REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1308
(CTA CASE NO. 8514)

x--x

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB NO. 1309
(CTA CASE NO. 8514)

x--x

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Petitioners,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1311
(CTA Case No. 8514)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , ***and***
MANAHAN, *JJ.*

Promulgated:

FEB 27 2017 10:32 a.m.

X--X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc are consolidated[1] Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1308 *(Commissioner of Internal Revenue v. Philippine Airlines, Inc.)*, Philippine Airlines, Inc. (PAL), petitioner in CTA Case No. 8514 *(Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs)*, docketed as CTA EB No. 1309 *(Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs)*, and by the CIR and Commissioner of Customs (COC), petitioners in CTA EB No. 1311 *(Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.)*.

In CTA EB No. 1309, petitioner PAL is seeking the partial reversal of the Decision dated January 6, 2015, and the Resolution dated April 28, 2015, rendered by the Second Division of this Court in CTA Case No. 8514, insofar as both denied refund of the partial amount of ₱1,139,494.29 representing excise taxes paid on PAL's importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

In both CTA EB No. 1308 and CTA EB No. 1311, petitioners CIR and COC, are respectively seeking the reversal and nullification of the same Decision dated January 6, 2015 and the Resolution dated April 28, 2015 and praying that another one be rendered denying the entire claim for refund.

THE PARTIES

PAL is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its registered address is at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, 1307, Pasay City.[2]

The CIR is the Commissioner of the Bureau of Internal Revenue (BIR), a government agency in charge of the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 142 and 145, respectively, of the National Internal Revenue Code (NIRC), as

---

[1] CTA EB 1309 and CTA EB 1311 were consolidated with CTA EB 1308, the case bearing the lowest docket number per Minute Resolution issued on June 19, 2015.
[2] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), *Docket* (Vol. I), p. 303.

amended. Respondent CIR has his office address at the BIR National Building, Agham Road, Diliman, Quezon City.[3]

The COC is the Commissioner of the Bureau of Customs (BOC), a government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145 of the NIRC, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (BIR Form No. 918) (ATRIG), duly issued by the CIR addressed to COC, in accordance with Section 12(a) of the NIRC, as amended. The COC has his office address at G/F OCOM Bldg., Bureau of Customs, Port Area, Manila City.[4]

THE COURT'S JURISDICTION

On May 7, 2015, the CIR received a copy of the Second Division's Resolution dated April 28, 2015 denying her motion for partial reconsideration. The CIR therefore had until May 22, 2015 within which to file a Petition for Review. As the CIR's Petition was filed on May 21, 2015, docketed as CTA EB No. 1308, the Petition was timely filed.

On May 6, 2015, PAL received a copy of the Second Division's Resolution dated April 28, 2015. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[5] PAL had fifteen (15) days from receipt of the said Resolution, or until May 21, 2015, within which to appeal to the Court *En Banc* by way of a Petition for Review.

On May 21, 2015, PAL filed a "Motion for Extension of Time to File Petition for Review" requesting for an extension of thirty (30) days or until June 20, 2015 within which to file its Petition for Review.

On June 5, 2015, PAL posted its Petition for Review docketed as CTA EB No. 1309 via registered mail which the Court received on June 11, 2015.

On the other hand, the COC received a copy of the Second Division's Resolution dated dated April 28, 2015 through the Office of the Solicitor General (OSG) on May 7, 2015. He therefore had until May 22, 2015 within which to file his Petition for Review.

---

[3] Par. 2, *Ibid.*
[4] Par. 3, Facts, JSFI, *Docket* (Vol. I), p. 304.
[5] Dated November 22, 2005, and which took effect starting December 15, 2005.

On May 22, 2015 , the COC filed a "Motion for Extension of Time to File Petition for Review" requesting for an extension of fifteen (15) days or until June 6, 2015 within which to file its Petition. Since the COC filed its Petition for Review on June 5, 2015, it is likewise timely filed.

THE FACTS[6]

On June 11, 1978, PAL was granted a franchise to operate air transport services domestically and internationally[7] under Presidential Decree No. 1590 (PD 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".[8] Section 13 thereof specifically provides:

> "SECTION 13. In consideration of the franchise and rights hereby granted, **the grantee shall pay** to the Philippine Government during the life of this franchise **whichever** of subsections (a) and (b) hereunder **will result in a lower tax**:
>
> (a) The **basic corporate income tax** based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A **franchise tax** of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The **tax paid** by the grantee under either of the above alternatives shall be **in lieu of all other** taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx

---

[6] As found by the Second Division, *Rollo,* CTA Case No. 8514, pp. 1294-1321, and as culled from the records of the case.
[7] Par. 4, Facts, JSFI, *Docket* (Vol. I), p. 304.
[8] Exhibit "A".

> (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**."[9] *(Emphasis supplied)*

On January 1, 2005, Republic Act No. 9334 (RA 9334), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect. Section 6 thereof provides:

> "SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> > 'SEC. 131. Payment of Excise Taxes on Imported Articles. —
> >
> > (A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
> >
> > In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

[9] Par. 5, Facts, JSFI, *Docket* (Vol. I), pp. 304-305.

> **The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on *(sic)* introduction into the Philippine customs territory x x x"[10] *(Emphasis supplied)*

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes "on all importations destined for Duty Free Philippines (DFP) and the Freeport Zones, such as the Subic Bay Freeport Zone", and requested the BOC to immediately collect the excise taxes due on the imported alcohol and tobacco products brought to the DFP and Freeport Zones.[11]

[10] Par. 6, Facts, JSFI, *Docket* (Vol. I), pp. 305-306.
[11] Par. 7, Facts, JSFI, *Docket* (Vol. I), p. 306.

On February 4, 2005, then COC George Jereos issued a Memorandum to the BOC officers and personnel directing them to "effect collection of excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones."[12]

On March 1, 2005, COC Alberto Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulations No. 12-2004."[13]

Thereafter, on various dates in 2007 and 2008, petitioner's importations of assorted cigarettes, liquors and wines arrived in Manila through the Ninoy Aquino International Airport (NAIA) and South Harbor, covered by various Informal Import Declarations and Entries (IIDEs), Bills of Lading, and Authorities to Release Imported Goods (ATRIGs), as follows:

Port of Entry	Date of Arrival[14]	IIDE No.[15]	Bill of Lading No.[16]	ATRIG No.[17]	Amount of Excise Tax Paid[18]
NAIA	June 23, 2007	6471	079-2900355-3	00043547	197,524.32
NAIA	August 14, 2007	8872	079-3005260-6	00043534	150,876.00
South Harbor	August 12, 2008	9157	D0807/4294	00043545	183,603.42
South Harbor	August 16, 2008	9158	D0807/4368	00043548	183,603.42
NAIA	October 7, 2008	10538	079-3209621-2	00043537	90,525.60
NAIA	November 10, 2008	11667	079-3209711-1	00044291	473,823.22
South Harbor	December 24, 2008	13405	D0811/5067	00030394	183,603.42
South Harbor	December 31, 2008	13406	D0812/5099	00030391	183,603.42
NAIA	October 17, 2008	11093	079-3150984-4	00026160	802,431.00
				TOTAL	₱2,449,593.82

And in addition thereof, the following importations:

[12] Par. 8, *Id.*
[13] Par. 9, *Id.*
[14] Exhibits "I", "J", "K", "L", "M", "N", "O", "P" and "Q".
[15] *Id.*
[16] Exhibits "I-1", "J-1", "K-1", "L-1", "M-1", "N-1", "O-1", "P-1" and "Q-1".
[17] Exhibits "T" to "BB".
[18] *Id.*

Port of Entry	Date of Arrival[19]	IIDE No.[20]	Bill of Lading No.[21]	ATRIG No.[22]	Amount of Excise Tax Paid[23]
South Harbor	July 31, 2009	6978	0906/1167	00038736	550,810.26
NAIA	September 25, 2009	9011	079-3289122-4	00040276	63,488.88
NAIA	September 29, 2009	8963	079-3289129-4	00040049	954,688.56
NAIA	September 25, 2009	9010	079-3289121-3	00040291	63,488.88
NAIA	October 7, 2009	9001	079-3289139-0	00040279	22,780.35
NAIA	October 17, 2009	9083	079-3289150-4	00040278	105,814.80
NAIA	October 22, 2009	9029	079-3289156-3	00044034	149,611.98
NAIA	October 24, 2009	9444	079-3289162-2	00044019	105,814.80
NAIA	October 26, 2009	9449	079-3289168-1	00044020	105,814.80
				TOTAL	₱ 2,122,313.31

On January 9, 2009, Gilda L. Cinco, then Acting Chief-WAU, of the BOC sent a letter[24] to Sylveria S. Salazar, Chief, Collection Division, NAIA Customhouse, informing the latter to collect from petitioner the customs duties, VAT, excise taxes and IPF due on petitioner's importation of alcohol and tobacco products in compliance with CMO 13-2005 and Revenue Regulations No. 3-2006.

Thus, on July 7, 2010, petitioner both paid under protest the assessments issued by the BOC in the amounts of ₱2,449,593.82, as evidenced by BOC Official Receipt No. 0180933823-3[25], and ₱2,122,313.31, as evidenced by BOC Official Receipt No. 0180933821-1.[26] Subsequently, on the same day, petitioner sent two separate letters[27] to Mrs. Sylveria S. Salazar to formally protest the assessments and subsequent collection of the said amounts.

On July 12, 2010, petitioner also filed with Atty. Carlos T. So, District Collector of Customs of NAIA, two written protests[28] for the assessments and collection of said excise taxes on the above importations.

[19] Exhibits "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM" and "NN".
[20] *Id.*
[21] Exhibits "FF-1", "GG-1", "HH-1", "II-1", "JJ-1", "KK-1", "LL-1", "MM-1" and "NN-1".
[22] Exhibits "QQ" to "YY".
[23] *Id.*
[24] Exhibit "R".
[25] Exhibit "S".
[26] Exhibit "PP".
[27] Exhibits "CC" and "ZZ".
[28] Exhibits "DD" and "AAA".

Thereafter, on February 15, 2011, petitioner filed with respondent CIR two administrative claims[29] for refund, for the amounts of ₱2,449,593.82 and ₱2,122,313.31, both representing the excise taxes paid on July 7, 2010 to the BOC for the said importations.

Claiming inaction on the part of respondent CIR, petitioner filed with this Court on July 6, 2012 its judicial claim via its Petition for Review docketed as CTA Case No. 8514.[30]

On July 30, 2012, respondent COC filed his Answer/Comment[31] while respondent CIR filed her Answer[32] on September 11, 2012.

PAL argued that its exemption from excise tax on its importation of commissary supplies for use in its international flights under Section 13 of its franchise, PD 1590, still subsists despite the existence of Section 131 of the Tax Code, as amended by Section 6 of RA 9334.

On the other hand, the CIR argued that PAL's entire claim for refund is unwarranted; that Section 6 of RA 9334 which amended Section 131 of the NIRC expressly withdrew the conditional tax exemptions granted to PAL under its franchise; the exemption granted to petitioner is not absolute as it is subject to the condition that the commissary supplies are not locally available in reasonable quantity, quality and price; and that laws granting tax exemptions are strictly construed and, therefore, PAL has the burden of proving that its right to a tax refund indubitably exists.

The COC argued that the assessment and collection of excise taxes on PAL's importation of alcohol and tobacco products was in accordance with law; that the passage of RA 9334 effectively revoked PAL's previous exemption under its charter; that a franchise to operate a public utility vehicle is at all times subject to amendment by congress; and that statutes granting tax exemptions are considered as a derogation of the sovereign authority, thus, are strictly construed against the person or entity claiming the exemption.

On October 8, 2012, both respondent COC and petitioner filed their respective Pre-Trial Brief.[33] Then, on November 6, 2012, the parties

---

[29] Exhibits "EE" and "BBB".
[30] Docket (Vol. I), pp. 7-31.
[31] *Id.*, pp. 202-221.
[32] *Id.*, pp. 228-241.
[33] *Id.*, pp. 251-258 and pp. 259-280.

submitted their Joint Stipulation of Facts and Issues,[34] which the Court approved in the Resolution[35] dated November 9, 2012.

During trial, petitioner presented the following witnesses together with their respective Judicial Affidavit: (1) Mr. Jonathan Castillo Lee, Manager-Company Handling Materials Handling Division of PAL,[36] (2) Ms. Ma. Evelyn L. Taghap, Manager-Tax Services and Compliance Department of PAL,[37] and (3) Ms. Cheryl V. Capinpin, Manager-in-flight Materials Purchasing Division of PAL.[38]

On May 7, 2013, petitioner filed its Formal Offer of Exhibits with Motion for Re-Marking,[39] offering Exhibits "A" to "HHHH", inclusive of sub-markings, as its documentary evidence. Accordingly, in the Resolution[40] dated July 8, 2013, this Court admitted petitioner's exhibits except for Exhibits "N-1", "O-1", "FF-3", "KK-1", "HHH" to "JJJ-1", "KKK-1" to "KKK-4", "LLL-1" to "LLL-3-a", "MMM" to "NNN-4", "PPP" to "VVV-1" and "HHHH". Petitioner then moved for reconsideration[41] for the denied exhibits on July 24, 2013. After due consideration thereof, this Court granted petitioner's Motion for Reconsideration in the Resolution[42] dated October 18, 2013, thereby admitting the previously denied exhibits except for Exhibits "FF-3" and "NNN" to "NNN-3".

Meanwhile, respondent COC filed a Manifestation[43] on August 1, 2013, stating that he will no longer be presenting testimonial or documentary evidence considering that the primary issue involved in this case is essentially legal. Respondent CIR, on the other hand, adopted the same manifestation of respondent COC. Thus, during the August 5, 2013 hearing, this Court noted said manifestations and ordered the parties to submit their respective Memorandum.

Complying therewith, respondent CIR submitted his Memorandum[44] on November 14, 2013, petitioner submitted its Memorandum[45] on November 22, 2013, and respondent COC submitted his Memorandum[46] on December 19, 2013.

[34] *Id.*, pp. 303-309.
[35] *Id.*, p. 313.
[36] Exhibits "GGG" and "GGG-1".
[37] Exhibits "OOO" and "OOO-1".
[38] Exhibits "WWW" and "WWW-1".
[39] *Docket* (Vol. III), pp. 849-908.
[40] *Id.*, pp. 1128-1130.
[41] Motion for Reconsideration (of the Resolution Dated July 8, 2013), *Id.*, pp. 1133-1165.
[42] *Id.*, pp. 1212-1213.
[43] *Id.*, pp. 1190-1192.
[44] *Id.*pp. 1214-1231.
[45] *Id.*, pp. 1232-1267.
[46] *Id.*, pp. 1273-1287.

After the submission of the parties' respective Memorandum, this Court, in its Resolution[47] dated January 6, 2014, deemed the case submitted for decision.

However, on November 25, 2014, petitioner both filed a Motion to Admit Original Documents and a Manifestation. In its Motion, petitioner prays that this Court admit in evidence the attached original copies of Exhibits "NNN"[48], "NNN-1"[49], "NNN-2"[50], and "NNN-3"[51], and that the markings in its former Exhibits "NNN"[52], "NNN-1"[53], "NNN-2"[54], and "NNN-3"[55], which were previously denied admission by this Court in its Resolution[56] dated October 18, 2013, be transferred to the said attached original copies. On December 12, 2014, this Court denied petitioner's Motion.

On January 6, 2015, the assailed Decision was rendered by the Court in Division[57] finding that PAL complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies, specifically the imported liquors used for its inflight consumption, but that due to the denial of the admission of the Quarterly VAT Returns for the first, second and third quarters of FY 2008 for petitioner's failure to present the original copies of said documents for comparison, it did not fully satisfy the requirement that it should pay its corporate income tax and VAT liabilities for the subject period of its importation. The amount of ₱348,400.32 was then deducted from petitioner's claim as it pertained to excise taxes paid on importations made during the first, second, and third quarters of FY 2008. Similarly, the amount of ₱791,093.97 corresponding to excise taxes was deducted because the local prices of the liquors and wines were not available for comparison.

. The dispositive portion of the Decision provided, thus:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱3,432,412.84** representing excise taxes

---

[47] *Id.*, p. 1288.
[48] BIR Payment Form No. 0605 filed on January 2, 2007.
[49] Quarterly VAT Return for the First Quarter of FY ended March 31, 2008 filed on July 23, 2007.
[50] Quarterly VAT Return for the Second Quarter of FY ended March 31, 2008 filed on November 20, 2007.
[51] Quarterly VAT Return for the Third Quarter of FY ended March 31, 2008 filed on January 24, 2008.
[52] *Supra* 58.
[53] *Supra* 59.
[54] *Supra* 60.
[55] *Supra* 61.
[56] *Docket* (Vol. III), pp. 1212-1213.
[57] *Rollo*, pp. 42-69.

> erroneously collected from petitioner on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.
>
> **SO ORDERED.**"

The parties filed their timely Motions for Partial Reconsideration[58] which the Court in Division resolved on April 28, 2015. Finding no merit in the motions for reconsideration and no valid justification to compel a modification or reversal of the assailed Decision, the Resolution denied the CIR and COC's Motion for Reconsideration and PAL's Motion for Partial Reconsideration.

As recounted in the earlier portion of this Decision, the parties timely filed their respective appeals via Petition for Review with the Court *En Banc.*

On June 26, 2015, CTA EB No. 1309 and CTA EB No. 1311 were consolidated with CTA EB No. 1308, the case bearing the lowest docket number by way of Minute Resolution.

In a Resolution dated July 20, 2015, PAL's counsel were ordered by the Court to show proof of compliance with the Mandatory Continuing Legal Education (MCLE) requirements.[59] On August 17, 2015, PAL filed its Compliance and Manifestation.[60]

In a Resolution dated September 16, 2015, the Court ordered the respondents to file their respective Comments on the Petitions for Review.[61] The CIR filed her Comment on October 21, 2015. The COC, on the other hand, posted its "Motion for Extension of Time to File Comment" via registered mail on October 22, 2015 which the Court received on November 2, 2015.

On November 4, 2015, the Court *En Banc* granted the COC's motion by way of Minute Resolution, giving the COC a final and non-extendible period of thirty (30) days or until November 22, 2015 within which to file his Comment on CTA EB No. 1309.

---

[58] The CIR filed its Motion for Partial Reconsideration on January 26, 2015, while the COC filed a similar motion on even date; and PAL filed its motion on January 28, 2015.
[59] *Rollo*, pp. 83-85.
[60] *Id.*, pp. 86-95.
[61] *Id.*, pp. 97-99.

On November 12, 2015, the COC posted another "Motion for Extension of Time to File Comment" by registered mail which the Court received on November 26, 2015.[62]

On December 1, 2015, the COC filed a "Motion for Reconsideration (Of the Resolution dated November 4, 2015)" by way of registered mail which the Court received on December 7, 2015.[63] The COC filed his Comment on December 22, 2015.[64]

On January 21, 2016, the Court *En Banc*, denied the COC's "Motion for Reconsideration (Of the Resolution dated November 4, 2015)" for lack of merit, but granted the COC's second "Motion for Extension of Time to File Comment" in the interest of substantial justice.[65]

On the other hand, per Records Verification Report dated January 25, 2016, PAL failed to file its Comment within the period given.

The Petitions for Review were given due course in a Resolution dated February 18, 2016, and the parties were ordered to submit their respective memorandum within thirty (30) days from receipt of the Resolution.[66]

On March 18, 2016, the COC filed his "Motion for Extension of Time to File Memorandum".[67] On even date, the CIR filed a "Manifestation" that she was adopting the arguments raised in her Petition as her Memorandum.[68]

On March 22, 2016, the Court *En Banc* granted the COC's motion and gave him until April 26, 2016 within which to submit his Memorandum.[69]

PAL submitted its Consolidated Memorandum on April 11, 2016[70] while the COC submitted his Consolidated Memorandum on April 25, 2016.

The CIR filed a "Manifestation" stating that she was adopting her arguments and discussion raised in her Petition and in her Comment as her

---

[62] *Id.*, pp. 114-119.
[63] *Id.*, pp. 127-134.
[64] *Id.*, pp. 135-142.
[65] *Id.*, pp. 144-148.
[66] *Id.*, pp. 149-152.
[67] *Id.*, pp. 153-157.
[68] *Id.*, pp. 158-161.
[69] *Id.*, p. 181.
[70] *Id.*, pp. 162-180.

Memorandum, which the Court noted by way of Minute Resolution dated March 23, 2015. Similarly, the COC also manifested that he was adopting his Petition and Comment as his Memorandum which was also noted by the Court by way of Minute Resolution dated April 27, 2015.

On May 17, 2016, the consolidated cases were submitted for decision.[71]

ISSUE

Is PAL entitled to its entire claim for tax refund of excise taxes paid on its importations of cigarettes, liquors and wines during the subject period?

THE ARGUMENTS OF THE PARTIES

In CTA EB 1308, the CIR argues that Section 131 of the NIRC, as amended by RA 9334, expressly withdrew the conditional tax exemption granted to PAL and mandates that all importations of cigarettes, liquor and wine shall be subject to the applicable taxes.

The CIR further argues that the letter of the law should prevail over the rules of construction, and that should construction be necessary, RA 9334 is the more specific law on the tax treatment of imported cigarettes, liquor and wine products. Besides, PAL failed to prove that its alcohol and tobacco importations were not locally available in reasonable quantity, quality, and price.

Lastly, the CIR argues that the exemption granted to PAL is not absolute and that to sustain PAL's interpretation of its franchise provisions would convert the conditional exemption to one that is absolute.

As the Court in Division partially granted PAL's claim for refund for its alcohol importations, PAL now argues in CTA EB 1309 that it also sufficiently proved its compliance with the requirements to entitle it to exemption from the payment of excise tax, especially since it had submitted the VAT Returns and a BIR Certification attesting to the payment of such. Furthermore, PAL argues that it presented uncontroverted evidence that some of the products it imported are not locally available in reasonable quantity, quality, or price.

---

[71] *Id.*, pp. 213-215.

On the other hand, in CTA EB 1311, the COC argues that Congress has already removed PAL's tax privilege under Section 13 of PD 1590 when it enacted the NIRC which originally included in Section 131 the phrase, "[t]he provision of any special or general law to the contrary notwithstanding..." and that Section 131 is the special law that must govern in this case.

Additionally, the COC argues that the subsequent amendment of Section 131 of the NIRC by RA 9334, which included fermented liquors in the enumeration of taxable articles, and withdrew the exemption of articles brought into the duly chartered or legislated freeports, repealed PAL's tax privilege under its franchise. Thus, no tax exemption may be claimed under the said provision.

The COC also argues that even assuming that PAL is still entitled to the tax privilege, it failed to prove that the subject alcohol products are not locally available in reasonable quantity, quality or price. While the Court in Division correctly denied the claim for tax refund for PAL's imported alcohol and liquor products for failure to present proof that PAL paid its VAT liabilities for the subject importation periods and for want of comparative data, it granted the refund of the remaining imported articles on the basis of the Comparative Table prepared by PAL's witness. It should have also denied PAL's claim for refund for its imported alcohol products as PAL never competently proved that the articles were not locally available in reasonable price at the time of its importation. The COC advocates that the requirement of "reasonableness in price" does not necessarily equate to the lowest or cheapest price.

THE RULING OF THE COURT

Subject to the Conditions Stated in Sec. 13 of PD 1590, PAL is Exempt from Taxes on Its Importations of Cigarettes, Liquor, and Wine for Its Commissary and Catering Supplies

It is paramount to impress upon the parties in this case that this Court upholds the principle of *stare decisis* which enjoins adherence by lower courts to doctrinal rules established by the Supreme Court in its final decisions.[72] It is based on the principle that once a question of law has been examined and

---

[72] *Ting vs. Ting*, G.R. No. 166562, March 31, 2009.

decided, it should be deemed settled and closed to further argument.[73] Basically, it is a bar to any attempt to relitigate the same issues[74], necessary for two simple reasons: economy and stability. This principle is entrenched in Article 8 of the Civil Code which states that "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

Given the foregoing, the questions of law that this case presents are not new. They have been previously resolved by the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[75], where it held:

> "Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, **the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334**. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc*:
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.[76] x x x
>
> To be sure, **the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated**. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue case*:
>
> > While it is true that Sec. 6 of RA9334 as previously quoted states that 'the provisions of any special or general law to the contrary notwithstanding,' such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to

---

[73] *Id.* citing *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, August 19, 2005, 467 SCRA 433, 440.
[74] *Id.* at 438.
[75] G.R. Nos. 212536-37, August 27, 2014.
[76] *Id.*, citing G.R. No. 180066, July 7, 2009, 592 SCRA 237, 261.

> specifically identify PD 1590 as one of the acts intended to be repealed. x x x
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.[77]

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue.*[78] In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,'[79] declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. The Court wrote in that particular case involving PAL's claim for refund of the excise taxes imposed on its purchase from Caltex (Phils.), Inc. of imported aviation fuel for domestic operations, thus:

[77] *Id.*
[78] *Id.* at Note 47, citing G.R. No. 198759, July 1, 2013, 700 SCRA 322.
[79] *Id.* at 336.

In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:

x x x x x x x x x

Based on the above-cited provision, **PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes that are 'directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement.' In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: *(a)* taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and *(b)* the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.[80]" *(Emphasis supplied)*

We affirm, therefore, the findings of the Court in Division, to wit:

"[I]t is evident that upon the exercise of petitioner of its option to pay basic corporate income tax or franchise tax, whichever is lower, the same shall be in lieu of all other taxes which include petitioner's excise taxes over its importations of wine, liquors and cigarettes.

There is, further, no merit in respondents' argument that the specificity of RA 9334 in its tax treatment on imported wine, liquors and cigarettes, categorizes it as a special law and

[80] *Id.* at 337-339.

as such, it should be deemed to have amended PD 1590. It has been explained that:

> 'A general statute is a statute which applies to all of the people of the state or to all of a particular class of persons in the state with equal force. It is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. It is one of universal application affecting the entire community. On the other hand, a special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only. x x x'[81]

Based therefrom, **RA 9334 cannot be considered as a special law because it applies to all of the people of the state and not to a particular person or thing of a class.** Thus, RA 9334 is undeniably a general law. Hence, in accordance with the foregoing rulings of this Court and consistent with the hornbook rule that **a general law cannot prevail over a special law, the tax exemptions granted by Section 13 of PD 1590 cannot be deemed to have been withdrawn by RA 9334.**

All told, Section 13 of PD 1590 remains to be applicable to petitioner vis a vis its exemption from payment of excise tax to be entitled to its present claim for refund." *(Emphasis supplied)*

Even prior to the Supreme Court's pronouncement in the *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[82] case, this Court has consistently adopted a similar position that RA 9334 did not amend or repeal the exemption granted to PAL under its franchise in a number of cases.[83] With the Supreme Court's imprimatur on this Court's interpretation of how the exemption provisions of PD 1590 operate in view of RA 9334, *We* find no reason for divergence.

---

[81] Ruben E. Agpalo, *Statutory Construction*, 5th Ed., 2003, pp. 276-277; citing *U.S. vs. Serapio*, G.R. No. L-7557, December 7, 1912; *Valera vs. Tuason*, G.R. No. L-1276, April 30, 1948; *Villegas vs. Subido*, G.R. No. 31711, September 30, 1971; and *Bagatsing vs. Ramirez*, G.R. No. 41631, December 17, 1976.
[82] *Id.* at Note 51.
[83] CTA EB No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 and 7746, August 24, 2012); CTA EB Nos. 942 and 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 and 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Nos. 920 and 922, September 9, 2013 (CTA Case Nos. 7665 and 7713, April 17, 2012); CTA Case No. 8153, January 17, 2013; CTA Case No. 7935, December 20, 2012; CTA Case No. 8361, March 26, 2014.

It is also apropos, at this point, to emphasize the legal principle that once the courts interpret or construe a law in a case, the same constitutes **a part of the law as of the date the statute is enacted.**[84] It is only when a prior ruling of the Supreme Court is overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith, in accordance therewith under the familiar rule of *lex prospicit, non respicit.*[85]

PAL's Evidence of Compliance with the Requirements for Exemption from Payment of Taxes on Its Imported Cigarettes and Alcohol

Finally, the Court will determine whether PAL is entitled to its claim for refund in the total amount of ₱4,571,907.13 excise taxes it paid under protest.

In order for PAL's cigarette and alcohol importations to be tax-free, it is necessary to determine whether or not PAL has complied with Section 13 of PD 1590. The said section provides as follows:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the **grantee shall pay** to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax:**
>
> (a) The **basic corporate income tax** based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A **franchise tax** of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

[84] *Id.* at Note 48.
[85] *Id.*

> The **tax paid by the grantee** under either of the above alternatives **shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; ***provided***, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price." *(Emphasis supplied)*

The above-quoted provision provides that payment of basic corporate income tax or franchise tax, in lieu of all other taxes, exempts PAL from the payment of excise tax on its importation of cigarettes, liquor and wine for as long as three requisites are complied with, namely:

1. PAL paid its corporate income tax and VAT liabilities for the subject period of importation;

2. the imported articles, supplies or materials are intended to be used in PAL's 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.

As recounted by the Court in Division in the assailed Decision, PAL presented the testimonies of its Manager of the In-flight Materials Purchasing Division, Corporate Logistics and Services Department, Ms. Cheryl V. Capinpin;[86] its Manager of Company Materials Handling Division, Mr. Jonathan Castillo Lee;[87] and its Senior Planning and Purchasing

[86] Exhibits "WWW" and "WWW-1".
[87] Exhibits "GGG" and "GGG-1".

Specialist of Catering and In-flight Materials Purchasing Sub-Department Corporate Logistics and Services Department, Mr. Gilbert M. Galedo.[88] PAL also presented the Informal Import Declaration and Entry,[89] Authority to Release Imported Goods (BIR Form No. 1918)[90], Mr. Gilbert M. Galedo's Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[91], Philippine Wine Merchants (PWM) Price Lists for the years 2006[92], 2007[93], 2008[94] and 2009[95], Future Trade International Price List dated April 8, 2009[96], Future Trade International Price List as of February 2009[97], Price List of Duty Free Philippines (as canvassed and attached to the Affidavit of Mr. Gilbert M. Galedo)[98] and Monthly Philippine Dealing System Rates for the years 2000 to 2007[99] in order to substantiate that it complied with the requirements for refund.

Upon review of the record, *We* agree with the Court in Division as to their finding that PAL indeed paid its corporate income tax for the years 2008 to 2010 as evidenced by its Annual Income Tax Returns for the Fiscal Years (FYs) ending March 31, 2008[100], March 31, 2009[101] and March 31, 2010[102]

As regards PAL's Quarterly VAT Returns for the first, second and third quarters of FY 2008, *We* find no reversible error in the Court in Division's finding that the amount of ₱348,400.32 corresponding to excise taxes paid on importations made during the said period should be deducted from PAL's claim. The Court in Division, in its Resolution[103] dated October 18, 2013, properly denied the admission of the Quarterly VAT Returns for the first, second and third quarters of FY 2008 for PAL's failure to present the original copies of the said documents for comparison.

PAL continues to argue that it was able to submit original print-outs of the VAT returns for the periods in question in its Motion for Reconsideration dated July 24, 2013, which it again submitted in its Motion

[88] Exhibits "TTT" and "TTT-1".
[89] Exhibits "I" to "Q" and "FF" to "NN".
[90] Exhibits "T" to "BB" and "QQ" to "YY".
[91] Exhibit "HHHH".
[92] Exhibit "PPP".
[93] Exhibit "QQQ".
[94] Exhibit "RRR".
[95] Exhibit "SSS".
[96] Exhibit "UUU".
[97] Exhibit "UUU-1".
[98] Exhibit "TTT".
[99] Exhibit "VVV".
[100] Exhibit "MMM".
[101] Exhibit "HHH".
[102] Exhibit "III".
[103] *Docket* (Vol. III), pp. 1212-1213.

to Admit Original Documents filed on November 25, 2014, and that it also submitted a Certification issued by the BIR recognizing that PAL paid VAT during the periods in question when it filed its Motion for Partial Reconsideration on January 28, 2015.

We uphold the Court in Division's decision not to give probative value to the same.

As regards the original print-outs of the VAT returns for the periods in question, the Court in Division discussed its rationale for the denial thereof in the assailed April 28, 2015 Resolution, thus:

> "[I]nstead of filing reconsideration thereof to present the original VAT returns, **petitioner awaited a period of more than one (1) year before acting on the said denial.** In fact, based on the case records, it was only on November 25, 2014 that petitioner resorted to file a Motion to Admit Original Documents **when the case has long after been submitted for Decision** on January 6, 2014. As held by this Court in the Resolution dated December 12, 2014:
>
> > 'A perusal of petitioner's motion reveals that petitioner's main purpose is for the admission of its previously denied exhibits. Evidently, petitioner re-offers the original copies of the denied exhibits and seeks the transfer of their respective markings to the said original copies. Petitioner attempts to circumvent the rules of procedure by surreptitiously guising a Motion for Reconsideration into a Motion to Admit Original Documents, in view of the fact that the allotted fifteen (15) day period within which to seek reconsideration of this Court's October 18, 2013 Resolution had already long prescribed.[104] By sleeping on its right, petitioner cannot invoke substantial justice to excuse its laxity in losing a remedy, especially when the law precisely provides the time within which to utilize the said remedy.'"

As regards the Certification PAL attached to its Motion for Partial Reconsideration, it is axiomatic that a court cannot consider any evidence

---

[104] Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals.

which was not formally offered.[105] Indubitably, no evidentiary value can be given to the pieces of evidence submitted by PAL attached to its motion, as the rules on documentary evidence require that these documents must be formally offered before this Court.[106]

As for the second requisite, PAL established compliance therewith by presenting ATRIGS issued by the CIR and addressed to the COC which provided that "the shipment to be released at the Port of Manila consisting of the described articles, will be used exclusively for international in-flight consumption."

It is with regard to the third condition which requires that the imported liquors, wines and cigarettes must not be locally available in reasonable quantity, quality, or price that the Court *En Banc* comes to a different conclusion.

We agree with the Court in 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, at least to the extent of ₱3,432,412.84 of the entire amount of excise tax payments PAL is claiming for refund.

The Court in Division denied the refund of the excise tax payment of ₱791,093.97 corresponding to the following liquors and wines as the local prices thereof were not available for comparison:

Import Batch No.	Product Imported	Unit Cost per Sales Invoice	Unit Cost per ATRIG	Unit Cost per IIDE	Excise Tax
5	Carlsberg Beer in Can	HK$51.00/case	US$6.56/case	US$12.29/case	₱90,525.60
		HK$2.13/can	US$0.27/can	US$0.51/can	
10	Volupta Blanco	€1.50/bottle	US$12.86/case	US$12.86/case	206,347.50
			US$2.14/bottle	US$2.14/bottle	
	Volupta Rosso	€1.40/bottle	US$12.00/case	US$12.00/case	344,462.76
			US$2.00/bottle	US$2.00/bottle	
11	Absolut Vodka	US$52.56/case	US$52.56/case	US$68.03/case	63,488.88
		US$4.38/bottle	US$4.38/bottle	US$5.67/bottle	
13	Absolut Vodka	US$52.56/case	US$52.56/case	US$69.70/case	63,488.88
		US$4.38/bottle	US$4.38/bottle	US$5.81/bottle	
14	Gordon's	US$39.93/carton	US$39.93/carton	US$53.93/carton	22,780.35

[105] Section 34, Rule 132, Revised Rules of Court. - "Section 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."
[106] *Coral Bay Nickel Corporation vs. CIR*, CTA Case No. 7895, January 27, 2015; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

	Gin	US$3.33/bottle	US$3.33/bottle	US$4.49/bottle	
				Total	**P791,093.97**

However, a perusal of the record shows that PAL's witness testified that as regards Items No. 10 in the above table, no local suppliers were available to supply the same brand. The pertinent portion of the testimony of Ms. Cheryl V. Capinpin during her cross-examination on April 3, 2013 is quoted below:

> "CROSS EXAMINATION OF PETITIONER'S WITNESS MS. CHERYL CAPINPIN BY ASSO. SOLICITOR ISAR O. PEPITO[107]
>
> ASSO. SOL PEPITO:
>
> Q x x x [W]e also notice Ms. Cheryl that some items in your Comparative Table do not contain comparative prices such as item number 10, 11, 13, and 14. Is it safe to assume that you were not able to obtain the prices in *(sic)* these items?
>
> A The reason why for example on shipment number 10 the Volupta [B]lanco we were not able to obtain the same brand from Duty Free Philippines, from Philippine Wine Merchant and from Future [T]rade simply because they do not have the same brand as what we are looking for the [V]olupta.
>
> Q Yes but you agree with me that there are no local suppliers in the Philippines selling the brand?
>
> A I guess there is none.
>
> Q You guess?
>
> A Because we are already talking to the direct distributor of the specific wine."

Given that there is positive testimony establishing that, as regards Item No. 10 in the table above, there are no local suppliers selling the brand, and, hence, no reasonable quantity thereof available locally, the amount of **₱550,810.26 should be refunded to PAL as well.**

[107] Transcript of Stenographic Notes (TSN) of hearing dated April 3, 2013, pp. 16-17.

The Law Imposes an Alternative, not Cumulative, Qualification for Exemption

In recent cases decided by the Court[108] interpreting the very same provision, the Court held that the law imposes an alternative, not cumulative qualification for the determination of whether importations under Sec. 13(2) of PD 1590 will be subject to the exemption and that it would suffice for petitioner to be able to prove even just one qualification out of the three -- not locally available in reasonable a) quantity, b) quality, or c) price.

In *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[109], the Court ratiocinated thus:

> "To allow petitioner's exemption from excise taxes under PD 1590, the third condition must be present, *i.e.* 'the articles materials or supplies should not be locally available in reasonable quantity, quality **or** price.'
>
> The word **"or"** signifies that a preference can be made among the presented alternatives. While initially confusing because the phrase is couched in the negative, simply put, as long as petitioner is able to prove the absence of one condition (**either** reasonable quantity, quality, **or** price), the exemption applies. Petitioner is not required to prove the absence of all three conditions.
>
> This was likewise the conclusion of the Supreme Court in the case of *Saludaga vs. Sandiganbayan*[110] where both petitioners were charged with having violated Section 3(e) of Republic Act No. 3019, by causing undue injury to the government, and the Court construed whether or not each of the acts mentioned in the subsection constituted a different offense for which they could be charged separately. The Supreme Court held:
>
> > 'In a string of decisions, the Court has consistently ruled:

[108] *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851, June 10, 2016; CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.
[109] CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.
[110] G.R. No. 184537, April 23, 2010.

> R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term or connotes that either act qualifies as a violation of Section 3 paragraph (e), or as aptly held in Santiago, as two (2) different modes of committing the offense. **This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.**[111]

> The afore-stated ruling is consistent with the well-entrenched principle of statutory construction that [t]he word *or* is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word.[112]'(Boldface and italics in the original)

Jurisprudence prior to *Saludaga* reveals similar findings by the Supreme Court. In the case of *Martin Centeno vs. Honorable Victoria Villalon-Pornillos, et al.*[113], a discourse on how the word "or" is to be used also obtains, to wit:

> 'In its elementary sense, "or" as used in a statute is a disjunctive article <u>indicating an alternative</u>. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.' (Emphasis supplied)

[111] Citing *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214; *Bautista v. Sandiganbayan*, G.R. No. 136082, May 12, 2000, 332 SCRA 126; *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377.

[112] Citing AGPALO, STATUTORY CONSTRUCTION, 2003, p. 204; see also *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009.

[113] G.R. No. 113092, September 1, 1994.

Similarly, in *Aquilino Q. Pimentel, Jr. vs. COMELEC*[114], the word **"or"** is further defined as provided in statutory construction, thus:

> 'A rule in statutory construction is that the word or is a disjunctive term signifying **dissociation and independence of one thing from other things enumerated** unless the context requires a different interpretation.' (Emphasis supplied)

To require petitioner to prove the absence of all three conditions -- locally available supply in reasonable quantity, quality and price -- would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.

At this juncture, it is worth noting that petitioner is a **public utility**. A public utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, **transportation**, telephone or telegraph service.[115] It exists for public use and public service and its services cannot be denied to anyone who is willing to pay for it. More than that, aside from being a public utility, petitioner is also a **common carrier**. Relevant provisions thereto under the Civil Code are as follows:

> 'Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of **carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.**

---

[114] G.R. No. 126394, April 24, 1998.

[115] *JG Summit Holdings, Inc. vs. Court of Appeals, et al.*, G.R. No. 124293. September 24, 2003, citing Almario, Generoso O., Transportation and the Public Service Law, 3rd ed. (1977), p. 267 citing 73 CJS 990-991; *Albano v. Reyes*, 175 SCRA 264 (1989) citing Am Jur. 2d v. 64, p. 549; *NAPOCOR v. Court of Appeals*, 279 SCRA 506 (1997).

> Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe **extraordinary diligence** in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. x x x
>
> x x x x x x x x x
>
> Art. 1755. A common carrier is bound to carry passengers safely as far as human care and foresight can provide, using the **utmost diligence of very cautious persons**, with a due regard for all the circumstances.' (Emphasis supplied)

It is evident from the above-quoted provisions that the law exacts from common carriers extraordinary diligence in its affairs, and the utmost diligence of very cautious persons when it comes to the safety of its passengers. As such, **the interpretation of the words "reasonable quantity, quality or price" must be one that carries out the mandate of the law to common carriers and one that affords it the most advantageous conditions of operations for its success. This would include an adequate source of materials of good quality, in adequate quantities, and at the lowest possible price, especially since that price is passed on to the public, its ultimate consumers.**

In exchange for the standard of diligence that the law requires that common carriers exercise, and considering the fact that, as a public utility, its operations are imbued with public service, the law grants the airline a concession -- that it can import the materials it needs tax-free, if the materials cannot be supplied by local industry in 'reasonable quantity, quality **or** price.'

Keeping in mind that all three factors must be taken into consideration when evaluating the viability of a supplier of such materials, as petitioner has manifested, the absence of one factor would disqualify such a supplier. The airline can then import the materials tax-free and need not show that the local suppliers fail in all the three criteria, otherwise the concession for the higher standard and the great responsibility that the law demands of them, will be for naught. It would be akin to 'what the left hand giveth, the right hand taketh away.'" *(Emphasis supplied)*[116]

We see no reason to disturb this interpretation of the provision of law that is at the heart of the matter in the cases at bar.

WHEREFORE, the Petition for Review of Philippine Airlines, Inc. in CTA EB No. 1309 is **PARTIALLY GRANTED** and the Petitions for Review of the Commissioner of Internal Revenue in CTA EB No. 1308 and the Commissioner of Customs and the Commissioner of Internal Revenue in CTA EB No. 1311 are **DENIED.**

Accordingly, the assailed Decision dated January 6, 2015 and the Resolution dated April 28, 2015 of the Court's Second Division in CTA Case No. 8514 are **MODIFIED** to the extent that the petition of Philippine Airlines, Inc. is **PARTIALLY GRANTED** in the reduced amount of **₱3,983,223.10** representing excise taxes erroneously collected from it on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

---

[116] *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs,* CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice