REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

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

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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:

JUL 28 2016 1:28 p.m.

x---x

RESOLUTION

UY, *J.*:

For resolution are the Commissioner of Internal Revenue's **"MOTION FOR RECONSIDERATION"** filed on December 28, 2015, and the Commissioner of Customs' **"MOTION FOR RECONSIDERATION [Of the Decision dated 18 December 2015]"** filed on January 4, 2016, with the **"CONSOLIDATED COMMENT"** of Philippine Airlines, Inc. (PAL) filed on March 17, 2016, praying for the reconsideration of the Court *En Banc*'s Decision dated December 8, 2015, the dispositive portion of which reads:

> "**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**."

In her Motion, the Commissioner of Internal Revenue (CIR) argues as follows, to wit:

1. This Court erred in ruling that respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence;
2. Section 6 of Republic Act (RA) No. 9334 (Section 131 of the National Internal Revenue Code [NIRC]) mandates that all importations of cigarettes, liquor and wine shall be subject to the applicable taxes;
3. Section 131 of the NIRC of 1997, as amended by RA No. 9334, expressly withdrew the conditional tax exemption granted to respondent;
4. The letter of the law should prevail over the rules of construction;
5. Assuming there is ambiguity and rules of construction must be utilized, petitioner submits that as to the subject matter, RA No. 9334 is the more specific law on the tax treatment of imported cigarettes, liquor and wine products;
6. The exemption granted to respondent is not absolute; and
7. To sustain respondent's misguided and self-serving interpretation of its franchise provisions would ultimately convert the conditional exemption to one that is absolute.

For his part, the Commissioner of Customs (COC), in his Motion, states the following grounds therefore, *viz*:

1. Section 13 of Presidential Decree (PD) No. 1590 was amended by Section 6 of RA No. 9334, making respondent's importations of wines and liquors subject to excise tax; and
2. Respondent failed to adduce evidence showing that the imported alcohol products were not locally available in reasonable quantity, quality, or price.

On the other hand, PAL asserts, in its Consolidated Comment, as follows, to wit:

1. The Court *En Banc* correctly held that PAL's exemption from excise tax as provided in its franchise under PD No. 1590 was not revoked by the NIRC of 1997, as amended by RA No. 9334;
2. The letter of the law, which excludes PAL's franchise from the withdrawal of exemption, is clear; and
3. The Court correctly held that with respect to the refund of excise tax in the amount of ₱1,948,175.07 paid on its importations of commissary supplies, PAL has duly satisfied the conditions for entitlement to exemption.

THE COURT *EN BANC*'S RULING

The Motions lack merit.

The CIR and the COC failed to present any argument to convince the Court *En Banc* to reverse or modify the assailed Decision. A careful reading of their Motions for Reconsideration shows that the arguments raised therein have already been sufficiently passed upon and exhaustively discussed in the assailed Decision.

To reiterate, the issue of whether or not RA No. 9334 repealed Section 13 of PD No. 1590 has already been settled by the Supreme Court. In the case of *Republic of the Philippines rep. by the Commissioner of Customs vs. Philippine Airlines, Inc. (PAL), and Commissioner of Internal Revenue v.s Philippines Airlines, Inc. (PAL),*[1] which was cited in the assailed Decision, the High Court ruled that Section 13 of PD No. 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334, and declared, in no unclear terms, the following:

> "xxx. Consequently, PAL may now claim 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

[1] G.R. Nos. 209353-54 and 211733-34, July 6, 2015.

thereto; and 2) they are not locally available in reasonable quantity, quality, or price."

Thus, as already pointed out in the assailed Decision, both the CIR and 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 by Section 13 of PD No. 1590.

Furthermore, PAL made out a *prima facie* case that the cost of importing the subject alcohol products is indeed reasonably lower than purchasing them locally, in offering as evidence the testimony of Ms. Cheryl V. Capinpin,[2] 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,[3] Sales Invoices issued by foreign suppliers,[4] Philippine Wine Merchants Price List for 2007,[5] 2008,[6] and 2009[7], Duty free Philippines 2009 Retail Prices,[8] Future Trade International Travel Retail (Airlines) Price List as of February 2009,[9] Monthly Philippine Dealing System Rates for the year 2007 to 2010,[10] and Booking Rates for August 2007 and February 2009.[11]

WHEREFORE, the Motions for Reconsideration of the CIR and the COC are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[2] Exhibit "JJJ", Division Docket (CTA Case No. 8361) – Vol. II, pp. 902 to 917.
[3] Exhibit "A", Division Docket (CTA Case No. 8361) – Vol. II, pp. 719 to 724.
[4] 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.
[5] Exhibit "B", Division Docket (CTA Case No. 8361) – Vol. II, p. 725.
[6] Exhibit "B-1", Division Docket (CTA Case No. 8361) – Vol. II, p. 726.
[7] Exhibit "B-2", Division Docket (CTA Case No. 8361) – Vol. II, p. 726.
[8] Exhibits "C" and "C-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 728 to 729.
[9] Exhibits "D" and "D-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 730 to 731.
[10] Exhibit "E", Division Docket (CTA Case No. 8361) – Vol. II, p. 732.
[11] Exhibits "F" and "F-1", Division Docket (CTA Case No. 8361) – Vol. II, pp. 733 to 742.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice