REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 8514**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** APR 2 8 2015 2:25 pm

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RESOLUTION

CASANOVA, *J.*:

Submitted before this Court are the following:

1. Respondent Commissioner of Internal Revenue's **Motion for Partial Reconsideration (Re: Decision promulgated 6 January 2015)**, filed on January 26, 2015, with petitioner's **Consolidated Comment [on the Motion for Reconsideration of the Respondents Commissioner of Internal Revenue and Commissioner of Customs]** filed on February 16, 2015;

2. Respondent Commissioner of Customs' **Motion for Reconsideration** filed, through registered mail, on January 26, 2015, with petitioner's **Consolidated Comment [on the Motion for Reconsideration of the Respondents Commissioner of Internal Revenue and Commissioner of Customs]** filed on February 16, 2015; and

3. Petitioner's **Motion for Partial Reconsideration,** filed on January 28, 2015, with respondent Commissioner of Internal Revenue's **Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision promulgated 6 January 2015)** filed on February 25, 2015, and respondent Commissioner of Customs' **Comment (On Petitioner's Motion for Partial Reconsideration)** filed, through registered mail, on March 23, 2015.

On January 6, 2015, this Court promulgated its Decision in the instant case, the *fallo* of which reads as follows:

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

Aggrieved, the parties filed their respective Motions for the reconsideration of the above Decision. Thus, in her Motion, respondent Commissioner of Internal Revenue (CIR) prays that the above Decision be set aside and a new one be rendered denying petitioner's entire claim for refund. She alleges that petitioner failed to substantiate its claim that the commissary supplies are not locally available in reasonable quantity, quality and price. She further asserts that Section 131[1] of the National Internal Revenue Code (NIRC) of 1997, as amended

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[1] **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.

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 by Republic Act No. 9334[2], expressly withdrew the conditional tax exemption granted to petitioner; which therefore, now subjects all importations of cigarettes, liquor and wine to the applicable taxes.

Whereas respondent Commissioner of Customs (COC), in his Motion, prays that the above Decision be reconsidered, and judgment be rendered dismissing the Petition for Review. He claims that the cited case *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[3] *("CIR vs. PAL case")* cannot be applied in the instant controversy since it had not yet attained finality. He, likewise, concurs with respondent CIR in asserting that Section 131 of the NIRC of 1997, as amended, has altered and partially repealed Presidential Decree No. 1590 (P.D. No. 1590) since it is the special law in the present controversy as it specifically deals with the excise taxability of petitioner's alcohol and tobacco importations. Nonetheless, respondent COC alleges that petitioner failed to prove that it complied with the

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chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.

[2] *"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"* dated January 1, 2005

[3] G.R. Nos. 212536-37, August 27, 2014

conditions specified in Section 13[4] of P.D. No. 1590 for it to be entitled to the said tax privilege.

On the other hand, petitioner, in its Motion, also moves for the partial reconsideration of the said Decision praying that its claim for refund or tax credit certificate for its erroneously paid excise taxes on importations of catering and commissary supplies, in the remaining amount of ₱1,139,494.29, should, likewise, be granted. Contrary to respondents' assertion, petitioner insists that it was able to sufficiently prove its compliance with the requirements under Section 13 of P.D. No. 1590, *to wit:*

a. Petitioner must pay its corporate income tax and the value-added tax for the taxable year involved;

b. It must import said supplies for its use in its transport and non-transport operations and other activities incidental thereto; and

c. The commissary and catering supplies imported are not locally available in reasonable quantity, quality or price.

After due consideration of the arguments presented by the parties, this Court finds the instant Motions without merit.

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[4] **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:

x x x

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

Perusal of the instant Motions reveal that the issues raised therein have already been analyzed and passed upon extensively in the assailed Decision. The grounds raised by the parties in their Motions did not raise anything new to merit reconsideration thereof.

Nonetheless, with respect to respondent COC's allegation that the *CIR vs. PAL case* "is not binding in this case since it had not yet attained finality", this Court reiterates that it merely cited the said case, not as a final ruling in consonance with the principle of *stare decisi et non quieta movere,* but rather, to point out that the Supreme Court had consistently held the same stand with regard to the issue that petitioner's exercise of its option to pay basic corporate income tax or franchise tax, shall be ***in lieu* of all other taxes**, which include petitioner's excise taxes over its importations of wine, liquors and cigarettes.[5] In fact, scrutiny of the *CIR vs. PAL case* evidently reveals that the pronouncement made therein originated from an earlier case, *PHILIPPINE AIRLINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE*[6], which this Court quoted in its Decision to bear emphasis on the Supreme Court's stand over said issue. Thus:

> "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.* 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,' 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. *x x x*"[7] *(Citation omitted)*

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[5] *See* also Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180043, July 14, 2009; and Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009
[6] G.R. No. 198759, July 1, 2013
[7] Decision p. 18, *citing* the CIR vs. PAL case

Lastly, as to petitioner's assertion that "notwithstanding the abovementioned *[Original Print-Outs of VAT returns]* submissions, the Honorable Court ruled that petitioner failed to establish by preponderant evidence that it filed and paid the value-added tax for the first, second and third quarters of 2008", this Court has already addressed the said issue. Going back, in the Resolution[8] dated October 18, 2013, this Court denied 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 the said documents for comparison. Thereafter, instead 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[9] on January 6, 2014. As held by this Court in the Resolution[10] 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.[11] 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."

Consequently, this Court finds no reversible error to disturb conclusions reached in the Decision dated January 6, 2015.

WHEREFORE, respondent CIR's Motion for Partial Reconsideration (Re: Decision promulgated 6 January 2015),

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[8] Docket (Vol. III), pp. 1212-1213
[9] Resolution, Docket (Vol. III), p. 1288
[10] Docket (Vol. III), pp. 1289-1291
[11] Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals

respondent COC's Motion for Reconsideration, and petitioner's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice