REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1184
(CTA Case No. 8361)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1186
(CTA Case No. 8361)

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN *JJ.*

Promulgated:

DEC 08 2015 2:20pm

x---x

DECISION

UY, *J.*:

Before Us are consolidated Petitions for Review, docketed as **CTA EB No. 1184**, filed by the Commissioner of Internal Revenue (CIR), petitioner, against Philippine Airlines, Inc. (PAL), respondent on June 16, 2014, and as **CTA EB No. 1186**, filed by the Commissioner of Customs (COC), petitioner, against Philippine Airlines, Inc. (PAL) respondent, on July 3, 2014.

Both petitions assail the Decision dated March 26, 2014,[1] and Resolution dated May 27, 2014,[2] promulgated by the Second Division of this Court (or "Court in Division") in **CTA Case No. 8361**, entitled *Philippine Airlines Inc., Petitioner, vs. Commissioner of Internal Revenue and Commissioner of Customs, Respondents*, the dispositive portions of which respectively read:

Decision dated March 26, 2014:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED** to **REFUND** to petitioner the total amount of P1,948,175.07, representing petitioner's erroneously paid excise taxes on October 26, 2009.
>
> **SO ORDERED**."

Resolution dated May 27, 2014:

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

THE PARTIES

In **CTA EB No. 1184**, petitioner CIR is the Commissioner 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, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In **CTA EB No. 1186**, petitioner COC is the Commissioner of

[1] EB Docket (CTA EB No. 1184), pp. 33 to 51; Penned by Associate Justice Amelia R. Cotangco-Manalastas, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[2] EB Docket (CTA EB No. 1184), pp. 52 to 53; *Idem.*

the Bureau of Customs (BOC), which is the government agency tasked with 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, on the basis of the delegated authority of the CIR, through an Authority to Release Imported Goods (BIR Form No. 1918) duly issued by the CIR addressed to the COC in accordance with Section 12(a) of the NIRC of 1997, as amended. The COC holds office at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

In both CTA EB No. 1184 and 1186, respondent PAL 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.

THE FACTS

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

On January 1, 2005, Republic Act (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.

On February 3, 2005, then CIR Guillermo L. Parayno, Jr. wrote then COC 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.

On February 4, 2005, then COC Jereos issued a Memorandum to BOC officers and personnel directing them *"to effect collection of* *excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".*

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order No. 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".*

On various dates in 2007 and 2008, PAL's importations of assorted liquors and wines subject of the instant claim arrived in Manila through the Ninoy Aquino International Airport (NAIA), as follows:

Arrival Date	Articles	Informal Import Declaration and Entry (IIDE) No.	Airway Bill No.	Authority to Release Imported Goods (ATRIG) No.	Excise Taxes (Php)
Aug. 31, 2007	Martini Sweet/Dry Vermouth	9552	079-3005330-6	00030396	3,423.84
Nov. 28, 2008	Johnnie Walker Black Label	12443	079-3214570-2	00032082	91,118.30
Nov. 28, 2008	Johnnie Walker Black Label	12442	079-3214571-3	00032081	113,750.91
Nov. 28, 2008	Chivas Regal Whisky	12441	079-3214582-0	00026177	100,230.13
Dec. 2, 2008	Johnnie Walker Black Label	12347	079-3214586-4	00031873	127,271.69
Dec. 2, 2008	Johnnie Walker Black Label	12439	079-3214584-2	00032071	127,271.69
Dec. 2, 2008	Johnnie Walker Black Label	12438	079-3214585-3	00032070	127,271.69
Dec. 3, 2008	J&B Rare Scotch Whisky	12460	079-3214588-6	00031881	105,814.80
Total Excise Tax					**₱796,153.05**

On June 23, 2009, Ms. Gilda L. Cinco, Acting Chief-WAU, wrote a letter addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse, assessing PAL for excise tax on the above importations.

On October 26, 2009, PAL paid under protest to the BOC the amount of ₱796,153.05, representing the excise taxes on the above importations, as evidenced by BOC Official Receipt No. 168546987.

On the same day, PAL wrote a letter address to Mrs. Silveria Salazar, Chief – Collection Division, Collection District III, BOC, to formally protest the assessment and collection of ₱796,153.05, representing excise taxes on the above importations.

On November 6, 2009, PAL filed with the District Collector of Customs of NAIA, a written protest dated November 4, 2009 against the assessment and collection of ₱796,153.05, representing excise taxes on the above importations.

On January 28, 2010, PAL filed an administrative claim for refund with the CIR for the refund of the amount of ₱796,153.05, representing its excise tax paid on October 26, 2009 through the BOC, on the above importations.

Additionally, on various dates in 2008 and 2009, PAL's importations of assorted liquors and wines subject of the instant claim arrived in Manila through NAIA, as follows:

Arrival Date	Article	IIDE No.	Airway Bill No.	ATRIG No.	Excise Taxes (Php)
Dec. 3, 2008	J & B Rare Scotch Whisky; Gordon Gin	12459	079-3214587-5	00031884	92,001.06
Dec. 4, 2008	J & B Rare Scotch Whisky	12474	079-3214590-1	00026159	105,814.80
Feb. 4, 2009	Piper Heidsieck	679	079-3214710-2	00031885	252,192.60
Feb. 6, 2009	Camus VSOP Cognac Elegance	694	079-3209953-5	00031886	236,911.61
Feb. 14, 2009	Lindemans Premier Chardonnay; Lindemans Premier Shiraz Cabernet; Penfolds Chardonnay; Penfolds Shiraz Cabernet	1328	079-3192988-1	00031879	104,549.40
Feb. 27, 2009	Martini Sweet/Dry Vermouth	1679	079-3286525-4	00032077	4,891.20
March 22, 2009	Carlos I Brandy	2500	079-3214826-6	00032074	355,661.35
Total Excise Tax					**₱1,152,022.02**

On June 23, 2009, Ms. Gilda L. Cinco, Acting Chief-WAU, wrote a letter addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customhouse, assessing PAL for excise tax on the above importations.

On October 26, 2009, PAL paid under protest to the BOC the amount of ₱1,152,022.02, representing the excise taxes on the above importations, as evidenced by BOC Official Receipt No. 168546926.

On the same day, PAL wrote a letter address to Mrs. Silveria Salazar, Chief – Collection Division, Collection District III, BOC, to formally protest the assessment and collection of ₱1,152,022.02, representing excise taxes on the above importations.

On November 6, 2009, PAL filed with the District Collector of Customs of NAIA, a written protest dated November 4, 2009 against the assessment and collection of ₱1,152,022.02, representing excise taxes on the above importations.

On January 28, 2010, PAL filed an administrative claim for refund with the CIR for the refund of the amount of ₱1,152,022.02, representing its excise tax paid on October 26, 2009 through the BOC, on the above importations.

Due to the CIR's inaction and in observance of the statutory period of two (2) years within which to file a judicial claim for refund, PAL filed a Petition for Review with the Court in Division on October 26, 2011, docketed as CTA Case No. 8361.

On December 12, 2011, the CIR filed her Answer and interposed special and affirmative defenses, alleging, among others, that PAL is liable for excise tax as specified in Section 131 of the NIRC of 1997, as amended by RA No. 9334, and that PAL is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. However, PAL allegedly failed to present proof that they have filed an administrative claim for refund with the BOC, as no record was presented with the BIR. Furthermore, PAL failed to present proof whether the excise taxes paid were actually remitted by the BOC to the BIR.

On the other hand, the COC filed his Answer/Comment on January 9, 2012, alleging, among others, the PAL's importations are subject to excise tax under Section 6 of RA No. 9334 and that PD No. 1590, granting tax exemptions to PAL, has been amended by RA Nos. 8424 and 9334 to the extent that PAL's importations of cigars and cigarettes, distilled spirits and wines are now subject to excise taxes.

On January 10, 2012, the Court in Division issued a Notice of

Pre-Trial Conference, setting the case for pre-trial on February 16, 2012. On April 4, 2012, the parties filed their Joint Stipulation of Facts and Issues, which the Court in Division approved in the Resolution dated April 11, 2012.

During trial, PAL presented as witnesses, Jonathan Castillo Lee, PAL's Manager-Company Materials Handling Division, Ma. Evelyn L. Taghap, its Manager-Tax Services Division, and Cheryl V. Capinpin, PAL's Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department.

Thereafter, PAL filed its Formal Offer of Exhibits with Motion for Re-marking on March 13, 2013 and Manifestation with Supplemental Formal Offer of Evidence on May 21, 2013, submitting Exhibits "A" to "JJJ-1", inclusive of sub-markings, which were admitted in the Resolution dated July 26, 2013 and Resolution dated November 28, 2013.

On September 2, 2013, the CIR manifested that she has no evidence to present. Likewise, on October 16, 2013, the COC manifested that he will not be presenting evidence in this case. Hence, the Court in Division granted the parties thirty (30) days from October 16, 2013 or until November 15, 2013 to file their respective Memorandum.

On November 28, 2013, the case was submitted for decision, taking into consideration the CIR's Memorandum filed on November 14, 2013 and PAL's Memorandum filed on November 15, 2013. The COC failed to file his Memorandum despite notice.

On March 26, 2014, the Court in Division rendered the assailed Decision, granting PAL's claim for refund in amount of ₱1,948,175.07, representing PAL's erroneously paid excise taxes on October 26, 2009.[3]

The CIR and COC filed their respective Motions for Reconsideration of the assailed Decision on May 11, 2014;[4] while PAL filed a Consolidated Comment thereon on May 2, 2014.[5]

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[3] EB Docket (CTA EB No. 1184), pp. 33 to 51; Division Docket (CTA Case No. 8361) – Vol. III, pp. 1112 to 1130.

[4] Division Docket (CTA Case No. 8361) – Vol. III, pp. 1131 to 1154, and 1155 to 1166.

[5] Division Docket (CTA Case No. 8361) – Vol. III, pp. 1169 to 1185.

In the assailed Resolution dated May 27, 2014[6], the Court in Division denied both Motions for Reconsideration for lack of merit.

Consequently, the CIR and COC filed their respective Petitions for Review before the Court *En Banc* against PAL, docketed as CTA EB No. 1184 and CTA EB No. 1186, respectively.

On July 30, 2014, the Court *En Banc* directed PAL to file a Comment on the CIR's Petition for Review in CTA EB No. 1184, within ten (10) days from receipt of notice.[7]

Subsequently, in the Minute Resolution dated July 31, 2014,[8] the Court *En Banc* ordered the consolidation of CTA EB No. 1186 with CTA EB Case No. 1184, pursuant to Section 1, Rule 31 of the Revised Rules of Court.

On August 20, 2014, PAL filed its Consolidated Comment [To Petitioner's Petition for Review].[9]

Thereafter, in the Resolution dated September 8, 2014, the Court *En Banc* gave due course to the instant Petitions for Review and directed herein parties to submit their respective memorandum.[10]

The CIR filed a Manifestation on October 1, 2014, stating that she is adopting the Petition for Review in CTA EB No. 1184 filed on June 16, 2014 as her Memorandum, in compliance with the Court *En Banc*'s Resolution dated September 8, 2014.[11] Parenthetically, said Manifestation was noted by Court *En Banc* in the Minute Resolution dated October 7, 2013.[12]

Subsequently, PAL filed its Memorandum on October 24, 2014,[13] while the COC filed his Memorandum on November 24, 2014.[14] Thus, in the Resolution dated January 8, 2015, the

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[6] EB Docket (CTA EB No. 1184), pp. 52 to 53
[7] EB Docket (CTA EB No. 1184), Resolution dated July 30, 2014, pp. 58 to 59.
[8] EB Docket (CTA EB No. 1184), pp. 60 to 61.
[9] EB Docket (CTA EB No. 1184), pp. 62 to 77.
[10] EB Docket (CTA EB No. 1184), pp. 80 to 81.
[11] Erroneously referred to by the CIR as the "Resolution of Court *En Banc* dated 3 (should be 8) September 2014"; EB Docket (CTA EB No. 1184), pp. 82 to 85.
[12] EB Docket (CTA EB No. 1184), pp. 86 to 87.
[13] EB Docket (CTA EB No. 1184), pp. 88 to 104.
[14] EB Docket (CTA EB No. 1184), pp. 113 to 126.

consolidated petitions were deemed submitted for decision.[15]

Hence, this Decision.

THE ISSUES

In **CTA EB No. 1184**, the CIR raises a sole issue in her Petition for Review, to wit:

> "WHETHER OR NOT THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF P1,948,175.07 ALLEGEDLY REPRESENTING PEITIONER'S ERRONEOUSLY PAID EXCISE TAXES ON 26 OCTOBER 2009."[16]

Upon the other hand, in **CTA EB No. 1186**, the COC raises this issue in his Petition for Review, to wit:

> "WHETHER OR NOT THE SUBJECT IMPORTATIONS OF LIQUORS, WINES AND CIGARETTES ARE EXEMPT FROM EXCISE TAX."[17]

We consolidate both issues into one issue as follows:

> "WHETHER OR NOT PAL IS ENTITLED TO A REFUND OF THE TOTAL AMOUNT OF P1,948,175.07 REPRESENTING ITS PAYMENTS MADE ON OCTOBER 26, 2009, FOR SPECIFIC TAXES ON ITS IMPORTATIONS OF CIGARETTES, LIQUOR, AND WINE FOR ITS CATERING AND COMMISSARY SUPPLIES FOR INTERNATIONAL CONSUMPTION UNDER ITS FRANCHISE, PRESIDENTIAL DECREE NO. 1590."

Petitioner CIR's arguments:

In her Petition for Review, CIR contends that Section 131(A) of the NIRC of 1997, as amended by RA No. 9334, provides that all importations of cigars, cigarettes, liquors and wines are subject to

[15] EB Docket (CTA EB No. 1184), pp. 129 to 130.
[16] EB Docket (CTA EB No. 1184), pp. 7 to 8.
[17] EB Docket (CTA EB No. 1186), p. 15; Refer also to the COC's Memorandum, EB Docket (CTA EB No. 1184), p. 118.

excise tax, and that only government owned and operated duty free shops have been expressly granted an exemption from payment thereof.

According to the CIR, the same provision in fact expressly withdrew the conditional tax exemption granted to PAL under Section 13 of PD No. 1590, as Section 6 of RA No. 9334 employs a clear and all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding".* RA No. 9334, therefore, repeals any inconsistent provision whether contained in general or special statues like PD No. 1590—PAL's franchise.

Furthermore, the CIR maintains that the Supreme Court in the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue*[18] recognized the express amendment of a legislative franchise by a general law. According to the CIR, the amendments involved in the said case are exactly similar in character to the amendments made under RA No. 9334, in which Congress enacted a general law subjecting all corporate taxpayers to income tax, except those expressly exempted therein, and used the same proviso repealing all inconsistent special or general laws, including the subject legislative franchise.

Moreover, the CIR argues that the subject provision of law subjecting all importation of alcohol and tobacco products to excise tax is very clear and there is no need for the court to apply canons of construction. Allegedly, it is a cardinal principle that tax exemptions should not be enlarged by the rules of construction.

Assuming that there is ambiguity and rules of construction must be utilized, the CIR submits that as to the subject matter, RA 9334 must prevail over PD No. 1590 as it is the more specific law on the tax treatment of imported cigarettes, liquor and wine.

Finally, the CIR avers that the exemption granted to PAL is not absolute as it is subject to the condition that the commissary supplies are not locally available in reasonable quantity, quality or price; and even assuming that Section 13 of PD No. 1590 was not amended by RA No. 9334, PAL's claim for refund must still fail because PAL failed to prove compliance with said condition. According to the CIR, the testimony of PAL's own employee certifying that imported products are not locally available at reasonable price is highly self-serving; and

[18] G.R. No. L-60126 September 25, 1985.

PAL's interpretation that reasonable price means cheaper price would ultimately convert the conditional exemption to one that is absolute because PAL's direct importations will always be cheaper over locally available goods.

Petitioner COC's arguments:

Similarly, the COC argues that Section 6 of RA No. 9334 in no uncertain terms revoked PAL's exemption under PD No. 1590 when it categorically required the payment of the applicable taxes, duties, charges, including excise taxes on all importations of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops. According to the COC, had Congress meant to exclude PD No. 1590 from its coverage, it would have expressly done so by mentioning PD No. 1590 as an exception thereto.

Moreover, the COC claims that Congress further expressed its desire to subject all importations of alcohol and tobacco products to excise tax by declaring all laws inconsistent with RA No. 9334 as repealed, amended or otherwise accordingly modified. Allegedly, RA No. 9334 is the special and later law that governs the imposition of excise taxes on alcoholic and tobacco products; hence, it should be the law controlling.

Finally, the COC contends that the burden is on PAL to prove its entitlement to refund. However, PAL has not shown its right to exemption from payment of excise taxes because its documentary and testimonial evidence failed to prove either the existence of a law exempting PAL from payment of excise taxes for its importation or the existence of a law classifying the goods that are subject of its importation as tax-free articles.

Respondent PAL's counter-arguments:

For its part, PAL insists that, under Section 13 of PD No. 1590, PAL is exempt from the payment of all taxes, duties and other fees, and charges of any kind or nature on all importation of, among others, commissary and catering supplies, and other articles, supplies or materials, imported by PAL for use in its transport and non-transport operations and other activities incidental thereto.

According to PAL, this matter has long been settled and has been reiterated by the Supreme Court in the recent case of *Philippine Airlines vs. Commissioner of Internal Revenue,*[19] which categorically upheld PAL's entitlement to exemption under PD No. 1590. PAL further claims that in the 2009 case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[20] no less than the Supreme Court recognized that RA No. 8424, otherwise known as the 1997 NIRC, did not amend or repeal PAL's franchise under PD No. 1590, not only because of the statutory construction principle that a special law prevails over a general law, but also because PD No. 1590 explicitly provides that it may only be revised or amended by a special law specifically amending or revising it.

Finally, PAL claims that it is entitled to a refund or tax credit in the total amount of ₱1,948,175.07, representing excise taxes paid under protest on October 26, 2009 because, as confirmed by the Court in Division, PAL has adequately established the conditions set forth under Section 13 of its franchise, PD No. 1590, for PAL to be exempt from the payment of excise taxes on its importation of cigarettes and liquors used in its international flight operations.

THE COURT *EN BANC*'S RULING

The consolidated Petitions lack merit.

The tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334.

In the recent consolidated cases of "*Republic of the Philippines rep. by the Commissioner of Customs vs. Philippine Airlines, Inc. (PAL)" and Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)",*[21] the Supreme Court held:

> "In *CIR v. PAL*,[22] the Supreme Court has already passed upon the very same issues raised by the same petitioners. The only differences are the taxable period involved and the amount of refundable tax.

[19] G.R. No. 212536-37, August 27, 2014.
[20] 592 SCRA 237 (2009) ,G.R. No. 180066, July 7, 2009.
[21] G.R. Nos. 209353-54 and 211733-34, July 6, 2015.
[22] G.R. Nos. 212536-37, August 27, 2014.

We have held in that case that it is a basic principle in statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of the earlier statute. A reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption:

> **PRESIDENTIAL DECREE NO. 1590**[23]
>
> x x x x
>
> SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; *provided*, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:**

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[23] Took effect on June 11, 1978.

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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;**

x x x x

SECTION 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof. (Emphasis supplied)

REPUBLIC ACT NO. 9334[24]

x x x x

SECTION 6. Section 131 of the National Internal Revenue Code of 1997, is 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

[24] Took effect on January 1, 2995 (Section 11 of R.A. No. 9334).

articles from the customs house, 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 on introduction into the Philippine customs territory.
>
> x x x x

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. (Emphasis supplied)

The Court has exhaustively discussed all issues similar to those in the present case in this wise:

> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*:[25]
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
> >
> > To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been

[25] 609 Phil. 695, 719 (2009)

> demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:
>
> > While it is true that Sec. 6 of RA 9334 as previously quoted states that *'the provisions of any special or general law to the contrary notwithstanding,'* <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed</u>. . . . (Emphasis supplied)
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary 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 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 other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax – whichever is lower – shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to

> taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, *provided* that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.
>
> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.
>
> In this case, the CTA found that PAL had paid basic corporate income tax exemption from taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, provided it shows that 1) such articles or supplies or materials are imported for use in its transport and nontransport operations and other activities incidental thereto; and 2) they are not locally available in reasonable quantity, quality, or price."

Hence, both the CIR and the COC are in error to argue that Section 131(A) of the NIRC of 1997, as amended by RA No. 9334, withdrew or revoked PAL's conditional tax exemption granted under Section 13 of PD No. 1590. Such being the case, considering the continuation of PAL's tax exemption privileges over the imported goods subject of this case, PAL is not prohibited to file a claim for tax refund or credit on the excise taxes imposed thereon.

PAL is entitled to a refund in the amount of ₱1,948,175.07, representing erroneously paid excise taxes on October 26, 2009.

To be clear, in order to be exempt from paying taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies as provided in Section 13 of PD No. 1590, it is necessary for PAL to establish that:

1. it paid its corporate income tax covering the period when the subject importations were made;
2. the articles, supplies or materials are imported for PAL's use 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.

Insofar as the first two requirements are concerned, petitioners appear to have conceded to the finding of the Court in Division that PAL paid its corporate income tax for the fiscal years ending March 31, 2008, and March 31, 2009;[26] and that the articles imported by PAL for its commissary and catering supplies, consisting of liquors and wines, were intended to be used in its non-transport and transport operations and other activities incidental thereto.[27]

However, the CIR continues to question whether PAL was able to prove that imported articles were not locally available in reasonable quantity, quality or price.

After a careful evaluation of the evidence presented in the instant case, the Court *En Banc* is convinced that PAL has sufficiently established that the alcohol products it imported were not available in reasonable quantity, quality or price in the local market.

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[28] This strict construction necessitates that the claimant create a *prima facie* case in his favor. However, when a *prima facie* case is established, the burden of evidence or the burden of going

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[26] Exhibits "BBB", and "CCC", Division Docket (CTA Case No. 8361) – Vol. II, pp. 953 to 956.
[27] Exhibits "S" to "Z" and "MM" to "SS" in relation to Exhibit "JJJ", Division Docket (CTA Case No. 8361) – Vol. II, pp. 776 to 777, 828 to 834, and 902 to 917.
[28] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.

forward with the evidence shifts to the defensive party. It is now incumbent upon the defensive party to meet the *prima facie* case which has been established.[29]

In offering as evidence the testimony of Cheryl V. Capinpin,[30] PAL's Manager-In-Flight materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department, together with the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Suppliers,[31] Sales Invoices issued by foreign suppliers,[32] Philippine Wine Merchants Price List for 2007,[33] 2008,[34] and 2009[35], Duty free Philippines 2009 Retail Prices,[36] Future Trade International Travel Retail (Airlines) Price List as of February 2009,[37] Monthly Philippine Dealing System Rates for the year 2007 to 2010,[38] and Booking Rates for August 2007 and February 2009,[39] PAL made out a *prima facie* case that the cost of importing the subject alcohol products is indeed reasonably lower than purchasing them locally.

Notably, PAL's evidence remained unrebutted as both CIR and COC failed to present any controverting evidence to show otherwise before the Court in Division in CTA Case No. 8361. Considering that PAL was able to establish *prima facie* its right to the refund by testimonial and object evidence, the CIR and the COC should have presented rebuttal (or counter) evidence to shift the burden of evidence back to PAL.[40]

In light of the foregoing considerations, the Court *En Banc*

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[29] Caraig, Benjamin R., *Revised Rules Of Evidence 3rd ed.*, Caraig Publishing House, 2006, p. 306.
[30] Exhibit "JJJ", Division Docket (CTA Case No. 8361) – Vol. II, pp. 902 to 917.
[31] Exhibit "A", Division Docket (CTA Case No. 8361) – Vol. II, pp. 719 to 724.
[32] Exhibits" I-2", "J-2", "K-2", "L-2", "M-2", "N-2", "O-2", "P-2", "DD-2", "EE-2", "FF-2", "GG-2", "HH-2", "II-2", and "JJ-2", Division Docket (CTA Case No. 8361) – Vol. II, pp. 752, 755, 758, 761, 764, 770, 773, 807, 810, 813, 816, 819, 822, and 825.
[33] Exhibit "B", Division Docket (CTA Case No. 8361) – Vol. II, p. 725.
[34] Exhibit "B-1", Division Docket (CTA Case No. 8361) – Vol. II, p. 726.
[35] Exhibit "B-2", Division Docket (CTA Case No. 8361) – Vol. II, p. 726.
[36] Exhibits "C" and "C-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 728 to 729.
[37] Exhibits "D" and "D-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 730 to 731.
[38] Exhibit "E", Division Docket (CTA Case No. 8361) – Vol. II, p. 732.
[39] Exhibits "F" and "F-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 733 to 742.
[40] Refer to *Republic of the Philippines vs. Team (Phils.) Energy Corporation*, G.R. No. 188016, January 14, 2015.

finds that PAL complied with the requirements prescribed for exemption from payment of excise taxes on its importation of commissary and catering supplies used for its in-flight consumption.

When the claim for refund has clear legal basis and is sufficiently supported by evidence, then the Court shall not hesitate to grant the same.[41]

WHEREFORE, all the foregoing considered, the above-captioned petitions are hereby **DENIED** for lack of merit. Accordingly, the Decision dated March 26, 2014 and Resolution dated May 27, 2014, promulgated by the Court in Division in CTA Case No. 8361, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[41] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180043, July 14, 2009.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice