Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1323
(CTA Case Nos. 8032 and 8075)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

JAN 16 2018 2:20p.m.

x- -x

RESOLUTION

CASANOVA, J.:

For resolution of the Court are the following:

1. Respondent Commissioner of Internal Revenue's (CIR) Motion for Partial Reconsideration, filed on June 6, 2017[1], with petitioner's Comment/Opposition [To the Commissioner of Internal Revenue's Motion for Partial Reconsideration dated 6 June 2017][2] filed, via registered mail, on July 31, 2017;

2. Respondent Commissioner of Customs' (COC) Motion for Partial Reconsideration[3], filed on June 13, 2017, with petitioner's Comment/Opposition [To the Commissioner of Customs' Motion for Partial Reconsideration dated 13 June 2017] filed, via registered mail, on September 18, 2017.

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[1] En Banc Rollo, pp. 1723-1730.
[2] Ibid, pp. 1778-1786.
[3] Id., pp. 1743-1762.

3. Petitioner's Motion for Partial Reconsideration[4] filed, via registered mail, on June 9, 2017, with respondent CIR's Opposition (Re: Motion for Partial Reconsideration)[5], filed on August 31, 2017, and respondent COC's Comment (on Petitioner's Motion for Partial Reconsideration dated June 9, 2017) filed, via registered mail, on October 19, 2017.

For easy reference, the dispositive portion of the assailed Decision[6] reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondents are hereby **ORDERED TO REFUND** in favor of petitioner the amount of **FIVE MILLION FOUR HUNDRED THIRTY-TWO THOUSAND THREE HUNDRED SIXTEEN AND 95/100 (₱5,432,316.95),** representing erroneously paid excise tax on its importations of various liquor and wine products in the years 2005, 2006 and 2007.
>
> **SO ORDERED.**"

RESPONDENT CIR'S MOTION FOR PARTIAL RECONSIDERATION

Citing the January 5, 2015 Decision of the Court of Tax Appeals (CTA) Third Division, respondent CIR asserts that petitioner failed to establish that the imported liquors, wines and cigarettes were used in its transport operations and other activities.

Respondent CIR also avers that the pricelists from only one supplier, Philippine Wine Merchants, were insufficient to prove that the subject imported articles, supplies or materials were not locally available in reasonable price.

He further adds that the testimony of petitioner's very own employee, Ms. Cheryl Capinpin, was self-serving and her study on prices was not comprehensive in nature.

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[4] Id., pp. 1764-1733.
[5] Id., pp. 1791-1795.
[6] Id., pp. 1673-1718.

Respondent CIR, likewise, argues that the Court erred when it equated reasonableness with cheaper prices.

By way of opposition, petitioner argues that the CIR did not question the Honorable Court's finding that petitioner was able to substantiate that the imported articles were used for commissary and catering supplies as established in the May 26, 2015 Resolution of the Court in Division.

Petitioner also states in its comment that, without prejudice to its pending Motion for Partial Reconsideration, the Honorable Court did not err when it ruled that the Table of Comparison of Prices, based from one supplier, was deemed sufficient to prove that the cost of importing commissary and catering supplies was lower than purchasing them locally.

RESPONDENT COC'S MOTION FOR PARTIAL RECONSIDERATION

Respondent COC, on the other hand, argues in his Motion that the presentation of Authority to Release Imported Goods (ATRIGs) is not sufficient to prove the second requisite that the articles, supplies or material are imported for petitioner's use in transport and non-transport operations and other activities incidental thereto; and, that the Supreme Court's pronouncement in the case of *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.*[7] was merely an *orbiter dictum* since it merely affirmed the factual determinations of the CTA being a "highly specialized body that reviews tax cases and conducts trial de novo", and did not make a specific finding as regards petitioner's non-compliance with the condition set forth by Section 13 of Presidential Decree (P.D.) No. 1509.

In its Comment, petitioner claims that the Court En Banc did not err when it ruled that ATRIGs are considered public documents; that, absent any contradicting evidence, the facts stated in ATRIGs remain uncontroverted; that COC was given the opportunity to present contradicting evidence but, instead, chose to waive the same; and, that the Supreme Court has consistently ruled that the CTA is a highly specialized body that reviews tax cases and conducts trial de novo, thus, its decisions are regarded with respect.

[7] G.R. Nos. 209353-54, 211733-34, July 6, 2015.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

In its Motion, petitioner reiterates that it has fully satisfied the conditions for entitlement to exemption, and has presented uncontroverted evidence proving its entitlement to a refund of the excise taxes it paid on its importations of catering and commissary supplies; and, that respondents COC and CIR did not present anything to counter nor rebut its preponderant evidence.

Respondent CIR counters that petitioner failed to present sufficient evidence to show its entitlement to the refund sought.

By way of comment, respondent COC mainly argues that petitioner's Motion for Partial Reconsideration is a mere repetition of its arguments based on the same set of evidence already presented before and weighed by the Court.

The Court En Banc finds no merit in the present Motions.

Except for the COC's allegation that the Supreme Court's pronouncement in the case of *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.*[8] ("Republic of the Philippines vs. PAL") was merely an *obiter dictum* as it merely affirmed the factual determinations of the Court of Tax Appeals (CTA) being a "highly specialized body that reviews tax cases and conducts trial de novo" and did not make a specific finding as regards petitioner's non-compliance with the condition set by Section 13 of P.D. No. 1509, the Court notes that the respective arguments raised by the parties in the instant Motions are mere reiterations of matters which have already been considered and passed upon by the Court *En Banc* in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein. To discuss them anew is superfluity.

Respondent COC's claim that the affirmation made by the Supreme Court of the factual determinations of the CTA with regard to petitioner's non-compliance with the conditions set forth by Section 13 of P.D. No. 1509 in *Republic of the Philippines vs. PAL case* only constitute as *obiter dictum* is specious.

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[8] G.R. Nos. 209353-54, 211733-34, July 6, 2015.

The concept of an *obiter dictum* was explained by the Supreme Court in the case of *Francisco N. Villanueva, Jr., vs. The Hon. Court of Appeals and Roque Villadores*[9] in this wise:

> "**It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum***, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. **So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.** (Emphases supplied)

In the case of *Land Bank of the Philippines vs. Edgardo L. Santos et al.,*[10] the Supreme Court discussed the legal effects of *obiter dictum*, to wit:

> [An obiter dictum] "x x x is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point

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[9] G.R. No. 142947, March 19, 2002.
[10] G.R. Nos. 213863 and 214021, January 27, 2016.

> not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. **It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of res judicata.**" (Emphasis supplied)

Based therefrom, We hold that the Supreme Court's ruling in the aforesaid case of *Republic of the Philippines vs. PAL* cannot be considered as a mere *obiter dictum* because it touched upon a matter squarely raised by petitioner in its Petition for Review, specifically, its alleged compliance with the conditions stated under Section 13 (b) (2) of PD No. 1590[11] in order for its imported articles, supplies or materials to be considered exempt from excise tax. Thus, the pronouncement therein cannot be considered as a mere remark made or opinion expressed upon a cause, "by the way", or only incidentally or collaterally, and not directly upon a question before the Court.

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[11] "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

(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; . . . ."

Lastly, the Supreme Court is not mandated to examine and appreciate anew any evidence already presented below, especially if the findings of the lower court are supported by substantial evidence.

WHEREFORE, premises considered, the instant Motions for Reconsideration are hereby **DENIED** for lack of merit.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my vote to affirm the decision and Resolution of the CTA Third Division)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I maintain my vote to affirm the assailed Decision and Resolution)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With due respect, I maintain my vote to affirm the assailed Decision and Resolution)
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice