REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

AIR PHILIPPINES CORPORATION, *Petitioner,*	**CTA CASE NOS. 7767, 7791, 7807, 7816, 7837, 7839 & 7851**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, *Respondents.*	Promulgated: JUN 10 2016 11:00 a.m.

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DECISION

BAUTISTA, J:

The Case

The consolidated Petitions for Review[1] filed pursuant to *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals,*[2] pray for

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[1] *Records, CTA Case No. 7767, Vol. I, Petition for Review ("PFR"),* pp. 1-67, with annexes; *Records, CTA Case No. 7791, PFR,* pp. 1-69, with annexes; *Records, CTA Case No. 7807, PFR,* pp. 4-71, with annexes; *Records, CTA Case No. 7816, PFR,* pp. 1-68, with annexes; *Records, CTA Case No. 7837, PFR,* pp. 4-72, with annexes; *Records, CTA Case No. 7839, PFR,* pp. 1-69, with annexes; *Records, CTA Case No. 7851, PFR,* pp. 4-72, with annexes.

[2] A.M. No. 05-11-07-CTA (2005). Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> Sec. 3. ***Cases within the jurisdiction of the Court in Divisions.*** –
> The Court in Divisions shall exercise:
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

the refund or issuance of a tax credit certificate ("TCC") in the aggregate amount of Php94,689,001.50 representing the specific taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period March to November 2006, broken down as follows:

Court of Tax Appeals ("CTA") Case No.	Date of Arrival	Amount of Specific Tax Involved	
7767	March 28, 2006[3]	Php	11,810,005.00
7791	May 4, 2006[4]		14,830,382.00
7807	June 7, 2006[5]		14,804,299.00
7816	July 7, 2006[6]		11,803,527.00
7837	September 7, 2006[7]		11,835,328.00
7839	August 22, 2006[8]		11,887,313.50
7851	November 16, 2006[9]		17,718,147.00
Total		**Php**	**94,689,001.50**

The Parties

Petitioner Air Philippines Corporation ("APC") is a corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[10]

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("BIR"), which is a government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of Php3.67 *per* liter of volume capacity on aviation turbo jet fuel imposed by *Section 148(g)*[11] *of the 1997 National Internal Revenue*

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[3] *BOC Records, Exhibit* "I" 7767, p. 12; *Exhibit* "K-6" 7767, p. 13.
[4] *Id., Exhibit* "I" 7791, p. 40; *Exhibit* "AA" 7791, p. 42.
[5] *Id., Exhibit* "I" 7807, p. 54; *Exhibit* "K-6-b" 7807, p. 55.
[6] *Id., Exhibit* "O" 7816, p. 27; *Exhibit* "Q-6-b" 7816, p. 28.
[7] *Id., Exhibit* "I" 7837, p. 69; *Exhibit* "EE-2" 7837, p. 70.
[8] *Id., Exhibit* "I" 7839, p. 85; *Exhibit* "K-6-b" 7839, p. 86.
[9] *BOC Records, Exhibit* "I" 7851, p. 101; *Exhibit* "K-6-b" 7851, p. 102.
[10] *Records, CTA Case Nos. 7767 & 7816, Vol. I, Joint Stipulation of Facts and Issues ("JSFI")*, p. 190; *Records, CTA Case No. 7791, JSFI*, p. 185; *Records, CTA Case No. 7807, JSFI*, p. 166; *Records, CTA Case No. 7837, JSFI*, p. 184; *Records, CTA Case No. 7839, JSFI*, p. 196; *Records, CTA Case No. 7851, JSFI*, p. 180.
[11] Section 148(g) of the 1997 NIRC:

> **Sec. 148.** ***Manufactured Oils and Other Fuels.*** - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise

Code as amended (*"1997 NIRC"*)[12], with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[13]

Respondent Commissioner of Customs is the Commissioner of the Bureau of Customs ("BOC"), which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise tax of Php3.67 *per* liter on imported aviation turbo jet fuel imposed by *Section 148(g) of the 1997 NIRC,* delegated and authorized by respondent CIR through an Authority to Release Imported Goods ("ATRIG") (BIR Form No. 1918) duly issued by the BOC and addressed to the BIR.[14]

The Facts

On June 11, 1978, *Presidential Decree ("PD") No. 1590*[15] was issued by then President Ferdinand E. Marcos which granted a franchise to Philippine Airlines, Inc. ("PAL") for the establishment, operation, and maintenance of transport services by air for the carriage of passengers, mail, and property domestically or internationally.[16] Under its franchise, PAL was entitled to pay whichever was lower between the basic corporate income tax or a franchise tax of two percent (2%) of its gross revenues - which tax shall be in lieu of all other taxes, duties, and fees that may be imposed by the State (including taxes, duties, and fees on all importations of aviation gas, fuel, and oil provided the same are imported for use in its transport operations and activities incidental thereto, and are not locally available in reasonable quantity, quality, or price). The relevant provisions of *Section 13(b) of PD No. 1590* state:

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taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

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(g) Aviation turbo jet fuel, per liter of volume capacity, Three Pesos and Sixty-Seven Centavos (Php3.67);

[12] Republic Act No. 8424, as amended (1997).

[13] *Records, CTA Case Nos. 7767 & 7816, Vol. I, JSFI,* p. 191; *Records, CTA Case No. 7791, JSFI,* pp. 185-186; *Records, CTA Case No. 7807, JSFI,* pp. 166-167; *Records, CTA Case No. 7837, JSFI,* pp. 184-185; *Records, CTA Case No. 7839, JSFI,* pp. 196-197; *Records, CTA Case No. 7851, JSFI,* pp. 180-181.

[14] *Records, CTA Case Nos. 7767 & 7816, JSFI,* p. 191; *Records, CTA Case No. 7791, JSFI,* pp. 186; *Records, CTA Case No. 7807, JSFI,* p. 167; *Records, CTA Case No. 7837, JSFI,* p. 185; *Records, CTA Case No. 7839, JSFI,* p. 197; *Records, CTA Case No. 7851, JSFI,* p. 181.

[15] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries (1978).

[16] § 1.

Sec. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; *provided,* that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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:

x x x   x x x   x x x

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of the 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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

Subsequently, on October 31, 1985, *Letter of Instructions ("LOI") No. 1483* was issued by President Marcos withdrawing the tax exemption privilege of PAL on its purchase of domestic petroleum products for use in domestic operations.

In August 1997, *Republic Act ("RA") No. 8339*[17] was enacted granting APC a franchise for the establishment, operation, and maintenance of transport services by air for the carriage of passengers, mail, goods, and property domestically or internationally.[18] APC was likewise granted the same terms, which shall operate equally in APC's favor, as those granted to its competitors.[19]

On January 29, 1999, *BIR Ruling No. 013-99*[20] was issued clarifying *LOI No. 1483*. Under *BIR Ruling No. 013-99*, the BIR opined that while *LOI No. 1483* withdrew PAL's tax exemption privilege insofar as PAL is no longer exempt from taxes on its purchase of domestic petroleum products for use in its domestic operations, such withdrawal of exemption does not include purchases from abroad or foreign countries for use by PAL in its domestic operations - which remain exempt from tax. *BIR Ruling No. 013-99* states:

> In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations.

On October 23, 2000, *BIR Ruling No. 048-2000*[21] was issued confirming APC's exemption from all national taxes on its importations and purchases from abroad of petroleum products used for domestic operations, to wit:

> In reply, please be informed that pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation

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[17] An Act Granting Air Philippines Corporation (Air Philippines) a Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services (1997).
[18] § 1.
[19] Section 15 of RA No. 8339 provides:

> Sec. 15. ***Interpretation of Franchise.*** - This franchise shall not be interpreted to mean as an exclusive grant of the privileges herein provided for. However, in the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place herein grantee at any disadvantage, then such terms and/or provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee.

[20] *Records, CTA Case No. 7767, Vol. II, Exhibit* "E," pp. 895-896-a.
[21] *Id., Exhibit* "B," pp. 891-893.

> to Section 13 of P.D. No. 1590 (Franchise of PAL) and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations.

On December 20, 2002, the Department of Energy ("DOE") issued a certification (the "DOE Certification") confirming and certifying that aviation gas, fuel, and oil for use in domestic operations of domestic airline companies are locally available in reasonable quantity, quality, and price.[22]

On July 26, 2003, *RA No. 9215* was enacted amending *RA No. 8339*. Under its amended franchise, APC was entitled to pay a franchise tax of five percent (5%) of gross revenues derived from transport operations. Further, APC was granted the same tax privileges and other favorable terms its competitors were entitled to. The relevant provision of APC's franchise, as amended, reads:

> **Sec. 11.** ***Tax Provisions.*** - The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and taxed on its real property under existing laws on revenues earned from activities other than air transportation.

[22] *See Records, CTA Case No. 7767, Vol. IV,* p. 2026.

On January 29, 2003, *BIR Ruling No. 001-03*[23] was issued wherein the BIR opined that importations of petroleum products for domestic operations may only be tax exempt if the following conditions are present: (a) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude forms, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and (b) in the case of importations, that they are not locally available in reasonable quantity, quality, or price. In view of the DOE Certification dated December 20, 2002, the importations of petitioner may not be exempt from tax for as long as there is an available domestic supply of petroleum products. The relevant portions of *BIR Ruling No. 001-03* read:

> Importations of petroleum products for domestic operations are tax-exempt in the presence of two conditions: (1) the purchases by sale or delivery of aviation gas, fuel and oil, whether refined or in crude forms shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto, and (2) in the case of importations, that they are not locally available in reasonable quantity, quality, or price. Thus, importations of such products may not be tax-exempt unless the two conditions are present.
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> In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy the tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD1590, as amended by LOI 1483) and which condition applies *ipso facto* to the other airlines. Accordingly, your importations may not be given the same tax treatment as before for as long as there is such available domestic supply of petroleum products.

Thus, for the period March to November 2006, respondent BIR acting through respondent BOC assessed petitioner for specific taxes on its importations of Jet A-1 fuel used for its domestic operations.

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[23] *Records, CTA Case No. 7767, Vol. II, Exhibit* "A," pp. 888-890.

