CTA Form No. 8

21-000200-0038

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10530

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

PAL LEGAL AFFAIRS DEPARTMENT
E/F , Legal Affairs Department
Philippine Airlines, Lucia K. Tan Jr. Center ("LKTJC")
PAL Gate 5, Andrews Avenue, Nichols
Pasay City

GREETINGS:

You are hereby notified by these presents that on **June 7, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 7, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC., *Petitioner,*	**CTA Case No. 10530**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 07 2024 3:25PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review,*[1] filed by petitioner Philippine Airlines, Inc., on May 24, 2021, praying for the refund and/or issuance of a tax credit certificate in the amount of ₱8,427,599.88, allegedly representing excise taxes illegally collected and paid under protest on petitioner's importations of alcohol products for the period from June 2014 until September 2018.[2]

THE PARTIES

Petitioner Philippine Airlines, Inc. 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 1307, Pasay City.[3]

[1] Docket – Vol. I, pp. 12-37.
[2] Summary of the Case, Pre-Trial Order dated May 31, 2022, Docket – Vol. II, pp. 781.
[3] Par. 2, Admitted Facts, *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. II, pp. 766 to 767.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, and charges, including excise taxes paid on wines, liquors, and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC), as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590, otherwise known as *"An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries."*[5]

Petitioner imported various liquors and wine as part of its in-flight and commissary supplies.[6]

The Bureau of Customs (BOC), in separate letters, demanded the payment of excise taxes for its importation of alcohol products in the following respective amounts, *viz.*:

Date of the letter	**Amount**
September 6, 2017[7]	₱1,063,141.55
September 6, 2017[8]	₱2,687,008.12
August 29, 2018[9]	₱1,687,739.23
August 29, 2018[10]	₱1,009,729.03
August 29, 2018[11]	₱1,985,481.95

[4] Par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, p. 13, and Docket – Vol. II, p. 717, respectively.
[5] Par. 3, Admitted Facts, JSFI, Docket – Vol. II, p. 767.
[6] Exhibits "P-2", "P-3", "P-4" to "P-4.49", "P-5" to "P-5.49", "P-6" to "P-6.49", "P-7" to "P-7.4", "P-8" to "P-8.1", 'P-9" to "P-9.1", "P-10 to "P-10.49", "P-11", "P-12" to "P-12.1", "P-12.2" to "P-12.5", "P-12.6" to "P-12.9", "P-12.1o "P-12.11", "P-13", "P-14", "P-15", "P-16" to "P-16.1", "P-17" to "P-17.1", "P-18" to "P-18.1", "P-19", "P-20", "P-21" to "P-21.1", "P-22" to "P-22.1", 'P-23" to "P-23.1", "P-24", 'P-25" to "P-25.1", "P-26", "P-27", "P-28" to "P-28.2", "P-29" to "P-29.1", "P-30" to "P-30.1", "P-31", "P-32", "P-33" to "P-33.1", Docket – Vol. II, pp. 868 to 1310, respectively; Exhibits "P-34" to "P-34.1", Docket – Vol. I, pp. 44 to 56; Exhibits "P-35" to "P-35.1", Docket – Vol. I, pp. 227 to 241; and Exhibits "P-36" to "P-36.1", Docket – Vol. I, pp. 514 to 525, respectively.
[7] Exhibit "P-7", Docket – Vol. II, p. 1030.
[8] Exhibit "P-7.1", Docket – Vol. II, p. 1031.
[9] Exhibit "P-7.2", Docket – Vol. II, p. 1032.
[10] Exhibit "P-7.3", Docket – Vol. II, p. 1033.
[11] Exhibit "P-7.4", Docket – Vol. II, p. 1034.

On April 26, 2019, petitioner paid under protest excise taxes on its importation of liquor for commissary catering supplies, in the total amount of ₱8,427,599.88. The details of which are as follows:[12]

BOC Official Receipt Number	**Amount Paid**
0190007892613	₱ 3,744,649.67
0190007891514	₱ 4,682,950.21

Thereafter, on May 18, 2021, petitioner filed with the BIR a letter of even date,[15] requesting for the refund of, or issuance of a tax credit certificate for, the amount of ₱8,427,599.88, allegedly representing excise taxes illegally assessed, levied upon, and paid by petitioner under protest on its importation of alcohol products constituting commissary and catering supplies.

