REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

****

AIR PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NOS. 7252, 7362 7383, 7445, 7494, 7517, 7521 & 7566

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

FEB 1 6 2016 11:00 Am

x- -x

RESOLUTION

Before this Court is petitioner's **Motion for Reconsideration of the Decision dated 02 October 2015 and Motion to Reopen the Case for Presentation of Evidence** filed on October 20, 2015, with respondent Commissioner of Customs' **Comment (re: Motion for Reconsideration of the Decision dated October 2, 2015 and Motion to Reopen the Case for Presentation of Evidence dated October 19, 2015.)** filed, through registered mail, on December 14, 2015, while respondent Commissioner of Internal Revenue, on the other hand, failed to file her comment, as per Records Verification dated January 6, 2015 *[sic]*.

In its Motion, petitioner seeks that this Court reconsider and set aside the Decision dated October 2, 2015 which denied its claims for refund for insufficiency of evidence, the *fallo* of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petitions for Review are hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

Petitioner claims that the said Decision inaptly discussed and resolved the issue of *whether petitioner's importation of Jet A-1 fuel were used in its transport and non-transport operations* considering that it was not raised, assigned or argued on by the respondents during the trial, thus, it was erroneous to arrive at a conclusion based on the said issue. Petitioner submits that had it known that the consumption was disputed, it would have presented additional documentary evidence to prove that the subject fuel was indeed loaded onto its planes and consumed during flight. As such, petitioner prays that its consolidated claims for refund or issuance of tax credit certificates in the total amount of ₱235,613,134.47, representing its Jet A-1 fuel importations from May 2003 to December 2004, be granted; or in the alternative, be allowed to present further evidence on the matter of consumption of the subject fuel importations.

While, in his Comment, respondent Commissioner of Customs asserts that even assuming that they did not actively question petitioner's usage of Jet A-1 fuel during trial, the requirement to prove said fact is still incumbent upon petitioner because the issue of its entitlement to a refund has been raised as an issue during the pre-trial of the case.

After due consideration of the arguments advanced by the parties, this Court finds merit in the Motion to Reopen the Case for Presentation of Evidence.

A motion to reopen trial may properly be presented after either or both parties had formally offered and closed their evidence but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice. The Supreme Court in the case of *Rene Cabarles vs. Hon. Judge Bonifacio Sanz Maceda, et al.*[1] held that:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized

---

[1] G.R. No. 161330, February 20, 2007

> procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
>
> *x x x*
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. <u>A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment</u> <u>**and the only controlling guideline governing a motion to reopen is the paramount interest of justice.**</u> This remedy of reopening a case was meant to prevent a miscarriage of justice." *(Emphasis and Underscoring Ours)*

Considering that Section 8[2] of R.A. 1125,[3] as amended, provides that "the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence",[4] this Court finds no cogent reason to deny petitioner's plea. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[5]

---

[2] "**SECTION 8.** ***Court of record; seal; proceedings.*** - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."

[3] Otherwise known as "An Act Creating the Court of Tax Appeals"

[4] Bank of the Philippines Island vs. CIR, G.R. No. 122480, April 12, 2000

[5] *Ibid.*

In view of the foregoing, the resolution of the petitioner's Motion for Reconsideration shall be HELD IN ABEYANCE until the presentation of its additional evidence to prove its entitlement to the refund sought.

WHEREFORE, premises considered, petitioner's Motion to Reopen the Case for Presentation of Evidence is hereby **GRANTED**. Let the case be set for hearing on April 6, 2016 at 9:00 a.m. for the presentation of petitioner's additional evidence to prove that the subject Jet A-1 fuel importations were actually used in its transport and non-transport operations.

Accordingly, the resolution of petitioner's Motion for Reconsideration is **HELD IN ABEYANCE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AIR PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NOS. 7252,7362, 7383, 7445, 7494, 7517, 7521 & 7566**
	Members:
- versus -	**CASTAÑEDA, JR.**,Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: FEB 1 6 2016 11:00Am

x - x

DISSENTING OPINION

CASTAÑEDA, JR., ***J.***:

With all due respect, I dissent to the majority opinion granting petitioner's motion to reopen the trial of the instant case, on the following grounds: (1) The Court is not limited to the issues raised by the parties; (2) Petitioner failed to prove that the imported fuels were used in its transport or non-transport operations and other activities incidental thereto; and (3) The attendant circumstances do not warrant the reopening of the instant case.

In deciding the case, the Court is not limited to the issues stipulated by the parties

Section 1, Rule 14 of the 2005 Revised Rules of the CTA, as amended, pertinently provides:

> "SECTION 1. *Rendition of judgment.* –
>
> xxx xxx xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Under petitioner's franchise, Republic Act No. 8339, petitioner must satisfy the condition that its imported fuel are used in its transport or non-transport operations and other activities incidental thereto, among others, in order to be entitled to the tax benefit provided thereunder.

In the instant case, while the said condition was not stipulated as an issue, the pieces of evidence presented should be examined to determine if petitioner satisfied all the requirements under its franchise to be entitled to its claim. Such determination is necessary for an orderly disposition of the case.

Moreover, it is settled that "an appeal throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court."[1] Hence, it is the Court's duty to ensure that no fact of weight or substance has been overlooked, misapprehended or misapplied.

Petitioner's pieces of evidence do not prove that the imported fuels were used in its transport or non-transport operations and other activities incidental thereto ga

---

[1] *People of the Philippines v. Antonio Baraoil*, G.R. No. 194608, July 9, 2012, citing *People v. De los Santos, Jr.*, G.R. No. 186499, March 21, 2012.

Petitioner argues that it duly proved that the imported fuels were to be used in its operations through the testimonies of witnesses, the ATRIGs and the certifications and endorsements issued by the Air Transportation Office and the Department of Finance, respectively.

A re-evaluation of the pieces of evidence still reveals that petitioner failed to prove that the imported fuels were used in its transport or non-transport operations and other activities incidental thereto.

With regard to the testimonies of the witnesses coupled with the subject ATRIGs, these pieces of evidence describe how the imported fuel will be used or consumed, *i.e.*, will be used exclusively for its domestic operations. However, the question of whether the imported fuel were in fact, used or consumed during the course of petitioner's operations, remains unanswered.

On the other hand, with regard to the certifications and endorsements, these pieces of evidence merely state that the imported fuels are necessary or incidental for petitioner's operations. Again, these documents do not answer the question of whether the imported fuels were in fact, used or consumed during the course of petitioner's operations.

In other words, the operative word in the phrase "imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto" is the word "use". In the instant case, even if the evidence presented by petitioner is considered in its totality, the only logical conclusion that may be derived therefrom is that petitioner imported fuels for its use because the subject importations are necessary or incidental to its domestic operations. No evidence was presented whether the imported fuels were indeed, used by petitioner.

The attendant circumstances do not warrant the reopening of the instant case

Petitioner further prays that the case be reopened for further reception of evidence. It reasons that had it known that the issue on consumption was disputed, it would have presented additional evidence to show that the fuels were loaded to its planes and consumed during flights.

Prefatorily, it bears stressing that the subject consolidated cases were filed as early as years 2005, 2006 and 2007, respectively. Meanwhile, the case was submitted for decision on February 3, 2015. In other words, petitioner had more or less ten (10) years to present evidence to prove its case.

Moreover, worth emphasizing is the fact that petitioner already filed a Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum[2] on October 31, 2014. Said motion, however, was denied by the Court in the Resolution[3] dated January 21, 2015. In denying the said motion, the Court correctly found that:

> "Here, the Court sees no inadvertence, mistake or oversight on the part of the petitioner in presenting its evidence. Neither is there any showing that the evidence petitioner intends to present is a newly discovered evidence. In fact, petitioner even asserted that it has already submitted <u>sufficient evidence</u> to prove its compliance with the two (2) conditions for availing its privilege of tax-free importation under its franchise" and the additional evidence[s] will further "prove its claim and ventilate the issues in the most comprehensive manner."

The above-quoted resolution of this Court is germane to the nature and concept of a motion to reopen, as explained by the Supreme Court in the case of *Republic of the Philippines v. Sandiganbayan,*[4] *viz:*

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
>
> **Sec. 5.** *Order of trial.* Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to

---
[2] Docket, Vol. V, pp. 1875-1882.
[3] Id., pp. 1909-1912.
[4] G.R. No. 152375, December 16, 2011.

> the issues stated in the pre-trial order and shall proceed as follows:
>
> x x x x
>
> (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.]

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the courts discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** *i.e.*, on whether the evidence would qualify as a good reason and be in furtherance of the interest of justice. xxx xxx xxx

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon

> their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. xxx xxx xxx"[5]

In the said case, the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify as a good reason for reopening the case and would serve the interest of justice, the Court may allow the reception of additional evidence.

However, petitioner failed to justify that the evidence it shall present is newly discovered, or that the same was omitted through inadvertence or mistake. Petitioner's heavy reliance on the rule that defenses and objections not pleaded in the answer are deemed waived,[6] while totally disregarding the equally important and pertinent provisions of Section 1, Rule 14 of the 2005 Revised Rules of the CTA, as amended, and the doctrine laid down in *Baraoil case*,[7] cannot be considered as omission through inadvertence or mistake. "Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven."[8] Thus, petitioner ought to prove every aspect of its case.

Even so, petitioner not only failed to present evidence of "use" of the imported fuels; it likewise failed to prove its unavailability in reasonable price in the local market. In this regard, the Court ruled in the assailed Decision that:

---

[5] Id., citing James M. Henderson, 6 *Commentaries on the Law of Evidence in Civil Cases Based Upon the Works of Burr W. Jones*, 2502, pp. 4950-4951; *Director of Lands v. Roman Archbishop of Manila,* 41 Phil. 121 (1920); John Henry Wigmore, 6 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, 1940, p. 519; *Seares v. Hernando, etc., et al.*, 196 Phil. 487 (1981); 88 C.J.S. 104, p. 217; 5A C.J.S. 1606, p. 102; and *Lopez v. Liboro*, 81 Phil. 431 (1948); *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755 (2003); *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 564; and *Leviste v. Court of Appeals,* G.R. No. 189122, March 17, 2010.

[6] Section 1, Rule 9 of the Revised Rules of Court.

[7] See Note 1.

[8] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

> "With respect to the availability thereof in reasonable price, it appears that petitioner merely based its comparison of the actual cost of importation against the cost of domestic purchases, by using the local price quotations issued by Petron Corporation. However, the Court observes that petitioner could not have determined the availability of Jet A-1 fuel in reasonable price in the local market by basing its comparison on the quotation provided by a single enterprise. Thus, petitioner failed to prove the unavailability thereof in reasonable price in the local market."

As such, to reopen the case would be a mere exercise in futility, in light of the fact that petitioner failed to prove the imported fuels' unavailability in reasonable price in the local market.

In sum, petitioner had ten (10) long years to present evidence to prove its case. Further, to grant the reopening of this case is to abandon the *raison d'être* of the January 21, 2015 resolution of this Court which is in keeping with the *Republic v. Sandiganbayan case*. At any rate, even if petitioner presents before this Court its proof of use, the inevitable conclusion is that the consolidated Petitions should still be denied for its failure to prove the imported fuels' unavailability in reasonable price in the local market.

In view of these antecedent facts, liberal application of the rules is inapplicable because petitioner was already afforded a considerable length of time to present evidence. It cannot be allowed to present piecemeal evidence at will, which is neither newly discovered nor omitted through inadvertence or mistake, because it will necessarily result in the disorderly administration of justice to the prejudice of the State.

Considering the foregoing, I **VOTE** to **DENY** the subject motions.

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