REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8153

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 17 2013
2:35 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed on September 2, 2010 by Philippine Airlines, Inc. (petitioner) to appeal the inaction of respondent Commissioner of Internal Revenue on petitioner's administrative claim for tax refund of the amount of SIX MILLION THREE HUNDRED TWENTY-NINE THOUSAND SEVEN HUNDRED THIRTY-FIVE PESOS and 21/100 (P6,329,735.21), allegedly representing excise tax paid on September 5, 2008 on account of petitioner's importation of commissary supplies consisting of liquors and cigarettes for international flight consumption.

Petitioner Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.[1]

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 181.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including the excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended. Respondent COC holds office at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

On June 11, 1978, by virtue of Presidential Decree No. 1590 (PD No. 1590), otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.[2]

On January 1, 2005, Republic Act No. 9334 (RA No. 9334), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" took effect.[3]

On February 3, 2005, then BIR Commissioner Guillermo L. Parayno, Jr. wrote then BOC Commissioner George M. Jereos, calling attention to Section 6 of RA No. 9334 and the failure of the BOC to collect excise taxes "on all importations of alcohol and tobacco products destined for Duty Free Philippines (DFP) and the freeport zones such as the Subic Bay Freeport Zone." In the said letter, the BIR also requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to DFP and the freeport zones be immediately collected.[4]

On February 4, 2005, then BOC Commissioner Jereos issued a Memorandum to BOC officers and personnel, directing them to "effect

[2] Par. 4, Facts, JSFI, docket, p. 182.
[3] Par. 5, Facts, JSFI, docket, p. 182.
[4] Exhibit "C".

collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".[5]

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Regulation No. 12-2004".[6]

Hence, petitioner's subsequent importations of wine, liquor, and cigarettes needed for its international flights' consumption were subjected to payment of excise tax and also withheld release from the customs ports pending the payment of taxes, duties, and fees.[7]

Petitioner's importation of commissary supplies consisting of liquors, wines, and assorted cigarettes subject of the instant claim arrived in Manila, on the following dates:[8]

Date of Arrival	Description of Goods	Informal Import Declaration and Entry No.	Airway Bill No.	Authority to Release Imported Goods (ATRIG) No.	Excise Taxes (Php)
Oct. 3, 2007	Mild Seven Lights, Mild Seven Super Lights, Salem Menthol, Salem Lights	10284[9]	079-2999-042-4[10]	00000811[11]	899,070.00
Oct. 27, 2007	Mild Seven Lights, Mild Seven Super Lights, Salem Menthol, Salem Lights	11752[12]	079-2999094-0[13]	00000807[14]	846,950.00
Nov. 5, 2007	West Full Flavor, West Ice	11757[15]	079-2999106-5[16]	00000851[17]	416,960.00

[5] Exhibit "D".
[6] Exhibit "E".
[7] Exhibit "PP"; Par. 15, Petition for Review, docket, p. 12.
[8] Exhibit "PP".
[9] Exhibit "M".
[10] Exhibit "M-1".
[11] Exhibit "AA".
[12] Exhibit "P".
[13] Exhibit "P-1".
[14] Exhibit "DD".
[15] Exhibit "O".
[16] Exhibit "O-1".
[17] Exhibit "CC".

Nov. 15, 2007	Jack Daniels Whisky, CuttySark	12345[18]	079-2999-120-5[19]	00008837[20]	360,557.57
Nov. 16, 2007	Winston Red KS & Winston Lights	12048[21]	079-2999121-6[22]	00007636[23]	560,290.00
Dec. 1, 2007	J & B Rare Scotch Whisky	12353[24]	079-2999164-0[25]	00008835[26]	352,719.36
Dec. 3, 2007	Royal Salute Scotch Whisky, Chivas Regal	13331[27]	079-2999163-6[28]	00008842[29]	500,894.15
Dec. 17, 2007	Mild Seven, Super Lights, Salem Lights, Winston Red KS, Winston Lights KS	13370[30]	079-2999174-3[31]	00008846[32]	1,003,310.00
Dec. 14, 2007	Camus VSOP Cognac Elegance	13359[33]	079-3012629-4[34]	00008843[35]	146,313.22
Dec. 14, 2007	Camus Cognac VSOP Elegance 70cl with Camus Cognac XO Elegance 5cl	13358[36]	079-3012630-5[37]	00008836[38]	164,602.37
Dec. 17, 2007	Davidoff Classic, Davidoff Lights, West Ice	13388[39]	079-2999177-6[40]	00008847[41]	508,170.00
Dec. 22, 2007	Absolute Blue Vodka, Piper Heidsieck Brut	13871[42]	079-2999181-3[43]	00008841[44]	569,898.54
TOTAL EXCISE TAX					**6,329,735.21**

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[18] Exhibit "Q".
[19] Exhibit "Q-1".
[20] Exhibit "EE".
[21] Exhibit "L"
[22] Exhibit "L-1"
[23] Exhibit "Z".
[24] Exhibit "K"
[25] Exhibit "K-1"
[26] Exhibit "Y".
[27] Exhibit "N".
[28] Exhibit "N-1".
[29] Exhibit "BB".
[30] Exhibit "I"
[31] Exhibit "I-1"
[32] Exhibit "W".
[33] Exhibit "J
[34] Exhibit "J-1"
[35] Exhibit "X".
[36] Exhibit "T".
[37] Exhibit "T-1".
[38] Exhibit "HH".
[39] Exhibit "R".
[40] Exhibit "R-1".
[41] Exhibit "FF".
[42] Exhibit "S".
[43] Exhibit "S-1".
[44] Exhibit "GG".

The Authority to Release Imported Goods (ATRIG) listed in the foregoing table, issued by the BIR Commissioner and addressed to the BOC Commissioner, provided that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption" and is subject to the payment of "Excise Tax under xxx of the Tax Code". Furthermore, the ATRIGs provided that "the aforementioned shipment may now be released from your custody after the payment of the abovementioned taxes".

On September 5, 2008, petitioner paid under protest to the Bureau of Customs the amount of P6,329,735.21, representing the excise taxes on the said importation of commissary supplies consisting of liquors and assorted cigarettes.[45]

On March 5, 2009, petitioner filed an administrative claim for refund dated February 23, 2009 with respondent CIR for the refund of the amount of P6,329,735.21, representing its excise tax paid on September 5, 2008 through the BOC, for the subject importation of liquors and cigarettes.[46] Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund under the NIRC of 1997, as amended, petitioner filed this instant Petition for Review on September 2, 2010.

On September 28, 2010, respondent CIR filed her Answer[47] and interposed the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 5. Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 6. The claim for refund in the amount of Six Million Three Hundred Twenty-Nine Thousand, Seven Hundred Thirty-Five Pesos and 21/100 (Php6,329,735.21) being claimed by petitioner paid

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[45] Exhibit "V", Bureau of Customs Official Receipt No. 155450757, docket, p. 100.
[46] Exhibit "KK".
[47] Docket, pp. 146-155.

and incurred for the taxable year 2008 is not warranted.

7. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It provides:

> ***SECTION 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: 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.*

It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the *clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications* **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003)**. A perusal reading of the provision will emphasize that to validly substantiate a claim for refund, the taxes must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rests on vague inference.

8. Presidential Decree 1590 (P.D. 1590) signed on June 11, 1978 granted to the petitioner the franchise to operate air-transport services. Among the provisions of PD 1590 is Section 13 to wit:

> *'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 xxx'.*

On July 26, 2004, Republic Act 9334 took effect. RA 9334 served as the basis for assessment and collection of excise taxes, it provides:

> *'Section 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:*
>
> *'(A) Persons Liable.-xxx*
>
> *'**The provision of any special or general law to the contrary notwithstanding,** the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. xxx*
>
> *'Section 10. Repealing Clause – All laws, decrees, ordinances, rules and regulations, executive or administrative orders and such other presidential issuances as **are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly**.'*

The contention of petitioner that its tax exemption under its franchise subsists notwithstanding the passage of Republic Act 9334 is clearly unfounded. The approval of PAL's franchise does not serve to provide it a blanket tax exemption which will bar any act of the government to enforce its power to tax. It must be stressed that taxation is the rule and exemption is the exception. Tax exemption is by no means irrevocable. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. (**Tolentino vs. Secretary of Finance G.R 155455, August 25, 1994**)

No less than the 1987 Philippine Constitution upholds this claim when it provides that *'Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires.'* (**Section 11, Article XII**) There can be no restrictions for a future amendment or repeal without impinging the *carte blanche* legislative authority of Congress and without defying the fundamental law.

There can be no serious doubt as to the intention of the Congress to withdraw tax exemption. The explicit language of Section 6 of Republic Act 9334 which authorizes the imposition of excise taxes '***notwithstanding contrary provisions in general or special law***'' is all-encompassing and clear. The doctrine laid down in the case of the National Power Corporation vs. City of Cabanatuan (**G.R. No. 149110, April 9, 2003**) is on all fours applicable. In the foregoing case, the Supreme Court had an occasion to rule that NPC's exemption from all taxes by virtue of its charter has been repealed by the enactment of Local Government Code. The Supreme Court held:

*'Section 137 of the LGC clearly states that the LGUs can impose franchise tax '**notwithstanding any exemption granted by any law or other special law**.' This particular provision of the LGC does not admit any exception. In City Government of San Pablo, Laguna v. Reyes, MERALCO's*

*exemption from the payment of franchise taxes was brought as an issue before this Court. Ruling in favor of the local government in both instances, **we ruled that the franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws.**'*

9. In the case of Manila Electric Company vs. City of Laguna, the Supreme Court clarified that:

> *'It is true that the phrase 'in lieu of all taxes' found in special franchises has been held in several cases to exempt the franchise holder from payment of tax on its corporate franchise imposed of the Internal Revenue Code, as the charter is in the nature of a private contract and the exemption is part of the inducement for the acceptance of the franchise, and that the imposition of another franchise tax by the local authority would constitute an impairment of contract between the government and the corporation. But these 'magic words' contained in the phrase 'shall be in lieu of all taxes' have to give way to the peremptory language of the LGC specifically providing for the withdrawal of such exemption privileges.'*

Therefore, petitioner forthwith cannot seek refuge in the said phrase to indiscriminately refuse to pay taxes duly imposed by the taxing authorities. In providing 'in lieu of all taxes' clause, Congress does not perpetually divest its power to tax. Clearly, Republic Act 9334 is indicative of a later legislative will.

10. Taxes are essential to government's very existence; (**CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003**) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (**CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008**) Since tax

refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. (**Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005**).

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On November 25, 2010, upon motion of counsel for petitioner, this Court declared respondent COC in default for failure to submit his Answer and Pre-trial Brief.

During trial, petitioner presented as witnesses Joseph Brian T.L. Tan[48], petitioner's Manager-Aircraft Materials Purchasing Division, Ma. Evelyn L. Taghap[49], its Manager-Tax Services Division, and Victor Santos[50], petitioner's Assistant Vice President in charge of Catering and In-flight Materials Purchasing Sub-department. Thereafter, on January 3, 2012, petitioner filed its Formal Offer of Evidence[51], submitting Exhibits "A" to "WW-4", inclusive of sub-markings; which were admitted in Resolution[52] dated January 18, 2012, Resolution[53] dated April 11, 2012, and Resolution[54] dated June 25, 2012.

On the other hand, on April 23, 2012, respondents, through their respective counsels, manifested that they have no witness to present. Hence, this Court granted the parties thirty (30) days from April 23, 2012 or until May 23, 2012 to file their respective Memorandum.[55]

On August 16, 2012, the case was submitted for decision, taking into consideration respondent COC's Memorandum filed on June 6, 2012, respondent CIR's Memorandum filed on August 1, 2012, and petitioner's Memorandum filed through registered mail on August 2, 2012 and received by this Court on August 14, 2012.[56]

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[48] Minutes, docket, p. 436.
[49] Minutes, docket, p. 513.
[50] Minutes, docket, pp. 607 and 614.
[51] Docket, pp. 623-634.
[52] Docket, pp. 714-717.
[53] Docket, pp. 754-760.
[54] Docket, pp. 825-829.
[55] Minutes dated April 23, 2012, docket, p.761.
[56] Resolution dated August 16, 2012, docket, p. 876.

The following are the parties' jointly stipulated issues[57] submitted for this Court's resolution:

> "(a) Whether or not petitioner PAL, under its franchise, Presidential Decree No. 1590, is EXEMPT from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;
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> (b) Whether or not Republic Act No. 9334 amended, modified, or repealed PAL's exemption under its franchise, Pres. Decree No. 1590, from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;
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> (c) Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> (d) Whether or not petitioner's claim for tax refund of excise tax was filed within the period prescribed by law.
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> (e) Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund
>
> (f) Whether or not PAL is entitled to a refund or tax credit in the total amount of Six Million Three Hundred Twenty Nine Thousand Seven Hundred Thirty Five and 21/100 (PHP6,329,735.21) allegedly representing excise taxes for the taxable year 2008."

The foregoing issues can be summarized as follows:

> "Whether or not petitioner is entitled to a refund of the amount of P6,329,735.21, representing excise tax paid on September 5, 2008 to respondent Commissioner of Internal Revenue through the Commissioner of Customs on account of its importation of commissary

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[57] Issues to be Tried or Resolved, JSFI, docket, pp. 183-184.

supplies consisting of liquors and cigarettes for international inflight consumption."

This Court shall address first petitioner's compliance with the procedure and the timeliness of filing of the administrative and the judicial claims for refund.

The provisions of the NIRC of 1997, as amended, pertinent to a refund claim arising from erroneous payment of taxes are Sections 204(C) and 229, which provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (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."
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> "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 assed 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the foregoing provisions, no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected until a claim for refund or credit has been duly filed with the BIR Commissioner and that 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. In other words, the provisions only require that both the administrative and judicial claims for refund must be filed within two years from the date of payment of the tax.[58]

In the instant case, records show that petitioner paid the excise tax of P6,329,735.21 to the Bureau of Customs on September 5, 2008.[59] Counting from September 5, 2008, petitioner had until September 5, 2010[60] to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim for refund filed on March 5, 2009 before respondent CIR and the judicial claim for refund filed on September 2, 2010 fell within the two-year prescriptive period.

The Court will now determine whether petitioner is entitled to a tax refund in the amount of P6,329,735.21, arising from the payment of excise tax on September 5, 2008, covering its importation of liquors and cigarettes.

In its Memorandum, petitioner argues, among others, that it is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption, citing *Philippine Airlines, Inc.(PAL)vs. Commissioner of Internal Revenue and Commissioner of Customs*[61],

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[58] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 7665 and 7713, April 17, 2012.
[59] Exhibit "V",Bureau of Custom's Official Receipt No. 155450757, docket, p. 100.
[60] September 5, 2010 fell on a Sunday.
[61] CTA Case Nos. 7665 and 7713, April 17, 2012.

which passed upon the issue of such exemption given the amendment of its franchise, PD No. 1590, by Republic Act No. 9334.

Petitioner also alleges that it complied with the provisions of Section 13 of PD No. 1590, as amended, (a) by showing that it opted to pay the corporate income tax for the fiscal year ended March 31, 2008 as well as, the VAT liability of the same year; (b) by presenting the ATRIGs issued by respondent CIR which showed that the imported articles subject of the instant claim were used exclusively in petitioner's international inflight consumption; and (c) by presenting the testimony of Mr. Victor Santos, through his Judicial Affidavit, to prove that the subject imported articles are not locally available in reasonable quantity, quality or price.

Respondent CIR counter-argues that Section 13 of PD No. 1590 had already been amended, modified or repealed by RA No. 9334: that Section 6 of RA No. 9334, which authorizes the imposition of excise taxes "notwithstanding contrary provisions in general or special law" is all encompassing and clear, and that RA No. 9334 is indicative of a later legislative will; that petitioner failed to submit complete documents in support of its administrative claim for refund, hence, administrative remedies were not exhausted; and that tax refunds are construed strictly against the taxpayer.

Respondent COC also argues that Section 6 of RA No. 9334 had amended Section 13 of PD No. 1590, making petitioner liable for excise tax on all its importations; that respondent COC is authorized under Section 12 of RA No. 8424, as amended, to collect excise taxes on petitioner's importations; and that Letter of Instructions No. 684 is merely an administrative issuance which does not have the force and effect of a law.

The Court agrees with petitioner.

In a number of cases[62] involving the same parties and issues but different taxable years, this Court has ruled that petitioner, under its franchise, Presidential Decree No. 1590, is exempt from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption; and that under Section 13 of PD No. 1590 as amended by Republic Act No. 9337, petitioner is obliged to pay the corporate income tax and the value-added tax, *in lieu of all other taxes,* including taxes on commissary and catering supplies, provided that

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[62] CTA Case Nos. 7665 and 7713 dated April 17, 2012; CTA Case No. 7843 dated May 18, 2012; CTA Case Nos. 7677, 7685, and 7746 dated August 24, 2012.

such articles, supplies or materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price.

Section 13 of PD No. 1590 provides as follows:

"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** ℊℯ

> **imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;" *(Emphasis supplied)*

According to the afore-quoted provision, the taxation of petitioner Philippine Airlines, Inc.(PAL), during the lifetime of its franchise, shall be governed by two fundamental rules, namely: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.[63] The tax paid under Section 13 of PD No. 1590 shall be in lieu of, among others, taxes, duties, charges, royalties, or fees due on all importations of "commissary and catering supplies" provided that the following are present:

1. 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

2. they are not locally available in reasonable quantity, quality, or price.

Congress later passed RA No. 9337 in 2005, with Section 22 thereof stating as follows:

> "SECTION 22. *Franchises of Domestic Airlines*. - **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.,** R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) **The franchise tax is abolished**;

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[63] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009 (592 SCRA 237).

(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) **The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement**." *(Emphasis supplied)*

The amendment introduced by RA No. 9337 only modified or altered petitioner's options for the payment of taxes since petitioner is now obliged to pay the corporate income tax and the value-added tax *in lieu of all other taxes,* with the franchise tax being expressly abolished.

Thus, in order to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:

1. it paid its corporate income tax and VAT liabilities for the subject period of importation;

2. the imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

In this case, petitioner submitted in evidence its Amended Annual Income Tax Return[64], for fiscal year ending March 31,2008. A perusal of the said return shows that petitioner opted to pay the basic corporate income tax for the fiscal year ended March 31, 2008 in accordance with its franchise. Petitioner was also able to prove that it is a VAT-registered entity and paid its value-added tax for the fiscal year ended March 31, 2008, as evidenced by its Certificate of

[64] Exhibit "QQ".

Registration[65] dated December 18, 2007, Certificate of Registration[66] dated August 4, 2004, Payment Form No. 0605[67], and VAT Return[68] for the fiscal year 2008.

The Authority to Release Imported Goods issued by the CIR and addressed to the COC, provided that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption".[69]

To support the claim that the subject cases or packages of liquors were not locally available in reasonable quantity, quality, or price, petitioner presented Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Materials Purchasing Sub-department of petitioner, testifying by way of Judicial Affidavit[70] that importing said supplies was cheaper for petitioner than buying the products locally. In order to corroborate the foregoing testimony, petitioner submitted in evidence the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[71], Philippine Wine Merchants' January 11, 2007 Price List[72], and Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010.[73]

A perusal of the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[74] shows that the cost of importing **liquors** is indeed lower than purchasing them locally, to wit:

Exhibit	Product Imported	Unit Cost per Sales Invoice (price per bottle in US$)	Informal Import Declaration Entry No.	Unit Cost per IIDE (per bottle in US$)	Phil. Wine Merchants 2007 Pricelist (price per bottle converted to US$)
J to J-2	Camus Cognac VSOP Elegance	10.25	13359	11.49	38.98
K to K-2	J&B Rare	3.36	12353	4.61	20.19
N to N-3	Royal Salute Scotch Whiskey	23.11	13331	14.43	154.45
	Chivas Regal	11.25			26.56

[65] Exhibit "RR".
[66] Exhibit "SS".
[67] Exhibit "TT".
[68] Exhibit "UU".
[69] Exhibits "W' to "HH".
[70] Exhibit "WW".
[71] Exhibit "WW-2".
[72] Exhibit "WW-3".
[73] Exhibits "WW-4".
[74] Exhibit "WW-2"

Q to Q-2	Jack Daniels	8.44	12345	8.93	21.52
	Cutty Sark	5.63			19.88
S to S-3	Absolute Blue Vodka	4.38	13871	14.07	15.21
	Piper Heidsieck Brut	15.63			61.34
T to T-2	Camus Cognac VSOP Elegance	13.67	13358	15.16	38.98

Likewise, petitioner submitted in evidence the Bureau of Customs Official Receipt No. 155450757[75] and the Authority to Release Imported Goods[76] issued on various dates for the said importation of liquors and cigarettes. The said BOC Official Receipt indicates that on September 5, 2008, petitioner paid to the Bureau of Customs the amount of P6,329,735.21, representing petitioner's excise tax payable on its importation of liquors and cigarettes as stated in the ATRIGs.

After a careful evaluation of the evidence presented, this Court finds that petitioner was able to substantially prove that it paid its basic corporate income tax liability for the fiscal year ending March 31, 2008, as well as the value-added tax for the fiscal year ending March 31, 2008; that the articles imported by petitioner for its commissary and catering supplies, consisting of liquors, were intended to be used in its transport and non-transport operations and other activities incidental thereto; that the imported articles were not locally available at reasonable prices, and that it paid to the Bureau of Customs the amount of P6,329,735.21, which includes the P2,094,985.21 excise tax payable on petitioner's importation of liquors as shown in the ATRIG Nos. 00008837, 00008835, 00008842, 00008843, 00008836, and 00008841.

However, petitioner's claim for refund of the excise tax paid on importation of various **cigarettes** must fail.

While petitioner substantially proved compliance with the other requirements, however, it failed to discharge its burden of proof on whether the said cigarettes were not locally available in reasonable quantity, quality or price.

The Court notes that petitioner failed to submit a price list of cigarettes from local suppliers or dealers. In his Judicial Affidavit, Mr. Victor Santos, stated as follows:[77]

[75] Exhibit "V".
[76] Exhibits "W" to "HH".
[77] Exhibit "WW".

> "6. A. "xxx in case of cigarettes, there are **no local suppliers or dealers big enough to supply the various foreign brands of cigarettes PAL is importing, and if ever there are said local dealers, their selling prices would definitely be higher than PAL's cost of importing the cigarettes**.
>
> xxx xxx xxx
>
> 24. Q. How about the cost of locally buying the said product in the same year?
>
> 24. A. xxx Furthermore**, there are no local suppliers of the said cigarettes who could regularly supply PAL with the quantity of Mild Seven Super Lights, Salem King, Winston Red KS, and Winston Lights K/S cigarettes** it needs for its commissary supplies for sale in its international flights. **If ever there are local suppliers, their selling price would definitely be higher than the importation cost of PAL**.
>
> 25. Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?
>
> 25. A. Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes. On the other hand, if said suppliers buy the same cigarettes from local manufacturers, thereof, if there are any, the excise taxes and other costs incurred by said manufacturer on said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL." (*Emphasis supplied*)

The Court is not convinced since the said testimony are unverifiable and self-serving, as no other supporting documents were presented before this Court to prove that said cigarettes were not locally available in the required quantity, quality or price. The Court cannot just rely on the foregoing testimony. It would have been useful for petitioner, if for example, it presented to the Court a certification from local dealers of cigarettes that they cannot supply petitioner enough cigarettes with said brands for its catering and in-flight use. And if they had such products, a list of the corresponding selling prices should have been also presented. In the absence thereof, the Court cannot determine whether the cost of importing cigarettes is lower than purchasing them locally.

It is well settled that petitioner, as taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[78]

Thus, the Court finds that petitioner has sufficiently proven its exemption from the payment of excise taxes pertaining only to its importation of liquorsin the amount of P2,094,985.21, broken down as follows:

Exhibit	Entry No.	Excise Tax
J	13359	P 146,313.22
K	12353	352,719.36
N	13331	500,894.15
Q	12345	360,557.57
S	13871	569,898.54
T	13358	164,602.37
	TOTAL	**P2,094,985.21**

Considering that the amount of P2,094,985.21 was paid by petitioner on September 5, 2008[79], the same constituted erroneously paid excise tax which is refundable pursuant to Sections 204 and 229(C) of the NIRC of 1997, as amended.

Anent respondents' contention that Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005, mandating the collection of excise taxes on the importation of cigar and cigarettes, distilled spirits, fermented liquors and wines in the Philippines, the same is bereft of merit. Jc

[78] *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. et al.*, G.R. No.L-68252, May26, 1995 (244 SCRA 336).
[79] Exhibits "V" and "U".

Section 6 of RA No. 9334 provides:

"SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

'SEC. 131. *Payment of Excise Taxes on Imported Articles.–*

(A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law:

> *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

Again, as held by earlier rulings, the above-quoted provision expressly mentioned RA Nos. 7227, 7922, and 7903, while there is no express mention of PD No. 1590. Thus, Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise. Had Congress intended to repeal petitioner's franchise, it could have easily included PD No. 1590 in the enumeration of those liable for such excise tax not only under RA No. 9334, but also under the later law, which is RA No. 9337. That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.[80]

In *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs*[81], this Court held:

> "**While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed.** As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is

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[80] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009 (592SCRA 261).

[81] CTA Case Nos. 7665 and 7713, April 17, 2012.

logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.

Equally noteworthy is the fact that **Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails**. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.

Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise." *(Emphasis supplied)*

In sum, the Court finds petitioner entitled to a refund in the reduced amount of P2,094,985.21, which represents excise tax paid on September 5, 2008 covering petitioner's importation of liquors as commissary supplies.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondents are hereby **ORDERED** to **REFUND** to petitioner the amount of P2,094,985.21, representing petitioner's erroneously paid excise tax on September 5, 2008.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division