PROCEEDINGS BEFORE THIS COURT

Aggrieved, petitioner filed the present *Petition for Review* on May 24, 2021.[16]

On October 21, 2021 respondent filed his *Answer.*[17]

The Pre-Trial Conference was initially scheduled for February 28, 2022.[18] During the hearing on the said date, the Court, in the interest of justice, denied respondent's oral motion to dismiss the case due to the absence of petitioner's counsel and failure to file a *Pre-Trial Brief.*[19] The Pre-Trial Conference was cancelled, with a warning to petitioner, and held on April 20, 2022.[20] Prior thereto, respondent's *Pre-Trial Brief* was submitted on December 17, 2021,[21] while petitioner's *Pre-Trial Brief* was posted on April 12, 2022.[22]

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[12] Exhibits "P-9" and "P-9.1", Docket – Vol. II, pp. 1037 and 1038, respectively.
[13] Exhibit "P-8", Docket – Vol. II, p. 1035.
[14] Exhibit "P-8.1", Docket – Vol. II, p. 1036.
[15] Exhibit "P-2", Docket – Vol. II, pp. 868 to 877.
[16] Docket – Vol. I, pp. 12 to 39.
[17] Docket – Vol. II, pp. 716 to 723.
[18] Notice of Pre-Trial Conference dated December 9, 2021, Docket – Vol. II, pp. 725 to 726.
[19] Minutes of the hearing held on, and Order dated, February 28, 2022, Docket – Vol. II, pp. 732 to 733.
[20] Minutes of the hearing held on, and Order dated, April 20, 2022, Docket – Vol. II, pp. 734 and 736, respectively.
[21] Docket – Vol. II, pp. 727 to 730.
[22] Docket – Vol. II, pp. 737 to 757.

On May 19, 2022, the parties submitted their *Joint Stipulation of Facts and Issues,*[23] which was approved and adopted by the Court in the Pre-Trial Order dated May 31, 2022,[24] thereby deeming the termination of the Pre-Trial.

As trial ensued, only petitioner presented its testimonial and documentary evidence. At the June 1, 2022 hearing, respondent's counsel manifested that she has no witness to present in this case.[25]

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Jonathan R. Castillo Lee,[26] the Manager for petitioner's Company Materials Handling Division; (2) Mr. Ruel Ryan O. Julian,[27] the Manager for Tax Services Division of petitioner; and (3) Ms. Cheryl V. Capinpin,[28] the Manager of the In-flight Materials Purchasing Division, Corporate Logistics and Services Department of petitioner.

On August 30, 2022, petitioner filed a *Formal Offer of Evidence (With Motion to Set Commissioner's Hearing),*[29] to which respondent submitted his *Comment (Re: Formal Offer of Evidence)* on August 31, 2022.[30] In the Resolution dated October 21, 2022,[31] the Court granted the *Motion to Set Commissioner's Hearing* and held in abeyance the resolution of petitioner's FOE until after the submission of certain exhibits.

Petitioner's *Submission and Manifestation* was then filed on December 1, 2022.[32] In the Resolution dated February 8, 2023,[33] the Court noted the *Submission and Manifestation* and admitted petitioner's offered exhibits.

On May 2, 2023, respondent filed a *Manifestation,*[34] stating that he would not present any witnesses. In the Resolution dated May 4, 2023,[35] the Court noted respondent's

[23] Docket – Vol. II, pp. 766 to 779.
[24] Docket – Vol. II, pp. 781 to 785.
[25] Minutes of the hearing held on, and Order dated June 1, 2022, Docket – Vol. II, pp. 798 to 799.
[26] Exhibit "P-34", Docket – Vol. I, pp. 44 to 57; Minutes of the hearing held on, and Order dated June 1, 2022, Docket – Vol. II, pp. 798 to 799.
[27] Exhibit "P-36", Docket – Vol. I, pp. 517 to 526; Minutes of the hearing held on, and Order dated June 1, 2022, Docket – Vol. II, pp. 798 to 799.
[28] Exhibit "P-35", Docket – Vol. I, pp. 230 to 242; Minutes of the hearing held on, and Order dated June 1, 2022, Docket – Vol. II, pp. 798 to 799.
[29] Docket – Vol. II, pp. 828 to 865.
[30] Docket – Vol. II, pp. 1311 to 1313.
[31] Docket – Vol. III, pp. 1316 to 1319.
[32] Docket – Vol. III, pp. 1320 to 1323.
[33] Docket – Vol. III, pp. 1380 to 1383.
[34] Docket – Vol. III, pp. 1384 to 1386.
[35] Docket – Vol. III, p. 1389.

Manifestation and cancelled the initial presentation of respondent's evidence.

On May 22, 2023, respondent's *Memorandum* was filed.[36]

In the Resolution dated May 29, 2023,[37] the present case was transferred to this Court's First Division.

Thereafter, petitioner's *Memorandum* was submitted on June 8, 2023.[38]

In the Resolution dated June 22, 2023,[39] the present case was submitted for decision.

Hence, this Decision.

THE ISSUE

The stipulated issue by the parties for this Court's resolution is as follows:

> Whether PAL is entitled to the refund of excise taxes allegedly paid under protest for various importations on 26 April 2019 amounting to **EIGHT MILLION FOUR HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED NINETY-NINE PESOS AND 88/100 (PHP 8,427,599.88)** for its importations of liquor and wine for its catering and commissary supplies for international consumption.[40]

Petitioner's arguments:

Petitioner argues that its importation of commissary and catering supplies is exempt from all taxes pursuant to its franchise as Republic Act No. 9334 did not repeal PD No. 1590.

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[36] Docket – Vol. III, pp. 1390 to 1396.
[37] Refer to Notice, Docket – Vol. III, p. 1398.
[38] Docket – Vol. III, pp. 1399 to 1418.
[39] Refer to Notice, Docket – Vol. III, p. 1423.
[40] Stipulated Issue, JSFI, Docket – Vol. II, p. 769.

Respondent's counter-arguments:

Respondent contends that this Court has no jurisdiction over the petition for review and that, assuming it has jurisdiction, petitioner is not entitled to the refund sought.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed because petitioner's *administrative* claim was filed out of time.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ... ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty <u>regardless of any supervening cause that may arise after payment</u>**: *Provided, however,* That the Commissioner may,

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even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*,[41] the Supreme Court ruled as follows:

"Section 229 of the National Internal Revenue Code of 1997 prescribes two conditions for an action to recover erroneously paid or illegally collected taxes, namely: (1) that an administrative claim must first be filed with the Bureau of Internal Revenue; and (2) that the judicial claim must be filed within two years from payment of the tax. ...

... ...

Section 204 refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. **Under this provision, <u>an administrative claim for refund or credit must be filed within two years from payment of the tax</u>.**

Section 229, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.

Reading the two provisions together, <u>both administrative and judicial claims must be filed within the two-year period</u>. Futhermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that **'[t]imeliness of the filing of the claim is mandatory and jurisdictional.** The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.'

Consequently, respondent had two years from the date of payment or remittance of the overpaid final withholding tax to the Bureau of Internal Revenue to file a claim for refund, both administrative and judicial claim.

... ...

Sections 204 and 229 fixed the <u>same period of two years</u> for filing an administrative claim for refund before the **Bureau of Internal Revenue <u>and</u>** to sue before the **<u>Court of Tax Appeals</u>.** *CBK Power Company*[42] explained that <u>as long</u>

[41] G.R. No. 226592, July 27, 2021.

[42] Referring to *CBK Power Company Limited v. Commissioner of Internal Revenue*, 750 Phil. 748 (2015) [Per J. Perlas-Bernabe, First Division].

> as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.
>
> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as **both claims were filed within the two-year prescriptive period.**" *(Emphases and underscoring added)*

Based on the foregoing legal and jurisprudential pronouncements, in an action to recover erroneously paid or illegally collected taxes, the claimant must first file an *administrative* claim with the BIR before filing a *judicial* claim with the Court of Tax Appeals. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is ***mandatory and jurisdictional***; thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, the law explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[43]

In this case, petitioner paid the excise taxes totaling ₱8,427,599.88 on April 26, 2019.[44] Counting two years from this date, petitioner had until **April 26, 2021,** to file both administrative and judicial claims for refund. As established, petitioner's *administrative* claim was filed with the BIR on **May 18, 2021**,[45] while its *judicial* claim was filed with this Court on **May 24, 2021**.[46] Clearly, both claims were filed *beyond* the 2-year prescriptive period.

Petitioner justifies the belated filing of its *administrative* and *judicial* claims by virtue of the Supreme Court's Administrative Circular (AC) No. 22-2021 dated April 14, 2021, which extended the physical closure of courts in Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) areas including the National Capital Region, until April 30, 2021, and suspended the time for filing and service of pleadings and motions during this period, which would resume seven (7) calendar days counted from the first day of physical reopening of the relevant court.

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[43] *Commissioner of Internal Revenue v. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[44] Exhibits "P-9" and "P-9.1", Docket – Vol. II, pp. 1037 and 1038, respectively.
[45] Exhibit "P-2", Docket – Vol. II, pp. 868 to 877.
[46] Docket – Vol. I, pp. 12 to 43.

It must be noted that the CTA physically reopened on May 17, 2021, pursuant to Supreme Court AC No. 33-2021, dated May 14, 2021. Counting seven (7) calendar days from May 17, 2021, the period for filing and service of pleadings, motions, and other court submissions resumed on May 24, 2021.

Given that petitioner had until April 26, 2021 to file its *judicial* claim through a petition for review before this Court, and considering that the period for filing and service of pleadings was suspended in light of the declaration of ECQ and MECQ beginning March 29, 2021[47] and resumed on May 24, 2021,[48] the present *Petition for Review* filed on May 24, 2021, was timely.

However, this extension does not apply to petitioner's *administrative* claim filed with the BIR. Administrative claims for refunds do not fall under the category of *"pleadings, motions, and court submissions"* that are to be filed in courts. Therefore, this type of claim was not covered by the Supreme Court circulars extending the filing periods for pleadings, motions, and other court submissions.

Moreover, there is no law or BIR issuance extending the deadline for filing *administrative* claims for refunds of erroneous tax payments made on April 26, 2019.

Although the Secretary of Finance, upon the CIR's recommendation, issued revenue regulations authorizing the extension of the two-year period for filing refund applications for erroneous tax payments made during specific periods[49] in response to the COVID-19 pandemic, these extensions do not cover petitioner's erroneous payments made on April 26, 2019. Therefore, the inevitable conclusion is that petitioner had only until April 26, 2021, to file its *administrative* claim with the BIR. Consequently, the filing of petitioner's *administrative* claim on May 18, 2021, was out of time.

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[47] Supreme Court Administrative Circular (AC) No. 14-2021 dated March 28,2021, AC No. 15-2021 dated April 3, 2021, AC No. 21-2021 dated April 10, 2021, AC No. 22-2021 dated April 14, 2021, AC No. 29- 2021 dated April 30, 2021, and AC No. 33-2021 dated May 14, 2021.
[48] *Id.*
[49] Refer to Revenue Regulations Nos. 10-2020, and 11-2020. Following these regulations, applications for refund/credit of erroneous tax payments made from March 17, 2018 to April 30, 2018 have been extended until **June 14, 2020**, while erroneous payments made from May 1, 2018 to May 31, 2018 have been extended until **June 30, 2020**.

As it stands, petitioner's *administrative* claim was already barred by prescription when it filed its *judicial* claim on May 24, 2021. Thus, this Court lacks jurisdiction to take cognizance of this *Petition for Review*, and its only recourse is to dismiss the case.

Given the foregoing, this Court need not address the other issues raised in this case.

WHEREFORE, premises considered, the instant *Petition for Review* filed by Philippine Airlines, Inc. is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice