REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NOS. 8032 & 8075

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 26 2015
3:46 p.m.

x---x

RESOLUTION

BAUTISTA, J.:

For resolution are:

a. Petitioner's "Motion for Reconsideration" filed on January 26, 2015;

b. Respondent Commissioner of Internal Revenue ("CIR") "Comment/Opposition (Re: Motion for Reconsideration of the Decision promulgated 5 January 2015)," filed on February 13, 2015; and

c. Respondent Commissioner of Customs ("COC") "Comment," filed on March 24, 2015.

On January 5, 2015, the Court *En Banc* issued a Decision, the portion of which reads:

> "**WHEREFORE**, in view of the foregoing, petitioner's claim for refund in the amount of Php22,214,356.06 representing its importations of cigarette, wines, and liquors from February to May 2008 is hereby **DENIED**.
>
> **SO ORDERED.**"

Petitioner's Arguments:

Anent the second requisite provided in Section 13 of Presidential Decree ("PD") 1590 which provides that the imported articles were used for commissary and catering supplies, petitioner argues in the following manner:

a. That the testimony of Mr. Joseph Brian T.L. Tan ("Mr. Tan") is not hearsay as his testimony refers to the Informal Import Declaration Entries ("Informal Entries") which are public documents that need not be authenticated by the person who prepared the same;

b. That the testimony of Mr. Tan is an entry of the official records as it was made in the performance of duty by a person specially enjoyed by law under Section 44, Rule 130 of the Rules of Court.

c. That the testimony Ms. Cheryl V. Capinpin ("Ms. Capinpin") has the competence and personal knowledge of the fact that the subject importations were for catering and commissary supplies being the Manager of the In-flight Materials Purchasing Division of PAL;

d. That the testimony of Ms. Capinpin corroborated the testimony of Mr. Tan; and

e. That the Informal Entries were corroborated by Authority to Release Imported Goods ("ATRIG's") which are public documents.

Anent the third requisite provided in Section 13 of PD 1590, which provides that the imported articles were not locally available in reasonable quantity, quality or price, petitioner alleges the following: that the submission of comparative local price is not the only determining factor to justify the exemption of the imported product; that the comparative local price could not be provided because there is the absence of local supplier capable of supplying the required amount of importation; and that respondent admitted that the importation of catering and commissary supplies cost less than the purchasing them locally as found in her Memorandum dated December 9, 2013.

Respondent CIR's Arguments:

Respondent CIR alleges that petitioner failed to prove that the commissary supplies are not locally available in reasonable quality, quality, and price as there were no independent and credible evidence presented to prove the matter; and that it was self-serving for petitioner to have Ms. Capinpin testify to the fact that the imported articles are not locally available in reasonable quantity, quality and price.

Respondent COC's arguments:

Respondent COC alleges that Mr. Tan lacks personal knowledge of the entries in the Informal Entries as Mr. Tan was not the one who made the recording on the said entries; that the entries in the Informal Entries are not exempt from the hearsay rule under Section 44 of Rule 130 of the Rules of Court as the recording was not made by a public officer; that the testimony of Ms. Capinpin does not corroborate the testimony of Mr. Tan; and that the Informal Entries were not corroborated by the Authority to Release Imported Goods ("ATRIG").

The Court finds petitioner's "Motion for Reconsideration" partially meritorious.

The arguments raised by the parties pertain to the substantiation requirements of Section 13 of PD No. 1590 that in order to be entitled to exemption from excise tax on importations of commissary and catering supplies, petitioner must prove that the imported articles were used for catering and commissary supplies and that the imported articles were not locally available in reasonable quantity, quality or price.

Thus, after taking a second perusal of the evidence presented the Court finds the following:

Petitioner was able to substantiate that the imported articles were used for commissary and catering supplies as prescribed in Section 13 of PD No. 1590.

In the ATRIG[1] the contents thereof provides:

> *"TAXPAYER: PHILIPPINE AIRLINES, INC.*
> *A D D R E S S: PAL Inflight Ctr., Customs Bonded Whse. #13 (A-C)- Baltao*
>
> *xxx xxx xxx*
>
> *Please be informed that according to the documents submitted by abovementioned importer, the shipment to be released at the Port of Manila, consisting of the above described articles, will be used exclusively for International Inflight consumption."*

A further perusal of the ATRIG reveals that the contents thereof were recorded under the sovereign authority of the Bureau of Internal Revenue ("Bureau") as the document was certified by the Commissioner of the Bureau.

In the consolidated cases *of Heirs of Jose Marcial K. Ochoa, et.al vs. G & S Transport Corporation et.al,*[2] the Supreme Court has held that public documents under Section 19(a) of Rule 132[3] refers to those recording made by a public officer, to wit:

---

[1]*Records*, p.3089.
[2]G.R. Nos.170071 & 170125, July 16, 2012.
[3]Section 19. *Classes of Documents.* – For the purpose of their presentation evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledge before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to the entered therein.
All other writings are private.

"Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents. As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States.

A further research on said agency shows that it was created through Executive Order 10973 by President John F. Kennedy on November 3, 1961 pursuant to the Foreign Assistance Act of 1961. It is headed by an Administrator and Deputy Administrator, both appointed by the President of the Unites States and confirmed by its Senate. From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is prima facie evidence of the facts stated therein.

And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs."

Therefore, since the recording was under the authority of the Commissioner, and that the Commissioner is a public officer, the ATRIGs are considered public document.

Section 23, Rule 132 of the Rules of Court[4] provides that "public documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated."

Therefore, the stated fact in the ATRIG which provides that the importation was used exclusively for International Inflight Consumption is *prima facie* evidence that indeed the importation was used for Inflight Consumption.

Since there is the absence of any evidence to contradict the facts stated in the ATRIG, the Court shall reconsider its position in denying petitioner's claim based on none compliance with the second requisite of Section 13 of PD 1590 which provides that the imported articles were used for commissary and catering supplies.

Petitioner failed to substantiate that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price as prescribed in Section 13 of PD No. 1590.

While the Court have reconsidered its position in the second requirement provided in Section 13 of PD No. 1590 which provides that the imported articles were used for catering and commissary supplies, petitioner have still failed to discharge its burden of proof on the third requisite which provides that the imported articles were not locally available in reasonable quantity or price as prescribed in Section 13 of PD No. 1590.

The Court reiterating its findings on the matter that "based on the testimony of Ms. Capinpin, petitioner compared the prices of its imported wines or liquors with only one supplier - Philippine Wine Merchant. Petitioner failed to compare the price of its imported cigarettes as against its price in the local market.

---

[4] Section 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Therefore, petitioner could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by one supplier, i.e., Philippine Wine Merchant. With respect to its imported cigarettes, it was evident that petitioner also failed to make comparison in contrast to its local prices.

Hence, without sufficient basis for comparison of the quality, quantity or prices of locally available liquors, wines and cigarettes as against the quality, quantity or prices of such imported goods, petitioner could not have ascertained that the said imported goods are not locally available in reasonable quantity, quality, or price.[5]"

The Court has repeatedly stressed that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.[6] As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[7] It is therefore incumbent upon petitioner to prove that it is entitled to the refund sought, which petitioner failed to do.

Therefore, for failure to comply with the third requisite of Section 13 of PD No. 1590 which provides that the imported articles were not locally available in reasonable quantity or price, petitioner's claim for refund cannot be granted.

WHEREFORE, the "Motion for Reconsideration," is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

---

[5] *Records*, p. 3434.
[6] Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 92.
[7] Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO	**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice	Associate Justice