The importations and payments under protest made by petitioner for the period are summarized as follows:

CTA Case No.	Date of Arrival	Date of Payment Under Protest	Amount of Specific Tax Involved
7767	March 28, 2006[24]	April 20, 2006[25]	Php 11,810,005.00
7791	May 4, 2006[26]	June 7, 2006[27]	14,830,382.00
7807	June 7, 2006[28]	July 7, 2006[29]	14,804,299.00
7816	July 7, 2006[30]	August 4, 2006[31]	11,803,527.00
7837	September 7, 2006[32]	October 6, 2006[33]	11,835,328.00
7839	August 22, 2006[34]	October 12, 2006[35]	11,887,313.50
7851	November 16, 2006[36]	December 14, 2006[37]	17,718,147.00

CTA Case No. 7767

On March 28, 2006, petitioner imported 3,217,985 liters of Jet A-1 fuel for its domestic operations,[38] for which it paid under protest Php11,810,005.00 on April 20, 2006.[39] Thereafter, on May 4, 2006, petitioner filed a written protest with the District Collector of Customs.[40]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC*[41], petitioner filed a written request for refund with the

[24] *BOC Records, Exhibit* "K-6" 7767, p. 13.
[25] *Id., Exhibit* "I" 7767, p. 12.
[26] *Id., Exhibit* "AA" 7791, p. 42.
[27] *Id., Exhibit* "I" 7791, p. 40.
[28] *Id., Exhibit* "K-6-b" 7807, p. 55.
[29] *Id., Exhibit* "I" 7807, p. 54.
[30] *BOC Records, Exhibit* "Q-6-b" 7816, p. 28.
[31] *Id., Exhibit* "O" 7816, p. 27.
[32] *Id., Exhibit* "EE-2" 7837, p. 70.
[33] *Id., Exhibit* "I" 7837, p. 69.
[34] *Id., Exhibit* "K-6-b" 7839, p. 86.
[35] *Id., Exhibit* "I" 7839, p. 85.
[36] *BOC Records, Exhibit* "K-6-b" 7851, p. 102.
[37] *Id., Exhibit* "I" 7851, p. 101.
[38] *Id., Exhibits* "K-6" 7767 and "K-6-a" 7767, p. 13.
[39] *Id., Exhibit* "I" 7767, p. 12; *Exhibit* "K-6" 7767, p. 13.
[40] *Id., Exhibit* "K" 7767, pp. 1-9.
[41] Section 229 of the 1997 NIRC provides:

> **Sec. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without

BIR on March 7, 2008[42] and the instant Petition for Review with the Court on April 16, 2008.[43]

On May 26, 2008, respondent COC filed a Manifestation and Motion[44] praying that he be excused from filing his Answer.

On June 18, 2008, respondent CIR filed her Answer[45] interposing the following Special and Affirmative Defenses:[46]

> 6. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
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> 7. The instant petition for review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.
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> > 7.1. Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the [DOE] dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before Petitioner questioned its legality before this Honorable Court. Petitioner's precipitate act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure which provides as follows:
> >
> > **"MOTION TO DISMISS**
> >
> > **Section 1.** *Grounds.* - Within the time for but before filing the answer to the complaint or

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authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[42] *Records, CTA Case No. 7767, Vol. II, Exhibit* "L" 7767, pp. 938-947.
[43] *Id., Vol. I, PFR,* pp. 1-67, with annexes.
[44] *Id.,* pp. 76-78.
[45] *Id.,* pp. 85-93.
[46] *Id.,* pp. 86-90.

> pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> x x x x x x x x x
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> (j) That a condition precedent for filing the claim has not been complied with."

7.2. Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court in violation of Section 4 of the [1997 NIRC] which provides as follows:

> "**SEC. 4. Power of Commissioner to Interpret Tax Laws and to Decide Tax Cases.** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> x x x x x x x x x."

8. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the [1997 NIRC].

9. In effect, petitioner is asking this Honorable Court to override the factual determination by the Secretary of [the DOE], in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay this Honorable Court from exercising jurisdiction over this petitioner.

10. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the [BIR].

11. The amount of [Php]11,810,005.00 being claimed by petitioner as alleged specific tax on its March 28, 2006 importation of Jet A-1 fuel for domestic operation is not properly documented.

12. Petitioner must show that it has complied with the provisions of Section 204(C) and 229 of the 1997 [NIRC] on the prescriptive period for claiming tax refund/credit.

> 13. Furthermore, in an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc. 98 Phil 670);
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> 14. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).

On October 6, 2008, the Court promulgated a Resolution stating that inasmuch as respondent COC failed to submit his Answer, trial will proceed without his presence.[47]

Petitioner and respondent CIR filed their respective Pre-Trial Briefs on October 21, 2008[48] and November 12, 2008[49], respectively.

On December 5, 2008, petitioner filed a Motion to Consolidate CTA Case Nos. 7767 & 7816[50], which motion was granted by the Court in a Resolution promulgated on December 24, 2008[51].

Petitioner and respondent CIR thus filed their respective Consolidated Pre-Trial Briefs on January 19, 2009[52] and January 22, 2009[53], respectively.

On March 24, 2009, the parties filed their Joint Stipulation of Facts and Issues ("JSFI")[54], which was approved by the Court in its Resolution dated April 1, 2009[55].

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[47] *Records, CTA Case No. 7767, Vol. I*, p. 97.
[48] *Id.*, pp. 98-107.
[49] *Id.*, pp. 119-126.
[50] *Id.*, pp. 132-134.
[51] *Id.*, p. 137.
[52] *Id.*, pp. 139-148.
[53] *Records, CTA Case No. 7767, Vol. I*, pp. 149-157.
[54] *Id.*, pp. 190-198.

On July 15, 2010, petitioner filed a Motion to Consolidate to the Third Division CTA Case Nos. 7767 & 7816 (Consolidated), 7791, 7807, 7837, 7839, and 7851[56], which was confirmed by the Court in a Resolution dated September 28, 2010.[57]

CTA Case No. 7791

On May 4, 2006, petitioner imported 4,040,976[58] liters of Jet A-1 fuel for its domestic operations,[59] for which it paid under protest Php14,830,382.00 on June 7, 2006.[60] Thereafter, on June 20, 2006, petitioner filed a written protest with the District Collector of Customs.[61]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC,* petitioner filed a written request for refund with the BIR on May 14, 2008[62] and the instant Petition for Review with the Court on June 5, 2008.[63]

On June 27, 2008, respondent CIR filed her Answer[64] interposing Special and Affirmative Defenses similar to those contained in her Answer in CTA Case No. 7767.[65]

On July 16, 2008, respondent COC filed his Answer[66] wherein he reiterated the Special and Affirmative Defenses in respondent CIR's Answer[67].

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[55] *Records, CTA Case No. 7767, Vol. I,* pp. 201-202.
[56] *Id.,* pp. 318-323.
[57] *Id.,* pp. 356-357.
[58] Php14,830,382.00/Php3.67.
[59] *BOC Records, Exhibit* "AA" 7791, p. 42.
[60] *Id., Exhibit* "I" 7791, p. 40; *Exhibit* "AA" 7791, p. 42.
[61] *Id., Exhibit* "K" 7791, pp. 30-39.
[62] *Records, CTA Case No. 7791, Exhibit* "L" 7791, pp. 60-69.
[63] *Id., PFR,* pp. 1-69, with annexes.
[64] *Id.,* pp. 72-78.
[65] *See Records, CTA Case No. 7791,* pp. 73-76.
[66] *Records, CTA Case No. 7791,* pp. 88-91.
[67] *See Records, CTA Case No. 7791,* pp. 72-78.

Respondent CIR filed her Pre-Trial Brief on August 15, 2008[68], while petitioner filed its Pre-Trial Brief on August 22, 2008[69], and respondent COC filed his Pre-Trial Brief on August 29, 2008[70].

On March 27, 2009, the parties filed their JSFI[71], which was approved by the Court in its Resolution dated March 30, 2009[72].

On July 13, 2010, petitioner filed a Motion to Consolidate to the Third Division CTA Case Nos. 7767 & 7816 (Consolidated), 7791, 7807, 7837, 7839, and 7851[73], which motion was granted by the Court in a Resolution promulgated on September 17, 2010[74].

CTA Case No. 7807

On June 7, 2006, petitioner imported 4,033,869 liters of Jet A-1 fuel for its domestic operations,[75] for which it paid under protest Php14,804,299.00 on July 7, 2006.[76] Thereafter, on July 19, 2006, petitioner filed a written protest with the District Collector of Customs.[77]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC*, petitioner filed a written request for refund with the BIR on June 13, 2008[78] and the instant Petition for Review with the Court on July 3, 2008.[79]

On July 25, 2008, respondent CIR filed her Answer[80] interposing Special and Affirmative Defenses similar to those contained in her Answer in CTA Case No. 7767.[81]

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[68] *Records, CTA Case No. 7791*, pp. 107-112.
[69] *Id.*, pp. 113-122.
[70] *Id.*, pp. 124-128.
[71] *Records, CTA Case No. 7791*, pp. 185-193.
[72] *Id.*, p. 195.
[73] *Id.*, pp. 340-346.
[74] *Id.*, p. 354.
[75] *BOC Records, Exhibits* "K-6" 7807 and "K-6-a" 7807, p. 55.
[76] *Id., Exhibit* "I" 7807, p. 54; *Exhibit* "K-6-b" 7807, p. 55.
[77] *Id., Exhibit* "K" 7807, pp. 44-52.
[78] *Records, CTA Case No. 7767, Vol. II, Exhibit* "L," pp. 948-957.
[79] *Records, CTA Case No. 7807, PFR*, pp. 4-71, with annexes.
[80] *Id.*, pp. 74-79.
[81] *See Records, CTA Case No. 7807*, pp. 74-77.

On September 24, 2008, respondent COC filed his Answer[82] interposing the following Special and Affirmative Defenses:[83]

> 12. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and the failure to sustain the burden is fatal to such claim.
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> 13. It is settled that tax statutes must be strictly construed against the one claiming the exception because the law does not look with favor on tax exemptions and that he who would seek to be, must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*CIR vs. P.J. Kiener Company, Ltd., 65 SCRA 142 [1975]*).
>
> 14. Thus, it is incumbent upon the petitioner to clearly show that the alleged duties and taxes paid under protest in the amount of Php14,804,299.00 were illegally collected, for being contrary to Sections 204(c) and 229 of the [1997 NIRC].
>
> 15. Section 13(2) of PD 1590, otherwise known as the PAL Franchise, invoked by petitioner to be equally applicable to it, provides that domestic airlines are exempt from taxes on its importations of Jet A-1 fuel when the following two (2) conditions are met: (1) the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and (2) in the case of importations that they are not locally available in reasonable quantity, quality, or price.
>
> 16. On December 20, 2002, the [DOE] issued a Certification that aviation gas, fuel, and oil for use in domestic operation for domestic airline agencies are locally available in reasonable quantity, quality and price.
>
> 17. The [DOE] being the government agency responsible in the administration of the energy sector is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function[s].

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[82] *Records, CTA Case No. 7807,* pp. 108-119.
[83] *Id.,* pp. 111-118.

18. On the basis of said DOE Certification, the aforementioned second condition for petitioner's exemption from taxes on its importation of Jet A-1 fuel is wanting.

19. On January 29, 2003, respondent [CIR] issued BIR Ruling No. 001-2003 addressed to PAL, Cebu Air, Inc., the pertinent portion of which reads:

> "x x x In the light of the Certification of Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as sated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies ipso facto to the other airlines. Accordingly your importations may not be given the same tax treatment as before for as long as there is such available domestic supply of petroleum products.
>
> This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

20. Hence, specific tax was collected by the [BOC] from petitioner on its importation of 4,033,869 liters of Jet A-1 in the amount of Php14,804,299.00.

21. The issuance of BIR Ruling No. 001-2003 did not alter or amend the franchise of petitioner. Said ruling merely and simply determined whether the two conditions set forth in Section 13(2) of PD 1590, as mentioned above, that would justify petitioner's exemption from taxes on its importation of JET A-1 fuel, have been met.

22. Petitioner has not demonstrated or presented proof before the [DOE] that it erred when it issued the Certification dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.

23. This Honorable Court has no jurisdiction and is not the proper venue or forum for petitioner to contest and

question said administrative finding of the [DOE] that aviation gas, fuel, oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.

24. Petitioner in this case must show in the most convincing manner that there was indeed no aviation fuel in the local market available at reasonable price for it to be exempted for its importation of the said aviation fuel. However, here, it fails to show that it is exempted from duties and taxes and merely made assumption of facts instead of having clearly presented to this Court the clear-cut basis of its being covered by exemptions.

25. Petitioner merely alleged that because taxes on fuel could be passed on to PAL, the price of aviation fuel could no longer be reasonable. Hence, as it alleged, it was exempted from paying taxes for its importation of aviation fuel.

26. It is erroneous to conclude that the price of locally available aviation gas, oil and fuel was not reasonable in view alone of its passed-on tax and profit on top of its prices, otherwise it would render nugatory and meaningless the second condition set forth in PD 1590.

27. Petitioner still has administrative remedy(ies) to question and/or overturn the DOE Certification before resorting to the regular courts. It should have questioned, appealed and/or asked that the DOE Certification be overturned and not merely conveniently resort to this Honorable Court to seek a favorable declaration that at the time the petitioner imported its aviation fuel, there were no locally available aviation fuel that had reasonable price.

28. Petitioner miserably failed to show that the amount of Php14,804,299.00 as allegedly paid as specific tax on the importation of 4,033,869 liters of Jet A-1 on June 8, 2006 was erroneously or illegally collected or that the same was properly documented pursuant to Section 204(c) in relation to Section 229 of the [1997 NIRC].

29. Taxes paid and collected are presumed to have been paid in accordance with law, and therefore, not refundable.

30. On the other hand, the specific tax collected from petitioner was a [BIR] imposition, the [BOC] merely acting as pure collection agent.

31. The BOC has no jurisdiction over the protest of petitioner allegedly lodged before the District Collector of Customs, Port of Batangas, Batangas City.

32. The BOC, being a mere collection agency, does not have the power and jurisdiction to adjudicate any issue arising from the rulings, rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions, being of equal ranks, unless otherwise duly delegated as an incident to the collection.

33. In fact, petitioner's claim that it was constrained to file this present petition without waiting for the ruling of the [CIR] even worsened its case. It is crystal clear that the written protest of the petitioner was not in fact lodged before the [CIR] as it failed to allege the same. As alleged by the petitioner, it was lodged before the District Collector of Customs, Port of Batangas, Batangas City. Hence, as provided under Section 229 of the [1997] NIRC, this petition could not be maintained.

34. Section 229 of the [1997] NIRC specifically provides the following, to wit:

> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x-x-x" []

> 35. As stated in the provision of Section 229 of the [1997] NIRC above-quoted, no suit or proceeding shall be maintained until a claim for refund has been duly filed with the Commissioner. While said provision speaks of Commissioner only, it is deemed to be the [CIR]. It is worthwhile to mention that in claim for refund of taxes erroneously collected under the law, there is no provision both in the TCCP and NIRC delegating to the [COC] the obligation to receive and determine a claim for refund of taxes based on the questioned erroneous BIR Ruling.
>
> 36. In the case at bar, the claim for refund was filed not with the [CIR], contrary to the requirement of the afore-quoted provision of law. It was not even filed with the [COC]. The law is clear and categorical that written protest filed before the Collector of the Port of Batangas is not a claim filed before the [CIR].
>
> 37. Needless to say, this petition is prematurely filed with this Honorable Court for having failed to comply with the requirement of prior filing of a claim for refund before the [CIR].

Respondent CIR filed her Pre-Trial Brief on August 15, 2008[84], while petitioner filed its Pre-Trial Brief on August 22, 2008[85] and respondent COC failed to file his Pre-Trial Brief.

On April 7, 2009, the parties filed their JSFI[86], which was approved by the Court in its Resolution dated April 13, 2009[87].

On July 13, 2010, petitioner filed a Motion to Consolidate to the Third Division CTA Case Nos. 7767 & 7816 (Consolidated), 7791, 7807, 7837, 7839, and 7851[88], which motion was granted by the Court in a Resolution promulgated on August 13, 2010[89].

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[84] *Records, CTA Case No. 7807*, pp. 84-89.
[85] *Id.*, pp. 90-99.
[86] *Id.*, pp. 166-174.
[87] *Id.*, p. 176.
[88] *Id.*, pp. 352-358.
[89] *Id.*, pp. 364-365.

CTA Case No. 7816

On July 7, 2006, petitioner imported 3,216,220 liters of Jet A-1 fuel for its domestic operations,[90] for which it paid under protest Php11,803,527.00 on August 4, 2006.[91] Thereafter, on August 16, 2006, petitioner filed a written protest with the District Collector of Customs.[92]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC*, petitioner filed a written request for refund with the BIR on July 8, 2008[93] and the instant Petition for Review with the Court on July 31, 2008.[94]

On September 16, 2008, respondent CIR filed her Answer[95] interposing the following Special and Affirmative Defenses:[96]

> 4. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the [BIR]. A claim for refund is not *ipso facto* granted because the [CIR] still has to investigate and ascertain the veracity of the claim.
>
> 5. Taxes paid and collected by the [BIR] are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon petitioner.
>
> 6. In an action for refund, it is a working rule that petitioner as taxpayer-claimant, has the burden of proof to show that it is entitled to refund of the amount claimed as refundable. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund. Failure to present the necessary evidence is fatal to his claim.
>
> 7. It is a well-settled principle tax refunds are in the nature of tax exemptions and are to be construed in *strictissimi*

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[90] *BOC Records, Exhibits* "Q-6" 7816 and "Q-6-a" 7816, p. 28.
[91] *Id., Exhibit* "O" 7816, p. 27; *Exhibit* "Q-6-b" 7816, p. 28.
[92] *Id., Exhibit* "K-7" 7816, pp. 17-25.
[93] *Records, CTA Case No. 7767, Vol. IV, Exhibit* "L-9", pp. 2072-2112, with annexes.
[94] *Records, CTA Case No. 7816, PFR,* pp. 1-68, with annexes.
[95] *Id.,* pp. 84-92.
[96] *See Records, CTA Case No. 7816,* pp. 85-89.

juris against the entity claiming the same. Exceptions from taxation are highly disfavored, so much that they may be odious to the law. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. A state cannot be stripped off this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language. He who claims an exemption must be able to point the provision of the law creating said right.

8. Petitioner must prove that the amount of [Php]11,803,527.00 allegedly representing specific tax it paid under protest on 04 August 2006 to the [COC] is properly documented. To support its claim, it is indispensable for petitioner to prove the following:

a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, and Section 236 of the 1997 [NIRC], as amended;

b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the 1997 [NIRC], as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the [1997 NIRC], as amended. It is important to note that Section 112(C) of the [1997 NIRC] as amended, requires the submission of complete documents in support of the application filed with the [BIR] before the 120-day audit period shall apply and before petitioner could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants the dismissal of the instant petition for review; and

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (C) and 229 of the 1997 [NIRC], as amended.

9. The instant Petition for Review should not be given due course as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

Unmistakably, Section 1(j) of Rule 16 of the 199 [*sic*] Rules of Civil Procedure provides that:

"Motion to Dismiss"

Section 1. *Grounds.* - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(j) That a condition precedent for filing the claim has not been complied with."

Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the [DOE] dated 20 December 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price before petitioner questioned its legality before this Honorable Court. Contrary to the requirement of the law that there must be a condition precedent, that is an appeal before the President of the Philippines, petitioner went straight before this Honorable Court which is a clear contravention of the law.

10. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the [DOE], in order for petitioner to claim for refund. Said act by petitioner arises [from] its failure to recognize the [*sic*] This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. The fundamental advantages and the necessity of the independence of said three departments from each other, limited only by the specific constitutional precepts a check and balance between and among them, have long been acknowledged as more paramount than the serving of any temporary or passing governmental conveniences or exigencies.

> 11. Furthermore, petitioner again violated the law when it dodged the power of the CIR to construe tax laws and resolve tax cases pursuant to Section 4 of the [1997 NIRC] which states as follows:
>
> > "SEC. 4. *Power of Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
> >
> > x x x x x x x x x."
>
> 12. BIR Ruling No. 001-203 dated 29 January 2003 is a valid interpretation of the provisions of the [1997 NIRC].
>
> 13. Based on the foregoing, the petitioner's claim for tax refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action.

On the other hand, respondent COC failed to file his Answer.

Respondent CIR filed her Pre-Trial Brief on September 29, 2008[97], while petitioner filed its Pre-Trial Brief on September 30, 2008[98] and respondent COC failed to file his Pre-Trial Brief.

On December 5, 2008, petitioner filed a Motion to Consolidate CTA Case Nos. 7767 & 7816[99], which motion was granted by the Court in a Resolution promulgated on December 24, 2008[100].

CTA Case No. 7837

On September 7, 2006, petitioner imported 3,224,885 liters of Jet A-1 fuel for its domestic operations,[101] for which it paid under protest Php11,835,328.00 on October 6, 2006.[102] Thereafter, on October 19,

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97 *Records, CTA Case No. 7816*, pp. 93-100.
98 *Id.*, pp. 102-114, with annexes.
99 *Records, CTA Case No. 7767, Vol. I*, pp. 132-134.
100 *Id.*, p. 137.
101 *BOC Records, Exhibits* "EE" 7837 and "EE-1" 7837, p. 70.
102 *Id., Exhibit* "I" 7837, p. 69; *Exhibit* "EE-2" 7837, p. 70.

2006, petitioner filed a written protest with the District Collector of Customs.[103]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC,* petitioner filed a written request for refund with the BIR on September 12, 2008[104] and the instant Petition for Review with the Court on October 3, 2008.[105]

On November 20, 2008, respondent CIR filed her Answer[106] interposing the following Special and Affirmative Defenses:[107]

> 9. The Petition for Review does not merit to be given due course. Well-settled is the rule that jurisdiction is determined by the allegations in the complaint or in this case, the petition. The allegations of petitioner point to a relief that entirely relies on the nullification of the Certification of the [DOE] dated 20 December 2003 and the resultant BIR Ruling No. 001-2003. Aside from the allegations therein, this point is emphasized in petitioner's "Prayer" which explicitly seeks to nullify the validity of the said Certification of the [DOE]. It then further deteriorates to a point where petitioner is asking the Honorable Court to rule that the Department's factual finding that "aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price", is not correct. Finally, petitioner prays for the nullification of the resultant BIR Ruling No. 001-2003. Clear as day, petitioner is primarily seeking the nullification of these issuances. The alleged cause of action for refund of taxes being merely consequential to that primarily sought. It cannot be denied that absent the nullification of these issuances, petitioner would have nothing to base its cause of action. However, the law provides the proper administrative remedies available to petitioner in contesting these issuances and which petitioner ignored. Instead, what petitioner undertook is a procedural shortcut by filing the instant petition, and this miss-step should be viewed with utmost disfavor.
>
> 10. Petitioner did not seek redress from the [DOE] to assail the alleged invalid certification as provided under

[103] *BOC Records, Exhibit* "K" 7837, pp. 58-67.
[104] *Records, CTA Case No. 7767, Vol. II, Exhibit* "L" 7837, pp. 959-968.
[105] *Records, CTA Case No. 7837, PFR,* pp. 4-72, with annexes.
[106] *Id.,* pp. 92-99.
[107] *See Records, CTA Case No. 7837,* pp. 93-97.

Department Circular No. 2002-07-004, which was duly issued pursuant to the provisions of Section 5 (k) of R.A. 7638, otherwise known as the [DOE] Act of 1992.

11. Petitioner, likewise, failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Honorable Court, in violation of Section 4 of the [1997 NIRC] which provides as follows:

> "SEC. 4. *Power of Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> x x x x x x x x x."

12. Clearly, petitioner failed to exhaust all administrative remedies before elevating this case to this Honorable Court. It brings the issue of the validity of these issuances for judicial review at the first instance instead of availing the proper administrative remedies provided by law. Such cannot be allowed. As stated by the Honorable Supreme Court in the case of LAGUNA CATV NETWORK, INC., vs. HON. ALEX E. MARAAN, Regional Director, Region IV, Dept. of Labor and Employment (DOLE) et. al.

> "Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum. Observance of this doctrine is a sound practice and policy. As succinctly explained by this Court in Carale vs. Abarintos:
>
> > [']It (the doctrine of exhaustion of administrative remedies) ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance.[']"

> For failing to exhaust, or even avail of, the proper administrative remedies, the instant petition must be dismissed. As stated in the case of REPUBLIC OF THE PHILIPPINES, vs. EXPRESS TELECOMMUNICATION CO., INC. and BAYAN TELECOMMUNICATIONS CO., INC.
>
>> "The rule is well-entrenched that a party must exhaust all administrative remedies before resorting to the courts. The premature invocation of the intervention of the court is fatal to one's cause of action."
>
> 13. Furthermore, it should be noted that the assailed Certification of the [DOE] dated 20 December 2002 involves an entirely factual determination that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price. Therefore, in effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the [DOE] who acted within the scope of his official functions on a matter within the sphere of his specific competence/ specialization. The absurdity of it all speaks for itself and this is precisely one of the scenarios sought to be avoided by the doctrine of exhaustion of administrative remedies.
>
> 14. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and [as] such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).

On November 27, 2008, respondent COC filed his Answer[108] interposing Special and Affirmative Defenses[109] similar to those contained in his Answer in CTA Case No. 7807.

Respondent CIR filed her Pre-Trial Brief on January 12, 2009[110], while petitioner filed its Pre-Trial Brief on January 13, 2009[111] and respondent COC filed his Pre-Trial Brief of March 10, 2009[112].

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[108] *Records, CTA Case No. 7837 with annex*, pp. 100-110.
[109] *See Records, CTA Case No. 7837*, pp. 102-108.
[110] *Records, CTA Case No. 7837*, pp. 112-125.
[111] *Id.*, pp. 117-129, with annexes.
[112] *Id.*, pp. 132-144, with annexes.

On July 13, 2010, petitioner filed a Motion to Consolidate to the Third Division CTA Case Nos. 7767 & 7816 (Consolidated), 7791, 7807, 7837, 7839, and 7851[113], which motion was granted by the Court in a Resolution promulgated on August 12, 2010[114].

CTA Case No. 7839

On August 22, 2006, petitioner imported 3,239,050 liters of Jet A-1 fuel[115] for its domestic operations[116], for which it paid under protest Php11,887,313.50 on October 12, 2006.[117] Thereafter, on October 25, 2006, petitioner filed a written protest with the District Collector of Customs.[118]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC*, petitioner filed a written request for refund with the BIR on September 12, 2008[119] and the instant Petition for Review with the Court on October 9, 2008.[120]

On November 27, 2008, respondent CIR filed her Answer[121] interposing Special and Affirmative Defenses[122] similar to those contained in her Answer in CTA Case No. 7816.

On January 30, 2009, respondent COC filed his Answer[123] interposing the following Affirmative Defenses:[124]

> 5. Petitioner has no cause of action against respondent [COC].
>
> > 5.1. Cause of action is defined as an act or omission by which a party violates a right of another. Its essential elements are:

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[113] *Records, CTA Case No. 7837,* pp. 451-457.
[114] *Id.,* pp. 462-463.
[115] *BOC Records, Exhibits* "K-6" 7839 and "K-6-a," p. 86.
[116] *Id., Exhibit* "K-J" 7839, p. 88.
[117] *Id., Exhibit* "I" 7839, p. 85; *Exhibit* "K-6-b" 7839, p. 86.
[118] *Id., Exhibit* "K" 7839, pp. 73-82.
[119] *Records, CTA Case No. 7767, Vol. II, Exhibit* "L" 7839, pp. 969-978.
[120] *Records, CTA Case No. 7839, PFR,* pp. 1-69, with annexes.
[121] *Id.,* pp. 87-94.
[122] *See Records, CTA Case No. 7839,* pp. 88-91.
[123] *Records, CTA Case No. 7839,* pp. 131-140; *see* p. 147.
[124] *See Records, CTA Case No. 7839,* pp. 132-138.

(1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

(2) an obligation on the part of the named defendant to respect or not to violate such right; and

(3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

6. A reading of the present petition reveals that petitioner seeks a refund of specific tax on the Jet A-1 fuel importation which it paid allegedly under protest with the [BOC] on the ground that BIR Ruling No. 001-2003 withdrawing petitioner's tax exemption on importation of petroleum products for domestic operations amounts to an unauthorized amendment of its franchise and that the [DOE] Certification dated December 20, 2002 which is the basis of BIR Ruling No. 001-2003 is not valid.

7. While the petition is entitled "Refund of Specific Tax on Jet A-1 Importation," the primary issue to be resolved is whether the assailed BIR Ruling and DOE certification are valid. Otherwise stated, the resolution of whether petitioner is entitled to a tax refund it allegedly paid under protest to the [BOC] hinges on the issue of the validity of the assailed BIR Ruling and DOE certification.

8. Also, petitioner admits that said specific tax was collected by the Collector of Customs of the Port of Batangas by virtue of the Authority to Release Imported Goods issued by the Large Taxpayers Service of the Bureau of Internal Revenue. Plainly, the [BOC] merely acted as pure collection agent; hence, it has no jurisdiction over petitioner's protest allegedly lodged before the Collector of Customs of the Port of Subic.

9. In any case, the issuance of BIR Ruling No. 001-2002 did not alter or amend the franchise of petitioner/ said ruling merely and simply determined whether the two (2) conditions set forth in Section 13 of P.D. No. 1590, in relation

to Republic Act No. 8339, to justify petitioner's exemption from taxes on its importation of Jet A-1 fuel, have been met.

10. Section 13 of P.D. No. 1590, as amended, provides that importations of petroleum products for domestic operations are tax-exempt on two (2) conditions: [1] the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; [2] in the case of importations, that they are not locally available in reasonable quantity, quality or price.

11. On December 20, 2002, the [DOE] issued a certification that aviation gas, fuel and oil for use in domestic operation for domestic airline agencies are locally available in reasonable quantity, quality and price.

12. The DOE is the government agency responsible for the administration of the energy sector; hence, it is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function(s).

13. Based on the said DOE certification, it is therefore clear that the aforementioned second condition for petitioner's exemption from taxes on its importation of Jet A-1 fuel is wanting.

14. Further, it is respectfully submitted that the Honorable Court is not the proper forum to question or contest the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price; hence, the Honorable Court has no jurisdiction over the issue of whether said DOE certification is valid.

15. At all events, petitioner failed to question the said BIR Ruling within thirty (30) days from receipt thereof before the Secretary of Finance as provided for under Revenue Memorandum Circular No. 44-2001 dated October 11, 2001:

> Section 3. Rulings Adverse to the Taxpayer. - A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the receipt of such ruling, seek its review by the

> Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. ... []

16. Accordingly, said ruling had already become final. Petitioner can no longer question the same through the present petition filed before the Honorable Court.

17. Moreover, petitioner's failure to exhaust all administrative remedies is fatal to his cause. It is elementary that where, as here, a remedy is available within the administrative machinery, this should first be resorted to.

> 17.1 It is a basic rule that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him; hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action.

18. Finally, in an action for tax refund/credit, the taxpayer has the burden to establish its right to refund and failure to sustain the burden is fatal to the claim for refund.

19. Thus, it is incumbent upon petitioner to show that the alleged specific tax it paid was erroneously and illegally collected.

20. Petitioner, however, miserably failed to show that the amount paid as specific tax on importation of Jet A-1 was erroneously or illegally collected.

21. Indeed, tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

Respondent CIR filed her Pre-Trial Brief on January 8, 2009[125], while petitioner filed its Pre-Trial Brief on January 13, 2009[126] and respondent COC filed his Pre-Trial Brief of January 30, 2009[127].

On May 11, 2009, the parties filed their JSFI[128], which was approved by the Court in its Resolution dated May 15, 2009[129].

On July 16, 2010, petitioner filed an Amended Motion to Consolidate to the Third Division CTA Case Nos. 7767 and 7816, 7791, 7807, 7837, 7839, and 7851 (with Prayer for Withdrawal of Motion to Consolidate Dated 28 June 2010)[130], which motion was granted by the Court in a Resolution promulgated on August 13, 2010[131].

CTA Case No. 7851

On November 16, 2006, petitioner imported 4,827,833 liters of Jet A-1 fuel for its domestic operations,[132] for which it paid under protest Php17,718,147.00 on December 14, 2006.[133] Thereafter, on December 27, 2006, petitioner filed a written protest with the District Collector of Customs.[134]

To avoid the lapse of the two-year prescriptive period for claiming a refund of erroneously collected taxes under *Section 229 of the 1997 NIRC*, petitioner filed a written request for refund with the BIR on November 19, 2008[135] and the instant Petition for Review with the Court on December 11, 2008.[136]

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[125] *Records, CTA Case No. 7839*, pp. 96-103.
[126] *Id.*, pp. 104-116, with annexes.
[127] *Id.*, pp. 141-145; *see* p. 147.
[128] *Id.*, pp. 196-205.
[129] *Id.*, p. 206.
[130] *Id.*, pp. 519-525.
[131] *Records, CTA Case No. 7839*, pp. 534-535.
[132] *BOC Records, Exhibits* "K-6" 7851 and "K-6-a" 7851, p. 102.
[133] *Id., Exhibit* "I" 7851, p. 101; *Exhibit* "K-6-b" 7851, p. 102.
[134] *Id., Exhibit* "K" 7851, pp. 89-98.
[135] *Records, CTA Case No. 7767, Vol. II, Exhibit* "L" 7767 & 7816, pp. 979-988.
[136] *Records, CTA Case No. 7851, PFR*, pp. 4-72, with annexes.

On January 23, 2009, respondent COC filed his Answer[137] interposing Affirmative Defenses[138] similar to those contained in his Answer in CTA Case No. 7839.

On February 17, 2009, respondent CIR filed her Answer[139] interposing the following Special and Affirmative Defenses:[140]

> 4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner must [prove] that the amount of Seventeen Million Seven Hundred Eighteen Thousand One Hundred Forty Seven Pesos ([Php]17,718,147.00) representing specific tax it paid under protest on December 14, 2006 to the [COC] is properly documented.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the [BIR]. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund.
>
> 8. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 9. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.
>
> 10. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005).* The law does not look with favor on tax exemptions and that he who would seek to

[137] *Records, CTA Case No. 7851,* pp. 85-95.
[138] *Id.* pp. 86-92.
[139] *Id.,* pp. 103-113.
[140] *See Records, CTA Case No. 7851,* pp. 104-109.

be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-Land Services Vs. Court of Appeals, 357 SCRA 444).

11. The instant Petition for Review should not be given due course as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

Unmistakably, Section 1(j) of Rule 16 of the 1999 Rules of Civil Court Procedure provides that:

> "MOTION TO DISMISS"
>
> Section 1. Grounds. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx
>
> (j) That a condition precedent for filing the claim has not been complied with."

Petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the [DOE] dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price prior to questioning its legality before this Honorable Court. This is contrary to the requirements of the law that where there is a condition precedent, in this case, an appeal before the President of the Philippine, petitioner must observe the same. Petitioner, however, went straight before this Honorable Court which is a clear contravention of the law.

12. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the [DOE], in order for petitioner to claim for refund. Said act by petitioner arises from its failure to recognize the condition precedent for filing its claim. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. The fundamental advantage and the necessity of the independence of said three (3) departments from each other limited only by the specific constitutional precepts a check and balance between and among them, have long been acknowledged as more

paramount than the serving of any temporary of [*sic*] passing governmental conveniences or exigencies

13. Furthermore, petitioner again violated the law when it dodged the power of respondent CIR to construe tax laws and resolve challenges thereto pursuant to Section 4 of the [1997 NIRC] which states as follows:

> "SEC. 4. Power of Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> xxx."

14. Petitioner alleged that BIR Ruling No. 001-203 dated January 29, 2003 amounts to unauthorized amendment or alteration of P.D. No. 1590, the franchise of Philippine Airlines (PAL), in violation of Section 16 and 24 thereof. Respondent CIR humbly submits that the questioned BIR Ruling is a valid interpretation of the provisions of the NIRC of 1997. It is widely accepted that interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by courts. Unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid and full force and effect.

Revenue Memorandum Circular (RMC) No. 44-2001 entitled "Circularizing Department 23-01 providing for the Implementing Rules of the First Paragraph of Section 4 of the NIRC of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99" which was issued on October 11, 2001 provides:

> "Section 2. Validity of Rulings. - A ruling by the Commissioner of Internal Revenue shall be presumed valid unless modified, reversed or superseded by the Secretary of Finance.
>
> Section 3. Rulings Adverse to the Taxpayer. - A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself of through his/its duly accredited agent or representative. The request for review shall be in writing and under oath and must:

xxx

> These are mandatory requirements and failure to comply with any of the stated substantive requirements shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review."[]

> Petitioner is given thirty (30) days from its alleged receipt of said BIR ruling on February 18, 2003 or until March 20, 2003 within which to exhaust the above-mentioned remedy by filing before the Secretary of Finance a request for review in writing and under oath BIR Ruling 001-203. However, petitioner slept on its right and allowed the period within which to present its side of the case to lapse. Petitioner should therefore, suffer the consequence of its omission to exercise its rights.

> Respondent CIR respectfully submits that rules and regulations issued by the administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect or partake of the nature, of a statute.

> 15. Based on the foregoing, the petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action.

Respondent CIR filed her Pre-Trial Brief on March 2, 2009[141], while respondent COC and petitioner filed their respective Pre-Trial Briefs of March 3, 2009[142].

On May 25, 2009, the parties filed their JSFI[143], which was approved by the Court in its Resolution dated May 27, 2009[144].

On July 16, 2010, petitioner filed an Amended Motion to Consolidate to the Third Division CTA Case Nos. 7767 and 7816, 7791, 7807, 7837, 7839, and 7851 (with Prayer for Withdrawal of Motion to Consolidate Dated 28 June 2010)[145], which motion was

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[141] *Records, CTA Case No. 7851*, pp. 115-125.
[142] *Id.*, pp. 126-131, 132-140.
[143] *Id.*, pp. 180-187.
[144] *Id.*, p. 198.
[145] *Id.*, pp. 516-522.

granted by the Court in a Resolution promulgated on August 13, 2010[146].

CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851 (the "Consolidated Cases")

On August 13, 2013, petitioner filed its Formal Offer of Evidence[147] for the Consolidated Cases, which was resolved by the Court in Resolutions dated October 23, 2013[148] and February 11, 2014[149].

On June 9, 2014, petitioner filed its Supplemental Formal Offer of Evidence[150], which was resolved by the Court in a Resolution dated August 22, 2014[151].

On October 23, 2014, respondent COC filed his Formal Offer of Evidence[152], which was resolved by the Court in a Resolution dated December 19, 2014[153].

On February 12, 2015, petitioner filed its Supplemental Formal Offer of Evidence[154], which was resolved by the Court in a Resolution dated March 17, 2015[155].

In compliance with this Court's Resolution dated March 17, 2015[156], which ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof, respondent CIR filed her memorandum on April 6, 2015[157] while petitioner filed its memorandum on May 5, 2015[158] and respondent COC filed his memorandum by registered mail on May 13, 2015[159].

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[146] *Records, CTA Case No. 7839,* pp. 526-527.
[147] *Records, CTA Case No. 7767, Vol. II,* pp. 772-887.
[148] *Id., Vol. III,* pp. 1658-1660.
[149] *Id.,* pp. 1703-1705.
[150] *Id., Vol. IV,* pp. 1794-1803.
[151] *Id.,* pp. 1825-1828.
[152] *Id.,* pp. 2002-2010.
[153] *Records, CTA Case No. 7767, Vol. IV,* pp. 2047-2048.
[154] *Records, CTA Case No. 7767, Vol. IV,* pp. 2069-2071.
[155] *Id.,* pp. 2122-2123.
[156] *Id.,* pp. 2122-2123.
[157] *Id.,* pp. 2124-2135.
[158] *Id., Vol. V,* pp. 2146-2216.
[159] *Id.,* pp. 2219-2261.

On June 11, 2015, this Court promulgated a Resolution[160] submitting the case for decision; hence, this Decision.

The Issues

The issues for consideration of the Court can be summarized, as follows:

> WHETHER PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF A TCC FOR THE EXCISE TAXES PAID ON ITS IMPORTATIONS OF JET A-1 FUEL FOR THE PERIOD MARCH TO NOVEMBER 2006.

Petitioner's Arguments[161]

Petitioner argues that the Court has jurisdiction over the Consolidated Cases as the primary issue for the Court's resolution is petitioner's entitlement to a refund of the specific taxes paid on various importations of Jet A-1 fuel. In order to prove petitioner's entitlement to the refund, petitioner necessarily had to show the invalidity of the issuances and rulings on which the assessments were based. Moreover, petitioner argues that the Consolidated Cases fell under the exception to the principle of exhaustion of administrative remedies as there is an urgent need for judicial intervention in view of the imminence of the expiration of the two-year prescriptive period within which to file a suit or proceeding before the courts. Lastly, petitioner posits that the validity of the DOE Certification was already declared null and void by the Regional Trial Court of Pasay City, Branch 114 in the case entitled *Philippine Airlines, Inc. v. Secretary of the Department of Finance and Secretary of the Department of Energy* docketed as Civil Case No. R-PSY-10-03889-CV; hence, the DOE Certification cannot be relied upon.

Petitioner claims that it is exempt from the payment of specific taxes on its importation of aviation fuel for its domestic operations. To this end, petitioner alleges that under PAL's franchise, PAL enjoys a special tax treatment, *i.e.*, that of having the least possible tax burden. Similarly, petitioner is entitled to the same tax treatment as

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[160] *Records, CTA Case No. 7767, Vol. V*, p. 2263.
[161] *Id., Petitioner's Memorandum*, pp. 2161-2213.

PAL pursuant to *Section 11* of APC's franchise. By virtue of *BIR Ruling No. 001-03,* however, petitioner's exemption was arbitrarily taken away by a mere administrative issuance.

In this regard, petitioner alleges that *BIR Ruling No. 001-03* is invalid for being patently wrong and bereft of factual basis as the same is an unauthorized amendment of *PD No. 1590* and was issued without due process. The DOE Certification, which is the sole basis of *BIR Ruling No. 001-03,* was issued arbitrarily, has no basis and is contrary to DOE's data. Even assuming that the DOE Certification was valid, it applies only for 2002, and not for subsequent years. Moreover, petitioner posits that the term "locally available supply" excludes imported products, especially importations made by domestic airline companies for exclusive use in their operations.

Finally, petitioner argues that it is entitled to the refund or issuance of TCC for the specific taxes it paid under protest corresponding to its importations for the period March to November 2006. According to petitioner, it has proven its entitlement to the refund or issuance of TCC, that it has complied with the administrative claims for refund, and that it filed the Petitions for Review within the two-year reglementary period. Further, petitioner has also sufficiently proven payment of the specific taxes claimed for refund or issuance of TCC. In any case, petitioner puts forth that it has duly accounted for and paid its corporate income tax and value-added tax ("VAT") on its importations for the period March to November 2006.

Thus, petitioner prays for the refund or issuance of a TCC in the total amount of Php94,689,001.50 representing the specific taxes petitioner paid under protest on its importations of Jet A-1 fuel for its domestic operations for the period March to November 2006.

Respondent CIR's Counter-arguments[162]

Respondent CIR counters that the Petitions for Review do not merit to be given due course as petitioner is primarily seeking the nullification of the DOE Certification and *BIR Ruling No. 001-03,* the refund of taxes being merely a consequence thereof. Accordingly, the

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[162] *Records, CTA Case No. 7767, Vol. IV, Respondent CIR's Memorandum,* pp. 2126-2133.

Court has no jurisdiction over the nullification of the administrative issuances.

Further, respondent CIR submits that assuming that the nullification of the administrative issuances is merely consequential, the Court should still not allow the collateral attack on the administrative issuances as such administrative issuances are presumed valid and cannot be attacked collaterally.

Finally, respondent CIR argues that petitioner failed to prove that aviation fuel is not locally available in reasonable quantity, quality, and price. The law does not make a distinction between locally processed and imported products because any oil product imported into the Philippines would be locally available to the domestic market. In addition, the fact that some prices from abroad are cheaper does not make the locally available products' price "unreasonable" in the legal and economic sense.

Respondent COC's Counter-arguments[163]

Respondent COC contends that petitioner is not exempt from payment of excise tax on its importations of Jet A-1 fuel. According to respondent COC, petitioner's claim for refund is primarily anchored on the alleged *ipso facto* applicability of PAL's franchise in petitioner's favor. However, petitioner failed to present concrete and substantial evidence establishing that PAL or any of petitioner's competitors indeed receives or enjoys, or is receiving or enjoying, tax privileges with respect to its importations of Jet A-1 fuel. Moreover, PAL's charter does not grant PAL absolute exemption from all other taxes aside from the basic corporate income tax and VAT. The conditions specified in PAL's charter must first be fulfilled before PAL can be entitled to the tax privileges. Absent a clear showing that PAL or any of petitioner's competitors are actually enjoying or receiving tax privileges on its importations of Jet A-1 fuel, the *ipso facto* clause under petitioner's franchise cannot clearly offer and extend to petitioner the alleged exemption from payment of specific taxes on importations of Jet A-1 fuel.

[163] *Records, CTA Case No. 7767, Vol. V, Respondent COC's Memorandum*, pp. 2224-2258.

Respondent COC also alleges that petitioner failed to adduce proof of compliance with the conditions required to avail of the tax exemption. Assuming that petitioner is entitled to the refund, it must comply with the two conditions before it may avail of the tax exemptions under petitioner's charter in relation to PAL's franchise. However, petitioner failed to adduce sufficient proof that the two conditions were fulfilled.

In addition, respondent COC posits that from the point of view of the DOE, the total local available supply includes importations. Otherwise, if product importation is removed from the computation of local available supply of aviation fuel, the demand of airline companies for aviation fuel would likewise have to be excluded in computing the total demand. Also, respondent COC argues that petitioner's reliance on the Civil Aviation Authority of the Philippines ("CAAP") Certifications stating that there is no locally available aviation fuel in reasonable quantity, quality, and price is misplaced as CAAP is not competent and has no authority to issue such certifications. The DOE, as the government agency mandated by law to monitor the availability of petroleum products in the Philippines, is the entity with the authority to issue certifications.

Finally, respondent COC argues that petitioner failed to exhaust available administrative remedies before seeking judicial intervention; that petitioner should have first appealed *BIR Ruling No. 001-03* to the Secretary of Finance; and that the CTA has no jurisdiction to invalidate the DOE Certification. Assuming that petitioner's primary cause of action is to seek refund of its taxes, the consequential nullification of the administrative issuances - a collateral attack - cannot be allowed.

The Ruling of the Court

The Petitions for Review are meritorious.

The Court has jurisdiction over the Consolidated Cases.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine certain controversies."[164] The CTA, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[165]

Section 7(a)(1) of RA No. 1125, as amended[166], provides that this Court has exclusive appellate jurisdiction to review by appeal decisions of the CIR involving refunds of internal revenue taxes or other matters arising under the *1997 NIRC*, as follows:

> **Sec. 7.** ***Jurisdiction.*** — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;[167]

The Court agrees with petitioner that the present case involves primarily the refund of its excise taxes paid on the importation of Jet A-1 fuel for the period March to November 2006, which matter is clearly within the jurisdiction of the Court.

The claims for refund were timely filed.

Section 204(C)[168] in relation to Section 229[169] of the 1997 NIRC requires the filing of an administrative claim for refund before the

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164 *Guy v. Court of Appeals*, G.R. Nos. 165849, 170185, 170186, 171066 & 176650, December 10, 2007, 539 SCRA 584.
165 *CIR v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.
166 June 16, 1954.
167 Underscoring ours.
168 Section 204(C) of the 1997 NIRC provides:

> **Sec. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may -

filing of a judicial claim, both of which claims should be filed within two (2) years from payment of the tax.

The Supreme Court in *CIR v. Acosta*[170] outlined the requirements for claiming a refund in this wise:

> Noteworthy, the requirements under Section 230 [now, Section 204(C) of the 1997 NIRC] for refund claims are as follows:
>
> > 1. A written claim for refund or tax credit must be filed by the taxpayer with the Commissioner;
> > 2. The claim for refund must be a categorical demand for reimbursement;
> > 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefore must be commenced in court within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.
>
> In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court. This obviously is intended, first, to afford the CIR an

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x x x x x x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty; *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Underscoring ours.)

169 Section 229 of the 1997 NIRC provides:

Sec. 229. ***Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the fact of the return upon which payment has been made, such payment appears clearly to have been erroneously paid. (Underscoring ours.)

170 G.R. No. 154068, August 3, 2007, 529 SCRA 177.

opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure.

As applied to the Consolidated Cases, the Court holds that petitioner timely filed its administrative and judicial claims for refund, the relevant dates of which can be summarized as follows:

CTA Case No.	Date of Payment Under Protest	Date of Filing of Administrative Claim	Date of Filing of Petition for Review	Last Day to File Both Claims
7767	April 20, 2006	March 7, 2008	April 16, 2008	April 20, 2008
7791	June 7, 2006	May 14, 2008	June 5, 2008	June 7, 2008
7807	July 7, 2006	June 13, 2008	July 3, 2008	July 7, 2008
7816	August 4, 2006	July 8, 2008	July 31, 2008	August 4, 2008
7837	October 6, 2006	September 12, 2008	October 3, 2008	October 6, 2008
7839	October 12, 2006	September 12, 2008	October 9, 2008	October 12, 2008
7851	December 14, 2006	November 19, 2008	December 11, 2008	December 14, 2008

Having settled the procedural issues, the Court will now delve into the substantive issues.

Petitioner, like PAL, can enjoy exemption from payment of excise tax on its importation of Jet A-1 fuel.

In determining whether petitioner is entitled to a refund or issuance of TCC for excise taxes paid on importations of Jet A-1 fuel for the period March to November 2006, a thorough examination of APC's franchise is in order.

RA No. 8339, as amended, contains an *ipso facto* clause in favor of APC, as follows:

> **Sec. 11.** ***Tax Provisions.*** -
>
> x x x x x x x x x
>
> In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any

disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.

x x x x x x x x x

Under the *ipso facto* clause, APC shall equally enjoy tax privileges and other favorable terms which tend to place APC at any disadvantage *vis-à-vis* any of APC's competitors.

Meanwhile, PAL is an entity engaged in similar activities as that of APC and can be considered a competitor of APC. Similar to APC's franchise, under *Section 1 of PD No. 1590*, PAL was granted a franchise to "establish, operate, and maintain transport services for the carriage of passengers, mail, and property by air in and between any and all points and places throughout the Philippines, and between the Philippines and other countries." *Section 13(2) of PD No. 1590*[171] further provides for PAL's exemption from all taxes due on importations of aviation fuel provided the following conditions are met: (a) payment has been made either on PAL's basic corporate income tax or franchise tax, whichever is lower; (b) the aviation fuel imported is for the use of PAL in its transport and non-transport operations and other activities incidental thereto; and (c) the aviation fuel is not locally available in reasonable quantity, quality, or price.

By virtue of the *ipso facto* clause, therefore, APC shall also be entitled to the exemption from all taxes due on importations of aviation fuel provided it has met the following conditions:

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[171] The relevant provision states:

> **Sec. 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:
>
> x x x x x x x x x
>
> 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:
>
> x x x x x x x x x
>
> (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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

1. Payment has been made on its basic corporate income tax or franchise tax, whichever is lower;

2. The aviation fuel imported is for use in its transport and non-transport operations and other activities incidental thereto; and

3. The aviation fuel is not locally available in reasonable quantity, quality, or price.

The Court shall now determine whether petitioner satisfied the aforementioned conditions, and proved its exemption from excise tax on the importation of Jet A-1 fuel.

Petitioner sufficiently proved its entitlement to a refund or issuance of TCC for excise taxes paid on importations of Jet A-1 fuel for the period March to November 2006.

With regard to the first condition, *i.e.*, that payment has been made on APC's basic corporate income tax or franchise tax, whichever is lower, APC was able to satisfy the same as evidenced by its Annual Income Tax Return covering the calendar year ("CY") 2006[172] indicating an overpayment of Php10,196,002.32.

As explained by the Supreme Court in *CIR v. PAL*[173], if the franchisee incurs a net loss, zero liability for basic corporate income tax is the lowest possible tax liability which a franchisee can pay to satisfy the terms of its franchise, thus:

> Section 13 of Presidential Decree No. 1590 clearly gives respondent the option to "pay" either basic corporate income tax on its net taxable income or franchise tax on its gross revenues, whichever would result in lower tax. The rationale for giving respondent such an option is explained in the PAL case, to wit:

[172] *Records, CTA Case No. 7767, Vol. III, Exhibit* "OOO," pp. 1609-1614.
[173] G.R. No. 180043, July 14, 2009, 592 SCRA 730.

> Notably, PAL was owned and operated by the government at the time the franchise was last amended. It can reasonably be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When the respondent operates at a loss (as in the instant case), no taxes are due; in this [*sic*] instances, it has a lower tax liability than that provided by Subsection (b).

> In the event that respondent incurs a net loss, it shall have zero liability for basic corporate income tax, the lowest possible tax liability. There being no qualification to the exercise of its options under Section 13 of Presidential Decree No. 1590, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year. Additionally, a ruling by this Court compelling respondent to pay a franchise tax when it incurs a net loss and is, thus, not liable for any basic corporate income tax would be contrary to the evident intent of the law to give respondent options and to make the latter liable for the least amount of tax.

> x x x x x x x x x

> In allowing respondent to carry over its net loss for five consecutive years following the year said loss was incurred, Presidential Decree No. 1590 takes into account the possibility that respondent shall be in a net loss position for six years straight, during which it shall have zero basic corporate income tax liability. The Court also notes that net loss carry-over may only be used in the computation of basic corporate income tax. Hence, if respondent is required to pay a franchise tax every time it has zero basic corporate income tax liability due to net loss, then it shall never have the opportunity to avail itself of the benefit of net loss carry-over.

Having incurred a net loss for CY 2006, APC is deemed to have satisfied the first condition.

With regard to the second condition, *i.e.*, that the aviation fuel imported is for the use of APC in its transport and non-transport operations and other activities incidental thereto, the Court holds that APC produced sufficient evidence to establish that the Jet A-1 fuel it imported for the period March to November 2006 was used in its transport and non-transport operations and other activities incidental thereto.

APC's witnesses, Mr. Edwin J. Segundo[174] and Mr. Jhonathan Chiong[175], uniformly testified that the Jet A-1 fuel imported was for APC's domestic operations. In support thereof, APC's witnesses presented various ATRIGs on the importations made for the period March to November 2006 which state that the shipments were to be used for flight operations[176], daily domestic flight operations[177], or domestic flight operations[178].

Being engaged in the business of providing transport services by air for the carriage of passengers, mail, goods, and property domestically or internationally - as stated in its franchise - any Jet A-1 fuel imported by APC will necessarily be used for its transport and non-transport operations and other activities incidental thereto.

That Jet A-1 fuel imported by airlines is used by such airlines for their own exclusive consumption is confirmed by respondent's witness, Ms. Zenaida Y. Monsada[179], the Director of the Oil Industry Management Bureau of the DOE. For reference is the relevant portion of Ms. Monsada's testimony, to wit:[180]

> ATTY. MELO:
>
> Q. Okay. Let's go back to the importation of jet fuel by the airlines. You mentioned that airlines as of present comprised of at least fifty percent (50%) of the importations of all jet fuel, kerosene as stated in your figures?

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[174] *See Records, CTA Case No. 7767, Vol. I, Exhibit* "JJ" 7767 & 7816, pp. 265-280; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7791, pp. 1247-1252; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7837, pp. 1264-1275; *Records, CTA Case No. 7767, Vol. III,* Exhibit "HH" 7839, pp. 1276-1286; *Records, CTA Case No. 7851, Exhibit* "HH" 7851, pp. 473-483.

[175] *See Records, CTA Case No. 7767, Vol. III, Exhibit* "GG" 7791, pp. 1215-1222; *Records, CTA Case No. 7767, Vol. III, Exhibit* "GG" 7807, pp. 1223-1230; *Records, CTA Case No. 7767, Vol. III, Exhibit* "GG" 7837, pp. 1231-1238; *Records, CTA Case No. 7767, Vol. III, Exhibit* "GG" 7839, pp. 1239-1246; *Records, CTA Case No. 7767, Vol. III, Exhibit* "XX" 7851, pp. 1409-1420.

[176] *See BOC Records, Exhibit* "J" 7767, p. 14.

[177] *See BOC Records, Exhibit* "J" 7791, p. 43; *Exhibit* "K" 7816, p. 29.

[178] *See BOC Records, Exhibit* "J" 7807, p. 57; *BOC Records, Exhibit* "I-8" 7837, p. 72; *BOC Records, Exhibit* "J" 7839, p. 88; *BOC Records, Exhibit* "J" 7851, p. 103.

[179] *Records, CTA Case No. 7767, Vol. IV, Exhibit* "6," pp. 1881-1895; *Records, CTA Case No. 7767, Vol. IV,* pp. 1928-1970.

[180] *Records, CTA Case No. 7767, Vol. IV,* pp. 1959-1961.

DIR. MONSADA:

A. About, not necessarily at least.

ATTY. MELO:

Q. Okay, about. When airlines import jet fuel or Jet A-1, was it correct to state that they do so for their own exclusive consumption. They do not sell this to the public?

DIR. MONSADA:

A. That is the assumption that they import for their own use.

ATTY. MELO:

Q. In fact part of the conditions for allowing such importation, you know, is that the importation of fuel is for their own exclusive use, is that correct?

DIR. MONSADA:

A. Actually, there is no specific regulation that prevents anybody from selling provided that somebody who wants to sell should be properly registered because as the industry is deregulated, anybody can import fuel whether for their own use or for sale. But if it's for sale, then they have to notify the Department of Energy and comply with the other requirements.

ATTY. MELO:

Q. In your experience, has any airline, let's say, Philippine Airlines and APC, have they notified the DOE that they will import to sell jet fuel to the public?

DIR. MONSADA:

A. None, that I recall.

ATTY. MELO:

Q. And to your knowledge has Philippine Airlines or Air Philippines Corporation based on what you know have they actually sold any jet fuel or Jet A-1 to the public?

DIR. MONSADA:

A. None, that I am aware.

The foregoing testimony confirms that even the DOE acknowledges that APC imports the Jet A-1 fuel for its transport and non-transport operations and other activities incidental thereto, thereby satisfying the second condition.

With regard to the third condition, *i.e.*, that the aviation fuel is not locally available in reasonable quantity, quality, or price, the Court holds that APC was able to prove that the Jet A-1 fuel it imported for the period March to November 2006 was not locally available in reasonable quantity, quality, or price.

To establish that there was no locally available Jet A-1 fuel in reasonable quantity, quality, or price, petitioner presented letters and Indorsements by DOE and the Department of Finance ("DOF")[181] to the effect that the certifications issued by the Air Transportation Office ("ATO")[182], now the CAAP, is sufficient to prove its claim. A review of the ATO Certifications shows that the ATO interposed no objections to the importations made. Said ATO Certifications state:

> TO WHOM IT MAY CONCERN:
>
> This is to certify that this office interposes <u>no objection for the importation of Jet A-1 (aviation fuel)</u> under B/L No. . . . <u>which are not locally available (in reasonable quantity, quality and price)</u> and are necessary/incidental for the operation of Air Philippines.[183]

On the other hand, respondent COC presented evidence to prove that the DOF requested a certification from the DOE on whether aviation fuel for use in domestic operations is locally available in reasonable quantity, quality, or price in relation to the DOF's review of the exemption from excise tax granted to domestic airlines on their importation of aviation fuel for use in domestic operations.[184] In response to DOF's request, the DOE issued the

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[181] *See Records, CTA Case No. 7767, Vol. III, Exhibit* "MM," p. 1379; *Records, CTA Case No. 7767, Vol. III, Exhibit* "NN," p. 1384; *Records, CTA Case No. 7767, Vol. III, Exhibit* "OO," p. 1387.
[182] *See Records, CTA Case No. 7767, Vol. III, Exhibit* "QQ" 7837, p. 1390; *Records, CTA Case No. 7767, Vol. III, Exhibit* "RR" 7839, p. 1392; *Records, CTA Case No. 7767, Vol. III, Exhibit* "SS" 7816, p. 1393.
[183] Underscoring ours.
[184] *See Records, CTA Case No. 7767, Vol. IV, Exhibit* "4," p. 2027.

Certification confirming and certifying that aviation gas, fuel, and oil for use in domestic operations of domestic airline companies are locally available in reasonable quantity, quality, and price.[185]

At this juncture, the Court holds that in determining local availability of Jet A-1 fuel, the term "locally available" cannot include imported Jet A-1 fuel.

In *PAL v. CIR*[186], 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>.[187]

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.

The following testimony of respondent's witness, Ms. Monsada[188], illustrates the basis of the DOE in determining the local availability of Jet A-1 fuel, and the interaction between supply and demand of Jet A-1 fuel:[189]

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[185] *See Records, CTA Case No. 7767, Vol. IV, Exhibit* "3," p. 2026.
[186] G.R. No. 198759, July 1, 2013, 700 SCRA 322.
[187] Underscoring ours.
[188] *Records, CTA Case No. 7767, Vol. IV, Exhibit* "6," pp. 1881-1895; *Records, CTA Case No. 7767, Vol. IV*, pp. 1928-1970.
[189] *Records, CTA Case No. 7767, Vol. IV*, pp. 1942-1945, 1952-1955.

ATTY. MELO:

Q. Okay, thank you. Moving on, Director Monsada, in answer to Question 14, you mentioned that, generally, your concern or your function as part of the DOE-OIMB is to ensure that there is, to determine the total available supply of petroleum products?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. That is what you call, total available supply?

DIR. MONSADA:

A. Yes, we look at supply versus demand.

ATTY. MELO:

Q. Okay, let us just talk about supply first. According to you, the total supply for petroleum products is equal to local production, product importation and the existing inventory at that particular time?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. Okay. And this total supply basically means this is the total amount of a particular product existing in the country and placed in the country at any particular time?

DIR. MONSADA:

A. As of that time.

ATTY. MELO:

Q. As of that time of information or your data?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. And since the existence of the OIMB and in your experience in thirty-four (34) years in the DOE, the focus of the DOE has been this, the total supply of petroleum products?

DIR. MONSADA:

A. Yes, because the mandate of the DOE is to ensure there is adequate petroleum supply in the country.

ATTY. MELO:

Q. In the country?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. Whether it is by local production?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. Or whether it is imported?

DIR. MONSADA:

A. Yes.

x x x x x x x x x

ATTY. MELO:

Q. In 2003. If I may just refer you to Exhibit "X" that you are looking at and take the figure for the column for 2001. If you can compare the figures for demand against local production, would you agree with me that the demand is higher than the local production?

DIR. MONSADA:

A. Yes, based on the actual figures.

ATTY. MELO:

Q. Yes, okay. Can you also look at the other columns, the year columns, would you also agree with me that for all these other years up to 2010, the demand is higher than local production?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. And that in order to meet the demand or fulfill that demand, there must have the importation in order to meet that demand?

DIR. MONSADA:

A. Yes.

JUSTICE CASTAÑEDA:

You [*sic*] referring to year, what year?

DIR. MONSADA:

A. In all of the years.

ATTY. MELO:

Q. All of the years.

JUSTICE CASTAÑEDA:

All of the years.

DIR. MONSADA:

A. Yes. But if I may note, which is also part of my Affidavit, the production of oil companies would depend on how much is ordered from them. The refineries have flexibility to products [*sic*] more of this, more of that depending on that requirement of the end-users.

JUSTICE CASTAÑEDA:

So, my question would then be, if for example, the oil companies decided to just get from local oil refineries, would they be able to produce the requirements?

DIR. MONSADA:

A. Yes, but I am not sure if completely. But what I am saying is that the oil refiners would have the flexibility to produce more. Because they can, one thing is they can import more crude that would produce more of its products. So, it would depend on the requirement vis-à-vis the other products that they produce and of course, with the deregulated oil industry, the refiners have the flexibility to decide on to purchase to produce. So, by the products or by the crude and process so, it would depend on the requirement presented to them.

ATTY. MELO:

Q. Okay. Going to that Ms. Witness, you said that they have flexibility in whether they want to produce locally additional product or source in some other way. Would you agree with me to say that one of the means by which these oil companies, local oil companies can try to meet the demand is for them to import finished products?

DIR. MONSADA:

A. Yes.

ATTY. MELO:

Q. Yes. And in fact, this is what Shell and Petron do until today, they also import finished products?

DIR. MONSADA:

A. In general, yes.

ATTY. MELO:

Q. In general, yes. Among which is Jet A-1 or gas?

DIR. MONSADA:

A. Yes.

Meanwhile, the law imposes an alternative, not cumulative, qualification for the determination of whether there is locally available Jet A-1 fuel, *i.e.*, in order for APC to satisfy the third condition, APC must prove that Jet A-1 fuel is not locally in reasonable quantity, quality, <u>or</u> price. Accordingly, it would suffice for petitioner to be able to prove even just one qualification, *e.g.*, there is no locally available Jet A-1 fuel in reasonable price.

To establish the local unavailability of Jet A-1 fuel in reasonable price, APC's witness, Mr. Segundo, testified that for the relevant period, APC made a cost comparison table based on the Mean of Platt's Singapore ("MOPS") price index, the prevailing currency exchange rates, and the Into-Plane Quotations issued by Petron Corporation.[190] Based on the cost comparison table and the relevant supporting documents, the cost of importing Jet A-1 fuel was significantly lower than the price of locally purchased Jet A-1 fuel. Thus, Mr. Segundo concluded, as follows:[191]

> **Q: Based on the cost comparable table, what is the conclusion derived?**
>
> A: The difference in price between the locally available aviation fuel and the cost of imported fuel is SUBSTANTIAL and SIGNIFICANT enough to cause a high dent on the cost of domestic operations of all airlines. Such facts and figures clearly and unmistakably prove that the certification by the DOE that aviation fuel for use in domestic operation of domestic airline companies are locally available for a reasonable price is NOT correct.

The Court-commissioned independent Certified Public Accountant ("ICPA") confirmed Mr. Segundo's conclusion based on her independent study of the relevant supporting documents.[192]

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[190] *See Records, CTA Case No. 7767, Vol. I, Exhibit* "JJ" 7767 & 7816, pp. 265-280; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7791, pp. 1247-1252; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7837, pp. 1264-1275; *Records, CTA Case No. 7767, Vol. III,* Exhibit "HH" 7839, pp. 1276-1286; *Records, CTA Case No. 7851, Exhibit* "HH" 7851, pp. 473-483.

[191] *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7791, p. 1251; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH-2" 7797, pp. 1255-1256; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH-4" 7791, p. 1262; *Records, CTA Case No. 7767, Vol. III, Exhibit* "HH" 7837, p. 1274; *Records, CTA Case No. 7767, Vol. III,* Exhibit "HH" 7839, p. 1284; *Records, CTA Case No. 7851, Exhibit* "HH" 7851, p. 482.

[192] *See Records, CTA Case No. 7767, Vol. III, Exhibit* "III," pp. 1508-1512; *Records, CTA Case No. 7767, Vol. III, Exhibit* "NNN," pp. 1599-1603.

After a careful review of the evidence presented by petitioner, the Court holds that APC was able to prove that it satisfied the third condition for exemption from excise taxes on its importations of Jet A-1 fuel for the period March to November 2006. Petitioner presented sufficient evidence on the non-availability locally of Jet A-1 fuel in reasonable price.

In sum, the Court finds that the petitioner sufficiently proved that it is entitled to a refund or issuance of TCC for excise taxes paid on its importations of Jet A-1 fuel for the period March to November 2006.

WHEREFORE, the Petitions for Review in CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 & 7851 are hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Air Philippines Corporation in the amount of NINETY-FOUR MILLION SIX HUNDRED EIGHTY-NINE THOUSAND ONE AND 50/100 PESOS (Php94,689,001.50) representing the excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period March to November 2006.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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. 7767, 7791, 7807, 7816, 7837, 7839 & 7851

Members:

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

Promulgated:

JUN 10 2016
11:00 a.m.

x- x

DISSENTING OPINION

***Fabon-Victorino, J.*:**

With due respect, I humbly submit that the consolidated Petitions for Review should be denied as petitioner failed to prove its entitlement to the refund prayed for.

The instant consolidated *Petitions for Review* seek for the refund or issuance of Tax Credit Certificate (TCC) in the aggregate amount of ₱94,689,001.50, representing the specific taxes allegedly paid by petitioner Air Philippines Corporation on its importations of Jet A-1 fuel for its domestic operation for the period March to November 2006, broken down as follows:

CTA Case No.	Date of Arrival	Amount of Specific Tax Involved
7767	March 28, 2006	₱ 11,810,005.00
7791	May 4, 2006	14,830,382.00
7807	June 7, 2006	14,804,299.00

7816	July 7, 2006	11,803,527.00
7837	September 7, 2006	11,835,328.00
7839	August 22, 2006	11,887,313.50
7851	November 16, 2006	17,718,147.00
TOTAL		**₱ 94,689,001.50**

Petitioner's franchise, RA No. 8339, as amended by RA No. 9215, governs its taxability. Section 11 thereof provides that petitioner is entitled to the same tax-exemption privileges currently enjoyed by Philippine Airlines, Inc. (PAL) under the latter's franchise, to wit:

> SEC. 11. *Tax Provisions.* - The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.
>
> **In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.**
>
> The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation. *(Emphasis supplied)*

Section 13 of PD No. 1590 (PAL's franchise) partly provides:

> 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 percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; xxx *(Emphasis supplied)*

Based on Section 13 of PD No. 1590, for PAL to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth 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.

Thus, for petitioner to be exempt from the payment of the subject excise taxes, it must establish that all the foregoing requisites have been satisfied.

First Requisite:
Basic Corporate Income Tax or Franchise Tax must be paid

Evidence shows that petitioner filed its Annual Income Tax Return for calendar year 2006[1] on April 11, 2007, indicating overpayment of corporate income tax in the

[1] Exhibit "OOO", docket, pp. 11609-1610.

amount of ₱10,196,002.32. Hence, the first requisite is deemed satisfied.

Second Requisite:
Imported Jet A-1 fuel must be for Use in its Transport and Non-transport Operations

To prove its compliance with the second condition, *i.e.* whether such imported Jet A-1 was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner presented **Mr. Edwin J. Segundo**[2], its Fuel Department Supervisor, and **Mr. Jonathan Chiong**[3], its Fuel Department Manager, who in unison claimed that the imported Jet A-1 fuel was for petitioner's domestic operations. It also presented various Authority to Release Imported Goods (ATRIGs) on the importations made during the period March to November 2006 indicating that the shipments were "for flight operations"[4], "daily domestic flight operations"[5], or "domestic flight operations"[6].

However, a closer examination of the ATRIGs shows the following information, to wit:

> Please be informed that **according to the documents submitted by the abovementioned importer**, the shipment to be released at the Port of Batangas, consisting of the above described articles, will be used exclusively for... (*Boldfacing supplied*)

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[2] Exhibit "JJ", CTA Case Nos. 7767 & 7816, docket pp. 265-280; Exhibit "HH", CTA Case No. 7791, docket, pp.1247-1252; Exhibit "HH", CTA Case No. 7837, docket, pp.1264-1275; Exhibit "HH", CTA Case No. 7839, docket, pp.1276-1286; Exhibit "HH", CTA Case No. 7851, docket, pp. 473-483.

[3] Exhibit "GG", CTA Case No.7791, docket, pp.1215-1222; Exhibit "GG", CTA Case No. 7807, docket, pp.1223-1230; Exhibit "GG", CTA Case No. 7837, docket, pp. 1231-1238; Exhibit "GG", CTA Case No. 7839, docket, pp. 1239-1246; Exhibit "XX", CTA Case No. 7851, docket, pp.1409-1420.

[4] Exhibit "J" CTA Case No. 7767, BOC Record, pp. 14.

[5] Exhibit "J" CTA Case No. 7791, p. 43; Exhibit "K", CTA Case No. 7816, p. 29.

[6] Exhibit "J", CTA Case No. 7807, p. 57, BOC Record, p. 57; Exhibit "I-8", BOC Record, CTA Case No. 7837, p. 72; Exhibit "J", CTA Case No. 7839, BOC Record, p. 88; Exhibit "J", CTA Case No. 7851, BOC Record, p. 103.

Undoubtedly, the ATRIGs presented is self-serving since the information indicated therein originated from petitioner itself. Standing alone and *sans* other evidence to substantiate the claim that the imported Jet A-1 fuel were actually used for its transport and non-transport operations, the said information cannot be given much weight or credit.

Without further substantiation, the Court cannot simply adopt petitioner's assertion that the imported Jet A-1 fuel were actually utilized for its transport and non-transport operations hook, line and sinker. A legal and valid conclusion cannot be made to rest on bare allegations of the petitioner. For this member of the Court, petitioner miserably failed to satisfy the second requisite.

Third Requisite:
The imported articles must not be locally available in reasonable quantity, quality or price

To establish that there was no locally available Jet A-1 fuel in reasonable quantity, quality, or price, petitioner presented letters and Indorsements by the Department of Energy (DOE) and the Department of Finance (DOF) to the effect that certifications were issued by the Air Transportation Office (ATO), now Civil Aviation Authority of the Philippines (CAAP). However, the ATO certifications merely state that the ATO interposes no objections to the importation of Jet A-1 aviation which are not locally available in reasonable quantity, quality and price. The relevant portion of the ATO Certification reads as follows:

> "This is to certify that this office interposes no objection for the importation of Jet A-1 (aviation fuel) under B/L No. ... which are not locally available (in reasonable quantity, quality and price) and are necessary/incidental for the operation of Air Philippines."

Further, assuming that ATO Certifications are sufficient to prove that there was no locally available Jet A-1 fuel in reasonable quantity, quality, and price, petitioner presented only three (3) ATO Certifications out of its seven importations for the period March to November 2006, to wit:

CTA Case No.	Date of Arrival	Bill of Lading No.	Date of ATO Certification
7767	March 28, 2006	06/248[7]	-
7791	May 4, 2006	8015-01[8]	-
7807	June 7, 2006	06/463[9]	-
7816	July 7, 2006	504710-00007937[10]	-
7837	September 7, 2006	507710-00000066[11]	September 6, 2006[12]
7839	August 22, 2006	9460-01[13]	September 14, 2006[14]
7851	November 16, 2006	50954[15]	November 17, 2006[16]

Significantly, respondent Commissioner of Customs (COC) was able to secure and present to the Court a Certification, in relation to the DOF's review of the exemption from excise tax granted to domestic airlines on their importation of aviation fuel for use in domestic operations,[17] confirming and certifying that aviation gas, fuel, and oil for use in domestic operations of domestic airline companies are locally available in reasonable quantity, quality, and price.[18]

Further, respondent COC's witnesses[19] testified that it is the DOE and not the ATO which is the proper authority to issue certifications on the availability of Jet A-1 fuel in reasonable quantity, quality, or price as it is the government agency legally mandated under Republic Act No. 8479 to monitor and evaluate fuel and petroleum products. In this regard, the testimony of respondent COC's witness, Ms. Zenaida Y. Monsada[20], is enlightening:

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[7] Exhibit "K-4", CTA Case No. 7767, BOC Record, docket, p. 11.
[8] Exhibit "K-4", CTA Case No. 7791, BOC Record, docket, p.41.
[9] Exhibit "K-4", CTA Case No. 7807, BOC Record, docket, p. 53.
[10] Exhibit "Q-4, CTA Case No. 7816, BOC Record, docket, p. 26.
[11] Exhibit "K-4", CTA Case No. 7837, BOC Record, docket, p. 68.
[12] Exhibit "QQ", CTA Case No. 7837, docket, p. 1390.
[13] Exhibit "K-4", CTA Case No. 7839, BOC Record, docket, p. 84
[14] Exhibit "RR", CTA Case No. 7839, docket, p. 1392.
[15] Exhibit "K-4", CTA Case No. 7851, BOC Record, docket, p.100.
[16] Exhibit "SS", CTA Case No. 7851, docket, p.1393.
[17] Exhibit "4", docket, p. 2027.
[18] Exhibit "3", docket, p. 2026.
[19] On September 16, 2014, respondent COC filed a *Motion (To Adopt the Testimonies of Mr. Saturnino B. Dela Cruz and Ms. Zenaida Y. Monsada as Respondent COC's Evidence)*, which the Court **GRANTED** in open court on September 18, 2014.
[20] Docket, pp. 1881-1895.

Q11. What is the DOE's legal authority or basis for monitoring and evaluating petroleum products?

A11. Republic Act No. 8479 (RA 8479) empowers and mandates the DOE to monitor the prices, quality, and quantity of petroleum products.

xxx xxx xxx

Q29. Based on your regular monitoring of the oil and petroleum products, can you please tell us the condition or status of the supply, quality, and price of oil and petroleum products, particularly the aviation fuel for use in the domestic operations by the domestic aviation industry?

A29. In general, aviation gas for use in domestic operations of national airline companies are locally available in reasonable quantity, quality and price.

Q30. Aside from the DOE, would you know of any other government agency that is mandated or which regularly monitors and evaluates the supply, quality, and price of oil and petroleum products?

A30. None that I know of.

Q31. Does the Air Transportation Office (ATO), now the Civil Aviation Authority of the Philippines (CAAP) coordinate with DOE with regard to aviation fuel price, quantity and quality?

A31. No.

xxx xxx xxx

Q33. Since 2001 to date, was there ever a time when aviation fuel was not available in reasonable quantity, quality, and price, if you know?

> A33. Based on the data available to the DOE, there was never a time that the aviation fuel became insufficient in quantity or unreasonable price. Otherwise, it would have created an economic crisis for the country or the collapse of the local airline companies.
>
> Q34. As Director of the OIMB, what is the current status or present condition of the aviation fuel in the country, if you know?
>
> A34. There is ample supply of aviation fuel in the country.
>
> Q35. What is the basis of what you have just stated?
>
> A35. It is based on the available data submitted by the oil companies, including that of the local airline companies.

As the government agency legally mandated to oversee the oil industry, the DOE necessarily has the authority to issue certifications regarding the quantity, quality, and price of locally available petroleum products, such as the Jet A-1 fuel. Further, the DOE's official interpretation of "locally available supply", which includes both local production and importations, and certification, absent evidence to the contrary, must be given weight and credence. In fine, petitioner likewise failed to prove that it satisfied with the third condition for exemption from excise taxes on importations of Jet A-1 fuel for the period March to November 2006.

In view of all the foregoing, I vote to DENY the instant consolidated Petitions for Review.

ESPERANZA R. FABON-VICTORINO
Associate Justice