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. 9979**

Members:

**DEL ROSARIO,** *P.J., Chairperson,*
**MANAHAN,** and
**REYES-FAJARDO,** *JJ.*

Promulgated:
JAN 12 2023 12:33 P.M.

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## RESOLUTION

***DEL ROSARIO, P.J.:***

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated 20 September 2022)** filed on October 6, 2022 via electronic mail and on October 10, 2022 via licensed courier, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 20 September 2022)** filed on November 2, 2022.

The present Motion for Reconsideration assails the Court's Decision promulgated on September 20, 2022, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the present Petition for Review filed on November 26, 2018 is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In support of its motion, petitioner advances the following arguments:

1. The Court erred in its appreciation of the evidence presented as it has proven, by sufficient and preponderant evidence, that the subject importations were not locally available in reasonable quantity, quality, or price.

2. In several cases[1] involving the same parties, the Court, have previously ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies is more than sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally;

3. In *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[2] *(2017 PAL case)*, the Supreme Court declared that the evidence presented by PAL, including the Tables of Comparison and other similar documents, was more than sufficient to establish PAL's claim;

4. It had always presented pieces of evidence of the same kind and nature, only differing in the periods covered. Following the doctrine of *stare decisis*, the Court should have ruled in favor of the sufficiency of its evidence in the assailed Decision as they are substantially the same to those which have already been determined to be sufficient in previous decisions by the CTA and the Supreme Court;

5. In the Resolution dated February 17, 2021 in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*[3] *(2021 PAL case)*, a case involving petitioner's other judicial claim for refund, the Supreme Court ruled that the CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence it presented are inadequate to show compliance with Section 13(b)(2) of Presidential Decree (P.D.) No. 1590; and,

6. The Court's imposition of stringent requirement in proving that its importation of liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price defeats the purpose of the tax-exemption granted to it under P.D. No. 1590.

In his Opposition, respondent argues that petitioner's insistence that it is entitled to refund is bereft of merit as it failed to prove that its imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation as stated in the assailed Decision.

Respondent states that a claim for refund is construed strictly against the claimant as it partakes the nature of an exemption from tax.

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[1] Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL), CTA EB No. 942, CTA Case No. 7868, December 9, 2013; Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue & Commissioner of Customs, CTA Case Nos. 7677, 7685 and 7746, August 24, 2012; Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 7943, August 3, 2012.
[2] G.R. No. 215705-07, February 22, 2017.
[3] G.R. No. 231638, February 17, 2021.

Respondent further maintains that petitioner failed to discharge its burden of proving that it is entitled to the refund sought.

## THE COURT'S RULING

The present Motion for Reconsideration is devoid of merit.

In the assailed Decision, this Court held that petitioner's tax exemption as provided in Section 13 of P.D. No. 1590 subsists notwithstanding the enactment and effectivity of Republic Act No. 9334; and that in order for petitioner to be exempt from excise tax on its importations of tobacco and alcohol products, it must show compliance with the following requirements:

1. Petitioner paid the corporate income tax;

2. Petitioner imported the commissary and catering supplies for use in its transport/non-transport operations and other incidental activities; and,

3. The commissary and catering supplies were not locally available in reasonable quantity, quality or price.

While petitioner complied with the first and second requisites, this Court found petitioner's evidence insufficient to prove the third requisite. Specifically, the Court found that (i) petitioner's comparison of price based on the invoice provided by its suppliers *vis-à-vis* the pricing indicated in Revenue Memorandum Circular (RMC) No. 90-2012 is misplaced as said RMC was based on the **2010** price survey of products conducted by the BIR, and that the figures reflected therein cannot be considered as valid basis for a price comparison of products in the year **2014**; (ii) the product price lists from two (2) dealers, namely: *Absolute Sales Corporation, and Future Trade International,* can hardly represent the prevailing market price of the local products in 2014 for the entire country *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same year; and, (iii) the testimony of petitioner's witness, Ms. Cheryl V. Capinpin, without supporting evidence, is insufficient to prove that the imported tobacco products were not locally available in reasonable quantity, quality or price. Thus, the Court denied petitioner's claim for refund or issuance of tax credit certificate.

Upon re-evaluation of the case records, the Court still maintains its findings that petitioner's evidence is insufficient to prove the third requisite in order for it to be exempt from excise tax on its importations of tobacco and alcohol products.

Apart from the findings in the assailed Decision, it must be emphasized that the Court cannot rely on the price lists from Future Trade International since the same pertains to the products' price lists of said supplier effective **February 1, 2013**.[4] There is no indication that the prices of the products in **2013** as shown in the **2013 price list** prepared by Future Trade International Inc. are the same in **2014**, the subject year involved in this case.

Moreover, the Table of Comparison[5] presented by petitioner shows its products importations, and the corresponding Dutiable Value per Informal Import Declaration and Entry (IIDE)/Product Value per Sales Invoice of the imported products. Most of these products with cost comparison were compared with the price lists from Future Trade International and the price survey as found in RMC 90-2012. The comparison based on products' Dutiable value/Product value, on one hand, and the pricing from Future Trade International or the price survey based on RMC, upon the other hand, is misplaced since the pricing pertains to different years, other than year 2014.

Interestingly, the Table of Comparison depicts that not all imported products were compared with the products' pricing offered by the local supplier. This only shows that petitioner miserably failed to exert diligent effort to study the availability of the local products and the reasonableness of their prices from other local suppliers.

It is noted that there is only one imported product that was compared to the price list of Absolute Sales Corporation, that is - *Asahi Super Dry Beer*.[6] The pricing from one local supplier alone cannot be considered as a reasonable basis to make a conclusion that the imported product was not locally available in reasonable price. The price from Absolute Sales Corporation of *Asahi Super Dry Beer* can hardly represent the prevailing market price of said product in 2014 for the entire country *vis-à-vis* the totality of local suppliers who are engaged in selling similar product in the same year.

More importantly, the Court observed that the Table of Comparison failed to present a fair comparison as regards the *Asahi Super Dry Beer* product. Petitioner used as the price point for said

[4] Exhibit P-23, Docket Vol. III, pp. 1485-1490.
[5] Exhibit P-55, Docket Vol. II, pp. 966-968.
[6] *Asahi Super Dry Beer*, Docket Vol. II, p. 967.

imported product the Product Value *(based on Sales Invoice)* amounting to HKD12,000.00, and not the Dutiable Value *(based on IIDE)* of USD2,199.70 *[or HKD 17,056.57[7], if converted] vis-à-vis* the local price provided by Absolute Sales Corporation. The Value-Added Tax (VAT) for the imported product was not also considered in the Table of Comparison. Hence, it cannot be concluded that the said local product is not available in reasonable price since not all factors affecting the costs of importations are fully considered in the computation.

Petitioner asserts that, in several cases[8] involving the same parties, the Court have previously ruled that the *"Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies"* is more than sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally. The Court finds the assertion misplaced.

There is nothing in the cases cited by petitioner which suggests, even remotely, that a *"Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies"* is more than sufficient to establish that the cost of importing commissary and catering supplies is lower than purchasing them locally. Other pieces of evidence were considered by the Court in reaching the decision in those cited cases. To be sure, cases are evaluated based on evidence presented and prevailing jurisprudence.

Petitioner's reliance on the 2017 and 2021 PAL cases could not change the outcome of this case.

In the *2017 PAL* case, the Supreme Court sustained the findings of the CTA as it rules that there was no showing that the findings of the CTA are unsupported by substantial evidence. In that case, the CTA found that PAL has sufficiently established that the imported alcohol products which arrived in October to December **2007** are not locally available in reasonable price after considering the testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing Sub-department, together with the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, Philippine Wine

[7] USD2,199.70 divide by 0.128965 (as shown in the U.S. Dollar Rates of Selected Currencies; Exhibit P-26; Docket Vol. 1, p. 504; or approximately USD 0.64 per HKD5.00 as shown in the Table of Comparison, Docket Vol. II, p. 967).
[8] Note 1, *supra*.

Merchant's January 11, **2007** Price List, and Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010.[9]

Similarly, in the *2021 PAL* case, the Supreme Court in the Minute Resolution declared that the testimony of PAL's witness Cheryl V. Capinpin that importing alcohol products is cheaper than buying them locally, the Philippine Wine Merchants' Price List, and the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies are sufficient proofs that the imported liquors and wines were not locally available in reasonable quantity, quality, or price. A revisit of the related CTA case reveals that the same involves PAL's importations of liquors, cigarettes and wines which arrived from March to November **2007**, and the aforesaid price list was for **2007.**[10]

Here, the price list prepared by Future Trade International was for **2013** and petitioner's present claim involves the year **2014**, unlike in the 2017 and 2021 PAL cases. And while there was a **2014** price list prepared by Absolute Sales Corporation pertaining to the *Asahi Super Dry Beer*, petitioner, nonetheless, failed to make a fair comparison of the said local price with the total costs of product's importation.

With the re-evaluation of the records of the case, the Court still finds that petitioner failed to fulfil all the conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590 as it failed to prove that its imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation.

It has been said that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[11] The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[12] Petitioner's failure to discharge this burden is fatal to its cause.

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[9] Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8153, January 17, 2013.
[10] Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8130, December 1, 2014.
[11] Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222428, February 19, 2018.
[12] Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue, G.R. No. 154028. July 29, 2005.

All told, the Court finds no substantial issue raised by petitioner in its Motion for Reconsideration that would warrant the reversal or modification of the assailed Decision.

**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 20 September 2022)** is **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

WE CONCUR:

**CATHERINE T. MANAHAN**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice