REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., *Petitioner,*	CTA EB No. 1162 (CTA CASE No. 8236)
-versus-	
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, *Respondents.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1167 (CTA CASE No. 8236)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
PHILIPPINE AIRLINES, INC., (PAL) *Respondent.*	Promulgated: SEP 05 2016 4:27 p.m.

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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution are the Commissioner of Internal Revenue's Motion for Partial Reconsideration (RE: Decision promulgated in 07 January 2016) and Philippine Airlines, Inc.'s, (PAL) Motion for Reconsideration, both seeking for the reversal of this Court's Decision[1] promulgated on January 7, 2016, the dispositive portion of which reads as follows:

> Decision dated January 7, 2016:
>
> "**WHEREFORE** premises considered, the respective Petitions for Review of the parties are hereby **DENIED**. The Decision and Resolution of the Special First Division of this Court in CTA Case No. 8236 dated December 18, 2013 and April 10, 2014 are hereby **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED."**

The CIR, in her motion, contends that this Court erred in partially granting PAL's claim for refund in the amount of P3,131,639.31, representing erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.

The CIR explains that the claim for tax refund must fail because the tax privilege under Section 13 of P.D. No. 1590 has been expressly withdrawn by Congress with the enactment of R.A. No. 9334. She further argues that Section 13 of P.D. No. 1590 is irreconcilable with R.A. No. 9334 because the latter specifically deals with excise tax on alcohol and tobacco importations, which did not reinstate PAL's tax privilege. Thus, strongly bearing emphasis on the fact that the legislative intent is to subject PAL's importations of cigars and cigarettes, and distilled spirits and wines to all applicable taxes, duties, and charges, including, excise tax.

Accordingly, it is also pointed out by the CIR that PAL failed to present credible and independent evidence to substantially prove compliance with the requirements set forth under the law which mandates that the commissary supplies are not locally available in reasonable quantity, quality, and price.

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[1] En Banc docket, pp. 584-601.

On the other hand, PAL, in its motion, assails the decision on the ground that this Court erred in ruling that it is not entitled to a full refund of the excise taxes paid on its importations. It insists that it has sufficiently proven that the commissary supplies are not locally available in reasonable quantity, quality, or price.

This Court finds both motions bereft of merit. There is no compelling reason to reverse or modify the assailed Decision. The issues raised herein by the parties in their respective motions have been exhaustively addressed. Nonetheless, the Court still deems it appropriate to pass upon the arguments.

We cannot stress enough that the controversy is not novel. The recurring issue on PAL's tax privilege has already been settled by the Supreme Court in several pronouncements. PAL remains to be exempt from any taxes, duties, charges, royalties, registration, license, and other fees and charges under its franchise.

A careful reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption. Sections 13 and 24 of P.D. 1590 provide as follows:

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> **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:
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> (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
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> (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.
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> **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:**
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> xxx xxx xxx
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> **Section 24.** This franchise, as amended, or **any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof.** (Emphasis supplied)

Relevantly, Sections 6 and 10 of R.A. 9334 provide:

> **SEC. 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. –
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> xxx xxx xxx
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> "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 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."

SEC. 10. Repealing Clause. - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the

> provisions of this Act are hereby repealed, amended or otherwise modified accordingly."

Contrary to the CIR's assertion, the afore-cited provisions cannot be considered to have expressly repealed or modified PAL's tax exemption because P.D. 1590, a special law, categorically requires an **express amendment or repeal of the grant of exemption.** (Emphasis Supplied)

Even with the enactment of R.A. 9337[2], a much later law that abolished the franchise tax under PAL's and other domestic airlines' charter, and subjected them to corporate income tax and value-added tax opted not to include P.D. 1590 in the enumeration of those liable to pay excise tax. Section 22 of R.A. 9337[3] even explicitly provides that PAL shall remain exempt from any taxes, duties, royalties, etc., as may be provided in P.D. 1590.

To reiterate, in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.,*[4] the Supreme Court held:

> "It is a basic principle in statutory construction that a later law, general in terms, and **not**

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[2] Republic Act No. 9337

"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"

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SEC. 26. Effectivity Clause. - This Act shall take effect on July 1, 2005.

[3] **SEC. 22. Franchises of Domestic Airlines**.- The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchisetax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

(A) The franchise tax is abolished;
(B) The franchisee shall be liable to the corporate income tax;
(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
(D) The **franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement**.

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

expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of the earlier statute."

Indeed, as things stand, P.D. 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 P.D. 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of R.A. 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."

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To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under P.D. 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 R.A. 9334 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 specifically identify PD 1590 as one of the acts intended to be repealed**"

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Under the premises, PAL's tax exemption under P.D. 1590 subsists, notwithstanding the passage of R.A. 9334 and R.A. 9337.

Nevertheless, while we have sustained PAL's exemption from Section 13 of the franchise, it is imperative for PAL to show competent evidence that it has complied with the requirements set forth under the afore-mentioned provision, particularly regarding the unavailability of such imported articles locally in reasonable quality, quantity or price.

In the assailed Decision, PAL was able to establish its entitlement to a refund in the amount of P3,131,639.31, representing erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies. A perusal of the comparative price list corroborated the testimony of its Manager for In-Flight-Materials Purchasing Division, Ms. Cheryl Capinpin. Regrettably, it was unable to do so on its importations of cigarette products.

This Court cannot give evidentiary value to the attached letter of the National Tobacco Administration dated Februay 1, 2013 containing a list of the brands of locally manufactured cigarettes and imported cigarettes and corresponding importers of the same pursuant to Section 34, Rule 132[5] of the Rules on Evidence. The rule requires that such document must have been formally offered during trial.

Given the circumstances at bar, there are no other reliable data left through which this Court may evaluate and verify that the cost of importing the subject cigarettes are indeed reasonably lower than purchasing them locally, other than the testimony of PAL's In-Flight Manager. Incidentally, an uncorroborated testimony is just a mere conclusion based on conjectures and assumptions which definitely bears no credence.

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[5] Revised Rules on Evidence, as amended per Resolution adopted on March 14, 1989

RULE 132
Presentation of Evidence

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C. OFFER AND OBJECTION

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.

In sum, despite the exemption from payment of excise taxes, PAL was not able to prove compliance with the requirements set forth by Section 13 of P.D. 1590. Again, it is settled in a long line of cases that claims for tax refund or credit, like claims for tax exemption, are construed strictly against the taxpayer[6]. As already stated in the assailed Decision, *the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund*[7].

In view of the foregoing, this Court sees no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the CIR's Motion for Partial Reconsideration (RE: Decision promulgated in 07 January 2016) and Philippine Airlines, Inc.'s, (PAL) Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[6] Applied Food Ingredients Company, Inc., vs. Commissioner of Internal Revenue, G.R No. 184266, November 11, 2013.
[7] Philippine Geothermal, Inc., vs. The Commissioner of Internal Revenue, G.R. No. 154028. July 29, 2005.

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice