REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC., **Petitioner,**	**CTA Case No. 8362** For: Refund
-versus-	Members: DEL ROSARIO, P.J., Chairperson UY, MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, **Respondents.**	Promulgated: JAN 04 2016; 2:28 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Philippine Airlines, Inc. ("PAL" for brevity), as petitioner, against Commissioner of Internal Revenue and Commissioner of Customs, as respondents, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

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the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

Petitioner seeks the refund of the amount of Three Million Four Hundred Eleven Thousand Fifty-Four Pesos and 48/100 (P3,411,054.48), allegedly representing erroneous collection of excise tax, in connection with its importations of liquor, wine and cigarettes for international flight consumption.

Petitioner Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue

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[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x x x
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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> x x x x x x

of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[3]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), a 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 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.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145 of the NIRC of 1997, as amended. He holds office at the G/F OCOM Bldg., Bureau of Customs, Port Area, Manila.

On June 11, 1978, by virtue of Presidential Decree (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 Between the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally.[4]

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.[5] Section 6 of RA No. 9334 provides:

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[3] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 299.
[4] Par. 4, Facts, JSFI, Docket, p. 300
[5] Par. 6, Facts, JSFI, Docket, p. 301

"SEC. 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.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other

> similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
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> (B) *Rate and Basis of the Excise Tax on Imported Articles.* - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

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 informing the latter that, "there is a need to implement the same as soon as possible, otherwise, it will result in the non-collection of a significant amount of taxes, which is urgently needed by our country at this time."[6]

As a result, then COC George M. Jereos issued a Memorandum dated February 4, 2005 to effect collection of excise tax due on imported alcohol and tobacco products, even those destined for Duty Free Philippines and for Freeport zones, pursuant to RA No. 9334, particularly Section 6 thereof, amending Section 131 of the NIRC of 1997, as amended.[7]

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order (CMO) No. 13-2005, which provided for the immediate collection at the port of discharge of the duties, taxes and other charges, including excise tax due on all importations of alcohol and tobacco products destined to Duty Free Shops and Freeport zones, pursuant to RA No. 9334 and Revenue Regulations (RR) No. 12-2004.[8]

On various dates in 2007 and 2009, petitioner's importations of assorted cigarettes, liquor and wines arrived in Manila, covered by various Informal Import Declaration

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[6] Par. 7, Facts, JSFI, Docket, p. 302
[7] Par. 8, Facts, JSFI, Docket, p. 302
[8] Par. 9, Facts, JSFI, Docket, p. 302.

and Entry (IIDE), Air Waybills/Bills of Lading, and ATRIGs, detailed as follows:

Port of Entry	Arrival Date	IIDE No.	Air Waybill/Bill of Lading No.	ATRIG	Excise Taxes Paid (Peso)
NAIA	03/21/09	2444[9]	079-3214-8255[10]	00032076[11]	105,814.80
NAIA	03/29/09	2502[12]	079-3214-8406[13]	00032467[14]	126,977.76
NAIA	03/29/09	2503[15]	079-3214-8395[16]	00032489[17]	460,296.74
NAIA	04/09/09	1280[18]	079-3286-6050[19]	00032474[20]	233,384.39
NAIA	04/11/09	3084[21]	079-3192-9892[22]	00032470[23]	104,549.40
South Harbor	04/15/09	3164[24]	0903/408[25]	00032469[26]	367,206.84
NAIA	04/25/09	2505[27]	079-3214-8885[28]	00032472[29]	380,933.28
South Harbor	05/14/07	5188[30]	D0704/11706[31]	00030400[32]	186,171.30
NAIA	05/20/09	3713[33]	079-3192-9903[34]	00032468[35]	40,352.40
NAIA	05/23/09	3727[36]	079-3214-9250[37]	00032473[38]	380,933.28
NAIA	03/14/09	2411[39]	079-3214-8130[40]	00032075[41]	128,154.29
SUB-TOTAL					**2,514,774.48**
NAIA	02/27/09	1686[42]	079-3214-7603[43]	00032166[44]	203,700.00

[9] Exhibit "I", Docket, p. 876
[10] Exhibit "I-1", Docket, p. 877
[11] Exhibit "V", Docket, p. 916
[12] Exhibit "J", Docket, p. 879
[13] Exhibit "J-1", Docket, p. 880
[14] Exhibit "W", Docket, p. 917
[15] Exhibit "K", Docket, p. 882
[16] Exhibit "K-1", Docket, p. 883
[17] Exhibit "X", Docket, p. 918
[18] Exhibit "L", Docket, p. 885
[19] Exhibit "L-2", Docket, p. 887
[20] Exhibit "Y", Docket, p. 919
[21] Exhibit "M", Docket, p. 892
[22] Exhibit "M-1", Docket, p. 893
[23] Exhibit "Z", Docket, p. 920
[24] Exhibit "N", Docket, p. 895
[25] Exhibit "N-1", Docket, p. 896
[26] Exhibit "AA", Docket, p. 921
[27] Exhibit "O", Docket, p. 898
[28] Exhibit "O-1", Docket, p. 899
[29] Exhibit "BB", Docket, p. 922
[30] Exhibit "P", Docket, p. 901
[31] Exhibit "P-1", Docket, p. 902
[32] Exhibit "CC", Docket, p. 923
[33] Exhibit "Q", Docket, p. 904
[34] Exhibit "Q-1", Docket, p. 905
[35] Exhibit "DD", Docket, p. 924
[36] Exhibit "R", Docket, p. 907
[37] Exhibit "R-1", Docket, p. 908
[38] Exhibit "EE", Docket, p. 925
[39] Exhibit "S", Docket, p. 910
[40] Exhibit "S-1", Docket, p. 911
[41] Exhibit "FF", Docket, p. 926
[42] Exhibit "JJ", Docket, p. 948
[43] Exhibit "JJ-1", Docket, p. 949

NAIA	06/30/09	6054[45]	079-3214-9740[46]	00037736[47]	258,020.00
NAIA	02/14/09	1556[48]	079-3214-7382[49]	00037735[50]	434,560.00
SUB-TOTAL					**896,280.00**
TOTAL					**3,411,054.48**

On July 28, 2009[51] and September 23, 2009[52], Gilda L. Cinco, Acting Chief of WAU of the BOC, submitted to Silveria S. Salazar, Chief of the Collection Division, NAIA Customshouse, through a letter, the documents covering petitioner's payment of duties, taxes and other charges pursuant to CMO No. 13-2006 and RR No. 3-2006.

On October 26, 2009, petitioner paid, under protest, the amounts of P2,514,774.48 and P896,280.00 to the BOC, representing the excise taxes on the above importations, as evidenced by BOC Official Receipt Nos. 168546944[53] and 168546962.[54]

On October 26, 2009, petitioner formally protested the assessment and collection of the amounts of P2,514,774.48[55] and P896,280.00[56], through letters addressed to Ms. Silveria Salazar of the BOC.

On November 6, 2009, petitioner filed with the District Collector of Customs of NAIA a written protest against the assessment and collection of P2,514,774.48[57] and P896,280.00[58], representing the excise taxes on the above importations.

Thereafter, on January 28, 2010, petitioner filed an administrative claim with respondent CIR for the refund of

[44] Exhibit "OO", Docket, p. 960
[45] Exhibit "KK", Docket, p. 951
[46] Exhibit "KK-1", Docket, p. 952
[47] Exhibit "PP", Docket, p. 961
[48] Exhibit "LL", Docket, p. 954
[49] Exhibit "LL-1", Docket, p. 955
[50] Exhibit "QQ", Docket, p. 962
[51] Exhibit "T", Docket, p. 913
[52] Exhibit "MM", Docket, p. 957
[53] Exhibit "U", Docket, p. 914
[54] Exhibit "NN", Docket, p. 958
[55] Exhibit "GG", Docket, pp. 927-937
[56] Exhibit "RR", Docket, pp. 963-973
[57] Exhibit "HH", Docket, pp. 928-937
[58] Exhibit "SS", Docket, pp. 964-973

P2,514,774.48[59] and P896,280.00[60], representing the excise taxes paid for the said importations.

However, due to the inaction of respondent CIR on petitioner's administrative claim for refund, the latter filed the instant Petition for Review[61] on October 26, 2011.

In her Answer[62] filed on January 5, 2012, respondent CIR interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

6. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

7. The Petition for Review does not merit to be given due course. Petitioner failed to prove that it exhausted all administrative remedies before elevating this case to this Honorable Court.

7.1 A careful reading of the petition for review shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the granting of the application for tax refund. Instead, on January 28, 2010, petitioner submitted its application for refund with the Office of the Commissioner of Internal Revenue (CIR), which was attached to the petitioner as Annex 'II' and 'TT' without the submission of complete supporting documents. Absent the submission of complete supporting documents, the CIR cannot act on the administrative application for refund.

7.2 Considering that petitioner failed to submit supporting documents to respondent when it filed its application for refund on January 28, 2010, it deprived respondent of the opportunity to fully exercise her

[59] Exhibit "II", Docket, pp. 938-947
[60] Exhibit "TT", Docket, pp. 974-983
[61] Exhibit "UU-1", Docket, pp. 6-23
[62] Docket, pp. 206-218

function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of *Jariol vs. Commission on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

7.3 The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

7.4 Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that a party has no cause of action to ventilate in court. The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action.

8. 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.

9. The claim for refund in the aggregate amount of Three Million Four Hundred Eleven Thousand Fifty Four Pesos and 48/100 (P3,411,054.48) allegedly representing excise tax paid under protest on October

26, 2009 being claimed by the petitioner is not warranted.

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

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

substantiate a claim for refund, the taxes paid must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rests on vague inference.

11. Presidential Decree 1590 (P.D. 1590) signed on June 11, 1978 granted to 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'

Subsequently, on July 26, 2004, Republic Act 9334 (RA 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
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> '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.'

Precisely, Presidential Decree No. 1590, particularly Section 13 thereof had already been expressly repealed or modified by Republic Act No. 9334 which took effect on 1 January 2005.

A close reading of the third paragraph of Section 131 of the National Internal Revenue Code, as amended by RA 9334, reveals the unmistakable intent of Congress to withdraw tax exemptions granted to petitioner under Section 6, P.D. 1590. First, Section 6 of R.A. 9334 employs the clear and all-encompassing phrase 'The provision of any special or general law to the contrary notwithstanding.' R.A. 9334, therefore, repeals any inconsistent provision whether contained in general or special statutes like P.D. 1590, petitioner's franchise. Second, Section 6 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction. Said provision contains no proviso exempting petitioner's importation of said wines and tobacco products for its commissary and catering supplies.

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 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.**

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.

13. 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 Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R 141973, June 28, 2005)**

14. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic**

Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670).

15. Respondent humbly manifests that this Honorable Court is bereft of jurisdiction to hear and try the instant case, due to failure of the petitioner to exhaust all administrative remedies. Respondent submits that the instant petition for review was filed *prematurely*.

16. In view of the foregoing, for lack of merit, this Honorable Court should therefore dismiss the case outright. In so doing, a long and tedious trial would be dispensed with and the Honorable Court as well as the parties would be spared from undergoing the rigors and expenses of a full blown trial."

For respondent COC's part, he submitted his Answer/Comment[63] on January 10, 2012, alleging the following arguments:

"**ARGUMENTS**

THE IMPORTATIONS ARE SUBJECT TO EXCISE TAX BECAUSE:

I. SECTION 6 OF R.A. NO. 9334 IS NOT LIMITED TO FREEPORTS AND DUTY-FREE SHOPS.

II. SECTION 6 OF R.A. NO. 9334 APPLIES TO PETITIONER."

Respondent CIR filed her Pre-Trial Brief[64] on January 31, 2012; while respondent COC filed his Pre-Trial Brief[65] on February 13, 2012. Petitioner's Pre-Trial Brief[66] was filed on February 14, 2012. Then the Pre-Trial Conference was held on February 17, 2012.[67]

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[63] Docket, pp. 221-250
[64] Docket, pp. 254-259
[65] Docket, pp. 261-265
[66] Docket, pp. 267-275
[67] Minutes of the Hearing dated February 17, 2012, Docket, p. 279

As directed by the Court, the parties submitted a Joint Stipulation of Facts and Issues[68] and Supplemental Joint Stipulation[69] on April 23, 2012 and June 29, 2012, respectively; which the Court adopted in the Pre-Trial Order[70] dated July 17, 2012.

In support of its refund claim, petitioner presented the following witnesses: (1) Mr. Jonathan Castillo Lee[71] – Manager of Company Materials Handling Division of petitioner; (2) Ms. Ma. Evelyn Taghap[72] – Manager of the Tax Services Division of petitioner; and (3) Ms. Cheryl Capinpin[73] – Manager of the In-Flight Materials Purchasing Division, Catering and In-Flight Materials Purchasing Sub-Department of petitioner.

Petitioner formally offered its documentary evidence on July 26, 2013.[74] Respondent CIR filed her Comment (Re: Petitioner's Formal Offer of Evidence With Motion for Marking/Re-Marking and Motion to Correct Identification of Documents)[75] on August 13, 2013. On the other hand, respondent COC filed his Comment (On Petitioner's Formal of Evidence) on September 11, 2013.

On November 28, 2013, petitioner's Supplemental Formal Offer of Evidence[76] was filed. Respondent CIR filed her Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)[77] on December 4, 2013, while respondent COC waived his right to comment.[78]

Respondent COC likewise waived his right to present evidence in a Manifestation[79] posted on December 17, 2013.

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[68] Docket, pp. 299-305
[69] Docket, pp. 486-498
[70] Docket, pp. 506-520
[71] Minutes of the Hearing dated July 12, 2012, Docket, p. 501
[72] Minutes of the Hearing dated November 15, 2012, Docket, p. 717
[73] *Id.*
[74] Formal Offer of Evidence, Docket, pp. 781-860
[75] Docket, pp. 1017-1018
[76] Docket, pp. 1047-1052
[77] Docket, pp. 1057-1059
[78] Manifestation, Docket, pp. 1062-1063
[79] Docket, pp. 1062-1063

and received by the Court on December 20, 2013. Respondent CIR filed a Manifestation (Re: Notice of Resolution promulgated November 14, 2013)[80] on January 21, 2014, also waiving her right to present evidence.

Exhibits "I" to "EEE-8", inclusive of sub-markings, were admitted by the Court via Resolutions dated February 3, 2014[81] and September 3, 2014[82], after petitioner filed a Motion for Reconsideration (of the Resolution dated February 3, 2014),[83] and after respondents CIR and COC filed their respective comments thereto.[84] The Court also took judicial notice of Exhibits "A", "B", and "E", pursuant to Section 1 of Rule 129 of the Rules of Court, and noted the manifestations of respondent CIR and COC.[85] However, the Court denied the admission of Exhibits "C", "D", "F", "G", "H", "EEE-7", "EEE-7-a", "EEE-9", "EEE-10", and "FFF".

Petitioner's documentary evidence are as follows:

Exhibit:	Description:
I	Informal Import Declaration Entry No. 2444
I-1	Air Waybill No. 079-3214825-5 dated March 21, 2009
I-2	Commercial Invoice No.: 2009-PAL-3-1015 dated March 16, 2009
J	Informal Import Declaration Entry No. 2502
J-1	Air Waybill No. 079-3214-8406 dated March 29, 2009
J-2	Commercial Invoice No.: 2009-PAL-3-1017 dated March 30, 2009
K	Informal Import Declaration and Entry No. 2503
K-1	Air Waybill No. 079-3214-8395 dated March 29, 2009
K-2	Commercial Invoice No.: 2009-PAL-3-1016 dated March 30, 2009
L	Informal Import Declaration and Entry No. 1280
L-1	Air Waybill No. 079-3286605-0 dated April 9, 2009

[80] Docket, pp. 1068-1070
[81] Docket, pp. 1074-1076
[82] Docket, pp. 1238-1240
[83] Docket, pp. 1079-1089
[84] Comment (Re: Petitioner's Motion for Reconsideration dated February 25, 2014, Docket, pp. 1153-1156; Comment (On the Motion for Reconsideration [of the Resolution dated February 3, 2014]), Docket, pp. 1161-1166
[85] Resolution, Docket, pp. 1076

L-2	Commercial Invoice No. 251946 dated April 7, 2009
L-2-a	Commercial Invoice No. 251947 dated April 7, 2009
L-2-b	Commercial Invoice No. 251948 dated April 7, 2009
M	Informal Import Declaration and Entry No. 3084
M-1	Air Waybill No. 079-3192-9892 dated April 11, 2009
M-2	Sales Invoice No.: GW0905-010 dated April 14, 2009
N	Informal Import Declaration and Entry No. 3164
N-1	Bill of Lading No. 0903/408 with date of issue March 17, 2009
N-2	Sales Invoice No. 11078 dated April 17, 2009
O	Informal Import Declaration and Entry No. 2505
O-1	Air Waybill No. 079-3214-8885
O-2	Tax Invoice No. 80005173 dated April 24, 2009
P	Informal Import Declaration and Entry No. 5188
P-1	Bill of lading BL No. D0704/11706 with Reference No. BD000108 with date of issue April 11, 2007
P-2	Sales Invoice No. 11053 dated May 7, 2007
Q	Informal Import Declaration and Entry No. 3713
Q-1	Air Waybill No. 079-3192-9903 dated May 20, 2009
Q-2	Invoice No.: GW0905-031 dated May 13, 2009
R	Informal Import Declaration and Entry No. 3727
R-1	Air Waybill No. 079-3214-9250 dated May 23, 2009
R-2	Proforma Invoice No. 10005241 dated May 20, 2009
S	Informal Import Declaration Entry No. 2411
S-1	Air Waybill No. 079-3214-8130 dated March 14, 2009
S-2	Commercial Invoice No.: 2009-PAL-3-1013 dated March 16, 2009
T	July 28, 2009 Letter of Gilda L. Cinco, Acting Chief, WAU/FED of the BOC submitting to Silveria Salazar, Chief Collection Division, NAIA Customs house documents covering petitioner's payment of duties, taxes, and other charges pursuant to CMO 13-2005 and Revenue Regulations No. 3-2006
U	Bureau of Customs Official Receipt No. 168546944 dated October 26, 2009
V	Authority to Release Imported Goods (ATRIG) No. 00032076 dated May 22, 2009 issued by the BIR and addressed to the Collector of Customs

W	Authority to Release Imported Goods (ATRIG) No. 00032467 dated June 4, 2009 issued by the BIR and addressed to the Collector of Customs
X	Authority to Release Imported Goods (ATRIG) No. 00032489 dated June 9, 2009 issued by the BIR and addressed to the Collector of Customs
Y	Authority to Release Imported Goods (ATRIG) No. 00032474 dated June 4, 2009 issued by the BIR addressed to the Collector of Customs
Z	Authority to Release Imported Goods (ATRIG) No. 00032470 dated June 4, 2009 issued by the BIR and addressed to the Collector of Customs
AA	Authority to Release Imported Goods (ATRIG) No. 00032469 dated June 3, 2009 issued by the BIR and addressed to the Collector of Customs
BB	Authority to Release Imported Goods (ATRIG) No. 00032472 dated June 4, 2009 issued by the BIR and addressed to the Collector of Customs
CC	Authority to Release Imported Goods (ATRIG) No. 00030400 dated April 29, 2009 issued by the BIR addressed to the Collector of Customs
DD	Authority to Release Imported Goods (ATRIG) No. 00032468 dated June 3, 2009 issued by the BIR and addressed to the Collector of Customs
EE	Authority to Release Imported Goods (ATRIG) No. 00032473 dated June 4, 2009 issued by the BIR addressed to the Collector of Customs
FF	Authority to Release Imported Goods (ATRIG) No. 00032075 dated May 22, 2009 issued by the BIR addressed to the Collector of Customs
GG	October 26, 2009 Written Formal Protest of Jonathan R. Castillo Lee, Manager of Company Materials Handling Division of PAL addressed to Mrs. Silveria Salazar, Chief -Collection Division of BOC
GG	Signature of Mr. Jonathan R. Castillo Lee
HH	Petitioner's letter dated November 4, 2009 addressed to Atty. Carlos T. So, District Collector of Customs, Bureau of Customs, NAIA protesting the assessment and requesting for refund of the amount of P2,514,774.48
HH-1	Signature of Mr. Andy Y. Li, Vice President, Corporate Logistics & Services Department of Philippine Airlines, Inc.
II	Petitioner's letter dated January 28, 2010 addressed to Hon. Joel Tan-Torres, Commissioner of the Bureau of Internal Revenue protesting and requesting for the refund of the amount of P2,514,774.48
JJ	Informal Import Declaration and Entry No. 1686
JJ-1	Air Waybill No. 079-32147630-3 dated February 27, 2009

JJ-2	Proforma Invoice No. DF/09/0029 dated February 24, 2009
KK	Informal Import Declaration and Entry No. 6054
KK-1	Air Waybill No. 079-3214974-0 dated June 30, 2009
KK-2	Imperial Tobacco Proforma Invoice No. DF/09/0090 dated June 26, 2009
LL	Informal Import Declaration and Entry No. 1556
LL-1	Air Waybill No. 079-3214-7382 dated February 14, 2009
LL-2	Invoice No. 0138 dated February 13, 2009
MM	Letter dated September 23, 2009 to Silveria S. Salazar, Chief Collection Division, NAIA Customhouse from Ms. Gilda L. Cinco
NN	Bureau of Customs Official Receipt No. 168546962 dated October 26, 2009
OO	Authority to Release Imported Goods (ATRIG) No. 00032166 dated May 21, 2009 issued by the BIR and addressed to the Collector of Customs
PP	Authority to Release Imported Goods (ATRIG) No. 00037736 dated July 23, 2009 issued by the BIR and addressed to the Collector of Customs
QQ	Authority to Release Imported Goods (ATRIG) No. 00037735 dated July 23, 2009 issued by the BIR addressed to the Collector of Customs
RR	October 26, 2009 Written Formal Protest of Jonathan R. Castillo Lee, Manager of Company Materials Handling Division of PAL
RR-1	Signature of Mr. Jonathan R. Castillo Lee
SS	Petitioner's letter dated November 4, 2009 addressed to Atty. Carlos T. So, District Collector of Customs, Bureau of Customs, NAIA to protest on the assessment and to request for refund of the amount of P896,280.00
SS-1	Signature of Atty. Andy Y. Li, PAL's former Vice President for Corporate Logistic & Services Department
TT	Petitioner's letter dated January 28, 2010 addressed to Hon. Joel Tan-Torres, Commissioner of the Bureau of Internal Revenue protesting and requesting for the refund of the amount of P896,280.00
UU	Petition for Review filed on October 26, 2011
UU-1	Date of filing of the Petition for Review
VV	Judicial Affidavit of Mr. Jonathan R. Castillo Lee filed on June 1, 2012
VV-1	Signature of Mr. Jonathan R. Castillo Lee
WW	Amended Annual Income Tax Return of PAL for the Fiscal Year ended March 31, 2008
WW-1	Label of "Date/Filed: August 27, 2008 09:06 AM"

XX	Annual Income Tax Return of PAL for the Fiscal Year ended March 31, 2009
XX-1	Label of "Date/Filed: July 15, 2009"
YY	Annual Income Tax Return of PAL for the Fiscal Year ended March 31, 2010
YY-1	Label of "Date/Filed: September 3, 2010"
ZZ	Certificate of Registration of PAL dated December 18, 2007
ZZ-1	Certificate of Registration of PAL dated August 6, 2004
AAA	BIR Payment Form 0605 with date of filing of January 2, 2007
AAA-1	Quarterly VAT Return for the 1st Quarter of FY ended March 31, 2008 and with date of filing on July 23, 2007
AAA-2	Amended Quarterly VAT Return for the 2nd Quarter of FY ended March 31, 2008 and with date of filing on November 20, 2007
BBB	BIR Payment Form 0605 with date of filing of January 24, 2008
BBB-1	Amended Quarterly VAT Return for the 1st Quarter of FY ended March 31, 2009 with date of filing on July 2, 2009
BBB-2	Amended Quarterly VAT Return for the 2nd Quarter of FY ended March 31, 2009 with date of filing on July 7, 2009
BBB-3	Amended Quarterly VAT Return for the 3rd Quarter of FY ended March 31, 2009 with date of filing on July 8, 2009
BBB-4	Amended Quarterly VAT Return for the 4th Quarter of FY ended March 31, 2009 with date of filing on November 27, 2009
CCC	BIR Payment Form 0605 with date of filing of January 14, 2010
CCC-1	Amended Quarterly VAT Return for the 1st Quarter of FY ended March 31, 2010 with date of filing on June 11, 2010
CCC-2	Amended Quarterly VAT Return for the 2nd Quarter of FY ended March 31, 2010 with date of filing on June 11, 2010
CCC-3	Amended Quarterly VAT Return for the 3rd Quarter of FY ended March 31, 2010 with date of filing on June 11, 2010
CCC-4	Amended Quarterly VAT Return for the 4th Quarter of FY ended March 31, 2010 with date of filing on June 11, 2010
DDD	Judicial Affidavit of Mrs. Ma. Evelyn L. Taghap, Manager of Petitioner's Tax Services and Compliance Department
DDD-1	Signature of Ms. Ma. Evelyn L. Taghap
EEE	Judicial Affidavit of Cheryl Capinpin
EEE-1	Signature of Ms. Cheryl V. Capinpin

EEE-2	Table of Comparison between cost of importing and cost of locally purchasing commissary and catering supplies
EEE-3	Philippine Wine Merchants Price List 2007
EEE-4	Philippine Wine Merchants Price List 2008
EEE-5	Philippine Wine Merchants Price List 2009
EEE-6	Judicial Affidavit of Mr. Gilbert M. Galedo dated November 24, 2009 with attached Duty Free Philippines 2009 Retail Prices as Annex "A"
EEE-6-a	Signature of Mr. Gilbert M. Galedo
EEE-8	Monthly Philippine Dealing System Rates
GGG	Supplemental Judicial Affidavit of Ms. Cheryl V. Capinpin dated July 25, 2013
GGG-1	Signature of Ms. Cheryl V. Capinpin on page 5 of her Supplemental Judicial Affidavit dated July 25, 2013

Petitioner filed a Motion to Admit Attached Memorandum[86] on March 14, 2014, which the Court granted in a Resolution[87] dated April 11, 2014. Respondent CIR filed, through registered mail, her Memorandum (For Respondent)[88] on April 8, 2014; while respondent COC filed his Memorandum[89] on October 10, 2014.

On November 7, 2014, petitioner filed a Manifestation[90] requesting this Court to take note of the Supreme Court's decision in *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[91]. Respondent COC filed his Counter-Manifestation[92] on November 26, 2014.

Also, considering the exclusion of some of its evidence, petitioner filed a Tender Offer of Documentary Evidence (Offer of Proof of Evidence)[93] on October 7, 2014. On the other hand, respondent CIR filed a Comment[94] to oppose petitioner's Tender Offer of Documentary Evidence on

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[86] Docket, pp. 1119-1151
[87] Docket, pp. 1195-1196
[88] Docket, pp. 1170-1192
[89] Docket, pp. 1247-1268
[90] Manifestation, Docket, pp. 1278-1281
[91] G.R. No. 212536-37, August 27, 2014
[92] Docket, pp. 1295-1298
[93] Docket, pp. 1241-1245
[94] Comment (Re: Tender Offer of Documentary Evidence [Offer of Proof of Evidence] dated October 7, 2014), Docket, pp. 1284-1288

November 14, 2014, to which petitioner filed a Reply[95] on November 25, 2014.

In the Resolution[96] dated January 20, 2015, the Court noted petitioner's Manifestation and Tender Offer of Documentary Evidence (Offer of Proof of Evidence), and respondent COC's Counter-Manifestation. The case was also submitted for decision in the same Resolution.

The parties submitted the following issues[97] for this Court's disposition:

1. Whether or not petitioner is exempt from Section 6 of RA No. 9334;

2. Whether or not Section 13 of PD No. 1590 has been amended, modified or repealed by RA No. 9334;

3. Whether or not petitioner is entitled to a refund of the total amount of P3,411,054.48 representing specific taxes paid under protest to respondent CIR through respondent COC, as follows:

   a. P2,514,774.48 paid on October 26, 2009;
   b. P896,280.00 paid on October 26, 2009; and

4. Whether or not respondent COC acted within the scope of his authority.

The above-enumerated issues may be summarized into two main issues, to wit:

1. Whether RA No. 9334 amended petitioner's franchise under PD No. 1590, pertaining to exemption from excise tax of its importation of cigarette, liquor, and wine; and

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[95] Reply to Comment (Re: Tender Offer of Documentary Evidence [Offer of Proof of Evidence]), Docket, pp. 1290-1293
[96] Docket, pp. 1317-1319
[97] Issues to be Tried or Resolved, JSFI, Docket, pp. 304-305

2. Whether petitioner satisfied the conditions set forth in PD No. 1590 for exemption from excise tax of its importation of cigarette, liquor and wine, entitling it to a refund of the total amount of P3,411,054.48, representing specific taxes paid under protest to respondent CIR through respondent COC.

The Court will first determine if it has jurisdiction.

Pertinent to the resolution of this issue are Sections 204(C) and 229 of the NIRC of 1997, as amended, quoted hereunder for ready reference:

> "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." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been

> collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the afore-quoted provisions, Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. It is well-settled that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

Petitioner paid the excises taxes subject of this case on October 26, 2009.[98] From October 26, 2009, petitioner had two years or until October 26, 2011, within which to file its administrative and judicial claims.

Since petitioner filed the claim for refund with respondent CIR on January 28, 2010[99] and the instant Petition for Review on October 26, 2011[100], the same were filed well within the two-year prescriptive period. Thus, the Court has jurisdiction over the case.

Petitioner contends that RA No. 9334 did not repeal the exemption from excise taxes of its importations of

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[98] Exhibits "U" and "NN", Docket, pp. 914-915 and 958-959
[99] Exhibits "II" and "TT", Docket, pp. 938-947 and 974-983
[100] Exhibit "UU-1", Docket, p. 6

commissary and catering supplies for international consumption under PD No. 1590.[101] It likewise alleges that RA No. 9337 expressly amended PD No. 1590 but clearly retained its exemption from all taxes other than corporate income tax and value-added tax.[102]

On the other hand, both respondents CIR and COC argue that Section 131 of the NIRC of 1997, as amended by RA No. 9334, expressly withdrew the conditional tax exemption granted to petitioner.[103]

It must be pointed out that the Court has consistently held in a number of cases involving the parties in the present case that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590.[104] In the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[105], this Court made the following pronouncements:

> "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 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

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[101] Memorandum, Docket, p. 1139
[102] Memorandum, Docket, p. 1140
[103] Memorandum (For Respondent), Docket p. 1176; Memorandum, Docket, p. 1253
[104] CTA EB No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 and 7746, August 24, 2012); CTA EB Nos. 942 and 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 and 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Nos. 920 and 922, September 9, 2013 (CTA Case Nos. 7665 and 7713, April 17, 2012); CTA Case No. 8153, January 17, 2013; CTA Case No. 7935, December 20, 2012; CTA Case No. 8361, March 26, 2014
[105] CTA EB Nos. 920 and 922, September 9, 2013

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 (sic) 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."

In another case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et al.*[106], this Court reiterated the same ruling.

Thus, based on all the foregoing, the exemption granted to petitioner under PD No. 1590 remains.

The Court will now determine whether petitioner is entitled to a refund.

Petitioner claims that it has proven its compliance with the conditions for exemption of its importation of commissary supplies, such as cigarettes, liquor and wine for its international flight consumption.[107]

On the other hand, respondents CIR and COC claim that, assuming that Section 13 of PD No. 1590 was not amended by RA No. 9334, petitioner failed to prove that the alleged commissary supplies are not locally available in

[106] CTA Case No. 7935, December 20, 2012, citing *Tan, et al. vs. Pereña*, G.R. No. 149743, February 18, 2005
[107] Memorandum, Docket, pp. 1141-1142

reasonable quantity, quality and price.[108] Respondent CIR points out that there was no independent and credible evidence presented to prove the same. She posits that reasonable price is the decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit, as defined by the Black's Law Dictionary, or high enough to cover a seller's cost and a reasonable margin, but not high enough for the seller to realize monopolistic profit, as defined by the Business Dictionary.[109]

The pertinent portions of Section 13 of PD No. 1590 provide 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 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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[108] Memorandum (For Respondent), Docket, p. 1189; Memorandum, Docket, pp. 1263-1267
[109] Memorandum (For Respondent), Docket, p. 1189

xxx xxx xxx

> (2) **All taxes**, including compensating taxes, duties, charges, royalties, or fees due **on all importations by the grantee of** aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form **and other articles, supplies, or materials**; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.**" *(Emphasis supplied)*

Thus, in order for petitioner to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, it must be able to 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.

Petitioner submitted its Annual Income Tax Returns for the fiscal years ended March 31, 2008[110], March 31, 2009[111], and March 31, 2010[112] to prove payment of income tax. Also, petitioner proved that it is a VAT-registered entity and that it accounted and paid for the VAT on its sales/receipts as evidenced by its BIR Certificate of Registration[113] dated

[110] Exhibit "WW", Docket, pp. 527-528
[111] Exhibit "XX", Docket, pp. 529-530
[112] Exhibit "YY", Docket, pp. 551-552
[113] Exhibit "ZZ", Docket, p. 531

December 18, 2007, Certificate of Registration[114] dated August 6, 2004, Payment Forms No. 0605[115], and VAT Returns for fiscal years 2008, 2009, and 2010.[116]

Petitioner likewise complied with the second requisite. Under the column "Description of Articles" of the Informal Import Declaration and Entry (IIDE) documents[117] submitted by petitioner, the imported articles were described as "Inflight Materials". Similarly, in the ATRIGs[118] issued by respondent CIR addressed to respondent COC, it was indicated that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international in-flight consumption".

To support the claim that the imported articles were not locally available in reasonable quantity, quality or price, petitioner submitted the Judicial Affidavit of Ms. Cheryl Capinpin[119] (petitioner's Manager for In-flight Materials Purchasing Division), the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[120], the Philippine Wine Merchants (PWM) Price List for the years 2007[121], 2008[122], and 2009[123], the Affidavit of Gilbert M. Galedo[124], and the Monthly Philippine Dealing System (PDS) rates for the years 2007 to 2010[125].

An examination of the Judicial Affidavit of Ms. Cheryl Capinpin shows that except for the year 2009, petitioner compared the prices of its imported wines and liquors only with the local price list of Philippine Wine Merchants, and the prices of its imported cigarettes were compared only with the costs of the cigarettes sold by Duty Free Philippines for the year 2009 gathered by Mr. Gilbert M. Galedo, Senior Planning and Purchasing Specialist of Catering and In-flight

[114] Exhibit "ZZ-1", Docket, p. 532
[115] Exhibits "AAA" to "CCC", Docket, pp. 533, 534, and 553
[116] Exhibits "AAA-1" to "BBB-4", "CCC-1" to "CCC-4", Docket, pp. 535-550 and 554-561
[117] Exhibits "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "JJ", "KK", and "LL", Docket, pp. 876, 879, 882, 885, 892, 895, 898, 901, 904, 907, 910, 948, 951, and 954
[118] Exhibits "V" to "FF" and "OO" to "QQ", Docket, pp. 916-926 and 960-962
[119] Exhibit "EEE", Docket, pp. 573-591
[120] Exhibit "EEE-2", Docket, pp. 592-597
[121] Exhibit "EEE-3", Docket, p. 642
[122] Exhibit "EEE-4", Docket, p. 643
[123] Exhibit "EEE-5", Docket, p. 644
[124] Exhibit "EEE-6", Docket, p. 645
[125] Exhibit "EEE-8", Docket, p. 649

Materials Purchasing Sub-Department, Corporate Logistics and Service Department of petitioner. An excerpt of the Judicial Affidavit of Ms. Cheryl Capinpin is quoted hereunder:

"12. Q. Looking at Annex 'A' of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

12. A. The costs of importing the commissary supplies involved and listed under the column 'Product Imported', are specified under the columns labelled 'Sales Invoice/Quantity & Value per Sales Invoice/Unit Cost Per Sales Invoice', 'Authority to Release Imported Goods (ATRIG) No./Unit Cost per ATRIG', and 'Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.', while the costs of locally buying the same supplies are specified under the columns labelled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', 'Philippine Wine Merchants 2009 Price List', Duty Free Phils 2009 Retail Prices', and 'Future Trade International Travel Retail Price List as of Feb 2009'. As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

13. Q. What are those sales invoices mentioned in your table which are the bases of your costs of importing the products involved?

13. A. They are the sales invoices of PAL's suppliers of the imported product.

14. Q. How did you arrive at the unit cost per sales invoice?

14. A. As shown by the table, in the case of alcoholic products, I divided the cost per case or carton stated in the sales invoice, by twelve (12) or by six (6), depending upon the number of bottles per case or carton of the alcoholic product covered by the invoice, to arrive at the unit cost per bottle.

In the case of tobacco products or cigarettes, I divided the total value of the product as stated in the sales invoices, by the number of cartons or cases also stated therein, to arrive at the cost per carton. I then divided the cost per carton by fifty (50), the number of reams per cartons to arrive at the cost per ream of cigarettes. To arrive at the unit cost per pack of cigarettes, I divided the cost per ream by ten (10) which is the number of packs in a ream.

15. Q. How about the 'Unit Cost per ATRIG'? How did you arrive at the unit cost of the imported product?

15. A. The total number of cases of all the products imported and the total value of such number of cases are usually stated in the ATRIG or the Authority to Release Imported Goods issued by the BIR. To arrive at the cost per case, I just divided the total value of the product by the total number of cases stated therein. As in the case of the computation of unit costs of alcoholic products per sales invoice, I then divided the value per case by twelve (12) or six (6) bottles to arrive at the unit cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total value of the importation as given by the ATRIG by the total number of bottles. The resulting figure is the importation value per bottle.

In the case of cigarettes, the total number of cases of all the cigarettes imported and the total value of such number of cases are usually stated in the ATRIG. I divided the total value by the total number of cases to arrive at the cost per case. I then divided the cost per case by fifty (50) ream to arrive at the cost per ream. I then divided the cost per ream by ten (10) packs to arrive at the unit cost per pack.

16. Q. How about the 'Unit Cost per Informal Import Declaration Entry No.'? How did you arrive at the unit cost of the imported product?

16. A. I follow the same computation as in the case of the ATRIG. The Informal Import Declaration Entry usually states the total dutiable value of all the imported products. It does not state the dutiable value of each product. In such a case, I divided the total dutiable value by the number of cases of the product imported. I then divided the average value per case by the number of bottles contained therein to arrive at the average cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total dutiable value of the importation as given by the Informal Import Declaration Entry by the total number of bottles. The resulting figure is the average importation value per bottle.

17. Q. Why do you still have the unit cost per ATRIG and Informal Declaration Entry in addition to your 'Unit Cost per Sales Invoice'?

17. A. I am showing the said unit costs per ATRIG to show the cost of importing the same product as fixed or determined by the

Bureau of Internal Revenue and the cost per Informal Import Declaration to show the cost of importing the same product as fixed by the Bureau of Customs. I have to show those alternative sources of importation costs especially when the sales invoice of the foreign supplier of product involved is no longer available. Said sources are reliable considering that the number of cases imported shown in the ATRIG is the source of the BIR in computing the excise taxes due thereon, while the total dutiable value of the products given by the BOC as shown by the Informal Import Declaration Entry is their basis in computing the duties due thereon.

18. Q. How do the 'Unit Cost per ATRIG' and the 'Unit Cost per Informal Import Declaration Entry No.' compare with the 'Unit Cost per Sales Invoice' of the product?

18. A. As you can see in Annex 'A', they are about the same, if not slightly higher or lower.

19. Q. What do the columns labelled 'Philippine Wine Merchants Price List 2007', 'Philippine Wine Merchants Price List 2008', and 'Philippine Wine Merchants Price List 2009' contain?

19. A. Said columns contain the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2007 2008, and 2009, respectively, of the alcoholic products mentioned therein, if the same products were purchased from them.

20. Q. What is your source of the local price of Philippine Wine Merchants for the years 2007, 2008, and 2009?

20. A. **My source is the 2007, 2008, and 2009 Price Lists of Philippine Wine**

Merchants given to us by Philippine Wine Merchants, a local wine dealer.

21. Q. Showing to you these documents labeled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', and 'Philippine Wine Merchants 2009 Price List', with a signature appearing at the bottom of the page of each Price List, on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and attached as Annexes 'B', 'C', and 'D', respectively, how are they related to the 2007, 2008, and 2009 Price Lists of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the years 2007, 2008, and 2009 appearing in your table of comparison?

21. A. Those are the price lists for the years 2007, 2008, and 2009 of Philippine Wine Merchants which I mentioned.

22. Q. Do you have other sources of local prices of the products involved?

22. A. **Except for the year 2009, we have no other sources of said local prices because the other local wine merchants or dealers, including Duty Free Philippines, refused to give us their list of prices despite our persistent requests. For the year 2009, due to the refusal of Duty Free Philippines to give us their price list, we sent our Senior Planning & Purchasing Specialist of Catering & In-Flight Materials Purchasing Sub-Department, Corporate Logistics & Service Department, Mr. Gilbert M. Galedo, to at least look at the shelf prices of various wines, liqueurs, and cigarettes similar to our importation.**

23. Q. And what were the findings of Mr. Galedo?

23. A. Mr. Galedo found out that the prices of Duty Free Philippines of the products similar to our importations are very much higher than our importation cost.

xxx xxx xxx

25. Q. Aside from Duty Free Philippines, do you have other sources of 2009 local prices of the products involved?

25. A. As shown in Annex 'A', for the year 2009 we have another source and that is the Future Trade International Retail Price List as of Feb. 2009."

xxx xxx xxx

27. Q. How about the local costs of the imported cigarettes involved?

27. A. **Except for the costs of certain brands of cigarettes sold by Duty Free Philippines for the year 2009 appearing in the list attached to the affidavit of Mr. Galedo, I have no local costs of the imported cigarettes involved because, as I have stated earlier there were no local suppliers of the said cigarettes who could regularly supply PAL with the quantity and brand of the cigarettes it needs for its commissary supplies for sale in its international flights. Furthermore, if ever there were local suppliers of the said cigarettes, for the reasons I have stated earlier, their selling prices would definitely be higher than the importation costs of PAL.**" *(Emphasis supplied)*

During her cross-examination,[126] Ms. Capinpin stated:

"ATTY. JOSE:
Q: You testified that petitioner imported alcohol products during the years 2007 to 2009 because the importation products are cheaper than buying said products locally, correct?

MS. CAPINPIN:
A: Correct

ATTY JOSE:
Q: You also testified that based on the comparative table which you prepared attached to your affidavit comparing the cost of importing and the cost of purchasing them locally, petitioner's cost of importing is definitely much lower than the cost of buying them locally. Correct?

MS. CAPINPIN:
A: Correct.

ATTY. JOSE:
Q: Ms. Witness, I will refer you to the comparative table which you prepared particularly on Page 5 of it. On No. 11, Chivas Regal Unit Cost per Invoice is worth $12.50. $12.50 per bottle per Philippine Wine Merchant's 2009 Pricelist, the price per bottle is U.S.$22.70, correct?

MS. CAPINPIN:
A: Correct.

ATTY. JOSE:
Q: Would it be possible that the price of local purchase is higher because the content per bottle is different considering that in your report, Ms. Witness, you did not specify the weight content per bottle? <

[126] TSN, November 15, 2012, pp. 14 to 18

MS. CAPINPIN:
A: It is stated in the invoice that the volume is 750 ml. for the Chivas Regal but it is not anymore specified in the table.

ATTY. JOSE:
Q: So would you agree with me, Ms. Witness, that the cost might be higher because the content per bottle is different as it was not stated in the table, the price per liter, the content per bottle?

MS. CAPINPIN:
A: When we compare prices, we normally do it on apple to apple basis and if it is 750 ml. then, we would capture the 750 ml. price of the local quotation.

ATTY. JOSE:
Q: Would it also be possible, Ms. Witness, that the price of local purchase is higher because the two products contains different ingredients?

MS. CAPINPIN:
A: No. That could not be possible. If you are talking about one specific brand, Chivas Regal, regardless whether it was purchase abroad or purchase here locally, it should have the same ingredients.

ATTY. JOSE:
Q: Would it be also possible, Ms. Witness, that if PAL obtained a pricelist from other local suppliers the price of local purchase, as compared with the importation cost or the cost per sales invoice, will be lower?

MS. CAPINPIN:
A: You mean to say when we obtain local quotations?

ATTY. JOSE:
Q: If you obtain from other local suppliers, aside from the Philippine Wine Merchant's Pricelist?

MS. CAPINPIN:
A: **At a time, we were pertaining about the Chivas Regal, we obtained one quotation from Philippine Wine Merchants and the other one, the other quotation is from Duty Free Philippines in 2009. So we have two for the local quotations and both had higher unit cost compared to the importations, compared to the one that we imported.**" *(Emphasis supplied)*

Based on the foregoing, petitioner failed to make a comprehensive study on the availability, quantity, and price of the subject imported wines or alcoholic drinks and cigarettes in the local market as to justify importation of the said items. It is noteworthy that the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty Free Philippines was made by Mr. Gilbert Galedo, an employee of petitioner. This canvassed list and the price lists of Philippine Wine Merchants are not sufficient to prove the unavailability in the local market of the commissary supplies imported by petitioner.

Clearly, petitioner failed to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

Tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[127] And since petitioner failed to satisfy all the requirements for tax exemption, the refund claim in the amount of P3,411,054.48 cannot be granted.

[127] *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8362

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 04 2016 ; 2:28 p.m.

x ---------- x

DISSENTING OPINION

DEL ROSARIO, PJ.:

In her *ponencia,* the Honorable Associate Justice Cielito N. Mindaro-Grulla, denied petitioner's claim for refund of excise taxes paid on the importations of assorted cigarettes, liquor and wines used as commissary and catering supplies for failure to prove that said imported articles are not locally available in reasonable quantity, quality or price.

With all due respect, I dissent in the *ponencia's* ruling that, in addition to petitioner's evidence, there is a further need for a comprehensive study on the availability, quantity and price of the subject imported wines or alcoholic drinks and cigarettes in the local market to justify the importation of the said items and vote to grant petitioner's claim for refund.

Section 13 of Presidential Degree No. 1590[1] exempts petitioner from paying taxes, duties, charges, royalties or fees on the importation of its commissary and catering supplies, *viz*:

> "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:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, dutie s, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> 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**

[1] "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries"

> **are 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;**
>
> xxx xxx xxx" (Emphases supplied)

Pursuant to the afore-quoted provision, in order to claim exemption from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:

1. Its corporate income tax and VAT liabilities for the subject period of importation had been paid;

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.

I concur with the findings of the *ponencia* that petitioner had complied with the first and second requisites. With regard to the third requisite, I submit that petitioner likewise complied and proved that some of its imported articles were not locally available in reasonable quantity, quality or price, contrary to the conclusion in the *ponencia.*

Records show that petitioner presented the Judicial Affidavit of Ms. Cheryl Capinpin,[2] the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies,[3] the Philippine Wine Merchants Price List for the years 2007, 2008 and 2009,[4] the Affidavit of Gilbert M. Galedo,[5] the Monthly Philippine Dealing System Rates for the years 2007 to 2010,[6] Informal Import Declaration and Entry (IIDE)[7] of the subject imported articles, Commercial or Sale Invoices[8] issued

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[2] Exhibit "EEE", CTA Docket, pp. 573-591.
[3] Exhibit "EEE-2", CTA Docket, pp. 592-597.
[4] Exhibits "EEE-3", "EEE-4" and "EEE-5", CTA Docket, pp. 642-644.
[5] Exhibit "EEE-6", CTA Docket, p. 645.
[6] Exhibit "EEE-8", CTA Docket, p. 649.
[7] Exhibit "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "JJ", "KK" and "LL", CTA Docket, p. 876, 879, 882, 885, 892, 895, 898, 901, 904, 907, 910, 948, 951, 954, respectively.

to PAL for its purchase of the subject articles, BOC Official Receipt Nos. 168546944[9] and 168546962,[10] and the Authority To Release Imported Goods (ATRIG)[11] issued on various dates for the subject importation of liquors and wines to prove that the imported articles were not locally available in reasonable quantity, quality or price.

Truth be told, the issue involved in the case is not of first impression, the same issue was raised in earlier cases[12] before the CTA where the very same parties in this case are involved, albeit relating to different taxable years. In the said cases, the Court granted PAL's claim for refund of taxes, duties, charges, royalties or fees it paid on the importation of its commissary and catering supplies upon showing that said supplies were not locally available in reasonable quantity, quality or price by presenting the following pieces of evidence:

Case Number	Evidence Presented	Ruling
CTA Case No. 7677, 7685 and 7746 [(Decision and Amended Decision) affirmed with modifications in CTA EB 954 & 1046, October 14, 2014]	1. Affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight Sub-department; **2. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;** 3. Invoices issued to PAL for its purchase of the subject articles; 4. Philippine Wine Merchants' Price List for 2005 and 2006; and, 5. Monthly Philippine Dealing Systems rates for the year 2005-2006.	The claim for refund was partially granted. The Court emphasized that imported articles are not locally available in reasonable quantity, quality or price provided that sales invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence are presented to prove such fact.
CTA Case No. 7868 (affirmed in	1. Affidavit of Mr. Victor Santos, Assistant Vice-	The claim for refund was granted as the evidence

[8] Exhibits "I-2", "J-2", "K-2", "L-2", "L-2-a", "L-2-b", "M-2", "N-2", "O-2", "P-2", "Q-2", "R-2", "S-2", "JJ-2", "KK-2" and "LL-2", CTA Docket, pp. 1092-1106.
[9] Exhibit "U", CTA Docket, p. 914.
[10] Exhibit "NN", CTA Docket, p. 958.
[11] Exhibits "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF","OO", "PP", and "QQ", CTA Docket, pp. 916-926, 960-962.
[12] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* CTA Case Nos. 7677, 7685, 7746, 7868, 7843, 7665, 7713, 8153, 7935, 8236 and 8361.

CTA EB 942 & 944, December 9, 2013 and GR No. 212536-37, August 27, 2014)	President in charge of the Catering and In-flight Sub-department; 2. In his affidavit, Mr. Santos stated that importing the subject supplies is much cheaper for the petitioner than purchasing them locally as shown by the various price lists attached to his affidavit, Duty Free Philippines 2005 pricelist, Philippine Wine Merchants 2005 Price List and Philippine Wine Merchants Price List 2006; 3. Informal Import Entry Declarations; 4. Commercial or sales invoices; 5. Bills of Lading; and 6. Air Waybills.	presented fully complied with the requirements under PD 1590.
CTA Case No. 7843 (affirmed by CTA EB Nos. 928 and 929, October 21, 2013	1. Supplemental Judicial Affidavit of Mr. Andy Li, Vice President for Corporate Logistics and Services Department, who testified through his that the price per 750 mi. bottle of white/ red wine quoted by its foreign supplier Decker Handels G.m.b.H. was $1.82; while the price per 750 mi. bottle of white/red wine quoted by local suppliers, such as Premier Freeport, Inc. was $2.50; Enzima Internationat Inc. was P160.00 or $3.48; and Duty Free Philippines ranges from $6.00 to $19.00 per 750 mi. bottle, depending on the brand and source of wine; 2. Sales invoice of Decker Handels G.m.b.H.; 3. Letter of Decker Handels G.m.b.H. dated May 29, 2005; 4. Premier Freeport, Inc. Price List for Philippine Airlines, Inc. as of April 18, 2005;	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590.

	5. Enzima Internationat Inc. letter dated March 28, 2006; 6. Duty Free Philippines 2005 Price List on various wines; and, 7. Bureau of Customs Official Receipt No. 13561158536 and the Authority to Release Imported Goods No. 0008427837 dated October 12, 2006.	
CTA Case Nos. 7665 and 7713 (affirmed in CTA EB Nos. 920 and 922, September 9, 2013.)	1. Testimony of Mr. Andy Y. Li, Vice-President-Corporate Logistics and Services Department of petitioner. In his testimony, Mr. Li stated that importation of the subject articles was cheaper for petitioner than if it purchased the same locally. This is further supported by a copy of its letter addressed to Atty. Oscar C. Ventanilla, Jr., which contained **a tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally,** invoices issued to PAL for its purchase of the subject articles and Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of the claim for refund; and, 2. The letter also contains that Duty-Free Philippines does not have wines that meet petitioner's price budget and required quality. In addition, the average price difference of the cost of imported wines, liquors and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by petitioner.	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590.

CTA Case No. 8153, January 17, 2013 (affirmed in CTA EB Nos. 1029, 1031 and 1032, April 30, 2014.	1. Judicial Affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Materials Purchasing Subdepartment; 2. **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies**; 3. Philippine Wine Merchants' January 11, 2007 Price List, 4. Monthly PDS rates for the year 2007-2008, 2008- 2009, and 2009-2010; 5. Bureau of Customs Official Receipt No. 15545075775; and, 6. Authority to Release Imported Goods issued on various dates for the said importation of liquors and cigarettes.	The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on wines and liquors fully complied with the requirements under PD 1590. The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a pricelist of local dealers or suppliers.
CTA Case No. 7935, December 20, 2012 (affirmed in CTA EB Nos. 1018, 1021 and 1022, July 3, 2014.	1. Judicial Affidavit of Mr. Victor Santos, the Assistant Vice President in charge of the Catering and Inflight Sub-department; **2. Tabulation comparing the cost of importing the subject articles and cost of purchasing them locally;** 3. Invoices issued to PAL for its purchase of the subject articles; 4. Price List for 2005 of Duty Free Philippines; and, 5. 2005 and 2006 Price List issued by the Philippine Wine Merchants corresponding to the same articles subject of the claim for refund.	The claim for refund was partially granted. The court emphasized that imported articles are not locally available in reasonable quantity, quality or price provided that sales invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence are presented to prove such fact.
CTA Case No. 8236, December 18, 2013	1. Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590.

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	Purchasing Sub-Department; 2. **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;** 3. Sales Invoices issued by foreign suppliers; 4. Philippine Wine Merchants Price List for 2008; 5. Monthly Philippine Dealing System Rates for fiscal years 2008, 2009 and 2010; and, 6. Letters of Ms. Marianne C. Raymundo with the subject Booking Rates for the months of January, July, September and October 2008.	The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a pricelist of local dealers or suppliers.
CTA Case No. 8361, March 26, 2014	1. Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager-In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department; 2. **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;** 3. Sales Invoices issued by foreign suppliers; 4. Philippine Wine Merchants Price List for 2007, 2008 and 2009; 5. Duty Free Philippines 2009 Retail Prices; 6. Future Trade International Travel Retail (Airlines) Price List as of February 2009; 7. Monthly Philippine Dealing System Rates for the year 2007 to 2010; 8. Booking Rates for August 2007 and February 2009; 9. BOC Official Receipt Nos. 168546987 and 168546926; and, 10. ATRIGs issued on various dates for the subject	The claim for refund was granted as the evidence presented fully complied with the requirements under PD 1590.

	importation of liquors and wines.	

In the listed cases, the comparison between the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with the local prices reflected in the Philippine Wine Merchants' Price List and/or Duty Free Philippines Retail Prices was enough for the Court to rule that the cost of importing the imported articles is lower than purchasing them locally and accordingly granted the claim for refund.

In this case, record shows that petitioner likewise presented the various commercial and sales invoices, IIDE, the ATRIG, the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies and the local prices reflected in the Philippine Wine Merchants' Price List, Duty Free Philippines Retail Prices and Future Trade International Travel Retail Price as of February 2009. A comparison of the prices shows that the cost of importing wines and liquor is lower than purchasing them locally, to wit:

Exhibit	Product Imported	Unit Cost per Sales Invoice (price per bottle/pack in US$)	IIDE No.	Unit Cost per IIDE (per bottle in US$)	Phil. Wine Merchants 2007 / 2008 / 2009 Pricelist (price per bottle converted to US$) [*Exhibit "EEE-2"*]	Duty Free Phils 2009 Retail Prices (price per bottle)	Future Trade International Travel Retail Price list as of Feb 2009 (price per bottle)
I	Chivas Regal Whisky	12.50	2444	14.13	22.72	27.00 or 35.00	not available
J	Absolute Vodka	4.38	2502	5.93	9.29	14.00	not available
K	Chivas Regal Whisky	12.50	2503	17.23	22.72	27.00 or 35.00	not available
	Royal Salute Whisky	51.00		17.23	132.73	100.00	
	Martell VSOP Cognac	16.00		13.41	33.36	40.00	
L	Camus Cognac VSOP Elegance	13.66	1280	16.31	37.44	not available	not available
	Camus Cognac XO Superieur	35.00			87.37		
M	Lindemans Premier Chardonnay	3.70	3084	3.26	5.52	19.00	not available
	Lindemans Premier Shiraz Cabernet	3.70				22.00	
	Penfolds Chardonnay	4.80				16.00	
	Penfolds Shiraz Cabernet	4.80				16.00	
N	Vin De Table Blanc Pal	1.93	3164	0.95	7.30	26.00	not available
	Vin De Table Rouge Pal	1.93				22.50	
O	J&B Rare Scotch Whisky	5.60	2505		17.84	not available	not available

				4.67			
P	Vin De Table Blanc Pal	1.90	5188	1.88	7.66	-	-
	Vin De Table Rouge Pal	1.90					
Q	Lindemans Premier Shiraz Cabernet	3.70	3713	4.37	5.63	22.00	not available
R	J&B Rare Scotch Whisky	5.60	3727	4.69	19.71	-	-
S	Chivas Regal Whisky	12.50	2411	14.07	22.72	27.00 or 35.00	not available
	Martell VSOP Cognac	16.00		18.59	33.36	40.00	
JJ	Davidoff Classic	0.25	1686	0.77	-	not available	-
	Davidoff Lights	0.28					
KK	Davidoff Classic	0.25	6054	0.78	-	not available	-
	West KS	0.27		0.49	-		
LL	West KS	0.45	1556	0.46	-	not available	-

With regard to the imported cigarettes, it is noted that petitioner only submitted the pricelist of Duty Free Philippines which shows that the imported cigarettes were not available in the said establishment. Thus, no evidence exists that would confirm that the cost of importing cigarettes is lower than purchasing them locally or not available in reasonable quantity.

In sum, petitioner has sufficiently proven its exemption from the payment of excise taxes on its importation of wines and liquor in the amount of ₱2,514,774.48, computed as follows:

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Air Waybill/Bill of Lading No.	Authority To Release Imported Goods (ATRIG)	Excise Taxes
NAIA	03/21/09	Chivas Regal Whisky	2444	079-3214-8255	00032076	₱ 105,814.80
NAIA	03/29/09	Absolute Vodka	2502	079-3214-8406	00032467	126,977.76
NAIA	03/29/09	Chivas Regal Whisky, Royal Salute Whisky, Martell VSOP Cognac	2503	079-3214-8395	00032489	460,296.74
NAIA	04/09/09	Camus Cognac VSOP Elegance, Camus Cognac XO Superieur	1280	079-3286-6050	00032474	233,384.39
NAIA	04/11/09	Lindemans Premier Chardonnay, Lindemans Premier Shiraz Cabernet, Penfolds Chardonnay, Penfolds Shiraz Cabernet	3084	079-3192-9892	00032470	104,549.40
South Harbor	04/15/09	Vin De Table Blanc Pal, Vin De Table Rouge Pal	3164	0903/408	00032469	367,206.84

NAIA	04/25/09	J&B Rare Scotch Whisky	2505	079-3214-8885	00032472	380,933.28
South Harbor	05/14/07	Vin De Table Blanc Pal, Vin De Table Rouge Pal	5188	D0704/11706	00030400	186,171.30
NAIA	05/20/09	Lindemans Premier Shiraz Cabernet	3713	079-3192-9903	00032468	40,352.40
NAIA	05/23/09	J&B Rare Scotch Whisky	3727	079-3214-9250	00032473	380,933.28
NAIA	03/14/09	Chivas Regal Whisky, Martell VSOP Cognac	2411	079-3214-8130	00032075	128,154.29
TOTAL						**₱ 2,514,774.48**

For all the foregoing, I **VOTE** to grant the Petition for Review and **ORDER** the Commissioner of Internal Revenue to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Philippine Airlines, Inc. in the amount of ₱2,514,774.48.

ROMAN G. DEL ROSARIO
Presiding Justice