REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

AIR PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case Nos. 8039, 8069, 8104 & 8113

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 01 2016
11:45 a.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J*.:

For resolution are the following:

1. petitioner's "Motion for Reconsideration of the Decision dated 13 July 2015" filed on July 30, 2015, with respondent Commissioner of Internal Revenue's ("CIR") "Opposition (Re: Motion for Reconsideration of the Decision dated 13 July 2015)" filed on August 24, 2015, respondent Commissioner of Customs' ("COC") "Comment (On Petitioner's Motion for Reconsideration)" filed on September 17, 2015, and petitioner's "Reply (To the Opposition filed by Respondent Commissioner of Internal Revenue dated 20 August 2015)" filed on September 11, 2015;

2. petitioner's "Supplement to Motion for Reconsideration" filed on September 4, 2015, with respondent CIR's "Opposition (Re: Supplement to Motion for Reconsideration of the Decision dated 13 July 2015)" filed on September 23, 2015, respondent COC's "Comment (On Petitioner's Supplement to Motion for

Reconsideration)" filed on October 9, 2015, and petitioner's "Reply (To the Opposition filed by Respondent Commissioner of Internal Revenue dated 22 September 2015)" filed on October 20, 2015; and

3. petitioner's "Second Supplement to Motion for Reconsideration" filed on November 16, 2015, with respondent CIR's "Opposition (Re: Second Supplement to Motion for Reconsideration of the Decision dated 13 July 2015)" filed on January 7, 2016, and respondent COC's "Comment (On Petitioner's Second Supplement to Motion for Reconsideration)" filed on January 14, 2016.

In the assailed Decision, the Court denied petitioner's claim for refund in the aggregate amount of ₱74,498,009.11, representing specific taxes paid in connection with its importations of aviation turbo jet fuel or Jet A-1 fuel, for its domestic flight operations from March 2008 to October 2008. The dispositive portion of the Decision reads:

> "**WHEREFORE**, premises considered, petitioner Air Philippines Corporation's claim for refund is hereby **DENIED**.
>
> **SO ORDERED**."

In its Motion for Reconsideration[1], petitioner seeks the reconsideration of the Court's Decision and the issuance of an order for the refund or the issuance of a tax credit certificate in petitioner's favor, in the amount of ₱74,498,009.11, as specific taxes paid. Petitioner alleges that it sufficiently proved that the locally available supply of Jet A-1 fuel lacked reasonable quantity. It insists that the term "locally available" refers only to domestically produced products, and that an imported product is not "locally available".

Petitioner contends that even assuming that the term "locally available supply" includes importations, the importations of airline companies should be excluded as these are not "available" for public consumption. Moreover, petitioner claims that even if importations of oil companies were added to the domestic refinery production, the total supply would still be insufficient to meet the total industry demand.

Furthermore, petitioner posits that since it has proven that there is no locally available supply of fuel in reasonable price, it is more than sufficient to entitle petitioner to the tax exemption under the law. Petitioner argues that it would be inimical to petitioner and absurd to require all three conditions (reasonable quantity, quality, and price).

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[1] Motion for Reconsideration of the Decision dated 13 July 2015, docket, pp. 2923-2939.

Respondents insist that petitioner has failed to adduce sufficient evidence to support its claim that Jet A-1 fuel is not locally available in reasonable quality, quantity, or price; which is a condition precedent before petitioner could be entitled to any tax privilege on its importations of Jet A-1 fuel.[2]

Petitioner filed a Supplement to Motion for Reconsideration[3] on September 4, 2015. It claims that while its previously filed Motion for Reconsideration is sufficient in itself, such supplement, which does not raise or introduce new facts, issues, or evidence, will allow the Court to obtain a deeper and fuller understanding of the issues. Petitioner further states that through the Supplement, it wishes to emphasize that it is entitled to the refund since it has proven that there was an absence of a locally available supply of fuel in reasonable price.

Moreover, petitioner contends that the established facts clearly show that there is no sufficient locally available supply of fuel in reasonable quantity. Petitioner insists that local production was consistently and largely insufficient to meet the total demand. It also argues that the Court should have considered the expert testimony of former Department of Energy (DOE) Secretary Mario V. Tiaoqui, and the Civil Aviation Authority of the Philippines (CAAP) and the Air Transportation Office (ATO) Certifications, instead of the statements of Glendalyn Dela Cruz, which are self-serving and out-of-context.

On September 23, 2015, respondent CIR filed an Opposition to the Supplement to the Motion for Reconsideration[4], stating among others that the Supplement to Motion for Reconsideration should not be admitted for being filed out of time. On the other hand, respondent COC filed his Comment[5] on October 9, 2015, arguing that petitioner's Supplement to Motion for Reconsideration does not deserve consideration and should not be given due course. Respondent COC points out that the Supplement to Motion for Reconsideration seeks to remedy whatever is lacking in petitioner's arguments, and is an attempt to take another opportunity to file a motion for reconsideration, outside of the reglementary period.

Petitioner, through its Reply[6], argued that the Supplemental Motion is not meant to supersede or substitute the Motion for Reconsideration but merely to augment the latter. It emphasizes that as held by the Supreme Court in various cases, the admission of a supplemental pleading is discretionary on

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[2] Opposition (Re: Motion for Reconsideration of the Decision dated 13 July 2015), docket, pp. 2941-2949; Comment (on Petitioner's Motion for Reconsideration), docket, pp. 2998-3015.
[3] Supplement to Motion for Reconsideration, docket, pp. 2955-2979.
[4] Opposition (Re: Supplement to Motion for Reconsideration of the Decision dated 13 July 2015), docket, pp. 3017-3025.
[5] Comment (On Petitioner's Supplement to Motion for Reconsideration), docket, pp. 3032-3043.
[6] Reply (To the Opposition filed by Respondent Commissioner of Internal Revenue dated 22 September 2015), docket, pp. 3048-3056.

the Court, and as differentiated from an amended pleading, a supplemental pleading supplies deficiencies in aid of an original pleading, not to entirely substitute the latter.

On November 16, 2015, petitioner filed a Second Supplement to Motion for Reconsideration, which seeks to reiterate and simplify certain arguments and evidence already threshed out in petitioner's Memorandum, Motion for Reconsideration, and Supplement to the Motion for Reconsideration. Respondent CIR disputed the Second Supplement by filing an Opposition[7] on January 7, 2016, while respondent COC filed his Comment[8] on January 14, 2016.

At the onset, the Court shall address the issue of whether or not petitioner's Supplement to Motion for Reconsideration and Second Supplement to Motion for Reconsideration should be admitted. Respondent CIR asserts that both motions were filed beyond the reglementary period, hence, all the arguments raised therein should be considered as waived.

However, it must be noted that petitioner's motion for reconsideration was filed within the permissible period[9] to file the same. Meanwhile, the Rules are silent as to the period for filing supplemental pleadings. Since the principal motion for reconsideration was filed within the reglementary period, the Court finds respondents' argument unmeritorious.

Section 6 of Rule 10 of the Revised Rules of Court governs supplemental pleadings, to wit:

> "SEC. 6. *Supplemental pleadings.* – Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental *pleading.*"

Moreover, in the case of *Spouses Lambino vs. Hon. Presiding Judge, et al.*[10], the Supreme Court had the occasion to explain the nature of a supplemental pleading which, in that case, was a supplemental complaint:

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[7] Opposition (Re: Second Supplement to Motion for Reconsideration of the Decision dated 13 July 2015).

[8] Comment (On Petitioner's Second Supplement to Motion for Reconsideration).

[9] Revised Rules of the Court of Tax Appeals, Rule 15, Sec. 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

[10] G.R. No. 169551, January 24, 2007.

"The rule is a useful device which enables the court to award complete relief in one action and to avoid the cost delay and waste of separate action. **Thus, a supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter.**

A supplemental complaint must be consistent with, and in aid of, the cause of action set forth in the original complaint. A new and independent cause of action cannot be set up by such complaint. **The supplemental complaint must be based on matters arising subsequent to the original complaint related to the claim or defense presented therein, and founded on the same cause of action.** However, although the facts occur before the commencement of the suit if a party does not learn of their existence until after he has filed his pleading, he may file a supplemental pleading.

As a general rule, leave will be granted to file a supplemental complaint which alleges any material fact which happened or came within plaintiffs knowledge since the original complaint was filed, such being the office of a supplemental complaint. The purpose of the rule is that the entire controversy might be settled in one action; to avoid unnecessary litigation; prevent delay, unnecessary repetition of effort; unwarranted expense of litigants; to broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading; to bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the law to grant relief as far as possible for wrongs complained of growing out of the same transaction and thus put an end to litigation.

The admission or non-admission of a supplemental pleading is not a matter of right but is discretionary on the court. Among the factors that the court will consider are: **(1) resulting prejudice to the parties; and (2) whether the movant would be prejudiced if the supplemental pleading were to be denied.** What constitutes prejudice to the opposing party depends upon the particular circumstance of each case. **An opposing party who has had notice of the general nature of the claim or matter asserted in the supplemental pleading from the beginning of the action will not be prejudiced by the granting of leave to file a supplemental pleading. A motion for leave to file a supplemental pleading may be denied if he is guilty of undue delay or laches which causes**

> **substantial prejudice to the opposing party.**" *(Emphasis supplied)*

As correctly pointed out by petitioner in its Reply[11], the arguments it raised in the Supplemental Motion are matters which have already been substantially discussed in its Memorandum and Motion for Reconsideration. Since the Supplement to Motion for Reconsideration and the Second Supplement to Motion for Reconsideration are both consistent with and in aid of petitioner's Motion for Reconsideration, the Court **ADMITS** the same.

The Court shall now rule on whether or not petitioner is entitled to the refund or the issuance of a tax credit certificate in the amount of ₱74,498,009.11, as specific taxes paid.

As mentioned in the Decision sought to be reconsidered, for petitioner to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following requisites must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions provided in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

In the Decision, we have already resolved that: 1) the Petitions for Review were timely filed; 2) the CTA has jurisdiction over the Petitions; 3) petitioner, like PAL, can enjoy exemption from payment of excise tax on its importation of Jet A-1 fuel; 4) petitioner was able to prove the **first requisite** in order to be exempt from all taxes and paid basic corporate income tax for the subject taxable year; and 5) petitioner was also able to prove that the imported Jet A-1 fuel was actually used for its transport and non-transport operations or other activities incidental thereto, thereby complying with the **second requisite** for exemption.

We see no reason to disturb those findings. It is with regard to the **third requisite**, (*i.e.*, that the articles, materials or supplies should not be locally

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[11] Docket, pp. 3048-3056.

available in reasonable quantity, quality or price), that the Court deems that its prior conclusions merit reconsideration.

In Determining Locally Available Fuel, Importations are Excluded

As this Court has held in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[12], in determining local availability of Jet A-1 fuel, the term "locally available" cannot include imported Jet A-1 fuel. In that case, *We* held:

> "In *PAL v. CIR*[13], the Supreme Court held that domestic petroleum products excluded imported products, as follows:
>
> > *First,* examining its phraseology, the word "domestic", which means "of or relating to one's own country" or "an article of domestic manufacture", clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. <u>In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.</u>
>
> Applying the foregoing to the present case, in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, or price." *(Emphasis in the original)*

To appreciate the import of the conclusions of the Supreme Court in the *PAL vs. CIR* case (PAL Case) further, *We* quote:

> "Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **<u>all taxes</u>** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on

[12] CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851, June 10, 2016.
[13] G.R. No. 198759, July 1, 2003, 700 SCRA 322.

PAL's local purchase of aviation gas, fuel and oil;[14] (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL;[15] and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.[16]

Viewed within the context of **excise taxes**, it may be observed that the **first kind** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **second kind** of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/ produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies **when PAL itself acts as the importer of the foregoing petroleum products**. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, **it stands as the statutory taxpayer directly liable to the government for the same.**[17]

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[14] The pertinent portion of PAL's franchise reads:
1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form x x x. (Emphasis and underscoring supplied)

[15] The pertinent portion of PAL's franchise reads:
x x x and whether such taxes, duties, charges, royalties, or fees 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; (Emphasis and underscoring supplied)

x x x x

[16] The pertinent portion of PAL's franchise reads:
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 and underscoring supplied)

x x x x

[17] See SEC. 129 in relation to SEC. 131 of the NIRC.

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" – ***which characterizes the tax privilege LOI 1483 withdrew – refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale***[18] ***and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***[19], may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) **PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege).** Both textual and contextual analyses lead to this conclusion:

First, examining its phraseology, the word "domestic," which means "of or relating to one's own country"[20] or "an article of domestic manufacture,"[21] clearly **pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition**[22] as opposed to things imported.[23] **In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.**

Second, examining its context, certain "whereas clauses"[24] in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported).[25] In other words, LOI 1483 was meant to

[18] The first tax exemption under the second kind of tax privilege, relating to the first type of excisable articles under SEC. 129 of the NIRC.
[19] The second type of excisable articles under SEC. 129 of the NIRC.
[20] BLACK'S LAW DICTIONARY, 9th Ed. (2009), p. 557.
[21] (visited January 25, 2013)
[22] The first type of excisable articles under SEC. 129 of the NIRC.
[23] The second type of excisable articles under SEC. 129 of the NIRC.
[24] WHEREAS, by virtue of a ruling of the Department of Finance, now Ministry, dated November 17, 1969, domestic petroleum products sold to PAL for use in its domestic operations are exempt from the payment of specific and ad valorem taxes;

WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises; (Emphasis and underscoring supplied)

x x x x
[25] By way of background, the Subject DOF Ruling was issued in response to a letter seeking for the DOF's opinion regarding the scope of the "imposition of the specific tax on aviation gasoline and other fuels

divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 **could only refer to "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported."** In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist."

As evident from the above discourse, what qualifies as domestic petroleum products, which in this case is aviation fuel, cannot include those that are imported. It is necessarily excluded from the term.

In the Decision sought to be reconsidered, *We* previously attributed much probative value to the testimony of Ms. Glendalyn dela Cruz who testified that for purposes of determining whether there is locally available supply of aviation fuel at a given time, one must consider not only the refinery production, but also the inventory and the product importation.

Upon reviewing the matter further, it is evident that the Court ought to have placed more probative value on the testimony of petitioner's expert witness, former Secretary of the Department of Energy (DOE), Mario V. Tiaoqui, who testified that "local supply" and "locally available supply" is equivalent to, and has always been deemed to be equivalent to local refinery production.

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purchased locally by airline companies direct from local sources of production for use in domestic flight operations." The conflict stemmed from the import of BIR Ruling No. 65-116, issued on October 5, 1965, which "exempted from the specific tax aviation fuel and other fuel oils imported by [PAL], and similar franchise grantees but not those locally purchased by them for use in domestic flight operations." Through the Subject DOF Ruling, the DOF eventually overturned BIR Ruling No. 65-116, clarifying that PAL's franchise also conferred upon it tax exemption privileges concerning aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales and not only to those imported. The DOF stated:

In view thereof, and considering that Ruling No. 65-116 of the [BIR] is not in harmony with the established doctrine laid down by the Supreme Court on the matter, this Department hereby modifies the same and rules that aviation gasoline and other fuel oils directly purchased for domestic consumption by airline companies which are exempt from the payment of specific tax pursuant to their franchise are also exempt from the payment of specific tax on their domestic purchases of the same articles provided such airline companies are already owners and possessors of such products prior to or at the time of their removal from the place of production or bonded warehouses of the local refineries. x x x (See Subject DOF Ruling, p. 3-4; emphasis and underscoring supplied)

Qualifying as an expert witness, Sec. Tiaoqui held the position of Secretary of the DOE from 1998 to 2001 with over thirty (30) years of working experience in the private and public sector of the petroleum industry. He testified that it was in response to the oil crisis in the 70s that the DOE was established with the task of regulating the oil industry in the Philippines which involved both the importing, distribution, and refining of oil companies. He further testified that the policy of the government was to protect the local refiners and, as a result of that policy, the government only allowed importation of petroleum products if the local refiners were unable to meet the demand for petroleum products.

As explained by Sec. Tiaoqui, the term locally available supply only means the supply that is locally produced and necessarily excludes items that are imported. Relevant excerpts from his testimony are as follows:

"ATTY MELO
Q You mentioned that the government regulated particularly the importation of petroleum products. Can you also kindly explain when and under what conditions the government would allow the importation of petroleum products?

MR. TIAOQUI
A The government at that time was regulating as I mentioned the importation of both crude and product requirements. There were also three (3) oil refineries at that time. And the government's policy also was to protect the local refiners as a result that the government only allowed importation of petroleum products if the local refiners were unable to meet the demands of the petroleum products.

ATTY. MELO
Q So, you mean to say that the government at that time in the 1970s only allowed importation when there was a shortage of local supply?

MR. TIAOQUI
A That is correct.

ATTY. MELO
Q So, when you refer to the word local supply or shortage of local supply, what relation does it have if you know Mr. Witness to the term locally available supply?

MR. TIAOQUI
A Well, **we have equated locally available supply with locally refined and produced products here in the Philippines**.

x x x x x x x x x

ATTY. MELO
Q And in 1998, you were already the Secretary of the Department of Energy after the passage of the Oil Deregulation Act?

MR. TIAOQUI
A That is correct.

ATTY. MELO
Q You mentioned implementing the act as well as the government policies in relation to the Oil Deregulation Act. During your tenure as the Secretary of the Department of Energy, what was the policy or the understanding of the government in so far as the terms locally available supply of fuel or locally available supply?

MR. TIAOQUI
A During that time, we had **the Department of Energy considered *(sic)* locally available supply as supply that has been refined and produced here in the Philippines.**

ATTY. MELO
Q In other words, Mr. Tiaoqui, there is no change from the previous understanding of the same terms?

MR. TIAOQUI
A I believe that **ever since the 1960s, 1970s, and up to the early 2000s, the definition of locally available supply has been in terms of products that have been produced and refined here in the Philippines**.

x x x x x x x x x

ATTY. MELO
Q x x x Given what you have stated earlier and your expertise and experience in the petroleum industry, what do you

understand by the terms, not locally available in reason *(sic)* quantity, quality and price?

MR. TIAOQUI
A The term **not locally available**, I would understand it to me *(sic)* that **there is not any particular petroleum product that is <u>available for the demand requirements</u> that is produced and refined here in the Philippines**.

x x x x x x x x x

ATTY. MELO
Q Okay. You mentioned also earlier, I'm going to another point, Mr. Witness, you mentioned earlier that local available supply is equivalent to local refinery production. And can you please also explain what you mean or what you understand by the term **no adequate locally available supply**?

MR. TIAOQUI
A I understand that to mean, that there is, **the local refined products or produced products here in the Philippines is not available in order to meet the <u>demand requirements</u>**.

x x x x x x x x x

ATTY. MELO
Q Your Honors, I will show the large portion of these two (2) exhibits pertaining to the following details: In 2002, the inventory, the production local, importation and total local available supply.

Mr. Witness, can you examine these entries particularly the first four (4) rows: The inventory, the production local, importation and total local available supply. Mr. Witness, can you examine, these entries, particularly the first four (4) rows, the inventory, the production local, importation and total local available supply. What can you say about these figures, these entries, if any?

