

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA EB NO. 3112
(CTA Case No. 10263)

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

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PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA EB NO. 3122
(CTA Case No. 10263)

Members:

-versus-

RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, JJ.

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

SEP 07 2026

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DECISION

CUI-DAVID, J.:

Before this Court are the *Petitions for Review* filed by the Commissioner of Internal Revenue (**CIR**)¹ on March 24, 2025, and by Philippine Airlines, Inc. (**PAL**)² on April 10, 2025. Both

¹ Docket (CTA EB No. 3112), pp. 1-18.

² Docket (CTA EB No. 3122), pp. 1-18.

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petitions assail the *Decision* dated June 27, 2024³ and the *Resolution* dated February 18, 2025,⁴ of the Second Division of the Court of Tax Appeals (**Court in Division**) in CTA Case No. 10263.

THE PARTIES

PAL 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.⁵

The CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**), the government agency tasked with the assessment and collection of all national revenue taxes, fees, charges, including excise taxes paid on wine, liquors, and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁶

THE FACTS

The facts, as found by the Court in Division, are as follows:

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 11, 1987, [PAL] was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (P.D.) 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."

During the period from July 2013 to July 2017, [PAL] imported assorted cigarettes, liquors and wine for international in-flight consumption as evidenced by various Bureau of Customs (BOC) Informal Import Declaration and Entry (IIDE), Air Waybills/Airway Bills or Bills of Lading/Sea Waybills, and Authorities to Release Imported Goods (ATRIGs). In the said ATRIGs, [PAL] was assessed to pay the

³ Docket (CTA EB No. 3112), pp. 27-68; Docket (CTA EB No. 3122), pp. 27-67.

⁴ Docket (CTA EB No. 3112), pp. 70-77; Docket (CTA EB No. 3122), pp. 69-76.

⁵ Division Docket — Vol. III, pp. 1461-1462, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, par. 2.

⁶ Division Docket — Vol. I, p. 8. Petition for Review, par. 2 *vis-à-vis* Docket — Vol. II, p. 1082, Answer, par. 1.

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excise taxes stated therein, in the aggregate amount of P43,667,566.45. The BOC likewise wrote twenty-six (26) letters to [PAL] demanding payment of excise taxes for its importation of liquor, wine and tobacco.

On February 28, 2018, [PAL] paid under protest the said total amount of P43,667,566.35 as shown on BOC Official Receipt No. 01889898427.

Thereafter, [PAL] filed an administrative claim for refund or tax credit on alleged excise taxes paid under protest on imported alcohol products constituting commissary and catering supplies for use or consumption in its international flights before the office of [the CIR], through the Excise Large Taxpayers Audit Division II, on February 21, 2020.

PROCEEDINGS BEFORE THE COURT IN DIVISION

[PAL] filed the present Petition for Review on February 28, 2020. The case was initially raffled to this Court's former Second Division.

[The CIR] filed his Answer on June 15, 2020, interposing his special and affirmative defenses.

The Pre-Trial Conference was initially set on July 13, 2020. In view, however, of the failure of [PAL]'s counsel to file a Pre-Trial Brief and absence in the Pre-Trial Conference, the Petition for Review was dismissed and the case was closed and terminated.

Upon [PAL]'s Motion for Reconsideration filed on August 28, 2020, with [the CIR]'s Opposition (Re: Motion for Reconsideration of the Order dated 13 July 2020) filed on October 5, 2020, the Court, in the Resolution dated December 18, 2020, reversed and set aside its Order dated July 13, 2020 dismissing the instant case, and, accordingly, set the case for Pre-Trial Conference on February 24, 2021.

The Pre-Trial Conference, however, was reset to March 24, 2021, and further reset to, and eventually held on, July 5, 2021. Prior thereto, [the CIR]'s Pre-Trial Brief was posted on July 1, 2020, while [PAL]'s Pre-Trial Brief was submitted on March 19, 2021.

On October 21, 2021, the parties submitted their Joint Stipulation of Facts and Issues, which was approved and adopted by the Court in the Pre-Trial Order dated October 21, 2021, thereby deeming the termination of the Pre-Trial.



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As trial ensued, [PAL] presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Cheryl V. Capinpin, Manager of [PAL]'s In-flight Materials Purchasing Division; (2) Mr. Jonathan R. Castillo Lee, Manager for [PAL]'s Company Materials Handling Division; and (3) Mr. Ruel Ryan O. Julian, Manager for [PAL]'s Tax Services Division.

On November 19, 2021, [PAL] filed its Formal Offer of Evidence. Thereafter, [PAL] filed its Amended Formal Offer of Evidence on July 4, 2022, to which [the CIR] filed his Comment (Re: Amended Formal Offer of Evidence) on July 8, 2022. In the Resolution dated September 21, 2022, the Court admitted [PAL]'s offered exhibits, except for (1) Exhibits "P-3", "P-4", "P-4.14", "P-4.23", "P-4.71", "P-4.83", "P-4.97", "P-4.164", "P-4.194", "P-4.218", "P-4.244", "P-6.2", "P-6.6", "P-8.19", "P-8.21" and "P-10", for failure of the exhibit formally offered to correspond with the duly marked document; (2) Exhibit "P-30-a", for not being found in the records of the case; and, (3) Exhibits "P-4.84", "P-5.61", "P-5.73" and "P-5.215", for being unclear/unreadable.

In the meantime, the present case was transferred to the Third Division of this Court, per the Order dated June 29, 2022.

Thereafter, [PAL] filed its Omnibus Motion (I. For Partial Reconsideration of the Resolution dated 21 September 2022; II. For Commissioner's Hearing; and III. To Defer Filing of Memoranda) on October 24, 2022, to which [the CIR] failed to file a comment. The Court, in the Resolution dated February 17, 2023, granted the setting of a commissioner's hearing and deferred the filing of [PAL]'s memorandum. Thereafter, in the Resolution dated April 25, 2023, the Court granted [PAL]'s motion and admitted all of its denied exhibits.

In the Notice of Resolution dated June 6, 2023, the present case was transferred to the Second Division of this Court.

[The CIR] filed his Memorandum on October 17, 2022, while [PAL]'s Memorandum was filed via accredited courier service and received by the Court on June 9, 2023.

This case was considered submitted for decision on June 27, 2023.

On June 27, 2024, the Court in Division promulgated the assailed *Decision*,⁷ the dispositive portion of which reads:

⁷ Docket (CTA EB No. 3112), pp. 27-68; Docket (CTA EB No. 3122), pp. 27-67.

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WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE**, in favor of petitioner, in the amount of P27,275,640.48, representing the latter's erroneously paid excise tax on its importations of wine and liquor products for its international flight consumption.

SO ORDERED.

Aggrieved, the CIR filed a *Motion for Partial Reconsideration (Re: Decision promulgated 27 June 2024)* on July 11, 2024,⁸ while PAL filed its *Motion for Reconsideration (Re: Decision dated June 27, 2024)* on July 17, 2024.⁹

The Court in Division denied both motions in a *Resolution* dated February 18, 2025,¹⁰ the dispositive portion of which reads:

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 27 June 2024) and petitioner's Motion for Reconsideration (Re: Decision dated 27 June 2024) are both **DENIED** for lack of merit.

SO ORDERED.

PROCEEDINGS BEFORE THE COURT EN BANC

On March 24, 2025, the CIR filed his *Petition for Review*, docketed as CTA EB No. 3112.¹¹

On April 7, 2025, the Court directed PAL to file its comment/opposition to the CIR's *Petition for Review*.¹²

On April 10, 2025, PAL filed its own *Petition for Review*, docketed as CTA EB No. 3122.¹³ On April 11, 2025, the Court *En Banc* ordered the consolidation of CTA EB No. 3122 with CTA EB No. 3112.¹⁴



⁸ Division Docket – Vol. IV, pp. 1887-1903.

⁹ *Id.* at 1906-1922.

¹⁰ Docket (CTA EB No. 3112), pp. 70-77; Docket (CTA EB No. 3122), pp. 69-76.

¹¹ Docket (CTA EB No. 3112), pp. 1-18.

¹² *Id.* at 79.

¹³ Docket (CTA EB No. 3122), pp. 1-18.

¹⁴ Docket (CTA EB No. 3112), p. 80.

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On April 30, 2025, PAL filed its *Comment (Re: Petition for Review dated 14 March 2025)*.¹⁵

In a *Resolution* dated May 13, 2025, the Court noted PAL's *Comment* and directed the CIR to file his *Comment* on PAL's *Petition for Review*. Thus, on May 22, 2025, the CIR filed his *Comment (Re: Petition for Review dated May 21, 2025)*.¹⁶

On June 18, 2025, the Court noted the CIR's *Comment* and directed PAL to file, via electronic mail, a copy of its *Petition for Review*.¹⁷ PAL filed its *Compliance* on August 14, 2025.

The consolidated cases were submitted for decision on September 11, 2025.¹⁸

THE ISSUES

In CTA EB No. 3112, the CIR assigns the following error for the Court's resolution:

WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT INsofar AS EXCISE TAX PAID ON IMPORTED WINE AND LIQUOR PRODUCTS, THE AMOUNT OF P27,275,640.48 CONSTITUTES ERRONEOUSLY PAID EXCISE TAX WHICH IS REFUNDABLE PURSUANT TO SECTIONS 204 AND 229(C) OF THE NIRC OF 1997, AS AMENDED.

On the other hand, CTA EB No. 3122, PAL raises the following assignment of errors:

9. In the Assailed Decision and Assailed Resolution, while partially granting PAL's refund claim in the amount of PHP 27,277,640.48, the Honorable Court En Banc determined that PAL's evidence sufficiently established that the prices of the imported alcohol products are not available locally in reasonable quantity, quality, or price ("Third Condition"), based on comparative prices of its imported products vis-a-vis its local supplier's pricelist. However, this Honorable Court also found that PAL failed to comply with the Third Condition for the remaining importations ("Remaining Importations") and stated:



¹⁵ *Id.* at 81-92.

¹⁶ *Id.* at 108-111.

¹⁷ *Id.* at 116.

¹⁸ *Id.* at 119.

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While the above table of comparison is sufficient in determining whether the cost of importing commissary and catering supplies is lower than purchasing those locally, the determination is limited, however, with the imported wine and liquor products which can be compared with the local prices for the same brand or products. As regards to those imported wine and liquor products without comparative prices from Absolute Sales Corporation, Future Trade International Travel, Minivan Enterprise or Heineken Philippines, Inc., this Court finds that the lack of comparative prices from said establishments is not conclusive proof of the products' unavailability in the local market.

In fine, petitioner complied with the third condition, but only to the extent of the imported wine and liquor products that are supported by evidence showing that the cost per bottle of importing the same is lower than purchasing them locally from at least one supplier.

XXX XXX XXX

10. PAL takes this opportunity to convince this Honorable Court that, in accordance with PAL's franchise, Presidential Decree No. 1590 (P.D. 1590) and settled jurisprudence, the witnesses and documents presented in this case are **sufficient** to prove that **ALL** of the Subject Importations were not locally available in reasonable quantity, quality, or price. (Emphasis supplied)

Accordingly, the assigned error for the Court *En Banc*'s resolution is:

WHETHER THE COURT IN DIVISION ERRED IN HOLDING THAT PAL FAILED TO SUFFICIENTLY ESTABLISH THAT THE REMAINING IMPORTED WINE AND LIQUOR PRODUCTS WERE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY, OR PRICE, THEREBY PARTIALLY DENYING PAL'S CLAIM FOR REFUND UNDER PRESIDENTIAL DECREE NO. 1590.

ARGUMENTS

CTA EB No. 3112

In his *Petition for Review*, the CIR argues that the Court in Division erred in partially granting PAL's refund claim in the

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amount of ₱27,275,640.48. The CIR seeks the denial of the entire claim for tax refund or credit.

First, the CIR maintains that PAL failed to establish the legal conditions for tax exemption. He contends that, to qualify for excise tax exemption on imported alcohol products under Section 13 of Presidential Decree (**PD**) No. 1590, PAL must prove that the supplies were not locally available in reasonable quantity, quality, or price. He asserts that PAL failed to present sufficient and convincing evidence to establish this “*third condition*” at the time of importation.

The CIR argues that PAL relied heavily on product price lists from only two to four local dealers (such as Absolute Sales Corporation, Future Trade International, Minivan Enterprise, and AB Heineken Phils., Inc.). He claims that price lists from a select few dealers do not establish the general local market prices for the entire country, vis-à-vis the totality of local suppliers selling similar products. He further claims that there was no verification of whether these dealers were exclusive distributors, nor was there evidence demonstrating that other local suppliers could not match foreign prices for the quantities and qualities PAL required.

The CIR likewise observes that PAL relied on BIR Revenue Memorandum Circular (**RMC**) No. 90-2012 for price comparisons. However, because RMC No. 90-2012 was based on a 2010 price survey, he contends that it cannot serve as a valid benchmark for PAL's subsequent imports.

Further, the CIR challenges PAL's reliance on previous CTA decisions and minute resolutions. Citing Supreme Court jurisprudence (*San Roque Power Corporation* and *San Miguel Corporation*), the CIR underscores that CTA rulings do not constitute binding precedents and that minute resolutions do not establish legal doctrines applicable to other cases.

Finally, the CIR invokes the well-settled principle that tax exemptions and claims for tax refunds are highly disfavored in law. They must be construed *strictissimi juris* (strictness of law) against the claimant and liberally in favor of the taxing authority. He argues that PAL failed to discharge its burden of proof with clear and convincing evidence; hence, the refund should be denied in its entirety.

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CTA EB No. 3122

In its *Petition for Review*, PAL argues that the law uses the disjunctive word "or," meaning that it need only prove the absence of *any one of the factors* (reasonable quality, quantity, or price) to qualify for the exemption.

PAL notes that the Court in Division denied the refund for the "Remaining Importations" because PAL could not produce local comparative prices. It counters that, of the fifty-nine (59) imported products involved in its claim, local suppliers offered only eight (8). It argues that the absence of price quotations from local suppliers does not mean PAL failed to prove its case; rather, it conclusively proves that those specific brands or volumes are not available in sufficient quantity or inventory in the local Philippine market.

As to products with available local prices, PAL asserts that local distributors were 40% to 77% more expensive than foreign sources, making it highly improbable that other local distributors could offer competitive pricing.

PAL emphasizes that, in a long line of cases involving the same types of commissary supplies, both the CTA *En Banc* and the Supreme Court have consistently upheld the sufficiency of similar evidence—such as comparative tables, invoices, and third-party price lists—to justify granting a full refund.

PAL then turns to its nature as a public utility and common carrier. According to PAL, the law strictly demands it observe "extraordinary diligence" for passenger safety and operations. Thus, it posits that, to balance this high standard of diligence, the government granted it tax-free import privileges so it could secure high-quality supplies at the lowest possible operating costs, ultimately benefiting the public. It asserts that the Court in Division's strict insistence on local price comparisons creates an impossible standard. It cannot force private local suppliers to give price quotes for items they do not stock. Forcing it to buy substandard or overly expensive local alternatives simply because it cannot provide a price comparison would result in an absurd situation that undermines the legislative purpose of its public franchise.



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In his *Comment*, the CIR supports the Court in Division's ruling limiting PAL's entitlement to a refund and opposes any further grant of tax exemption.

The CIR highlights and aligns with the Court in Division's finding that, with respect to the remaining imported wine and liquor products, PAL failed to present comparative local market prices from its suppliers. He maintains that PAL's inability to obtain or present local price quotations does not, by itself, conclusively establish that the products were unavailable in the domestic market.

THE COURT *EN BANC*'S RULING

The Court En Banc has jurisdiction over the Petition for Review filed by PAL; however, the Court has no jurisdiction over the Petition for Review filed by the CIR.

Before addressing the merits, the Court *En Banc* must first determine whether it has jurisdiction over the present *Petitions*.

On February 18, 2025, the Court in Division denied for lack of merit¹⁹ the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated 27 June 2024)*²⁰ and PAL's *Motion for Reconsideration (Re: Decision dated June 27, 2024)*.²¹ The *Resolution* was received by the Office of the Solicitor General (OSG), representing respondent, on February 26, 2025, and by PAL on March 25, 2025.

Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**),²² a *Petition for Review* must be filed within fifteen (15) days from receipt of the assailed resolution. Accordingly, the CIR had until March 13, 2025,

¹⁹ Docket (CTA *EB* No. 3112), pp. 70-77, Resolution dated February 18, 2025; Docket (CTA *EB* No. 3122), pp. 69-76, Resolution dated February 18, 2025.

²⁰ Division Docket – Vol. IV, pp. 1887-1903.

²¹ *Id.* at 1906-1922.

²² Section 3. Who May Appeal; Period to File Petition. — . . .

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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while PAL had until April 10, 2025,²³ within which to file their respective *Petitions for Review*.

The records show that on March 24, 2025, beyond the reglementary period, the CIR filed his *Petition for Review*.²⁴ Accordingly, the Court failed to acquire jurisdiction over the CIR's *Petition for Review*. On the contrary, on April 10, 2025, PAL filed its *Petition for Review*,²⁵ which is within the reglementary period. With this, the Court acquired jurisdiction over PAL's *Petition for Review*.

Having ruled on jurisdictional matters, the Court *En Banc* now proceeds to resolve on the merits.

At the outset, the Court *En Banc* notes that there is no dispute as to the legal basis of PAL's tax exemption, nor its compliance with the *first* and *second* conditions or requisites for entitlement to a refund. The controversy in both *Petitions* centers solely on the factual findings of the Court in Division with respect to the *third* condition, *i.e.*, whether the imported alcohol and tobacco products were not locally available in reasonable quantity, quality, or price. Accordingly, the Court *En Banc* confines its discussion to this issue.

CTA EB No. 3112

The CIR's Petition for Review is dismissible for lack of authority from the Office of Solicitor General.

To recall, the Court has already ruled that the CIR's *Petition for Review* was filed out of time. Accordingly, the Court may already dismiss the CIR's *Petition for Review* for lack of jurisdiction.

Even assuming that the CIR's *Petition for Review* was timely filed, a review of the records reveals that it was not accompanied by a written deputation or authority from the OSG authorizing the CIR's counsel to institute the present appeal.

²³ The 15th day fell on April 9, 2025, which is a national holiday.

²⁴ Docket (CTA EB No. 3112), pp. 1-18.

²⁵ Docket (CTA EB No. 3122), pp. 1-18.

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In the absence of such deputation, the CIR's *Petition for Review* is procedurally dismissible for lack of authority, consistent with settled jurisprudence recognizing the OSG as the statutory counsel of the CIR before the CTA.²⁶

Nonetheless, even assuming there was proper authorization, the present *Petition* would still fail on the merits.

PAL sufficiently established its partial entitlement to a refund.

Under Section 13 (b)(2) of PD No. 1590,²⁷ as construed by the Supreme Court in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,²⁸ PAL must establish the following conditions or requisites to qualify for exemption from excise tax on its importation of alcohol and tobacco products, to wit:

(1) Payment of the corporate income tax;

(2) The said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and

(3) The imported alcohol and tobacco products were not locally available in reasonable quantity, quality, or price.

In the present *Petition for Review*, the CIR contends that the Court in Division erred in partially granting PAL's refund claim for ₱27,275,640.48, arguing that PAL failed to prove the *third* condition for tax exemption, namely, that the imported alcohol and tobacco products were not locally available in reasonable quantity, quality, or price.

²⁶ *Commissioner of Internal Revenue v. Second Division of the Hon. Court of Tax Appeals*, G.R. No. 280165, August 4, 2025 [Per J. Inting, Third Division], citing ADM. CODE (1987), Book IV, Title III, Chapter 12, sec. 35(1).

²⁷ SECTION 13. . . .

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:

....

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

²⁸ G.R. Nos. 206079 *et al.*, January 17, 2018 [Per J. Leonen, Third Division].

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To prove compliance with the *third* condition, PAL presented both documentary and testimonial evidence, including:

1. Bureau of Customs (**BOC**) Informal Import Declaration and Entry (**IIDE**);²⁹
2. Air Waybills/Airway Bills or Bills of Lading/Sea Waybills;³⁰
3. Authorities to Release Imported Goods (**ATRIG**);³¹
4. Invoices;³²
5. Table of Comparison;³³
6. Price lists from local suppliers, namely:
 - a. Absolute Sales Corporation 2013 to 2015 Price Lists;³⁴
 - b. Future Trade International, Inc. Price Lists for 2013 to 2017;³⁵
 - c. Minivan Enterprise Price Lists for 2013 to 2017;³⁶ and
 - d. AB Heineken Philippines, Inc. 2016 and 2017 Price Lists;³⁷
7. RMC No. 90-2012 and its annexes;³⁸
8. Bangko Sentral ng Pilipinas (**BSP**) Peso per US Dollar Rate (2013-2017);³⁹
9. BSP US Dollar Rates of Selected Currencies;⁴⁰ and
10. The Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager of PAL's In-flight Materials Purchasing Division.⁴¹

The CIR argues that PAL improperly relied on RMC No. 90-2012 for price comparisons, noting that the RMC No. 90-2012 was based on a 2010 price survey; thus, it cannot serve as a valid benchmark for PAL's subsequent importations.

The Court *En Banc* agrees.



²⁹ Exhibits "P-4" to "P-4.254", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁰ Exhibits "P-5" to "P-5.254", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³¹ Exhibits "P-6" to "P-6.254", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³² Exhibits "P-7" to "P-7.254", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³³ Exhibit "P-45", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁴ Exhibits "P-46" to "P-46-b", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁵ Exhibits "P-46-c" to "P-46-g", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁶ Exhibits "P-46-h" to "P-46-l", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁷ Exhibits "P-46-m" to "P-46-n", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁸ Exhibit "P-46-o", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

³⁹ Exhibit "P-47", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

⁴⁰ Exhibit "P-48", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

⁴¹ Exhibit "P-51", attached to petitioner's Amended Formal Offer of Evidence filed on July 4, 2022.

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Indeed, RMC No. 90-2012, based on a 2010 price survey, cannot, by itself, establish PAL's compliance with the *third* condition for importations made between July 2013 and July 2017.

The CIR further argues that PAL relied heavily on product price lists obtained from only two to four local dealers, which allegedly do not establish the general local market prices for the entire country, vis-à-vis the totality of local suppliers selling similar products. The CIR likewise asserts that there was no verification of whether these dealers were exclusive distributors, or that other local suppliers could not match foreign prices for the quantities and qualities PAL required.

The Court *En Banc* is not persuaded.

As aptly observed by the Court in Division, the Supreme Court has consistently held in cases involving PAL and the CIR that compliance with the *third* condition may be established through substantially the same types of evidence presented in this case, namely: (1) the testimony of PAL's responsible purchasing officers; (2) comparative tables showing the costs of imported and locally sourced commissary and catering supplies; and (3) price lists issued by local suppliers.

In this regard, the Court *En Banc* quotes with approval the pertinent ruling of the Court in Division in the assailed *Resolution*:

At any rate, the Court emphasizes that no less than the Supreme Court has already ruled what is deemed sufficient in proving the **third condition**. In said cases involving the same parties, to prove the third condition, PAL has consistently offered before the Court of Tax Appeals (CTA) the following pieces of evidence:

1. Testimonies of PAL's Assistant Vice-President in charge of Catering and In-flight Sub-Department and/or Manager for In-Flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department;
2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; and
3. Price List/s for specific period/s.



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Upon evaluation of the CTA Division in those cases, in some instances, it deemed the above pieces of evidence, among others, sufficient to establish that the imported alcohol products were not locally available in reasonable quantity, quality, or price. On the other hand, in those cases where the CTA Division deemed the evidence insufficient, the same was reversed by the CTA En Banc or even by the Supreme Court. Notably, the Supreme Court ultimately found that the pieces of evidence presented by PAL were sufficient to prove the third condition. We summarize these cases as follows:

Ruling of the CTA	Ruling of the Supreme Court	Relevant Periods (Importations vis-à-vis Price Lists)
1. CTA Case No. 8153, January 17, 2013. The CTA Division partially granted PAL's refund finding that PAL has sufficiently proven its exemption from the payment of excise taxes pertaining only to its importation of liquors. CTA <i>EB</i> Nos. 1029, 1031 & 1032, April 30, 2014: The CTA En Banc affirmed the above ruling.	G.R. No. 215705-07, February 22, 2017. (2017 PAL case) The Supreme Court affirmed the ruling of the CTA granting PAL's claim for refund and held that: "... the matter as to PAL's supposed noncompliance with the conditions set by Section 13 of P.D. 1590 for its imported supplies to be exempt from excise tax, are factual determinations that are best left to the CTA, which found that PAL had, in fact, complied with the above conditions. x x x Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court."	Period of Importation: October to December 2007 Price Lists: Philippine Wine Merchants Price List dated January 11, 2007
2. CTA Case No. 8198, June 2, 2015. The CTA Division denied PAL's refund holding that PAL failed	G.R. No. 240532 (Resolution), March 27, 2019. (2019 PAL case) The Supreme Court affirmed the ruling of	Period of Importation: January to July 2008 Price Lists: Philippine Wine Merchants Price List (for 2008)

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to prove the third condition. CTA EB No. 1363 (Amended Decision), dated February 13, 2018. The CTA En Banc reversed the CTA Division's decision denying the refund. The case was then remanded for determination of the refundable amount. The CTA En Banc found that the evidence presented by PAL is sufficient for the CTA Division to evaluate that the costs of importing liquors are lower than purchasing them locally. CTA Case No. 8198, August 14, 2024. In view of the order of the CTA En Banc to remand the case to the CTA Division, as affirmed by the Supreme Court, the CTA Division determined the final amount refundable to PAL.	the CTA granting PAL's claim for refund and held that: "...factual determinations that are best left to the CTA and cannot be reviewed by this Court under Rule 45. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. Thus, without any showing that the findings of the CTA are completely unsupported by substantial evidence, as in this case, its findings are binding on this Court."	
3. CTA Case No. 8130, December 1, 2014. The CTA Division denied the refund finding that the information gathered from the two price lists are seriously deficient to justify conclusion that the said imported	G.R. No. 231638 (Resolution), February 17, 2021. (2021 PAL case) The Supreme Court partially granted PAL's petition and ordered the remand of the case for determination of PAL's entitlement to a	Period of Importation: March to November 2007 Price Lists: Philippine Wine Merchants Price List for 2007

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items are not available in reasonable quantity, quality or price in the local market. CTA EB No. 1299, October 3, 2016. The CTA En Banc affirmed the CTA Division's ruling denying the claim for refund. The CTA En Banc held that the evidence presented by PAL was inadequate to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and is insufficient to establish its claim for a tax refund.	refund. The Supreme Court found the evidence presented adequate to prove compliance with the conditions for exemption, to wit: "Following prevailing jurisprudence, we are convinced that PAL sufficiently proved compliance with the second condition for excise tax exemption under Section 13 (b) (2). The CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence PAL presented are 'inadequate' to show compliance with Section 13 (b) (2). While we have generally deferred and respected the tax court's factual findings, the Court will not hesitate to reverse its factual findings when there is a showing of gross error or abuse on the part of the CTA."	
4. CTA Case No. 8514, January 6, 2015. The CTA Division partially granted PAL's refund ruling that PAL was able to substantiate its compliance with the requisites finding that the witnesses sufficiently	G.R. Nos. 236343-45 & 236372-74 (Resolution), January 17, 2023. (2023 PAL case) The Supreme Court ruled in favor of PAL and ordered the refund of erroneously paid excise taxes. With regard to the third	Period of Importation: June 2007 to October 2009 Price Lists: Philippine Wine Merchants Price Lists for the years 2006, 2007, 2008, and 2009,

corroborated that the imported liquors, wines and cigarettes were not locally available in reasonable quantity, quality or price and that the said goods were In-flight Materials. CTA EB Nos. 1308, 1309, & 1311 April 30, 2014. The Court En Banc affirmed the above ruling. The Court En Banc agreed with the CTA Division's conclusion that PAL's evidence sufficiently established that the imported liquors, wines and cigarettes were not locally available in reasonable quantity, quality or price.	condition, the Supreme Court held that: "... We also note that the Tables of Comparison and supporting price lists submitted by PAL corroborated Capinpin's testimony that the imported items were not locally available in reasonable quantity, quality, or price. Thus, in line with prevailing jurisprudence, We agree with PAL that the CTA erred in ruling that PAL has inadequately shown its compliance with Section 13 (b) (2) of PD 1590 as regards the amount of P240,283.71."	Future Trade International Price List dated April 8, 2009, Future Trade International Price List as of February 2009, Price List of Duty-Free Philippines
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As can be gleaned from the foregoing cases, the Supreme Court gave weight to the factual findings of this Court, stating that, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on the Supreme Court. Stated otherwise, the Supreme Court deemed the findings of the CTA in the above cases to be supported by substantial evidence.

It is also worth noting that, in the 2021 PAL case, the Supreme Court categorically declared that PAL sufficiently proved compliance with the condition that the imported supplies are not locally available in reasonable quantity, quality, or price, as required under Section 13 (b) (2) of P.D. No. 1590. In said case, PAL presented Ms. Cheryl V. Capinpin's sworn testimony, price list from one local supplier (i.e., Philippine Wine Merchants Price List) and the Table of Comparison, which were found to be sufficient to establish the non-availability of imported liquors and wines in reasonable quantity, quality, or price.



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Indeed, while certain CTA Division decisions initially found similar evidence insufficient, these were subsequently reversed by the CTA *En Banc* and, ultimately, by the Supreme Court, which consistently held that such evidence was adequate to establish that the imported alcohol and tobacco products were not locally available in reasonable quantity, quality, or price.

The Court *En Banc* finds no compelling reason to depart from these settled rulings. Although RMC No. 90-2012 cannot, on its own, establish compliance with the *third* condition, PAL's claim does not rest on the Circular alone. Rather, it is supported by a combination of documentary and testimonial evidence which, taken together, sufficiently demonstrates compliance with the *third* statutory condition.

Accordingly, the Court *En Banc* affirms the finding of the Court in Division that PAL satisfactorily established its entitlement to a refund, albeit only in the partial amount awarded.

CTA EB No. 3122

The Court in Division did not err in partially denying PAL's refund claim for failure to prove non-availability of the "Remaining Importations."

In its *Petition for Review*, PAL argues that the law employs the disjunctive term "or," such that it need only establish that the imported alcohol and tobacco products were not locally available in reasonable quantity, quality, **or** price. It argues that proof of the absence of **any one** of these factors is sufficient to qualify for the exemption. It is not required to prove the absence of **all three**.

PAL further points out that the Court in Division denied the refund for the "Remaining Importations" because PAL could not produce local comparative prices. It asserts that, of the fifty-nine (59) imported products involved in its claim, local suppliers offered only eight (8). Thus, it argues that the absence of price quotations from local suppliers does not mean PAL failed to prove its case; rather, it conclusively proves that those specific



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brands or volumes are not available in sufficient quantity or inventory in the local Philippine market.

PAL's position does not impress.

As correctly explained by the Court in Division, the mere absence of a particular product from the price lists obtained by PAL does not, by itself, establish that such product was not locally available in reasonable quantity, quality, or price. The Court *En Banc* adopts the pertinent portion of the assailed *Resolution*:

With regard to PAL's claim that it sufficiently established that all imported liquors and wine products are not locally available in reasonable quantity, quality, or price, including those products which do not appear in any of the price lists presented, We maintain that this alone cannot serve as conclusive proof of the products' unavailability in the local market. **The absence of certain alcohol products from the price lists procured by PAL does not necessarily prove its unavailability in the local market at a reasonable quantity, quality, or price, absent any categorical statement from local suppliers attesting to such fact.** (Emphasis supplied)

PAL also argues that, as a public utility, it is legally bound to exercise "extraordinary diligence" in ensuring the safety of its passengers and the efficient operation of its business. It posits that, to balance this high standard of diligence, the government granted it tax-free importation privileges so it could secure high-quality supplies at the lowest possible operating costs, ultimately benefiting the public. It contends that the Court in Division's insistence on strict local price comparisons creates an impossible standard. It cannot force private local suppliers to provide price quotations for items they do not stock. Forcing it to buy substandard or overly expensive local alternatives simply because it cannot provide a price comparison would result in an absurd situation that undermines the legislative purpose of its public franchise.

The argument fails to persuade.

First, being a public utility is certainly not an excuse for failing to comply with the well-established statutory and jurisprudential requirements for a tax refund. It is axiomatic that tax refunds are strictly construed against the taxpayer and that it is the obligation of the claimant to prove that it is entitled



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to a refund. This rule does not distinguish whether a taxpayer is a public utility.

In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*,⁴² the Supreme Court stated:

Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

Second, PAL's argument that the Court imposed an impossible requirement, *i.e.*, allegedly forcing private local suppliers to give price quotes for items they do not stock, is not well-taken. The Court does not absolutely require a price comparison for all items involved in PAL's claim for refund. To reiterate the assailed *Resolution*, "[t]he absence of certain alcohol products from the price lists procured by PAL does not necessarily prove its unavailability in the local market at a reasonable quantity, quality, or price, absent any categorical statement from local suppliers attesting to such fact."

Accordingly, a categorical statement from local suppliers attesting to the unavailability of a certain product in the local market may suffice to dispense with the requirement of comparison of local prices. However, PAL would have this Court conclude that such products are unavailable solely because they do not appear in the price lists of its chosen suppliers. This inference is unwarranted. The mere omission of items from selected price lists does not, by itself, establish non-availability. Such a bare and self-serving claim falls short of the evidentiary threshold required to support a refund.

All told, the Court *En Banc* sees no cogent reason to disturb the ruling of the Court in Division. Accordingly, PAL's *Petition for Review* in **CTA EB No. 3122** is denied.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA EB No. 3112 is hereby **DISMISSED** for lack of jurisdiction. The *Petition for Review* filed by Philippine Airlines, Inc. in CTA EB No. 3122 is hereby **DENIED** for lack of merit.

⁴² G.R. No. 133834, August 28, 2006 [Per J. Sandoval-Gutierrez. Second Division].



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Accordingly, the *Decision* dated June 27, 2024 and the *Resolution* dated February 18, 2025 rendered by the Second Division of the Court of Tax Appeals in CTA Case No. 10263 are hereby **AFFIRMED in toto**.

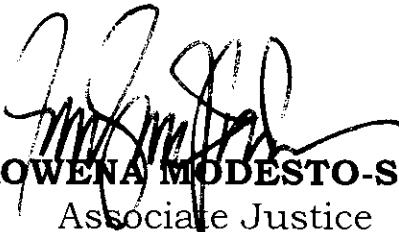
SO ORDERED.

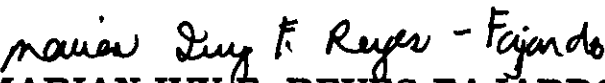

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

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HENRY S. ANGELES
Associate Justice


PAOLO S. TESTON
Associate Justice


DEBBIE JEAN I. CENTENO-DIJAMCO
Associate Justice



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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 consolidated cases were assigned to the writer of the opinion of the Court.



MA. BELEN M. RINGPIS-LIBAN

Presiding Justice



REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
CTA EB NO. 3112
(CTA Case No. 10263)

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

x ----- x
PHILIPPINE AIRLINES, INC.,
Petitioner,
CTA EB NO. 3122
(CTA Case No. 10263)

Present:

- versus -

RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 07 2026

x ----- x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in the dismissal of Commissioner of Internal Revenue's (CIR's) Petition for Review docketed as *En Banc* Case No. 3112 for lack of jurisdiction. An examination of the records reveals that the Office of the

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Solicitor General (OSG) received the Resolution of 18 February 2025 on 26 February 2025. Counting fifteen (15) days therefrom, CIR had until 13 March 2025 to file an appeal. Considering that the instant petition was only filed on 24 March 2025, the same was already beyond the prescribed reglementary period under Section 3(b),¹ Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). Even assuming that the same was timely filed, the petition lacks the necessary conformity from the OSG to file the appeal before the Court *En Banc*. Thus, it is only proper to dismiss CIR's petition for lack of jurisdiction.

With due respect to the *ponencia's* discussion that, even after setting aside the procedural infirmities, the petition lacks merit considering that Philippine Airlines, Inc. (PAL) had sufficiently established its partial entitlement to the claim for excise tax refund. I, respectfully, register my dissent.

My reasons are essayed below.

It is observed that the Second Division's² Decision dated 27 June 2024 (**Assailed Decision**) and Resolution dated 18 February 2025 (**Assailed Resolution**) partially granted PAL's claim for a refund amounting to **₱27,275,640.48**. This amount represents excise taxes imposed on PAL's importation of alcohol products (**from July 2013 to July 2017**), which were erroneously collected and paid under protest on 28 February 2018.

As discussed in the assailed Decision, the Second Division determined that PAL had complied with the *third (3rd) condition* required by Presidential Decree (PD) No. 1590,³ as amended, (*i.e.*, that the imported alcohol products were not locally available in reasonable quantity, quality, or price at the time of importation), **but only to the extent that there is evidence showing that the cost per bottle of importing the subject alcohol products is lower than purchasing them locally from at least one supplier.** 

¹ SEC. 3. *Who May Appeal; Period to File Petition.* —

...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

² Composed of Associate Justice Ma. Belen M. Ringpis-Liban (now Presiding Justice) as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

³ AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

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In so ruling, the Second Division gave probative weight to PAL's 'Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies' (**Table of Comparison**), the testimonies of its witnesses, and the price lists for specific periods. Further, in the assailed Resolution, the Second Division explained that the Supreme Court had already ruled that the said pieces of evidence are sufficient to prove the 3rd condition in the claim for the excise tax refund.

Nonetheless, with due respect, I wish to emphasize that the 2014⁴ and 2017 PAL Decisions⁵, 2015⁶ PAL Resolution and the PAL Minute Resolutions of 2018⁷, 2019⁸, 2021⁹, and 2023¹⁰ cannot be used as bases for deeming the pieces of evidence presented (i.e., the testimony of Cheryl V. Capinpin [**Capinpin**], PAL's Manager for In-flight Materials Purchasing Division, the Table of Comparison and the Price Lists) as sufficient compliance with the 3rd condition. **Unfortunately, the cited Decisions, Resolution and Minute Resolutions are clearly inapplicable to the instant case. Additionally, and more particularly, the Minute Resolutions are not binding precedents.**

To expound, Section 13(2) of PD 1590 reads:

...

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:

...

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[.]

...

⁴ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 212536-37, 27 August 2014.

⁵ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 215705-07, 22 February 2017.

⁶ *Republic of the Philippines, rep. by the Commissioner of Customs v. Philippine Airlines, Inc. (PAL)*, G.R. Nos. 209353-54 & 211733-34 (Resolution), 06 July 2015.

⁷ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. No. 238672 (Notice), 09 July 2018.

⁸ *Commissioner of Internal Revenue (CIR), et al. v. Philippine Airlines, Inc. (PAL)*, G.R. No. 240532 (Notice), 27 March 2019.

⁹ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 231638 (Notice), 17 February 2021.

¹⁰ *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, G.R. Nos. 236343-45 & 236372-74 (Notice), 17 January 2023.

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(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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

...

The foregoing provision requires the concurrence of three (3) requisites before PAL's importations may be considered tax-exempt, to wit:

1. PAL paid its corporate income tax covering the period when the subject importations were made;
2. The articles, supplies, or materials are imported for PAL's use in its transport and non-transport operations and other activities incidental thereto; and
3. The imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.¹¹

As to the 3rd condition, the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*,¹² ruled that such qualification for exemption is in the alternative, and not cumulative. Simply stated, PAL only needs to prove that the locally available article is **either** insufficient in quantity, **or** is of subpar quality, **or** is severely overpriced compared to its imported variant.

In this case, PAL submitted, among others, the following pieces of documentary evidence to prove that the subject imported alcohol products were not locally available in reasonable quantity, quality or price: (1) the Judicial Affidavits of Ms. Cheryl V. Capinpin, PAL's Manager for In-flight Materials Purchasing Division, and Mr. Jonathan R. Castillo Lee, PAL's Manager for Company Materials Handling Division; (2) Absolute Sales Corporation's (ASC's) Price List for 2013 to 2015; (3) Future Trade International's (FTI's) Price List for 2013 to 2017; (4) Minivan Enterprise's (ME's) Price List for 2013 to 2017; (5) AB Heinekin Philippines, Inc.'s (HPI's)

¹¹ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, 01 April 2024.

¹² G.R. Nos. 245330-31, 01 April 2024. *supra*.

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2016 and 2017 Price Lists; and (6) the Bureau of Internal Revenue's (BIR's) Price List *per* Revenue Memorandum Circular (RMC) No. 90-2012.¹³

It is my considered view that PAL's pieces of evidence are insufficient to prove that the locally available alcohol products are either overpriced or scarce or subpar compared to their imported variants.

First, as highlighted in the *ponencia*, RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products. Given this, no valid comparison can be made between the prices of PAL's wines and liquors imported from July 2013 to July 2017 and those reflected in the 2010 price survey. It is common knowledge that the quantity, quality, and price of locally available alcohol and tobacco products fluctuate over time. Consequently, the contents of RMC No. 90-2012, which relied on a price survey conducted in 2010 — several years before the subject importations — should not be accorded significant weight or relied upon as a basis for comparison.

Second, a careful examination of PAL's Table of Comparison reveals that, except for Rawson Private Release Shiraz,¹⁴ there is only one (1) merchant or supplier (*i.e.*, either ASC, FTI, ME or HPI) that supposedly establishes local prices for some of the imported alcohol products listed therein.

Clearly from the foregoing, although PAL submitted price lists from four (4) merchants (ASC, FTI, ME and HPI) not all of these suppliers provided retail prices for each of the imported alcohol products. Consequently, the pricing data for PAL's imported alcohol products rests either on the figures of a single supplier alone, on a combination of RMC No. 90-2012 and a single supplier, or on neither source.

Third, PAL submitted no reliable evidence to prove that the price lists from ASC, FTI, ME and HPI represent the local market prices (or that these merchants or suppliers serve as the exclusive distributors) of the above-listed alcohol products from July 2013 to July 2017 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same period. Consequently, the Court is left unable to

¹³ Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes".

¹⁴ There are two price quotations from FTI and ME.

ascertain whether the subject imported alcohol products are unavailable locally at a reasonable price.

Fourth, it cannot be determined from the pieces of evidence presented whether the subject imported alcohol products are not available locally in reasonable quantity and/or quality. **There is no indication from Capinpin’s testimony, nor from evidence on record, that the subject imported alcohol products are unavailable locally at a reasonable quantity and/or quality.**

Lastly, it is worth noting that, as regards PAL’s importation of alcohol products from July 2013 to July 2017, reliance cannot be made on the aforesaid 2014 and 2017 PAL Decisions, 2015 PAL Resolution and the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 in terms of appreciating the price lists from four (4) local suppliers to establish compliance with the 3rd condition since the subject matter of these cases pertain to importations made prior to the issuance of the BIR’s RMC No. 90-2012. Particularly, the 2014 and 2017 PAL Decisions and 2015 PAL Resolution involved importations of various liquors and wines from February to March 2007, from October to December 2007 and from July 2005 to February 2006, respectively, whereas the PAL Minute Resolutions of 2018, 2019, 2021, and 2023 involved those imported on various dates in 2007, 2009 and 2010, from January to April 2008, from March to November 2007 and from June 2007 to October 2008 and July 2009 to October 2009, respectively.¹⁵

Notably, RMC No. 90-2012 was based on the BIR’s 2010 price survey of alcohol products. Therefore, it is understandable that for liquors and wines imported before and during 2010, a price list from a single local supplier would suffice to meet the 3rd condition, as RMC No. 90-2012 already provides a benchmark for the prices of those available in the local market.

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Supreme Court Issuance	Case No.	Period of Importation
2014 PAL Decision	G.R. Nos. 212536-37	From February to March 2007
2017 PAL Decision	G.R. Nos. 215705-07	From October to December 2007
2015 PAL Resolution	G.R. Nos. 209353-54 & 211733-34	From July 2005 to February 2006
2018 PAL Minute Resolution	G.R. No. 238672	Various dates in 2007, 2009 and 2010
2019 PAL Minute Resolution	G.R. No. 240532	From January to July 2008
2021 PAL Minute Resolution	G.R. No. 231638	From March to November 2007
2023 PAL Minute Resolution	G.R. Nos. 236343-45 & 236372-74	From June 2007 to October 2008 and July 2009 to October 2009

SEPARATE OPINION

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Since the instant case involves PAL's imported alcohol products for the period from July 2013 to July 2017, which is beyond the scope of the BIR's 2010 price survey of alcohol products as per RMC No. 90-2012, it is reasonable to conclude that this issuance can no longer serve as a benchmark for the prices of those available in the local market. Without such a benchmark, the 2013 to 2017 price lists obtained from four (4) local merchants or suppliers in this case cannot be considered sufficient, as it can hardly be said that the prices indicated therein are representative of the prevailing local prices corresponding to PAL's imported alcohol products.

I also wish to underscore that, in determining compliance with the 3rd condition, the focus should not be on the number of price lists obtained from local suppliers. Instead, it should be on whether PAL was able to ascertain, within a reasonable time prior to importation, that the alcohol products sought to be imported could not be sourced from the local market in the necessary quantity, quality, or price — thereby justifying the need for importation. There should be evidence that PAL determined the prices and availability of each imported alcohol product through a survey conducted with a representative number of local dealers, in order to reasonably conclude that such products cannot be sourced locally and must be imported.

Certainly, since a statute granting tax exemption is strictly construed against the person or entity claiming the exemption,¹⁶ it is incumbent upon petitioner to demonstrate that the 3rd condition for excise tax exemption on the importation of alcohol products under PD 1590 was met not after, but within a reasonable time before or at the very least by the date of importation.

Succinctly, every case is evaluated and decided based on the evidence presented. A divergence in the rulings of the priorly-promulgated cases is not violative of the doctrine of *stare decisis*.

Additionally, the rulings in the PAL Minute Resolutions of 2018,¹⁷ 2019,¹⁸ 2021,¹⁹ and 2023²⁰ are not applicable since a minute resolution is not considered a binding precedent. Citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*²¹, in *San Miguel* 

¹⁶ *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, 07 July 2010.

¹⁷ Supra at note 7

¹⁸ Supra at note 8.

¹⁹ Supra at note 9.

²⁰ Supra at note 10.

²¹ G.R. No. 167330 (Resolution), 18 September 2009.

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*Corporation v. Commissioner of Internal Revenue*²² (**San Miguel**), the Supreme Court clarified that a previous case ruled with a different subject matter albeit with the same parties and same issues will not be considered *res judicata* to the other cases as well as stressed that there is a substantial distinction between a minute resolution and a decision, viz:

...

In the case of *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Court clarified that a Minute Resolution is not binding precedent:

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, CIR v. Baier-Nickel involving the same parties and the same issues, was previously disposed of by the Court through a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "(h)ad no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.²³

...

²² G.R. Nos. 257697 & 259446, 12 April 2023.

²³ Citations omitted, emphasis and italics in the original text, and underscoring supplied.

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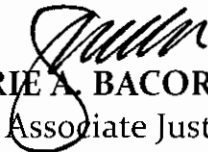
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Here, the subject alcohol products were imported from July 2013 to July 2017. In contrast, as aforementioned, the PAL Minute Resolutions dealt with importations from 2007 to 2010. Thus, any declarations made in the said minute resolutions will not affect the instant case.

With the foregoing disquisitions, I submit that PAL failed to present sufficient and convincing evidence to prove that the subject alcohol products it imported were not locally available in sufficient quantity, quality, or price at the time of their importation.

All told, I vote to **DISMISS** Commissioner of Internal Revenue's *Petition for Review* for lack of jurisdiction and due to the absence of the required authority to file the same. At any rate, even if the jurisdictional infirmities are to be set aside, the *Petition for Review* should be **DENIED** for lack of merit.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice