming the same.

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.

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.

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.

Pursuant to *C.T.A. Administrative Circular No. 01-2010,* dated January 5, 2010, on January 11, 2010, the consolidated cases, C.TA. Case Nos. 7677, 7685 and 7746, were transferred to the Third Division.

Petitioner presented Andy Li, Evelyn Taghap, and Victor Santos, as witnesses, and documentary evidence, marked as *Exhibits "A" to "GGGG"*, inclusive of their submarkings, which were admitted by the Court in its Resolutions dated October 5, 2011 and December 26, 2011, except for *Exhibits "DDDD" and "NN-5"*.

On the other hand, upon petitioner's motion, and for repeated failure of counsel for respondents to appear on the scheduled initial presentation of the evidence for the respondents, respondents were deemed to have waived the right to present their evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

Considering petitioner's "Memorandum" filed on April 25, 2012 and respondent CIR's "Manifestation" filed on May 28, 2012 stating that she is adopting her Answer as her memorandum, this case is now deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE COMMISSIONER OF CUSTOMS IS MERELY AN AGENT OF THE COMMISSIONER OF INTERNAL REVENUE DEPUTIZED TO COLLECT INTERNAL REVENUE TAXES ON IMPORTED GOODS, AND THEREFORE, DID NOT INCUR ANY LIABILITY FROM THE COLLECTION OF THE TAXES DUE.

II

WHETHER OR NOT THE COMMISSIONER OF INTERNAL REVENUE IS A PROPER PARTY-IN-INTEREST IN THE INSTANT CASE FOR REFUND.

III

WHETHER OR NOT PETITIONER'S FRANCHISE, PRESIDENTIAL DECREE NO. 1590, HAS BEEN AMENDED BY REPUBLIC ACT NO. 9334 IN SO FAR AS PETITIONER'S EXEMPTION FROM THE PAYMENT OF SPECIFIC TAXES ON ALL ITS IMPORTATIONS OF CIGARETTES, LIQUOR, AND WINE FOR ITS CATERING AND COMMISSARY SUPPLIES FOR INTERNATIONAL CONSUMPTION, IS CONCERNED.

IV

WHETHER OR NOT PETITIONER'S IMPORTATION OF LIQUORS AND CIGARETTES FORMS PART OF ITS COMMISSARY SUPPLIES FOR INTERNATIONAL SUPPLIES.

V

WHETHER OR NOT PAL IS ENTITLED TO A REFUND OF THE FOLLOWING SPECIFIC TAXES:

(1) PHP7,407,151 PAID UNDER PROTEST ON 9 SEPTEMBER 2005;
(2) PHP170,044.25 PAID UNDER PROTEST ON 8 OCTOBER 2005;
(3) PHP4,033,434.00 PAID UNDER PROTEST ON 27 OCTOBER 2005;
(4) PHP330,340.23 PAID UNDER PROTEST ON 7 APRIL 2006;
(5) PHP1,250,000.00 PAID UNDER PROTEST ON 26 APRIL 2006;
(6) PHP1,375,000.00 PAID UNDER PROTEST ON 26 APRIL 2006;
(7) PHP300,000.00 PAID UNDER PROTEST ON 26 APRIL 2006;
(8) PHP500,000.00 PAID UNDER PROTEST ON 26 APRIL 2006;
(9) PHP1,225,000.00 PAID UNDER PROTEST ON 26 APRIL 2006.

VI

WHETHER OR NOT THE SPECIFIC TAXES SUBJECT OF PETITIONER'S CLAIM FOR REFUND HAVE ACTUALLY BEEN PAID.

<u>Principal Issue</u>

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund of the aggregate amount of P16,590,969.48, representing excise taxes, paid under protest, on its importation of commissary supplies for the period April 2005 to April 2006.

THE COURT'S RULING

We find merit in the petition.

Petitioner's Arguments

Petitioner contends that under its franchise, *PD No. 1590*, petitioner is exempt from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption; under *Section 13 of PD No. 1590, as amended by RA 9337*, petitioner is obliged to pay the corporate income tax and value-added tax, *in lieu of all other taxes,* including taxes on commissary and catering supplies, provided that such articles or supplies or materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price; that *RA 9334* did not expressly provide that it modifies, amends or repeals the provision of *PD No. 1590*, pertaining to its tax privileges; and that there is no provision under *RA 9334* imposing any excise tax or duties on its importation of commissary supplies, much less repeal petitioner's exemption from all taxes and duties under its franchise.

Respondents' Counter-Arguments

Respondents, on the other hand, counter-argue that *Section 13 of PD No. 1590* had already been expressly repealed by *RA 9334*, which took effect on

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January 1, 2005; that *Section 6 of RA 9334* employs the clear and all-encompassing phrase "The provision of any special or general law to the contrary notwithstanding", repealing any inconsistent provision whether contained in general or special statutes like *PD No. 1590*, petitioner's franchise; and that *Section 6 of RA 9334* mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction; *PD No. 1590* did not categorically state that petitioner is exempt from payment of excise tax on its importations of liquor, wines and cigarettes; thus, in the absence of words exempting it from payment of excise tax on all its importations, petitioner should be held liable; and that petitioner failed to exhaust administrative remedies and to substantiate its claim for refund.

Timeliness of Petitioner's Claim

As to the timeliness of petitioner's claim, *Sections 204 and 229 of the NIRC of 1997, as amended,* provide that claims for refund or recovery of erroneously or illegally collected taxes shall be made within two (2) years from the date of payment of the tax or penalty.

Upon a careful examination of the evidence on record, the Court finds that petitioner timely filed, both its administrative and judicial claims for refund, thus:

AMOUNT PAID	DATE OF PAYMENT	LAST DAY OF 2 YEARS TO FILE	ADMINISTRATIVE CLAIM	JUDICIAL CLAIM
P7,407,151.00	September 9, 2005	September 9, 2007	December 27, 2006	C.T.A. Case No. 7677 September 10, 2007 *September 9, 2007 was a Sunday*
P170,044.25	October 8, 2005	October 8, 2007	January 18, 2007	C.T.A. Case No. 7685 October 5, 2007
P4,033,434.00	October 27, 2005	October 27, 2007	January 5, 2007	
P330,340.23	April 7, 2006	April 7, 2008	January 25, 2007	C.T.A. Case No. 7746 March 31, 2008
P1,250,000.00	April 26, 2006	April 26, 2008	January 25, 2007	
P1,375,000.00	April 26, 2006	April 26, 2008	February 1, 2007	
P300,000.00	April 26, 2006	April 26, 2008	February 1, 2007	
P500,000.00	April 26, 2006	April 26, 2008	February 1, 2007	
P1,225,000.00	April 26, 2006	April 26, 2008	February 1, 2007	

PAL's franchise exempts PAL from paying any tax other than the option it chooses

Section 13 of PD 1590 provides:

> "SEC. 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:

xxx xxx

2. **All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of** aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;" (Emphasis ours)

Pursuant thereto, petitioner has an option to pay the lower of two alternatives: (a) "the basic corporate income tax based on PAL's annual net taxable income computed in accordance with the provisions of the NIRC or (b) "a franchise tax of two (2%) percent of the gross revenues". Availment of either of these two alternatives shall exempt the airline from payment of "all other taxes", including taxes, duties, charges, royalties, or fees on commissary and catering supplies.

Thus, in the case of *Commissioner of Internal Revenue vs. Philippine Airlines (504 SCRA 90)*, the Supreme Court ruled:

> "While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, Section 13 of the franchise of respondent leaves no room for interpretation. **Its franchise exempts it from paying any tax other than the option it chooses**: either the "basic corporate income tax" or the two percent gross revenue tax." (Emphasis ours)

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.

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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", "GG-2" to "OO-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.

Enactment of RA 9334

As regards the issue of whether or not the exemption granted to petitioner under *Section 13 of PD 1590* was expressly repealed by the enactment of *RA 9334,* said issue is not novel, as this Court in *C.T.A. Case Nos. 7665 and 7713* (promulgated on April 17, 2012), *C.T.A. Case No. 7843* (promulgated on May 18, 2012), and *C.T.A. Case no. 7868* (promulgated on June 22, 2012), involving the same parties, had already ruled said issue in the negative.

We likewise rule in the negative.

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.

Sections 6 and 10 of RA 9334 provide:

"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 customs house or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all

> applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.'
>
> 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."

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 co-exist *(Laguna Lake Development Authority vs. Court of Appeals, 251 SCRA 56; Villegas vs. Subido, 41 SCRA 197)*.

Likewise, *Section 22 of RA 9337* provides:

> "SEC. 22. Franchises of Domestic Airlines. - **<u>The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.,</u>** 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;

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> (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**." (Emphasis ours)

Clearly, with the inclusion of the above provision in *Section 22 of RA 9337* which was enacted following *RA 9334*, the legislature did not intend to withdraw the privilege granted under *PD No. 1590*. Petitioner's franchise was merely modified in *RA 9337* to effect the elimination of the franchise tax and the inclusion of the requirement to register for and pay VAT, in addition to the payment of corporate income tax, in order to claim exemption from payment of all other taxes.

In compliance with the aforesaid additional requirement under *RA 9337*, petitioner presented a Certificate of VAT Registration *(Exhibit "ZZZ")*, Payment Forms No. 0605 and VAT returns for fiscal years ended in March 2006 and March 2007 *(Exhibits "AAAA", "AAAA-1", "BBBB" and "BBBB-1")*, to prove that it is a VAT-registered entity and paid its VAT liabilities for said taxable period.

In sum, the Court finds that petitioner has substantially complied with the requirements of *PD No. 1590, as amended by RA 9337*, thus, it is exempt from payment of all other taxes, including excise tax on its importation of commissary supplies.

Substantiation of Excise Taxes Paid

Petitioner having established that it is exempt from payment of all other taxes, we now proceed to determine the refundable amount in view of petitioner's erroneous payment of excise tax on its importation of commissary supplies.

C.T.A. Case No.7677

As to C.T.A. Case No.7677, petitioner presented various Informal Import Declaration and Entry, Airway Bill and ATRIGs to prove the following importations:

EXHIBITS	DATE OF IMPORTATION	ARTICLE IMPORTED & QUANTITY	EXCISE TAX DUE
I to I-2	April 20, 2005	Whisky JW Black, 48 cases	P 87,381.50
J to J-2	April 27, 2005	Remy Martin VSOP, Piper Heidseck Brut, 125 cartons	464,184.00
K to K-2	April 14, 2005	Cigarette Winston Red/Lights, 50 cases	625,000.00
L to L-2	April 26, 2005	Mild Seven Lights, Salem L King, Winston Red KS Cigarette, 125 cartons	1,562,500.00
M to M-2	May 31, 2005	JW Black and J&B Rare Whisky, 148 cases	268,821.00
N to N-2	May 4, 2005	J&B Rare, 131 Cases	237,686.40
O to O-3	April 28, 2005	West Ice Cigarettes, 20 cartons	250,000.00

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P to P-2	June 4, 2005	Pinot grigio tamas estates Monterey (Wines), 160 cases	25,156.80
Q to Q-2	May 22, 2005	Hardy Wines, 200 cases	15,723.00
R to R-2	April 13, 2005	J&B Rare, 186 cases JW Whisky, 175 cases	681,367.68
S to S-2	June 8, 2005	Piper Heidseck Cuvee Brut, 50 cases	196,560.00
T to T-2	May 6, 2005	Wente Cabernet Sauvignon 2001, 195 cartons	30,659.85
U to U-2	April 15, 2005	Assorted Cigarettes, 114 cases	1,425,000.00
V to V-2	June 15, 2005	Cigarettes, 118 cartons	1,475,000.00
W to W-2	June 18, 2005	Camus XO Superieur, 26 cases	31,449.60
X to X-2	April 17, 2005	Cabernet Sauvignon, 195 cartons	30,659.85

A perusal of the evidence on record shows that on September 9, 2005, petitioner erroneously paid the corresponding excise taxes due in the total amount of P7,407,151.00, as evidenced by Bureau of Customs Official Receipt No. 126361243 *(Exhibit "Y-1").*

C.T.A. Case No. 7685

Petitioner likewise presented evidence to show its assessed liability for excise taxes in the total amount of P4,203,478.25, for the following importations:

EXHIBITS	DATE OF IMPORTATION	ARTICLE IMPORTED & QUANTITY	EXCISE TAX DUE
DD to DD-2	September 25, 2005	Australian Wines, 183 & 490 cartons	P 170,044.25
GG to GG-2	July 25, 2005	West Lights Cigarettes, 80 cases	1,000,000.00
HH to HH-2	July 6, 2005	Piper Heidsteck Brut, 85 cases	111,384.00
II to II-2	July 27, 2005	Cutty Sark Scotch Whisky,	101,606.40

Olu

		60 cases	
JJ to JJ-2	June 18, 2005	Cigarettes,183 cases	2,287,500.00
KK to KK-2	August 4, 2005	Tamas Estate Pinot Grigio, 160 cases	25,156.80
LL to LL-2	July 4, 2005	Cabernet Sauvignon, 195 cases	30,659.85
MM to MM-2	July 21, 2005	Remy Martin VSOP, 46 cases Remy Martin XO, 8 cases	182,891.52
NN to NN-2	July 1, 2005	Various distilled spirits, 94 cases	267,140.16
OO to OO-2	June 15, 2005	Remy Martin XO, 8 cases	27,095.04

Records show that petitioner paid under protest the assessed excise taxes on the aforesaid importations on:

1) October 8, 2005, amounting to P170,044.25, as evidenced by Bureau of Customs Receipt No. 127432611 *(Exhibit "EE")*; and

2) October 27, 2005, amounting to P4,033,434.00, as evidenced by Bureau of Customs Receipt No.127859855 *(Exhibit "PP-1")*.

<u>*C.T.A. Case No. 7746*</u>

As regards C.T.A. Case No. 7746, records show that petitioner made the following importations:

EXHIBITS	DATE OF IMPORTATION	ARTICLE IMPORTED & QUANTITY	EXCISE TAX DUE
RR to TT	October 13, 2005	Wines, 3051 cases	P 330,340.23
WW to YY	January 18, 2006	Mild 7 Lights Cigarettes, Salem King, 100 cartons	1,250,000.00
BBB to DDD	January 17, 2006	Salem Cigarettes, Winston KS Red, Winston Lights KS, 110 cartons	1,375,000.00
GGG to III	February 10, 2006	Davidoff classic & Lights Cigarettes, 24 cartons	300,000.00
LLL to NNN	February 18, 2006	Mild 7 Cigarettes, 40 cartons	500,000.00

ebl

QQQ to SSS	March 9, 2006	Mild 7 Super Lights, Winston Red KS, 98 cases	1,225,000.00

Records also show that petitioner paid under protest the excise taxes in the total amount of P4,980,340.23, corresponding to the aforesaid importations, thus:

EXHIBITS	BOC OR No.	Date of Payment	Amount Paid
UU	131317751	April 7, 2006	330,340.23
ZZ	131602685	April 21, 2006	1,250,000.00
EEE	131568586	April 26, 2006	1,375,000.00
JJJ	131568613	April 26, 2006	300,000.00
OOO	131568595	April 26, 2006	500,000.00
TTT	131568604	April 26, 2006	1,225,000.00

For all the foregoing, and considering that petitioner has substantially complied with the prescribed requisites for entitlement to exemption from all other taxes, pursuant to its franchise, petitioner is, therefore, entitled to the refund of the erroneously collected excise taxes which it paid under protest in the aggregate amount of P16,590,969.48.

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 SIXTY NINE PESOS and 48/100 (P16,590,969.48)**, representing petitioner PAL's erroneously collected excise taxes on its importation of commissary supplies for the period April 2005 to April 2006.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice