REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 8514**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondents.	**Promulgated:** JAN 06 2015

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4:30 p.m.

DECISION

CASANOVA, *J.*:

This is a claim for refund or issuance of tax credit certificate in the amount of Four Million Five Hundred Seventy One Thousand Nine Hundred Seven and 13/100 Pesos (₱4,571,907.13) allegedly representing Philippine Airlines, Inc.'s ("PAL") erroneously paid excise taxes imposed on its importations of cigarettes, liquors and wine for its catering and commissary supplies used for its international flights consumption.

Petitioner PAL is a domestic corporation duly organized and existing under and by virtue 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.[1]

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

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[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 303

revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Section 142 and 145, respectively, of the National Internal Revenue Code (NIRC), as amended. Respondent CIR has her office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

Respondent Commissioner of Customs ("COC") is the Commissioner of the Bureau of Customs ("BOC"), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, on the basis of the delegated authority of the respondent CIR through an Authority to Release Imported Goods (BIR Form No. 1918) ("ATRIG") duly issued by the respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC, as amended. Respondent COC has his office address at G/F OCOM Bldg., Bureau of Customs, Port Area, Manila City.[3]

On June 11, 1978, Presidential Decree No. 1590[4] (PD 1590) was issued by then President Ferdinand Marcos granting a franchise to Philippine Airlines to operate air transport services domestically and internationally. [5]

Section 13 of PD 1590 specifically provides 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:
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> (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

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[2] Par. 2, *Ibid.*
[3] Par. 3, Facts, JSFI, Docket (Vol. I), p. 304
[4] "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate and Maintain Air-Transport Services in the Philippines and Other Countries"
[5] Par. 4, Facts, JSFI, Docket (Vol. I), p. 304

> (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:
>
> x x x
>
> 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price x x x;"[6]

On January 1, 2005, Republic Act No. 9334 (RA 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. Section 6 of RA 9334 provides:

> "SECTION. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

[6] Par. 5, Facts, JSFI, Docket (Vol. I), pp. 304-305

'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 on *[sic]* introduction into the Philippine customs territory. x x x"[7]

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George M. Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes "on all importations destined for Duty Free Philippines ("DFP") and the Freeport zones such as the Subic Bay Freeport Zone." Furthermore, in said letter, the BIR requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to the DFP and the Freeport zones be immediately collected.[8]

On February 4, 2005, then COC George M. Jereos issued a Memorandum to the BOC officers and personnel directing them to "effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones."[9]

On March 1, 2005, then COC Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005) which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulation No. 12-2004".[10]

Thereafter, on various dates in 2007 and 2008, petitioner's importations of assorted cigarettes, liquors and wines arrived in Manila through the Ninoy Aquino International Airport (NAIA) and South Harbor, covered by various Informal Import Declarations and Entries (IIDEs), Bills of Lading, and Authorities to Release Imported Goods (ATRIGs), as follows:

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[7] Par. 6, Facts, JSFI, Docket (Vol. I), pp. 305-306
[8] Par. 7, Facts, JSFI, Docket (Vol. I), p. 306
[9] Par. 8, *Ibid.*
[10] Par. 9, *Id.*

Port of Entry	Date of Arrival[11]	IIDE No.[12]	Bill of Lading No.[13]	ATRIG No.[14]	Amount of Excise Tax Paid[15]
NAIA	June 23, 2007	6471	079-2900355-3	00043547	197,524.32
NAIA	August 14, 2007	8872	079-3005260-6	00043534	150,876.00
South Harbor	August 12, 2008	9157	D0807/4294	00043545	183,603.42
South Harbor	August 16, 2008	9158	D0807/4368	00043548	183,603.42
NAIA	October 7, 2008	10538	079-3209621-2	00043537	90,525.60
NAIA	November 10, 2008	11667	079-3209711-1	00044291	473,823.22
South Harbor	December 24, 2008	13405	D0811/5067	00030394	183,603.42
South Harbor	December 31, 2008	13406	D0812/5099	00030391	183,603.42
NAIA	October 17, 2008	11093	079-3150984-4	00026160	802,431.00
				TOTAL	**₱2,449,593.82**

And in addition thereof, the following importations:

Port of Entry	Date of Arrival[16]	IIDE No.[17]	Bill of Lading No.[18]	ATRIG No.[19]	Amount of Excise Tax Paid[20]
South Harbor	July 31, 2009	6978	0906/1167	00038736	550,810.26
NAIA	September 25, 2009	9011	079-3289122-4	00040276	63,488.88
NAIA	September 29, 2009	8963	079-3289129-4	00040049	954,688.56
NAIA	September 25, 2009	9010	079-3289121-3	00040291	63,488.88

[11] Exhibits "I", "J", "K", "L", "M", "N", "O", "P" and "Q"
[12] *Ibid.*
[13] Exhibits "I-1", "J-1", "K-1", "L-1", "M-1", "N-1", "O-1", "P-1" and "Q-1"
[14] Exhibits "T" to "BB"
[15] *Ibid.*
[16] Exhibits "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM" and "NN"
[17] *Ibid.*
[18] Exhibits "FF-1", "GG-1", "HH-1", "II-1", "JJ-1", "KK-1", "LL-1", "MM-1" and "NN-1"
[19] Exhibits "QQ" to "YY"
[20] *Ibid.*

NAIA	October 7, 2009	9001	079-3289139-0	00040279	22,780.35
NAIA	October 17, 2009	9083	079-3289150-4	00040278	105,814.80
NAIA	October 22, 2009	9029	079-3289156-3	00044034	149,611.98
NAIA	October 24, 2009	9444	079-3289162-2	00044019	105,814.80
NAIA	October 26, 2009	9449	079-3289168-1	00044020	105,814.80
				TOTAL	**₱2,122,313.31**

On January 9, 2009, Gilda L. Cinco, then Acting Chief-WAU, of the BOC sent a letter[21] to Sylveria S. Salazar, Chief, Collection Division, NAIA Customhouse, informing the latter to collect from petitioner the customs duties, VAT, excise taxes and IPF due on petitioner's importation of alcohol and tobacco products in compliance with CMO 13-2005 and Revenue Regulations No. 3-2006.

Thus, on July 7, 2010, petitioner both paid under protest the assessments issued by the BOC in the amounts of ₱2,449,593.82, as evidenced by BOC Official Receipt No. 0180933823-3[22], and ₱2,122,313.31, as evidenced by BOC Official Receipt No. 0180933821-1[23]. Subsequently, on the same day, petitioner sent two separate letters[24] to Mrs. Sylveria S. Salazar to formally protest the assessments and subsequent collection of the said amounts.

On July 12, 2010, petitioner also filed with Atty. Carlos T. So, District Collector of Customs of NAIA, two written protests[25] for the assessments and collection of said excise taxes on the above importations.

Thereafter, on February 15, 2011, petitioner filed with respondent CIR two administrative claims[26] for refund, for the amounts of ₱2,449,593.82 and ₱2,122,313.31, both representing the excise taxes paid on July 7, 2010 to the BOC for the said importations.

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[21] Exhibit "R"
[22] Exhibit "S"
[23] Exhibit "PP"
[24] Exhibits "CC" and "ZZ"
[25] Exhibits "DD" and "AAA"
[26] Exhibits "EE" and "BBB"

Claiming inaction on the part of respondent CIR, petitioner filed with this Court on July 6, 2012 its judicial claim *via* the instant Petition for Review[27].

On July 30, 2012, respondent COC filed his Answer/Comment[28] while respondent CIR filed her Answer[29] on September 11, 2012. Respondent CIR raised the following special and affirmative defenses, to wit:

> "5. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
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> 6. 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.
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> 7. The claim for refund in the amount of Four Million Five Hundred Seventy-One Thousand, Nine Hundred Seven Pesos and 13/100 (P4,571,907.13) broken down as follows:
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> > 7.1 Two Million Four Hundred Forty-Nine Thousand Five Hundred Ninety-Three Pesos and 82/100 (P2,449,593.82) specific tax allegedly paid under protest on 07 July 2010; and
> >
> > 7.2 Two Million One Hundred Twenty-Two Thousand Three Hundred Thirteen Pesos and 31/100 (P2,122,313.31) specific tax allegedly paid under protest on 07 July 2010 being claimed by petitioner is not warranted.
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> 8. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It provides:
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> > ***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*

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[27] Docket (Vol. I), pp. 7-31
[28] *Ibid.*, pp. 202-221
[29] *Id.*, pp. 228-241

> *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.*
>
> *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.* 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.

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

On July 26, 2004, Republic Act No. 9334 (RA 9334, for brevity) 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**.'*

Clearly from the abovequoted provision, it can be gleaned that excise taxes are imposed on all importations of cigar and cigarettes, distilled spirits, fermented liquors and wines, notwithstanding the contrary provisions of any special or general law, such as PD 1590 which granted the franchise of petitioner. The contention of petitioner that its tax exemption under its franchise subsists notwithstanding the passage of RA 9334 is clearly unfounded. It bears stressing that Section 16 of PD 1590 categorically states that 'this franchise is granted with the understanding that it should be subject to amendment, alteration or repeal by competent authority when the public interest so requires.' Undeniably, petitioner has no vested right under the said law. Indubitably, there is no vested right in a tax exemption, more so when the latest expression of legislative intent renders it *[sic]* continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.

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.'* 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.

With the passage of RA 9334, PD 1590 was expressly repealed. A close reading of the third paragraph of Section 131 of the NIRC, as amended by RA 9334, reveals the unmistakable intent of Congress to withdraw tax exemptions granted to petitioner under Section 6 of PD 1590. First, Section 6 of RA

9334 employs the clear and all-encompassing phrase 'The provision of any special or general to the contrary notwithstanding.' RA 9334, therefore, expressly repeals any inconsistent provision whether contained in general or special statutes like PD 1590. Second, Section 6 mandates the collection of excise taxes on all importations of cigar, 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. Third, Section 10 categorically provides, *to wit:*

> 'SEC. 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.' *(Emphasis Supplied)*

RA 9334, therefore, repeals any inconsistent provision whether contained in a decree like petitioner's franchise - PD 1590.

10. Worthy to note is the case of Cagayan Electric Power & Light Co., Inc. wherein the Honorable Supreme Court had the occasion to rule on the meaning of 'express amendment'. The Honorable Supreme Court ruled in this wise:

> 'Republic Act No. 5431 in amending Section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in Section 27 of the Tax Code had the effect of withdrawing petitioner's exemption from income tax."

It can be gleaned from the foregoing that the abovequoted jurisprudence involves amendment of a special law by general law. Anent the foregoing, it is safe to conclude that RA 9334 expressly repeals PD 1590. Consequently, since petitioner is not included among the exceptions provided by RA 9334, it accordingly became subject to excise tax.

11. 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 legal order.

To reiterate the legislature unmistakably intended to withdraw the tax exemption granted to petitioner under its franchise and now subjects to excise tax its importation of cigar, cigarettes and liquor for its commissary and catering supplies. 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 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.'***

12. 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 [sic] 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.
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> 13. Moreover, the exemption granted to petitioner is not absolute as it is subject to the condition that the commissary supplies are not locally available in reasonable quantity, quality and price. It is therefore incumbent upon petitioner to prove that that *[sic]* the commissary supplies involved in the instant case were not locally available in reasonable quantity, quality and price. It must be noted, however, that petitioner cannot later on argue that the local price of the commissary supplies subject of the instant petition were *[sic]* much higher considering that local supplies will always be more expensive because of the tax imposed by RA 9334. In short, petitioner desired interpretation would effectively transform its conditional exemption to an absolute exemption.
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> 14. Taxes are essential to government's very existence; 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. Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.
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> 15. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.' *(Citations Omitted)*

On October 8, 2012, both respondent COC and petitioner filed their respective Pre-Trial Brief[30]. Then, on November 6, 2012, the parties submitted their Joint Stipulation of Facts and Issues[31], which the Court approved in the Resolution[32] dated November 9, 2012.

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[30] *Id.*, pp. 251-258 and pp. 259-280
[31] *Id.*, pp. 303-309
[32] *Id.*, p. 313

During trial, petitioner presented the following witnesses together with their respective Judicial Affidavit: (1) Mr. Jonathan Castillo Lee, Manager-Company Handling Materials Handling Division of PAL;[33] (2) Ms. Ma. Evelyn L. Taghap, Manager-Tax Services and Compliance Department of PAL,[34] and (3) Ms. Cheryl V. Capinpin, Manager-In-flight Materials Purchasing Division of PAL.[35]

On May 7, 2013, petitioner filed its Formal Offer of Exhibits with Motion for Re-Marking[36], offering Exhibits "A" to "HHHH", inclusive of sub-markings, as its documentary evidence. Accordingly, in the Resolution[37] dated July 8, 2013, this Court admitted petitioner's exhibits except for Exhibits "N-1", "O-1", "FF-3", "KK-1", "HHH" to "JJJ-1", "KKK-1" to "KKK-4", "LLL-1" to "LLL-3-a", "MMM" to "NNN-4", "PPP" to "VVV-1" and "HHHH". Petitioner then moved for reconsideration[38] for the denied exhibits on July 24, 2013. After due consideration thereof, this Court granted petitioner's Motion for Reconsideration in the Resolution[39] dated October 18, 2013, thereby admitting the previously denied exhibits except for Exhibits "FF-3" and "NNN" to "NNN-3".

Meanwhile, respondent COC filed a Manifestation[40] on August 1, 2013, stating that he will no longer be presenting testimonial or documentary evidence considering that the primary issue involved in this case is essentially legal. Respondent CIR, on the other hand, adopted the same manifestation of respondent COC. Thus, during the August 5, 2013 hearing, this Court noted said manifestations and ordered the parties to submit their respective Memorandum.

Complying thereon, respondent CIR submitted her Memorandum[41] on November 14, 2013, petitioner submitted its Memorandum[42] on November 22, 2013, and respondent COC submitted his Memorandum[43] on December 19, 2013. a

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[33] Exhibits "GGG" and "GGG-1"
[34] Exhibits "OOO" and "OOO-1"
[35] Exhibits "WWW" and "WWW-1"
[36] Docket (Vol. III), pp. 849-908
[37] *Ibid.*, pp. 1128-1130
[38] Motion for Reconsideration (of the Resolution Dated July 8, 2013), *Id.*, pp. 1133-1165
[39] *Id.*, pp. 1212-1213
[40] *Id.*, pp. 1190-1192
[41] *Id.*, pp. 1214-1231
[42] *Id.*, pp. 1232-1267
[43] *Id.*, pp. 1273-1287

After the submission of the parties' respective Memorandum, this Court, in its Resolution[44] dated January 6, 2014, deemed the case submitted for decision.

However, on November 25, 2014, petitioner both filed a Motion to Admit Original Documents and a Manifestation. In its Motion, petitioner prays that this Court admit in evidence the attached original copies of Exhibits "NNN"[45], "NNN-1"[46], "NNN-2"[47], and "NNN-3"[48], and that the markings in its former Exhibits "NNN"[49], "NNN-1"[50], "NNN-2"[51], and "NNN-3"[52], which were previously denied admission by this Court in its Resolution[53] dated October 18, 2013, be transferred to the said attached original copies. On December 12, 2014, this Court denied petitioner's Motion.

On December 22, 2014, petitioner filed a Tender Offer of Documentary Evidence (Offer of Proof of Evidence) praying for this Court to allow Exhibits "NNN", "NNN-1", "NNN-2" and "NNN-3" to be attached to and made part of the records of the case as petitioner's offer of proof of documentary evidence.

As stipulated, the parties submitted the following issues[54] for this Court's resolution:

1. Whether or not petitioner, under its franchise, PD 1590, is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

2. Whether or not RA 9334, as amended, repealed or modified petitioner's exemption under its franchise, PD 1590, from the

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[44] *Id.*, p. 1288
[45] BIR Payment Form No. 0605 filed on January 2, 2007
[46] Quarterly VAT Return for the First Quarter of FY ended March 31, 2008 filed on July 23, 2007
[47] Quarterly VAT Return for the Second Quarter of FY ended March 31, 2008 filed on November 20, 2007
[48] Quarterly VAT Return for the Third Quarter of FY ended March 31, 2008 filed on January 24, 2008
[49] *Supra* 45
[50] *Supra* 46
[51] *Supra* 47
[52] *Supra* 48
[53] Docket (Vol. III) , pp. 1212-1213
[54] Issues, JSFI, Docket (Vol. I), p. 307

payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

3. Whether or not PAL is entitled to a refund of the total amount of ₱4,571,907.13 specific taxes paid under protest to respondent CIR, through respondent COC, as follows:

   (a) ₱2,449,593.82 paid on 07 July 2010; and
   (b) ₱2,122,313.31 paid on 07 July 2010.

4. Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the NIRC, as amended;

5. Whether or not petitioner's claim for tax refund of excise tax was filed within the period prescribed by law; and

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

The foregoing issues may be summarized into three major issues, *viz*, "Whether or not petitioner's exemption from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies under P.D. 1590 was repealed or modified by R.A. 9334", "Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of erroneously paid taxes" and "Whether or not petitioner is entitled to refund the total amount of ₱4,571,907.13 for the excise taxes imposed on its importations of cigarettes and assorted liquors and wines for international flight consumption".

Petitioner's exemption from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies under P.D. 1590 was not repealed or modified by R.A. 9334.

Petitioner postulates that it is exempt from payment of specific taxes by virtue of Section 13 of PD 1590 because the phrase *"in lieu of all other taxes"* means that the imposable taxes upon petitioner are limited only to its basic corporate income tax and franchise tax.

On the contrary, respondents CIR and COC argue that RA 9334 is more specific in its tax treatment on importations of wine, liquors and cigarettes since it is a special law; and, the phrase "(t)he provision of any special or general law notwithstanding" clearly shows the intent of the lawmakers to withdraw petitioner's exemption from excise taxes thereon. Thus, RA 9334 is deemed to have expressly withdrawn the conditional tax exemption granted to petitioner by PD 1590.

This Court finds petitioner's argument meritorious.

Section 13 of PD 1590 clearly states that the tax paid by the grantee, i.e., basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, among others. In fact, the same has been succinctly explained by the Supreme Court in the recent case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.,*[55] in this wise:

> "xxx
>
> It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*[56]*:*
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private

[55] G.R. Nos. 212536-37, August 27, 2014
[56] G.R. No. 180066, July 7, 2009

> corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
>
> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:
>
> > While it is true that Sec. 6 of RA 9334 as previously quoted states that 'the provisions of any special or general law to the contrary notwithstanding,' such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x
>
> *xxx xxx xxx*
>
> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue.*[57] In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,' declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. *xxx*"

From the foregoing, it is evident that upon the exercise of petitioner of its option to pay basic corporate income tax or franchise tax, whichever is lower, the same shall be in lieu of all other taxes which include petitioner's excise taxes over its importations of wine, liquors and cigarettes.

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[57] G.R. No. 198759, July 1, 2013

There is, further, no merit in respondents' argument that the specificity of RA 9334 in its tax treatment on imported wine, liquors and cigarettes, categorizes it as a special law and as such, it should be deemed to have amended PD 1590. It has been explained that:

> "A general statute is a statute which applies to all of the people of the state or to all of a particular class of persons in the state with equal force. It is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. It is one of universal application affecting the entire community. On the other hand, a special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only. x x x"[58]

Based therefrom, RA 9334 cannot be considered as a special law because it applies to all of the people of the state and not to a particular person or thing of a class. Thus, RA 9334 is undeniably a general law. Hence, in accordance with the foregoing rulings of this Court and consistent with the hornbook rule that a general law cannot prevail over a special law, the tax exemptions granted by Section 13 of PD 1590 cannot be deemed to have been withdrawn by RA 9334.

All told, Section 13 of PD 1590 remains to be applicable to petitioner *vis a vis* its exemption from payment of excise tax to be entitled to its present claim for refund.

Petitioner has complied with the governing rules and regulations with regard to recovery of erroneously paid taxes.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the recovery of erroneously or illegally collected excise taxes.[59] Said section provides:

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[58] Ruben E. Agpalo, Statutory Construction, 5th Ed., 2003, pp. 276-277; *citing* U.S. vs. Serapio, G.R. No. L-7557, December 7, 1912; Valera vs. Tuason, G.R. No. L-1276, April 30, 1948; Villegas vs. Subido, G.R. No. 31711, September 30, 1971; and Bagatsing vs. Ramirez, G.R. No. 41631, December 17, 1976

[59] Republic of the Philippines vs. Hon. Ramon S. Caguioa, et al., G.R. No. 168584, October 15, 2007

"**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. *x x x" (Emphasis Ours)*

"**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, 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 Ours)*

Based above, a taxpayer has only two (2) years from the date of payment of the tax or penalty to file its claim for refund.

In the instant case, petitioner both paid under protest the assessments issued by the BOC in the amounts of ₱2,449,593.82[60] and ₱2,122,313.31[61] on July 7, 2010. Thereafter, on February 15, 2011, petitioner filed with respondent CIR its two administrative claims[62] for refund. Then, on July 6, 2012, petitioner filed its judicial claim with the Court of Tax Appeals. Accordingly, the judicial claim *via* a Petition for Review was made within the allotted two (2) year period provided by the above-quoted provisions. For ease of reference, a table below is provided to show the timeliness of petitioner's claim for refund.

BOC Official Receipt No.	Amount Paid	Date of Payment	Date when Administrative Claim was filed	Date when Judicial Claim was filed	Last Date prescribed by Law
0180933823-3	₱2,449,593.82	July 7, 2010	February 15, 2011	July 6, 2012	July 7, 2012
0180933821-1	₱2,122,313.31	July 7, 2010	February 15, 2011	July 6, 2012	July 7, 2012

Thus, petitioner's claims for refund were satisfactorily proven to be filed on time.

Petitioner is entitled to refund the total amount of ₱3,432,412.84 for the excise taxes imposed on its importations of assorted liquors and wines for international flight consumption.

Section 13 of PD 1590 specifically provides 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:

[60] Exhibit "S"
[61] Exhibit "PP"
[62] Exhibits "EE" and "BBB"

> (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:
>
> x x x
>
> 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price** x x x;"[63] *(Emphases Ours)*

Thus, based above, before petitioner's payment of basic corporate income tax or franchise tax could be considered as "in lieu of all other taxes", i.e. excise tax over its importation of the subject goods, petitioner must first prove that the imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto; **and** the imported

[63] Par. 5, Facts, JSFI, Docket (Vol. I), pp. 304-305

liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

To substantiate that petitioner complied with the said requisites, it presented the testimonies of its Manager of the In-flight Materials Purchasing Division, Corporate Logistics and Services Department, Ms. Cheryl V. Capinpin;[64] its Manager of Company Materials Handling Division, Mr. Jonathan Castillo Lee;[65] and its Senior Planning and Purchasing Specialist of Catering and In-flight Materials Purchasing Sub-Department Corporate Logistics and Services Department, Mr. Gilbert M. Galedo.[66] Accordingly, together with the Informal Import Declaration and Entry[67], Authority to Release Imported Goods (BIR Form No. 1918)[68], Mr. Gilbert M. Galedo's Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[69], Philippine Wine Merchants (PWM) Price Lists for the years 2006[70], 2007[71], 2008[72] and 2009[73], Future Trade International Price List dated April 8, 2009[74], Future Trade International Price List as of February 2009[75], Price List of Duty Free Philippines (as canvassed and attached to the Affidavit of Mr. Gilbert M. Galedo)[76] and Monthly Philippine Dealing System Rates for the years 2000 to 2007[77]. The said witnesses sufficiently corroborated that the imported liquors, wines and cigarettes were not locally available in reasonable quantity, quality or price and that the said goods were In-flight Materials.

That having been said, this Court shall now proceed to determine whether petitioner paid its corporate income tax and VAT liabilities for the subject period of importation.

Petitioner presented as evidence its Annual Income Tax Returns for the Fiscal Years (FYs) ending March 31, 2008[78], March 31, 2009[79]

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[64] Exhibits "WWW" and "WWW-1"
[65] Exhibits "GGG" and "GGG-1"
[66] Exhibits "TTT" and "TTT-1"
[67] Exhibits "I" to "Q" and "FF" to "NN"
[68] Exhibits "T" to "BB" and "QQ" to "YY"
[69] Exhibit "HHHH"
[70] Exhibit "PPP"
[71] Exhibit "QQQ"
[72] Exhibit "RRR"
[73] Exhibit "SSS"
[74] Exhibit "UUU"
[75] Exhibit "UUU-1"
[76] Exhibit "TTT"
[77] Exhibit "VVV"
[78] Exhibit "MMM"
[79] Exhibit "HHH"

and March 31, 2010[80] to show that it paid its corporate income tax for the said years.

Likewise, to prove that it is a VAT-registered entity and that it accounted for the VAT on its sales/receipts, petitioner submitted the following documents:

Particulars	Exhibit
BIR Certificate of Registration (BIR Form No. 2303) dated December 18, 2007	"JJJ"
BIR Certificate of Registration (BIR Form No. 2303) dated August 06, 2004	"JJJ-1"
Quarterly VAT Return for the first quarter of FY 2008	"NNN-1"
Quarterly VAT Return for the second quarter of FY 2008	"NNN-2"
Quarterly VAT Return for the third quarter of FY 2008	"NNN-3"
Quarterly VAT Return for the fourth quarter of FY 2008	"NNN-4"
Quarterly VAT Return for the first quarter of FY 2009	"KKK-1"
Quarterly VAT Return for the second quarter of FY 2009	"KKK-2"
Quarterly VAT Return for the third quarter of FY 2009	"KKK-3"
Quarterly VAT Return for the fourth quarter of FY 2009	"KKK-4"
Amended Quarterly VAT Return for the first quarter of FY 2010	"LLL-1-a"
Amended Quarterly VAT Return for the second quarter of FY 2010	"LLL-2-a"
Amended Quarterly VAT Return for the third quarter of FY 2010	"LLL-3-a"
Amended Quarterly VAT Return for the fourth quarter of FY 2010	"LLL-4"

However, in the Resolution[81] dated October 18, 2013, this Court denied the admission of the Quarterly VAT Returns for the first, second and third quarters of FY 2008 for petitioner's failure to present the original copies of the said documents for comparison. Since petitioner did not fully satisfy the requirement that it should pay its corporate income tax and VAT liabilities for the subject period of its importation, the amount of ₱348,400.32 shall be deducted from petitioner's claim as it pertains to excise taxes paid on importations made during the first, second and third quarters of FY 2008, to wit:

[80] Exhibit "III"
[81] Docket (Vol. III), pp. 1212-1213

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Date	Excise Tax
NAIA	6/23/2007	Remy Martin VSOP Cognac	6471 (Exh. "I")	06/26/07	₱ 197,524.32
NAIA	8/14/2007	Carlsberg Beer in Can	8872 (Exh. "J")	08/16/07	150,876.00
				Total	**₱ 348,400.32**

Moreover, a scrutiny of the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[82] shows that the local prices of the following liquors and wines with corresponding excise tax payment of ₱791,093.97 were not available for comparison:

Import Batch No.	Product Imported	Unit Cost per Sales Invoice	Unit Cost per ATRIG	Unit Cost per IIDE	Excise Tax
5	Carlsberg Beer in Can	HK$51.00/case	US$6.56/case	US$12.29/case	₱ 90,525.60
		HK$2.13/can	US$0.27/can	US$0.51/can	
10	Volupta Blanco	€1.50/bottle	US$12.86/case	US$12.86/case	
			US$2.14/bottle	US$2.14/bottle	206,347.50
	Volupta Rosso	€1.40/bottle	US$12.00/case	US$12.00/case	
			US$2.00/bottle	US$2.00/bottle	344,462.76
11	Absolut Vodka	US$52.56/case	US$52.56/case	US$68.03/case	
		US$4.38/bottle	US$4.38/bottle	US$5.67/bottle	63,488.88
13	Absolut Vodka	US$52.56/case	US$52.56/case	US$69.70/case	
		US$4.38/bottle	US$4.38/bottle	US$5.81/bottle	63,488.88
14	Gordon's Gin	US$39.93/carton	US$39.93/carton	US$53.93/carton	
		US$3.33/bottle	US$3.33/bottle	US$4.49/bottle	22,780.35
				Total	**₱ 791,093.97**

However, the said table also shows that the costs of importing the following liquors and wines with the corresponding excise tax payment of ₱3,432,412.84 are lower than the costs of purchasing them locally:

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry No.	Air Waybill/ Bill of Lading No.	Authority to Release Imported Goods No.	Excise Tax
South	8/12/2008	Vin de Table	9157	D0807/4294	00043545	

[82] Exhibit "HHHH"

Harbor		Blanc PAL / Vin de Table Rouge PAL	(Exh. "K")	(Exh. "K-1")	(Exh. "V")	₱183,603.42
South Harbor	8/16/2008	Vin de Table Blanc PAL / Vin de Table Rouge PAL	9158 (Exh. "L")	D0807/4368 (Exh. "L-1")	00043548 (Exh. "W")	183,603.42
NAIA	11/10/2008	Camus Cognac VSOP Elegance	11667 (Exh. "N")	079-3209-7111 (Exh. "N-1")	00044291 (Exh. "Y")	473,823.22
South Harbor	12/24/2008	Vin de Table Blanc PAL / Vin de Table Rouge PAL	13405 (Exh. "O")	D0811/5067 (Exh. "O-1")	00030394 (Exh. "Z")	183,603.42
South Harbor	12/31/2008	Vin de Table Blanc PAL / Vin de Table Rouge PAL	13406 (Exh. "P")	D0812/5099 (Exh. "P-1")	00030391 (Exh. "AA")	183,603.42
NAIA	10/17/2008	Piper Heidsieck	11093 (Exh. "Q")	079-3150-9844 (Exh. "Q-1")	00026160 (Exh. "BB")	802,431.00
				Subtotal		**₱2,010,667.90**
NAIA	9/29/2009	Remy Martin VSOP	8963 (Exh. "HH")	079-3289129-4 (Exh. "HH-1")	00040049 (Exh. "SS")	₱ 98,762.16
		Piper Heidsieck				855,926.40
NAIA	10/17/2009	Chivas Regal Whisky	9083 (Exh. "KK")	079-3289150-4 (Exh. "KK-1")	00040278 (Exh. "VV")	105,814.80
NAIA	10/22/2009	Chivas Regal Whisky	9029 (Exh. "LL")	079-3289156-3 (Exh. "LL-1")	00044034 (Exh. "WW")	54,964.91
		Martell VSOP				94,647.07
NAIA	10/24/2009	Chivas Regal Whisky / Chivas Regal Whisky	9444 (Exh. "MM")	079-3289162-2 (Exh. "MM-1")	00044019 (Exh. "XX")	105,814.80
NAIA	10/26/2009	Chivas Regal Whisky	9449 (Exh. "NN")	079-3289168-1 (Exh. "NN-1")	000444020 (Exh. "YY")	105,814.80
				Subtotal		**₱1,421,744.94**
				TOTAL		**₱3,432,412.84**

Thus, considering the evidence presented by petitioner, it has only proven and substantiated its entitlement to a tax refund in the amount of ₱3,432,412.84.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱3,432,412.84** representing excise taxes erroneously collected from petitioner on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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