MR. TIAOQUI
A Well, the first four (4) figures would constitute **total available supply**. But as indicated there, local production

is 5,050 and that there is an importation of 1,336. <u>The importation should not be considered as part of local available supply because by its very term, it is imported</u>.

ATTY. MELO
Q Importation should not be part of total locally available supply?

MR. TIAOQUI
A Yes.

ATTY. MELO
Q And what would you consider locally available supply among the remaining?

MR. TIAOQUI
A The local production, that is products that is refined and produced here in the Philippines.

ATTY. MELO
Q Considering local production and the figure for demand, what can you say about the co-relation *(sic)* between local production and demand?

MR. TIAOQUI
A Well, from the figures, it would indicate that the demand is greater than the local production by approximately 1,400.

ATTY. MELO
Q And would you conclude that locally available supply is insufficient to meet the demand?

MR. TIAOQUI
A Yes.

ATTY. MELO
Q Yes, meaning it is insufficient?

MR. TIAOQUI
A It is insufficient. x x x"

Under petitioner's franchise, it is granted the same terms as those granted to its competitors. PAL was granted its franchise under PD 1590 on **June 11, 1978**. It is precisely within the span of time testified to by the expert witness that the government adopted a policy of protecting local refiners. The Court holds that in construing the phrase "locally available" supply, the same rationale obtains, and thus, must be interpreted accordingly.

Albeit the *PAL Case*, in construing LOI 1483, defines the term "domestic petroleum products" while the phrase to be construed in the instant case is "locally available" supply, the Court finds the same synonymous as it applies to this case.

Well-respected dictionaries have recognized a distinction between the terms. The term **"local"** has been defined by the Oxford Dictionary as "belonging or relating to a particular area or neighborhood, typically exclusively"[26], while the Merriam-Webster Dictionary defines it as "of, relating to, or characteristic of a particular place: not general or widespread."[27] On the other hand, the term **"domestic"** is defined by the Oxford Dictionary as "existing or occurring inside a particular country; not foreign or international"[28], while the Merriam-Webster Dictionary defines it as "of, relating to, or made in your own country".[29]

It therefore becomes evident that the term **"domestic"** is more expansive and broader in scope in terms of geographical area rather than the term **"local"**. Therefore, the judicial construction of the term **"domestic"**, by necessary implication, must include and encompass the term **"local"** when construing the phrase **"locally available"**. The greater includes the lesser -- *in eo plus sit, simper inest et minus.*[30] There is no escaping this.

It is the judiciary that is charged with the duty and power to interpret or construe a statute. "It is the duty of the legislature to make the law; of the executive to execute the law; and of the judiciary to construe the law."[31] While the legislative and the executive department, by enacting and enforcing a law, respectively, may construe or interpret the law, it is the court that has the final word as to what the law means.[32]

[26] local. (2016). In: Oxford Dictionary of English, 3rd ed. [online] Oxford University Press Print. Available at: http://www.oxforddictionaries.com/us/definition/american_english/local [Accessed 25 Jun. 2016].
[27] local. (2016). In: Merriam-Webster's Collegiate Dictionary, 11th ed., [online] Merriam-Webster, Inc. Available at: http://www.merriam-webster.com/dictionary/local [Accessed 25 Jun. 2016].
[28] domestic, *id.* at Note 26.
[29] domestic, *id.* at Note 27.
[30] Apgalo, Statutory Construction, 1995 ed., p. 125, citing *Chua v. Civil Service Commission,* 206 SCRA 65 (1992), *People v. Aquino*, 83 Phil. 614 (1949).
[31] *Lacson v. Roque*, 92 Phil. 456 (1953).
[32] *Endencia v. David,* 93 Phil. 696 (1953).

The Supreme Court has already construed what the phrase "domestic petroleum products" mean which this Court holds as synonymous to or encompassing the phrase "locally available" supply. It is axiomatic that neither the legislature nor the executive can overrule judicial construction. Until and unless the Supreme Court itself, in an appropriate case, changes or overrules its previous construction that interpretation stands[33]. *Legis interpretatio legis vim obtinet* — the interpretation placed upon the written law by a competent court has the force of law.[34] That being said, the pernicious practice of sidestepping judicial construction via administrative issuances and practices must be halted.

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

This Court has recently held in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*[35] that the law imposes an alternative, not cumulative qualification for the determination of whether importations of Jet A-1 fuel will be subject to the exemption. Furthermore, *We* held 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. As *Our* finding in that case resolved a question of law, and interpreted the very same provision at issue in the case at bar, *We* uphold the same.

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*[36] 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:

[33] *People v. Jabinal*, G.R. No. 30061, February 27, 1974, 55 SCRA 607 (1974).
[34] *Id.*
[35] *Id.* at Note 12.
[36] 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.**[37]

> 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.[38]" *(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.*[39], 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)*

Similarly, in *Aquilino Q. Pimentel, Jr. vs. COMELEC*[40], 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**

[37] 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.
[38] 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.
[39] G.R. No. 113092, September 1, 1994.
[40] G.R. No. 126394, April 24, 1998.

> **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.[41] 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**.
>
> 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)*

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[41] *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).

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."

Petitioner is Entitled to Exemption for Satisfying Condition of Lack of Reasonable Price

As *We* have already discussed in the Decision, regarding the question of whether the imported Jet A-1 fuel of petitioner is locally available in reasonable price, petitioner presented as evidence a document denominated as **Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 and the Cost of Domestic Purchases of Locally Available Turbo Jet Fuel or Jet A-1 for the Period February to October 2008 Using the Price Quotation Issued to the Company by Pilipinas Shell Petroleum Corporation**[42], which shows the comparison between the prices of Jet A-1 fuel if imported and if domestically purchased.

Further re-evaluation of the ICPA's reports, specifically her Final Report[43] and Supplemental Report[44], shows that she included a comparison of the **actual cost of importation** of Jet A-1 fuel, using the invoices issued by the

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[42] Exhibit "C^6".
[43] Exhibit "O^4".
[44] Exhibit "B^6".

oil trader, with the **cost of domestic purchases** of Jet A-1 fuel, using local price quotations issued by Petron Corporation and Pilipinas Shell Petroleum Corporation, for the period of February to October 2008, the period of the subject importations.

The Court attributes great weight to the ICPA's conclusion that had petitioner purchased locally the same volume of Jet A-1 fuel subject of this case during the said period, it would have cost petitioner **an additional amount** of ₱56,796,668.91 had it purchased from Petron Corporation and ₱69,737,143.45 had it purchased from Pilipinas Shell Corporation.

The inescapable conclusion therefore is that even if the specific taxes and customs duties were not considered as part of the local price of Jet A-1 fuel, the total cost of purchasing it locally would still be greater than the total cost of its importation.[45]

As petitioner was able to prove that aviation fuel was not locally available in reasonable price during the subject period, petitioner has satisfied the third condition for exemption from excise taxes on its importations of Jet A-1 fuel for the period March 2008 to October 2008.

WHEREFORE, petitioner's Motion for Reconsideration, the Supplement to Motion for Reconsideration, and the Second Supplement to Motion for Reconsideration are **GRANTED.**

The Decision dated July 13, 2015 is **AMENDED** to the extent that the Petitions for Review in CTA Case Nos. 8039, 8069, 8104 & 8114 are **GRANTED.** Respondents are **ORDERED TO REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in petitioner's favor in the amount of **SEVENTY FOUR MILLION FOUR HUNDRED NINETY-EIGHT THOUSAND NINE AND 11/100 PESOS** (₱74,498,009.11), representing specific taxes paid under protest corresponding to its importations of Jet A-1 fuel for its domestic operations for the period of March 2008 to October 2008.

SO ORDERED.

Ma. Belen B. —

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[45] Exhibit "C[6]" under item "Difference (Savings)", (a), (b), (d), (e), (f), and (g), under column "Total Cost".

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(ON LEAVE)
ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice