REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7632

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 09 2017 4:00 pm

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RESOLUTION

CASTAÑEDA, JR., ***J.*:**

For resolution is respondent Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration (Re: Amended Decision promulgated 9 September 2016)**, filed on September 14, 2016, with petitioner's **Comment/Opposition [to Respondent Commissioner of Internal Revenue's Motion for Reconsideration (Re: Amended Decision promulgated on 9 September 2016)]**, filed on October 10, 2016.

In the assailed Amended Decision, the Court granted petitioner's Motion for Partial Reconsideration of Decision, filed on May 13, 2016, and modified the Decision promulgated on May 3, 2016 with respect to the amount of specific taxes to be refunded to petitioner. The dispositive portion of the assailed Amended Decision reads:

"**WHEREFORE,** premises considered, petitioner's *Motion for Partial Reconsideration of Decision* is **GRANTED**.

Accordingly, the *Decision* dated May 3, 2016 is **MODIFIED** with respect to the amount of specific taxes to be refunded to petitioner. The respondents are **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P258,629,494.00, representing the specific taxes paid for the importation of Jet A-1 aviation fuel for its domestic flight operations for the period of April to June 2005.

SO ORDERED."

In his motion, respondent CIR seeks the reconsideration of the assailed Amended Decision and prays that another one be rendered denying petitioner's entire claim for refund. Respondent CIR contends that petitioner was not able to prove that its importations of Jet A-1 aviation fuel are used for its transport and non-transport operations and that they were locally available in reasonable quantity, quality or price. According to respondent CIR, the Authority to Release Imported Goods (ATRIG) submitted are not sufficient to prove that the imported fuel was used for petitioner's transport and non-transport operations. Petitioner should allegedly have presented other independent and relevant evidence to support the testimony of its witnesses.

Moreover, respondent CIR avers that the Court erred in relying on the Certifications from the Air Transportation Office (ATO) in ruling that the imported aviation fuel is not locally available in reasonable quantity, quality or price. Respondent CIR posits that it is the Department of Energy (DOE) which is in the best position to determine whether the total supply is enough for total demand. Respondent also asserts that the Court should have considered the testimony of Ms. Glendalyn P. Dela Cruz of the DOE, which handles the monitoring, inventory and local refinery production of the oil companies in the country.

Finally, respondent CIR emphasizes that claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. Thus, petitioner's motion to reopen trial should not have been granted.

The Court finds that the contentions raised by respondent CIR are the same arguments he raised in his Memorandum[1] filed on May 7, 2014, and Comment (Re: Motion for Partial Reconsideration Of Decision and to Reopen the Case for Presentation of Evidence), filed on June 17, 2016[2], which have been sufficiently passed upon and fully discussed in the Decision[3] dated May 3, 2016, the Resolution[4] dated July 12, 2016 and the assailed Amended Decision[5].

As stated by the Court in the Resolution dated July 12, 2016, petitioner was able to prove that the Jet A-1 aviation fuel was used for its operations. In finding that the ATRIG's were sufficient to prove that the imported fuel was used for petitioner's transport and non-transport operations, the Court held:

> "ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGS are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Further, as public documents issued in the performance of a duty by a public officer, the subject A[S]TRIGs are *prima facie* evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Rules of Court, which provides that 'public documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated.'
>
> The respondents failed to present any evidence which specifically controvert PAL's compliance on the use of the imported fuel for its domestic operations. Therefore, the Court reiterates its view that, in the absence of any clear and sufficient evidence to overcome the above presumptions, the testimonies of petitioner's witnesses and the statement in the ATRIGs, which

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[1] Docket, volume (vol.) IV, pp. 1668-1679.
[2] Docket, vol. V, pp. 2028-2040.
[3] Docket, vol. IV, pp. 1903-1931.
[4] Docket, vol. V, pp. 2071-2079.
[5] Docket, vol. V, pp. 2115-2146.

> provides that the shipment (Jet A-1 aviation fuel) will be used exclusively for daily domestic flight operation, are prima facie evidence that indeed the subject aviation fuel will be used exclusively in petitioner's flight operations and other activities incidental thereto."[6]

Moreover, in the Decision dated May 3, 2016, the Court already ruled that at the time of the importations, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price, considering the testimonies of the witnesses and the Table of Data prepared and provided by the DOE.[7] The finding that petitioner complied with the said requisites to be exempt from all taxes under Section 13 of PD No. 1590 was also reiterated in the assailed Amended Decision.[8] Furthermore, in the Resolution dated July 12, 2016, the Court held:

> "Concerning the third requisite that the aviation fuel is not locally available in reasonable quantity, quality or price, the Court finds no reason to deviate from its finding that at the time of the importations subject of this case, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price.
>
> Ms. Glendaly[n] Dela Cruz ('Ms. Dela Cruz'), Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the DOE, that for the period covering 2005, domestic and international demand is greater than local refinery production and that the 2002 DOE Certification could not possibly cover the years subsequent to the time of its issuance, since the data pertaining to the years subsequent of the issuance of the 2002 DOE Certification were not yet available.
>
> Concerning the requirement that the aviation fuel is not locally available in reasonable quantity, the Table of Data which was prepared and provided by the DOE, shows that in all years from 1998 to 2010, based on the figures for all types of petroleum products, including jet fuel or kerosene, the demand far outstripped that local refinery production. It continues that in each of the years

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[6] Docket, vol. V, p. 2075.
[7] Docket, vol. IV, p. 1928.
[8] Docket, vol. V, p. 2117.

included in the Table of Data (including the year 2005), the total refinery production was never enough to meet the total demand.

In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, the Supreme Court defined the word domestic, in relation to Sec. 13 of PAL's franchise, as follows:

> xxx the word 'domestic', which means 'of or relating to one's own country' or 'an article of domestic manufacture,' clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported.

From the foregoing explanation of the word domestic under PAL's franchise, it follows that imported petroleum products should not be included as part of the total local supply. Thus, the Court gives credence to the Table of Data and the witness' testimony that the domestic and international demand is greater than local refinery production of Jet A-1 Aviation Fuel, and hence, petitioner proved that it is not locally available in reasonable quantity."

As to respondent CIR's opposition to the reopening of the case for the presentation of petitioner's evidence, the Court reiterates that the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence[9], thus, the Court, in the interest of substantial justice, granted petitioner's plea for the reopening of the case for presentation of evidence.

Finding no cogent reason to reverse the ruling in the assailed Amended Decision, the Court has no other recourse but to deny the instant motion.

[9] Section 8 of Republic Act No. 1125.

WHEREFORE, premises considered, the instant **Motion for Reconsideration (Re: Amended Decision promulgated 9 September 2016)** is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

TOOK NO PART
CATHERINE T. MANAHAN
Associate Justice