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. 1752
(CTA Case No. 8143)

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COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1756
(CTA Case No. 8143)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:
OCT 16 2019 5:05 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves the following:

1) The **Motion for Reconsideration (Re: Resolution** *(sic)* **promulgated 10 May 2019)** filed on June 4, 2019 by petitioner Commissioner of Internal Revenue *(CIR)* in CTA EB No. 1752, with **Comment/Opposition (to Petitioner Commissioner**

Internal Revenue's Motion for Reconsideration dated 3 June 2019) filed by respondent on July 17, 2019; and

2) the **Motion for Reconsideration** filed on May 31, 2019 by petitioner Commissioner of Customs *(COC)* in CTA EB No. 1756 via registered mail, and received by this Court on June 13, 2019, with **Comment/Opposition (to Petitioner Commissioner of Customs' Motion for Reconsideration dated 30 May 2019)** filed by respondent on August 7, 2019.

Both motions assail this Court *En Banc's* Decision promulgated on May 10, 2019, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the Petitions for Review filed by the Commissioner of Internal Revenue and Commissioner of Customs on December 12, 2017 and December 28, 2017, respectively, are **DENIED** for lack of merit. Accordingly, the July 17, 2017 Decision and November 20, 2017 Resolution of the Court in Division in CTA Case No. 8143 are **AFFIRMED**.
>
> **SO ORDERED**.

CIR's Motion for Reconsideration

In his Motion, CIR insists on the following: (i) the Court has no jurisdiction to rule on the validity of BIR Ruling No. 001-2003; (ii) the Authority to Release Imported Goods *(ATRIG)* alone is not sufficient to prove that the imported Jet A-1 aviation fuel was used by respondent for its transport and non-transport operations; and, (iii) respondent failed to comply with all the requisites under Section 13 of Presidential Decree No. 1590 for it to be exempted from excise tax on importations of Jet A-1 fuel used for its domestic operations since it failed to submit a certification from the Department of Energy (DOE) anent the sufficiency of total fuel supply in relation to total demand.

In its *Comment/Opposition (to Petitioner Commissioner of Internal Revenue's Motion for Reconsideration dated 3 June 2019)*, PAL argues that CIR's motion is merely a rehash of the arguments presented in its Petition for Review, which have been weighed and rejected by this Court in the assailed Decision.

COC's Motion for Reconsideration

In his Motion, COC contends that: (i) the CIR has no jurisdiction on a claim for refund of excise tax on imported articles and jurisdiction thereon is vested with the COC; (ii) the Petition filed with the Court cannot be said to be an appeal from the COC's decision or inaction as the Collector has not yet acted upon PAL's protest; hence, there is no decision of the Collector that may be reviewed by the COC, and no ruling of the COC that may be appealed to the Court; (iii) the Court has no authority to review, much less invalidate, BIR Ruling No. 001-2003 and the December 20, 2002 DOE Certification; (iv) assuming that the Court has the power to pass upon the validity of BIR Ruling No. 001-2003, PAL failed to exhaust its administrative remedies, *i.e., request the Secretary of Finance to review the ruling as provided in Department Order No. 23-01 and its implementing Revenue Memorandum Circular (RMC) No. 44-2001*; and, (v) there is no proof that the imported Jet A-1 fuel was actually used in PAL's transport operations and that Jet A-1 fuel was not locally available in reasonable quantity, quality or price at the time of the importation.

In its *Comment/Opposition (to Petitioner Commissioner of Customs' Motion for Reconsideration dated 30 May 2019)*, PAL contends that COC's motion is merely a rehash of its previous arguments presented in its Petition for Review dated 21 December 2017 as in fact they have been considered and dismissed in the assailed Decision.

THE COURT *EN BANC'S* RULING

The Court finds that the CIR and COC's arguments raised in their respective Motions for Reconsideration are mere reiteration or amplification of their arguments presented in their respective Petitions for Review, and Memorandum, all of which were duly considered in the assailed Decision. The Court has made an extensive discussion on this matter on **pages 14 to 22** of the assailed Decision.

As regards COC's contention that there is no proof that Jet A-1 fuel was not locally available in reasonable quantity, quality or price, and that this Court did not even address this issue in the Decision, the same is patently without merit.

This Court is categorical in the assailed Decision that **there is no cogent reason to depart from the Court in Division's ruling that PAL was able to comply with all the requisites under Section 13 of Presidential Decree No. 1590 for it to be exempted**

from excise tax on its importations of Jet A-1 fuel used for its domestic operations as the conclusion reached by the Court in Division is supported by evidence.

To be sure, the Court in Division has squarely discussed PAL's compliance with the requisites under Section 13 of PD 1590 based on admitted evidence; it further re-echoed the interpretation of the Court *En Banc* in *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[1] that the qualification - "*quantity, quality or price*", is alternative and not cumulative, and it is sufficient even if only one qualification is proved. This Court totally agrees with the conclusion of the Court in Division as the same is not contrary to law and is supported by evidence.

All told, this Court finds no justifiable reason to disturb the conclusions in the assailed Decision.

WHEREFORE, premises considered, the **Motion for Reconsideration (Re: Resolution** *(sic)* **promulgated 10 May 2019)** filed by petitioner Commissioner of Internal Revenue on June 4, 2019, and the **Motion for Reconsideration** filed by petitioner Commissioner of Customs on May 31, 2019 are **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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[1] CTA EB No. 1308, 1309 and 1311, February 27, 2017.

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice