REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB No. 2166** (CTA Case No. 9435)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 1 1 2020 1:15pm

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DECISION

UY, *J.*:

The instant *Petition for Review*[1] was filed on November 8, 2019 by Philippine Airlines, Inc. (PAL) against the Commissioner of Internal Revenue (CIR), praying for the reversal and setting aside of the Decision dated August 8, 2019 and Resolution dated September 26, 2019, promulgated by the Second Division of this Court, in CTA Case No. 9435, entitled, *"Philippine Airlines, Inc., Petitioner vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

Decision dated August 8, 2019:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **DENIED** for lack of merit.

[1] EB Docket, pp. 12 to 38.

SO ORDERED."

Resolution dated September 26, 2019:

"**WHEREFORE,** the 'Motion for Reconsideration' of the Decision promulgated August 8, 2019 is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner 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.

Respondent CIR is the Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise taxes paid on wines, liquors and cigarettes under Section 142 and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent CIR holds principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 11, 1987, PAL was granted a franchise to operate air transport services domestically and internationally under Presidential Decree (PD) No. 1590, also 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."

Section 13 of PD No. 1590 provides for PAL's exemption from the payment of all taxes, duties and other fees and charges of any kind or nature on all importations of commissary and catering supplies, among others, and other articles, supplies or materials imported by PAL for the use in its transport and non-transport operations, as well as other activities incidental thereto provided, that such articles or supplies or materials are imported for its use in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

On January 1, 2005, Republic Act (RA) No. 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.

On July 1, 2005, Republic Act (RA) No. 9337, entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as Amended, and For Other Purposes" took effect, expressly and specifically amending PAL's franchise, and subjecting it to value-added tax (VAT). PAL's exemption from all other taxes was retained.

On various dates, PAL imported various cigarette and alcohol products constituting its commissary and catering supplies for use in its international flights which arrived at the Ninoy Aquino International Airport (NAIA). The importations of the commissary supplies were covered by various Informal Import Declarations and Entries (IIDE), Air Waybills/Bills of Lading (AWB/BL), and Authority to Release Imported Goods (ATRIG). Thereafter, on August 22, 2014, PAL paid under protest the excise taxes thereon.

In view of the payment of the necessary excise taxes, the imported various cigarette and alcohol products constituting its commissary and catering supplies for use in its international flights were released to PAL.

Thereafter, on August 22, 2016, PAL filed before the CIR a claim for refund. Likewise, on the same date, PAL filed a Petition for Review before the Court in Division, praying for the refund or issuance of a tax credit certificate in the total amount of ₱7,454,833.06, representing excise taxes imposed and paid under protest by PAL on August 22, 2014.

In his Answer filed in CTA Case No. 9435 on September 22, 2016, the CIR interposed the following special and affirmative defenses, to wit:

1. The amount of ₱7,454,833.06 being claimed by PAL as specific tax allegedly paid on August 22, 2014 was not properly documented;

2. PAL must prove that the amount sought to be refunded as erroneously paid taxes within the purview of Sections 204 and 229 of the NIRC of 1997, as amended;

3. Section 13 of PD No. 1590 has been expressly repealed by Section 6 of RA No. 9334, which took effect on January 1, 2005;

4. The third paragraph of Section 131 of the NIRC of 1997, as amended by RA No. 9334, reveals the unmistakable intent of Congress to withdraw tax exemptions granted to PAL under Section 6 of PD 1590;

5. PAL made the alleged payments on August 22, 2014. Counting two years therefrom, the petition should have been filed on August 11, 2016. However, the same was only filed on August 22, 2016. Thus, the claim for refund was filed out of time; and

6. Moreover, PAL filed its administrative claim for refund on August 22, 2016, with respondent's Regular Large Taxpayers Audit Division II, the same day it filed the Petition for Review before the Court in Division. PAL's claim for refund is subject to administrative investigation/examination by the CIR. Pending the closure of this investigation, no grant of refund may be given to PAL based on the filed claim.

After the pre-trial conference held on January 19, 2017, the parties filed their *Joint Stipulation of Facts* on February 6, 2017. The same was approved and adopted in the Court's *Pre-Trial Order* (PTO) dated February 13, 2017.

On March 20, 2017, PAL filed its *Motion to Avail of the Provisions of Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals,* praying that Enrico T. Pizarro of ETP and Associates Co. be duly commissioned to conduct the audit and examination of PAL's voluminous documents and/or long accounts, pursuant to Section 5, Rule 12 of the RRCTA. PAL's *Motion* was granted during the hearing held on August 23, 2017 and Pizarro was ordered to submit his Independent Certified Public Accountant (ICPA) Report within thirty (30) days, or until September 22, 2017.

PAL filed its *Supplemental to the Petition for Review dated 19 August 2016* on April 21, 2017, as well as a *Manifestation [To: The*

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Supplemental To The Petition for Review Dated 19 August 2016] on April 25, 2017, amending its claim to include the amount of ₱1,529,918.87, to its initial claim of ₱7,454,833.06, for a total claim for refund in the amount of ₱8,984,751.93. In the Resolution dated June 27, 2017, the subject *Supplemental to the Petition for Review* was admitted, while the *Manifestation* was noted.

On July 20, 2017, the parties filed their *Amended Joint Stipulation of Facts*, and an *Amended Pre-Trial Order* was issued on July 31, 2017.

During trial, PAL presented documentary and testimonial evidence to substantiate its claim for refund. PAL presented four (4) witnesses, namely: 1) Jonathan R. Castillo Lee, 2) Ruel Ryan O. Julian, 3) ICPA Enrico T. Pizarro, and 4) Cheryl V. Capinpin. Thereafter, PAL formally offered its documentary evidence, which were admitted by the Court in the Resolution dated April 2, 2018.

During the scheduled initial presentation of respondent's evidence on July 25, 2018, counsel for the CIR manifested that there is no report of investigation and that he is submitting the case for decision. Hence, the parties were given a period of thirty (30) days within which to file their Memoranda.

On October 12, 2018, the case was submitted for decision, taking into consideration the CIR's Memorandum filed on August 16, 2018 and PAL's Memorandum filed on September 24, 2018.

In the assailed Decision[2] dated August 8, 2019, the Court in Division denied PAL's Petition for Review for lack of merit.

PAL filed its *Motion for Reconsideration* on August 28, 2019, to which the CIR filed his *Opposition (Re: Motion for Reconsideration of the Decision promulgated on 8 August 2019)* on September 13, 2019.

In the assailed Resolution[3] dated September 26, 2019, the Court in Division denied the Motion for Reconsideration for lack of merit.

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[2] EB Docket, pp. 41 to 64.
[3] EB Docket, pp. 65 to 70.

Undaunted, PAL filed a *Motion for Extension of Time to File Petition for Review* on October 24, 2019.[4] In the Resolution[5] dated November 5, 2019, the subject Motion was granted and PAL was given a final and non-extendible period of fifteen (15) days from October 24, 2019, or until November 8, 2019, within which to file its Petition for Review.

On November 8, 2019, PAL filed the instant *Petition for Review*.[6] In the Resolution[7] dated December 13, 2019, respondent was directed to file his Comment on the Petition for Review, within ten (10) days from notice.

With the filing of respondent's *Comment (Re: Petition for Review)*[8] on January 8, 2020, this case was submitted for decision on January 29, 2020.[9] Hence, this Decision.

ISSUES

PAL raises the following assignment of errors in its Petition for Review, to wit:

> "With all due respect, PAL humbly submits that the CTA-Division erred in dismissing the *Petition for Review* for the following reasons:
>
> 10.1 PAL complied with the procedural requirements laid down in Section 229, Tax Code;
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> 10.2 It is evident that the subject imported wines, liquors, and cigarettes were exclusively used for PAL's flight and non-flight operations and other incidental activities; and
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> 10.3 The subject imported wines, liquors and cigarettes were not locally available in reasonable quantity, quality, or price."[10]

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[4] EB Docket, pp. 1 to 10.
[5] EB Docket, pp. 11.
[6] EB Docket, pp.12 to 38.
[7] EB Docket, pp. 73 to 74.
[8] EB Docket, pp. 75 to 81.
[9] EB Docket, pp. 83 to 84.
[10] EB Docket, pp. 20 to 21.

Petitioner's arguments:

PAL contends that though admittedly, its administrative and judicial claims for refund were both filed on 22 August 2016, clearly, the administrative claim for refund was filed ahead of, or prior to, the filing of the Petition for Review docketed as CTA Case No. 9435.

As aforestated, petitioner filed with the BIR a written request for refund of the excise taxes paid under protest on the subject importations of assorted liquor, wine and cigarettes. And in view of the impending lapse of the two (2) year prescriptive period, petitioner filed the Petition for Review (CTA Case No. 9435) with the Court in Division wherein it attached thereto an original of its administrative claim for refund dated 19 August 2016 duly filed with the BIR – Regular Large Taxpayers Audit Division II on 22 August, 2016[11].

As corollary, petitioner states that the Petition for Review itself is a clear indication that PAL filed its administrative claim for refund prior to the filing of the present judicial claim for refund in compliance and in accordance with Section 204 in relation to Section 229, Tax Code and relevant jurisprudence.

Moreover, PAL contends that it was able to submit pieces of evidence to clearly establish the purpose as to why the subject wines, liquors, and cigarettes were imported, that is to be exclusively used for its flight and non-flight operations and other incidental activities.

Lastly, PAL also avers that the Court in Division ruled that PAL presented insufficient evidence to prove that the subject imported wines, liquors, and cigarettes are not locally available in reasonable quantity, quality, or price. However, PAL submits that the CTA-Division failed to appreciate the preponderant and uncontroverted evidenced that it adduced. It must be noted that the CIR never presented anything to counter PAL's preponderant evidence. Hence, its preponderant evidence is uncontroverted.

Respondent's counter-argument:

Respondent points out that the Second Division of the Honorable Court categorically stated in its Decision that petitioner

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[11] Division Docket (CTA Case No. 9435), Vol. I, pp. 36 to 54.

simultaneously filed both its administrative claim and judicial claim on August 22, 2016.

Clearly, petitioner failed to establish that prior to the judicial claim for refund, administrative claims for refund were in fact filed with the respondent CIR in compliance with Section 229 (of the Tax Code). There is allegedly non-compliance considering that both the administrative claim and the judicial claim for refund were simultaneously filed on August 22, 2016. Evidently, there is violation of Section 229 of the law which requires that an administrative claim be filed prior to the judicial claim.

Failure to seek relief initially at the administrative level would result in dismissal of the judicial claim for refund once it is elevated to the Court of Tax Appeals (CTA).

Moreover, respondent points out that the Court (In Division) found that the claim for refund are unsupported by substantial evidence. Hence the denial of its refund claim.

The CIR stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT *EN BANC*'S RULING

After careful review and consideration of the evidence presented in the instant case, the Court finds petitioner to have partially complied with the legal requirements.

The filing of the administrative claim and judicial claim on the same day does not comply with the requirements set forth in Section 229 of the NIRC of 1997, as amended.

Section 229 of the NIRC of 1997, as amended, pertinently provides as follows:

> "**Section 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** **–** **No suit or proceeding shall be maintained in any court** for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases supplied.)*

From the foregoing provisions, it is clear that within two (2) years from the date of payment of tax, the claimant must *first* file an administrative claim with the CIR, before filing its judicial claim with the courts of law. Both claims however must be filed within a two (2) year reglementary period.

PAL contends that it filed its administrative claim for refund with the CIR prior to the filing of its judicial claim for refund.

It appears however, that in interpreting the meaning of the word "**prior,**" which means "*preceding in time or order*" or "*taking precedence,*"[12] petitioner has overstretched the meaning thereof, to justify its supposed compliance with the legal requirement of **"prior filing"**.

To the mind of the Court *En Banc,* even if admittedly, the administrative claim for refund was filed with the CIR prior to the filing of the judicial claim with this Court, it was nevertheless, done on the same day.

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[12] Black's Law Dictionary, 8th Edition, 2007, p. 1231.

Hence, it becomes necessary to look into the purpose why prior filing of an administrative claim for refund with the CIR is legally mandated before resorting to judicial recourse.

In the case of "*Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*" *(or Goodyear case),*[13] it was held that the primary purpose of requiring the prior filing of an administrative claim, therefore, was to give notice or warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. Thus, while it does not mean that the taxpayer must await the final resolution of its administrative claim for refund,[14] the law still requires the *prior* filing of the administrative claim, before a judicial claim is filed before the Court in Division.

In this case, PAL paid, under protest, excise taxes in the total amount of ₱8,984,751.93[15] to the Bureau of Customs on August 22, 2014. Thus, PAL had two (2) years, or until August 22, 2016, within which to file its claim for refund. On August 22, 2016, PAL filed both its administrative claim[16] and its Petition for Review[17] before the Court in Division on the *same day.*

In light of the rationale elucidated by the Supreme Court in the *Goodyear* case, this Court sustains the findings of the Court in Division that PAL failed to comply with the statutory requirement of "**prior filing**" set forth in Section 229 of the NIRC of 1997, as amended.

As earlier mentioned, PAL is not expected to await the decision of the CIR on its administrative claim for refund, before it files a Petition for Review before the Court in Division. However, the filing of both the administrative claim and judicial claim for refund on the *same day*, is akin to the concurrent filing of the subject claims, and falls short of fulfilling its primary purpose, which is to give the CIR an opportunity to act on the administrative claim.

It bears stressing that PAL had sufficient time, or two (2) years within which to file both its administrative and judicial claims, and it

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[13] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.,* G.R. No. 216130, August 3, 2016.
[14] *Id.*
[15] Exhibits "P-154" to "P-163," Division Docket (CTA Case No. 9435), Vol. I, pp. 205 to 214.
[16] Division Docket (CTA Case No. 9435), Vol. I, pp. 36 to 54.
[17] Division Docket (CTA Case No. 9435), Vol. I, pp. 10 to 31.

proffered no reasonable explanation as to why it resorted to the filing of both claims on the *same day*, depriving the CIR of any opportunity to act on the said claim. For this reason, PAL's Petition for Review in CTA Case No. 9435 was correctly denied by the Court in Division for its failure to comply with the requirement that its administrative claim must have been filed prior to the filing of its judicial claim. In other words, the administrative claim must not be filed on the same day as the filing of the judicial claim.

We shall now look at petitioner's compliance with the remaining legal requirements in pursuing its refund claim.

Requisites for the exemption from all taxes, under Section 13 of P.D. No. 1590.

Section 13 (b) (2) of PD No. 1590[18] enumerates the conditions that PAL must comply with, in order to avail of the excise tax exemption for its imported supplies, to wit:

> "**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 non-transport 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.
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> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes,**

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[18] 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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> **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**; x x x." *(Emphases supplied)*

Based on the foregoing provision, PAL must comply with the following requisites, in order to be exempted from paying taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies, to wit:

1. It 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.

In the instant case, PAL's compliance with the first requisite was not put into issue.

The crux of the controversy, however, lies in the factual findings of the Court in Division that PAL failed to comply with the second and third requisites. Relative thereto, PAL argues that it was able to adduce sufficient proof that the subject imported articles were to be exclusively used for its flight and non-flight operations, and other incidental activities, and that these were not locally available in reasonable quantity, quality, or price.

The Court En Banc gives credence to PAL's evidence that the subject imported articles were to be used exclusively for its flight and non-flight operations.

In the instant case, the Court in Division ruled that the IIDEs designating the imported commodities as inflight materials; ATRIGs bearing notations that the subject articles would be used for international flight consumption; and the testimony of the Manager of PAL's In-Flight Materials Purchasing Division, are insufficient to prove that such articles were exclusively used for PAL's transport and non-transport operations.[19]

According to PAL, however, the abovementioned evidence is adequate to prove that the subject imported wines, liquors, and cigarettes are to be exclusively used for its flight and non-flight operations and other incidental activities.

We agree with petitioner.

An ATRIG is a document that is issued by the CIR, or his duly authorized representative, in accordance with the procedures set forth in Revenue Memorandum Order (RMO) No. 35-2002,[20] and the same is addressed to the Assistant Commissioners, Regional Directors, Revenue District Officers and others concerned, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable. Pertinent portions of RMO No. 35-2002 reads as follows:

> "II. Policies and Guidelines
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> xxx xxx xxx

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[19] EB Docket, p. 61.

[20] SUBJECT: Prescribing the Guidelines and Procedures in the Processing and Issuance of AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) for Excise and Value-Added Tax Purposes.

6. Proper coordination with the authorized representatives of the Bureau of Customs shall always be maintained if an ocular inspection is needed in order to verify the actual description of the imported article or to secure a sample thereof for purposes of laboratory analysis.

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8. Applications for ATRIG with legal issues on the taxability or exemption of the imported articles shall be referred to the Legal Division of the Regional Office or to the Law Division, National Office, as the case may be, for appropriate resolution. x x x.

For issues not requiring legal resolution, samples of the imported goods requiring laboratory analysis shall be referred to the BIR Laboratory Section National Office, for appropriate action. In this connection, physical laboratory analysis/comment/evaluation shall be conducted on samples of every shipment of alcohol and alcohol products, petroleum products, and such other articles to determine its taxability and proper tax classification. x x x.

In the event that the correct product classification and basis of taxation of imported article can be sufficiently determined on the basis of acceptable Certificate of Analysis and/or Material Safety Data Sheet (MSDS) together with complete product specification and/or product data/information, whichever is applicable, the conduct of actual laboratory analysis may be dispensed with. x x x.

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11. The issuing RDO/ETDO shall ensure that the articles subject to excise tax, whether taxable or exempt, are delivered to the importer's place of business/production. For this purpose, the Revenue Officer(s) assigned to process the application for ATRIG shall be designated to supervise the release of imported articles from the customs premises up to the importer's place of business/production. In addition to the foregoing, proper coordination and/or notification shall be made by the ATRIG issuing office to the BIR office having

jurisdiction over the excise tax establishments with Revenue Officer(s) Assigned on Premises (ROOPs). Such notification shall be made prior to the release of imported articles from customs custody to ensure that said ROOPs are duly alerted on incoming deliveries/shipments.

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III. PROCEDURES

A. REVENUE DISTRICT OFFICE (RDO) HAVING TERRITORIAL JURISDICTION OVER THE PORT OF ENTRY

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REVENUE OFFICER ASSIGNED TO PROCESS THE APPLICATION FOR ATRIG

1. Process the application:

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f. **Require submission of the following, <u>in cases where there are doubts on the representations made by the importer on its application</u>, whichever is applicable:**

> i. **Samples of the imported goods to be taken directly and personally from the shipment by the processing revenue officer and/or BIR laboratory representatives for BIR laboratory analysis.**
>
> ii. **Literatures/brochures/product data containing product description of imported goods.**
>
> iii. **Certification from appropriate regulatory government offices authenticating the representations made by the importer/applicant.**

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iv. Conduct actual ocular inspection of motor vehicles.

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5. Coordinate with importer as to the exact details of release from customs custody (date, time, mode of delivery and place of destination of the imported articles), in cases where the ATRIGs are issued for excise tax purpose." *(Emphases and underscoring supplied)*

From the foregoing, it is clear that an ATRIG is not simply issued upon the filing of the application by the importer. Under the RMC, the responsible officers are tasked to conduct verifications and follow specific processes prior to the issuance of an ATRIG, such as, but not limited to the following: 1) proper coordination with the authorized representatives of the BOC and with the importer as regards the pertinent importation; 2) the determination of whether there are issues for legal resolution; and 3) the determination of whether there is a need for the submission of certain information "*in cases where there are doubts on the representations made by the importer on its application.*"

Considering that the issuance of an ATRIG is not merely clerical, and is actually pursuant to a meticulous process of verification, this Court finds that due weight should be given to the contents thereof. In particular, the statement in the subject ATRIGs,[21] stating that the shipment is for "international inflight consumption," must be given weight, under Section 44, Rule 130 of the Rules of Court, which provides as follows:

"**SEC. 44.** ***Entries in official records.*** — **Entries in official records made in the performance of his duty by a public officer of the Philippines**, or by a person in the performance of a duty specially enjoined by law, **are *prima facie* evidence of the facts therein stated.**" *(Emphases supplied)*

The subject ATRIGs, therefore, must be accorded probative value, with regard to establishing PAL's compliance with the second requisite to avail of the tax exemption under Section 13 (b) (2) of PD No. 1590, *i.e.,* that the importations of commissary and catering

[21] Exhibits "P-101" to "P-148," and "P-218.3.1" to "P-218.3.47," Division Docket (CTA Case No. 9435), Vol. I, pp. 152 to 199 and CD (Annexes to the ICPA Report).

supplies are for PAL's use in its transport and non-transport operations and other activities incidental thereto.

Anent the testimony of PAL's witness, Cheryl Capinpin,[22] Manager of its In-Flight Materials Purchasing Division, the Court *En Banc* finds her testimony to be competent and credible, having testified of her personal knowledge. To be specific, she testified that as the Manager of the In-Flight Materials Purchasing Division, her duties include the efficient and effective planning, procuring, and control of all foreign and local materials, supplies, equipment and services, among others, for the *In-flight* Materials Purchasing Division. In this case, PAL imported alcohol, liquor and tobacco products for its *catering and commissary supplies*, because the importation of the said products is cheaper and reasonably priced than purchasing them locally.[23]

To the mind of this Court, the foregoing evidence proffered by PAL is sufficient to establish its compliance with the second requisite, that the commissary and catering supplies imported were for its use in its transport and non-transport operations.

PAL was able to adduce sufficient evidence that some of the subject imported wines, liquors, and cigarettes were not locally availably in reasonable quantity, quality, or price.

In the instant case, the Court in Division found that the testimony of the Manager of PAL's In-flight Materials Purchasing Division, who compared the prices of its tobacco and alcohol products with the local list of Philippine Wine Merchants, Future Trade International, and RMC No. 90-2012, are insufficient to prove that the prices listed represent the local market price of the subject goods.

PAL, however, avers that it was able to prove that the subject imported wines, liquors, and cigarettes are not locally available in reasonable quantity, quality, or price.

We partially agree.

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[22] Judicial Affidavit, Division Docket (CTA Case No. 9435), Vol. III, pp. 1023 to 1037.
[23] *Id.* at 1025.

As a general rule, taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the claimant and liberally in favor of the government.[24] This is the reason why a claimant must adduce evidence to prove its compliance with the statutory requirements, before it can be declared entitled to its claim for refund.

Once the requirements laid down by law are shown to have been met, however, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, or the CIR.[25] Since claims for refund are civil in nature, a claimant need only prove *preponderance of evidence* in order to be entitled to its claim for refund.[26]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term '*greater weight of the evidence*' or '*greater weight of the credible evidence*.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[27]

In this case, a review of the evidence on record, shows that PAL was able to *partly* establish by a preponderance of evidence, that the commissary and catering supplies it imported were not locally available in reasonable quantity, quality, or price.

To prove its entitlement to its claim for refund in the amount of ₱8,984,751.93, PAL proffered the testimony of Cheryl Capinpin,[28] Manager of its In-Flight Materials Purchasing Division, who testified that PAL imported alcohol, liquor and tobacco products for its *catering and commissary supplies*, because the importation of the said products is cheaper and reasonably priced than purchasing them locally.[29]

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[24] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.
[25] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.
[26] *Id.*
[27] *Id.*, citing *Peñalber v. Ramos*, G.R. No. 178645, January 30, 2009.
[28] Judicial Affidavit, Division Docket (CTA Case No. 9435), Vol. III, pp. 1023 to 1037.
[29] *Id.* at 1025.

In support of her testimony, PAL offered into evidence the following documents: 1) Examination of quotations for local suppliers and summary of imported goods not available locally for taxable year 2014;[30] 2) Examination of quotations for local suppliers, summary of imported goods with purchase price lower than quoted price from local suppliers for taxable year 2014;[31] 3) Examination of quotations for local suppliers, as well as summary of imported goods locally available in reasonable price for taxable year 2014;[32] 4) Summary of imported goods with no local quotations for taxable year 2014;[33] 5) Philippine Wine Merchants Price List dated 27 January 2012;[34] 6) Future Trade International Price List dated 15 July 2013;[35] 7) Table of Prices by Fast Trax Corporation;[36] 8) Request for Quotation dated 21 June 2013;[37] and 9) Letter dated 12 July 2013.[38]

In addition, in the Final Report[39] of ICPA Pizarro, it was reported that out of ₱8,984,751.93, PAL was only able to meet the requirements for tax exemption for the amount of ₱6,570,286.23, to wit:

Particulars	**Exhibit/ Reference No. in ICPA Report**	**Excise Tax (in Php)**
A. In compliance with Section 13 of PD 1590 as the imported goods are not locally available in reasonable quality, quantity or price.		
1. Not available in local supplier.	Exhibit P-208; Binder 1	₱4,763,971.15
2. Purchase price is lower than quoted price of local supplier.	Exhibit P-209; Binder 1	1,806,315.09
Subtotal		**₱6,570,286.23**
B. Imported goods locally available in reasonable price	Exhibit P-210; Binder 1	₱1,027,765.70
C. Imported goods with no local quotation	Exhibit P-211; Binder 1	1,386,700.00
TOTAL		₱8,984,751.93

30 Exhibit "P-208."
31 Exhibit "P-209."
32 Exhibit "P-210."
33 Exhibit "P-211."
34 Exhibit "P-212."
35 Exhibit "P-213."
36 Exhibit "P-214."
37 Exhibit "P-216."
38 Exhibit "P-217."
39 ICPA Report, p. 6 and 11.

Taken together, the foregoing evidence presented by PAL, successfully shifted the burden of evidence to the CIR, which burden, was not discharged in this case. To be precise, in contrast to PAL, the counsel for the CIR did not cross-examine most of PAL's witnesses,[40] did not object to PAL's offer of evidence,[41] nor did said counsel present any counter evidence for the CIR.[42] Thus, PAL's evidence remained unrebutted, in the absence of any evidence to controvert the same.

Notwithstanding the foregoing factual findings on petitioner's partial compliance with the legal requirements for its entitlement to its refund claim, this Court is constrained to *affirm* the assailed Decision and Resolution of the Court in Division denying PAL's Petition for Review in CTA Case No. 9435.

As discussed earlier, PAL failed to comply with the requirement of "***prior filing***" of its administrative claim with the BIR, because it filed its administrative and judicial claims on the *same day*. The same-day filing of the subject refund claims falls short of the requirement stated in Section 229 of the NIRC of 1997, as amended, and is ultimately fatal to petitioner's claim.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated August 8, 2019 and the Resolution dated September 26, 2019 rendered by the Second Division of this Court in CTA Case No. 9435 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[40] TSN dated August 23, 2017, pp. 7 and 11; and TSN dated February 7, 2018, pp. 3 and 6.
[41] Division Docket (CTA Case No. 9435), Vol. III, pp. 1157 to 1159.
[42] Division Docket (CTA Case No. 9435), Vol. III, p. 1169.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice