Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA CASE NO. 9435** For: Refund
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson*, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	AUG 08 2019

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2:15 p.m.

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 12, 2018, is a Petition for Review[1] filed by petitioner Philippine Airlines, Inc. (PAL) praying for the refund or issuance of a tax credit certificate in the total amount of ₱8,984,751.93 [2] representing excise taxes imposed and paid under protest by petitioner PAL on August 22, 2014.

PARTIES

Petitioner PAL is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its registered address is at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, 1307, Pasay City.[3]

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[1] Filed on August 22, 2016. Docket, Vol. I, pp. 10-31.
[2] Supplemental to the Petition for Review dated 19 August 2016 (The amount sought to be refunded was increased to ₱8,984,751.93 from ₱7,454,833.06.), Docket, Vol. II, pp. 885-895.
[3] Joint Stipulation of Facts, Docket, Vol. I pp. 260-269.

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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 the excise taxes paid on wines, liquors and cigarettes under Section 142 and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent CIR holds principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

ANTECEDENT FACTS

On June 11, 1987, PAL was granted a franchise to operate air transport services domestically and internationally under Presidential Decree (PD) No. 1590, also 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".[5]

Section 13 of PD No. 1590 provides for petitioner's exemption from the payment of all taxes, duties and other fees and charges of any kind or nature on all importations of commissary and catering supplies, among others, and other articles, supplies or materials imported by petitioner for the use in its transport and non-transport operations, as well as other activities incidental thereto provided, that such articles or supplies or materials are imported for its use in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity , quality, or price[6]. To wit:

> *"SECTION 13. xxx xxx xxx.*
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> *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,*

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[4] Ibid.
[5] Ibid.
[6] Ibid.

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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) xxx.

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importation 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;

xxx xxx xxx."

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.[7]

On July 1, 2005, Republic Act (RA) No. 9337, entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as Amended, and For Other Purposes" took effect, expressly and specifically amending petitioner PAL's franchise, and subjecting it to value-added tax (VAT). [8] Petitioner's exemption from all other taxes was retained.

On various dates, PAL imported various cigarette and alcohol products constituting its commissary and catering supplies for use in its international flights which arrived at the Ninoy Aquino International Airport (NAIA). Thereafter, on August 22, 2014, PAL paid under protest the excise taxes thereon. The importations of the commissary supplies were

[7] Ibid.
[8] Ibid.

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covered by various Informal Import Declarations and Entries (IIDE), Air Waybills/Bills of Lading (AWB/BL), and Authority to Release Imported Goods (ATRIG), detailed as follows:

BATCH SEVENTY TWO: OFFICIAL RECEIPT NO: 01851841266			
INFORMAL ENTRY NO.	AWB/BL NUMBER	ARRIVAL DATE	DETAILS OF PAYMENT
5843	00LU2524344990	16 June 2012	Total Amount: **₱2,537,519.62** Receipt Number: 01851841266 Date of Payment: 22 August 2014
5837	1204/254	20 June 2012	
5790	079-3595 1996	21 June 2012	
5791	079-3592 3720	23 June 2012	
6186	079-3595 3094	29 June 2012	
6221	079-3648 0964	2 July 2012	
6194	079-3667 2204	5 July 2012	
6193	079-3668 0313	6 July 2012	
6284	079-3648 1023	14 July 2012	
6292	079-3592 3915	17 July 2012	
6310	079-3668 0593	20 July 2012	
6349	079-3696 9645	27 July 2012	
6372	079-3696 9704	28 July 2012	

BATCH SEVENTY THREE: OFFICIAL RECEIPT NO: 01851841301			
INFORMAL ENTRY NO.	AWB/BL NUMBER	ARRIVAL DATE	DETAILS OF PAYMENT
2256	00LU3070321420	24 March 2012	Total Amount: **₱1,953,486.64** Receipt Number: 01851841301 Date of Payment: 22 August 2014
4381	00LU2522613860	5 May 2012	
3732	079-3592 3473	10 May 2012	
4382	1203/190	13 May 2012	
5438	079-3603 4456	11 June 2012	
5437	079-3603 4493	15 June 2012	
7301	079-3668 0674	2 August 2012	
7307	079-3592 3974	4 August 2012	

BATCH SEVENTY FOUR: OFFICIAL RECEIPT NO: 01851841244			
INFORMAL ENTRY NO.	AWB/BL NUMBER	ARRIVAL DATE	DETAILS OF PAYMENT
7361	079-36969715	7 August 2012	Total Amount: **₱1,196,135.69** Receipt Number: 01851841244 Date of Payment:
7408	079-36969726	10 August 2012	
7409	079-36969730	17 August 2012	
7482	B/L-1207/204	28 August 2012	
7493	079-35924103	4 September	

		2012	22 August 2014
8443	079-35924125	6 September 2012	

BATCH SEVENTY FIVE: OFFICIAL RECEIPT NO: 01851841323			
INFORMAL ENTRY NO.	AWB/BL NUMBER	ARRIVAL DATE	DETAILS OF PAYMENT
4379	WG00365364/ 079-3593-7101	12 April 2012	Total Amount: **₱1,727,691.11** Receipt Number: 01851841323 Date of Payment: 22 August 2014
4383	MNL7513969	29 April 2012	
5385	079-359203436	1 May 2012	
8445	079-36681256	4 September 2012	
7492	079-36681315	4 September 2012	
8444	079-37322725	5 September 2012	
8458	079-37323926	17 September 2012	

BATCH SEVENTY SIX: OFFICIAL RECEIPT NO: 01851841288			
INFORMAL ENTRY NO.	AWB/BL NUMBER	ARRIVAL DATE	DETAILS OF PAYMENT
8505	079-367608998/ WG003709290	18 September 2012	Total Amount: **₱1,529,918.87** Receipt Number: 01851841288 Date of Payment: 22 August 2014
9101	079-3748 0763	29 September 2012	
9114	079-3592 4243	2 October 2012	
9118	079-3668 1606	4 October 2012	
9134	074-5987 7285	6 October 2012	
9135	079-3668 1632	9 October 2012	
10488	079-3734 2174	23 October 2012	
10462	1208/115	16 October 2012	
9532	079-3592 4346	11 October 2012	
10499	B/L-1209/205	1 November 2012	
10501	079-3748 1846	1 November 2012	
10473	079-3748 1780	1 November 2012	

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In view of the payment of the excise taxes, the imported various cigarette and alcohol products constituting its commissary and catering supplies for use in its international flights were released to PAL.

Thereafter, on August 22, 2016, PAL filed before the CIR a claim for refund. Likewise, on the same date, PAL filed this present petition.[9]

Respondent CIR's Answer[10] alleged by way of special and affirmative defenses the following:

> *"5. The amount of P7,454,833.06 being claimed by petitioner as specific tax allegedly paid on 22 August 2014 was not properly documented.*
>
> *6. Petitioner must prove that the amount sought to be refunded are erroneously paid taxes within the purview of Sections 204 and 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).*
>
> *7. Presidential Decree No. 1590, particularly Section 13 thereof had been expressly repealed by Republic Act No. 9334 which took effect on 1 January 2005. Section 6 thereof provides:*
>
>> *'Section 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:*
>>
>> *'Section 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 customhouses or by the person who is found in possession of the articles which are exempt from excise taxes other than those legally entitled to exemptions.*

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[9] CTA Docket, Vol. I, pp. 10-31.
[10] CTA Docket, Vol. I, pp.222-229.

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> *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 cigar and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport, xxx and such other freeports as may be created by law. Provided, further: That importations of cigar, cigarettes, distilled spirits, fermented liquors and wine directly by a government -owned and operated duty-free shops, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only.*
>
> *xxx." (Underscoring supplied).*

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, PD 1590. First, Section 6 of RA 9334 employs the clear and all encompassing phrase "The provision of any special or general law to 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 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.

8. Moreover, Section 229 of the Tax Code categorically provides:

> *SECTION 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*

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> *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.*

In the instant case, petitioner made the alleged payments on 22 August 2014. Counting 2 years therefrom, the petition should have been filed on 11 August 2016. However, the same was filed only on 22 August 2016. From the foregoing, it is clear that the claim for refund was filed out of time.

9. Moreover, petitioner filed the administrative claim for refund on 22 August 2016 with respondent's Regular Large Taxpayers Audit Division II, the very same day it filed the instant petition for review before the Honorable Court. It must be pointed out that petitioner's claim for refund is subject to administrative investigation/examination by respondent. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim. Hence, the Honorable Supreme Court held:

> *"xxx a claim for refund is not ipso facto granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim."*
>
> *xxx xxx xxx."*

During trial, petitioner presented documentary and testimonial evidence to substantiate its claim for refund. Petitioner presented four (4) witnesses, namely: Jonathan R. Castillo Lee, Ruel Ryan O. Julian, Enrico T. Pizarro, the court Commissioned Independent Certified Public Accountant, and Cheryl V. Capinpin.

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Thereafter, petitioner formally offered its documentary evidence which were admitted by the Court in the Resolution dated April 2, 2018[11].

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
P-1	Secretary's Certificate issued by Marivic T. Moya, Corporate Secretary of Philippine Airlines, Inc., and notarized on May 14, 2015
P-2	Letter dated 19 August 2016, addressed to the Bureau of Internal Revenue and signed by Marvin A. Matias, Legal Counsel of Philippine Airlines
P-3	Certificate of Registration of Philippine Airlines, Inc., OCN no. 8RC0000021860
P-5 to P-52	Informal Import Declaration and Entry, issued by the Bureau of Customs on various dates, and authenticated and verified by the Independent Certified Public Accountant ("ICPA")
P-53 to P-100	Airway Bills/ Bills of Lading, of various dates, indicating the various goods to be imported
P-101 to P-148	Authority to Release Imported Goods, issued by the Bureau of Internal Revenue on various dates, and authenticated and verified by the ICPA
P-149 to P-153	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated 03 October 2012, 05 December 2012 and 12 March 2013, and addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-154 to P-158	Letters issued by Mr. Jonathan Castillo Lee, Manager, Company Materials Handling Division of PAL, formally protesting the assessment and collection of excise taxes on importations made by PAL
P-159 to P-163	Receipts issued by the Bureau of Customs
P-166 to P-166H	Annual Income Tax Return – BIR Form No. 1702
P-169	Quarterly Value Added Tax Return – BIR Form No. 2550-Q
P-171, P-172 and P-174	Quarterly Value Added Tax Return – BIR Form No. 2550-Q

[11] CTA Docket, Vol. III, pp. 1162-1164.

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P-194	Petition for Review of PAL dated 19 August 2016
P-195	Supplemental to the Petition for Review dated 21 April 2017
P-196	Certificate of Filing of Amended Articles of Incorporation (AOI) submitted to the Securities and Exchange Commission (SEC)
P-197	Certificate of Registration BIR Form No. 2303, with OCN No. 8RC0000021860
P-198	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated 03 October 2012, addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-199	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated 05 December 2012, and addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-200	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated 05 December 2012, and addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-201	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated 12 March 2013, and addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-202	Letters issued by Teresita F. Dela Peña, Acting Chief WAU dated dated 12 March 2013, and addressed to Ms. Vivian Dayao, Officer-in-Charge, Collection Division, NAIA Customhouse
P-203	Letter by Jonathan Castillo Lee, formally protesting assessment in the amount of Php 2,537,519.62, dated 22 August 2014.
P-204	Letter by Jonathan Castillo Lee, formally protesting assessment in the amount of Php 1,953,486.64, dated 22 August 2014.
P-205	Letter by Jonathan Castillo Lee, formally protesting assessment in the amount of Php 1,196,135.69, dated 22 August 2014.
P-206	Letter by Jonathan Castillo Lee, formally protesting assessment in the amount of Php 1,767,691.11, dated 22 August 2014.
P-207	Letter by Jonathan Castillo Lee, formally protesting assessment in the amount of Php 1,529,918.87, dated 22 August 2014.
P-208	Examination of quotations for local suppliers and summary of imported goods not available locally for taxable year 2014.
P-209	Examination of quotations for local suppliers, summary of imported goods with purchase price lower than quoted price from local suppliers for taxable year 2014.
P-210	Examination of quotations for local suppliers, as well

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	as summary of imported goods locally available in reasonable price for taxable year 2014.
P-211	Summary of imported goods with no local quotations for taxable year 2014.
P-212	Philippine Wine Merchants Price List, dated 27 January 2012, signed by Mr. Ronald Lim Joseph.
P-213	Future Trade International Price List, dated 15 July 2013, signed by Mr. Analu G. Santos
P-214	Table of Prices by Fast Trax Corporation, denominated as "National Price List", dated 13 February 2012
P-215	Revenue Memorandum Circular # 90-2012, with Annexes "A" to "D-2"
P-216	Letter denominated as a Request for Quotation, dated 21 June 2013, signed by Ms. Cheryl Capinpin and addressed to Mr. Edgardo D. Zaragoza of the National Tobacco Administration
P-217	Letter dated 12 July 2013, signed by Mr. Edgardo Zaragoza, Administrator and Vice Chairman of the Governing Board of the National Tobacco Administration
P-218.1.1 to P-218.1.47	Airways Bills/Bills of Lading, of various dates, indicating the various goods to be imported
P-218.2.1 to P-218.2.47	Informal Import Declaration and Entry, issued by the Bureau of Customs on various dates, and authenticated and verified by the ICPA
P-218.3.1 to P-218.3.47	Authority to Release Imported Goods, issued by the Bureau of Internal Revenue on various dates, and authenticated and verified by the ICPA
P-219	Summary of receipt and withdrawal of imported goods in the inventory account
P-220	Oracle AP Invoice
P-221	Independent Auditors Report, drafted by Ms. Catherine E. Lopez, SGV partner
P-222	Official Receipt from the Bureau of Customs, with OR#01851841266
P-223	Official Receipt from the Bureau of Customs, with OR#01851841301
P-224	Official Receipt from the Bureau of Customs, with OR#01851841244
P-225	Official Receipt from the Bureau of Customs, with OR#01851841323
P-226	Official Receipt from the Bureau of Customs, with OR#01851841288
P-227	Annual Income Tax Return- BIR Form No. 1702
P-228	Quarterly Value Added Tax Return – BIR Form No. 2550-Q

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P-229	Quarterly Value Added Tax Return – BIR Form No. 2550-Q
P230	Quarterly Value Added Tax Return – BIR Form No. 2550-Q
P-231	Quarterly Value Added Tax Return – BIR Form No. 2550-Q
P-233	Table of Comparison of Imported Alcohol Products
P-234	Table of Comparison of Imported Alcohol Products
P-289	Revenue Memorandum Circular 90-2012, with Annexes "A" to "D-2"
P-290	Letter denominated as a Request for Quotation dated 21 June 2013, signed by Ms. Cheryl Capinpin addressed to Mr. Edgardo D. Zaragoza of the National Tobacco Administration
P-291	Letter dated 12 July 2013, signed by Mr. Edgardo Zaragoza, Administrator and Vice Chairman of the Governing Board of the National Tobacco Administration

On July 25, 2018, the scheduled initial presentation of evidence for the respondent, respondent's counsel manifested that there is no report of investigation and that she is submitting the case for decision. Hence, the Court granted the parties a period of thirty (30) days within which to file their Memoranda[12].

On October 12, 2018, the case was submitted for decision, taking into consideration CIR's Memorandum[13] filed on August 16, 2018 and PAL's Memorandum[14] filed on September 24, 2018.

Based on the Joint Stipulation of Facts and Issues[15], the parties' jointly stipulated the issue and submitted for this Court's resolution, to wit:

> "WHETHER PETITIONER PAL IS ENTITLED TO THE REFUND *(sic)* EXCISE TAXES PAID UNDER PROTEST FOR VARIOUS IMPORTATIONS FOR ITS IMPORTATIONS OF CIGARETTES, LIQUOUR, AND

[12] CTA Docket, Vol. III, p. 1169.
[13] CTA Docket, Vol. III, pp. 1170-1185.
[14] CTA Docket, Vol. III, pp. 1212-1226.
[15] CTA Docket, Vol. III pp. 260-269.

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WINE FOR ITS CATERING AND COMMISSARY SUPPLIES FOR INTERNATIONAL CONSUMPTION."[16]

We resolve.

Section 4 of the National Internal Revenue Code[17] states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Republic Act No. 9282[18], amending Republic Act No. 1125[19], is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over decisions and inactions by the CIR in cases involving refunds of internal revenue taxes, to wit:

> *"Section 7. Jurisdiction. — The CTA shall exercise:*
>
> *(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:*
>
> *(1) Decisions of 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;*

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[16] Ibid. p.262.

[17] **SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[18] An Act Expanding the Jurisdiction of the Court of Tax (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[19] An Act Creating the Court of Tax Appeals.

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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 provides a specific period for action, in which case the inaction shall be deemed a denial**;*

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

xxx xxx xxx."

This means that while the CIR has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling. Moreover, the Court can act on a judicial claim for refund of erroneously or illegally collected internal revenue taxes even if the CIR failed to act on the taxpayer's administrative claim for refund as long as it complies with the requirements under Sections 204[20] (C) and 229[21] of the NIRC of 1997, as

[20] **SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** -
The Commissioner may -
(A) Compromise the payment of any internal revenue tax, when: xxx.
(B) Abate or cancel a tax liability, when: 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.

[21] **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

amended. The law does not require the CIR to act upon the administrative claim before claimant can file its judicial claim for refund. Section 229, as worded, **only requires that an administrative claim be filed prior to the judicial claim.**[22]

In the case of CBK Power Company Limited vs. Commissioner of Internal Revenue and Commissioner of Internal Revenue vs. CBK Power Company Limited[23], the Supreme Court ruled that Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. **However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner**, to wit:

> *"Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. These provisions respectively read:*

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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.

[22] Commissioner of Internal Revenue v. Goodyear Philippines, Inc., G.R. No. 216130, August 3, 2016.
[23] G.R. Nos. 193383-84 and G.R. Nos. 193407-08, January 14, 2015

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SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –

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(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 <u>with the Commissioner</u> a claim for credit or refund <u>within two (2) years after the payment of the tax or penalty</u>****: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.*

x x x x

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.*

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 x x x. (Emphases and underscoring supplied)*

xxx xxx xxx.

With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA En Banc in debunking the alleged failure to exhaust

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administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. ***There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.***

In the foregoing instances, attention must be drawn to the Court's ruling in P.J. Kiener Co., Ltd. v. David (Kiener), wherein it was held that in no wise does the law, i.e., Section 306 of the old Tax Code (now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In Kiener, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow, viz.:

> *The controversy centers on the construction of the aforementioned section of the Tax Code which reads:*
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> > *SEC. 306. 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal*

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> *Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.*
>
> *The preceding provisions seem at first blush conflicting. It will be noticed that, whereas the **first sentence requires a claim to be filed with the Collector of Internal Revenue before any suit is commenced, the last makes imperative the bringing of such suit within two years from the date of collection.** But the conflict is only apparent and the two provisions easily yield to reconciliation, which it is the office of statutory construction to effectuate, where possible, to give effect to the entire enactment.*
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> *To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. **Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action.** x x x. **We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow**. x x x. (Emphases supplied)"*

Evidently, the filing of administrative refund pursuant to the NIRC and judicial refund to forestall the running of the two-year prescriptive period for claiming tax refunds[24] is a

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[24] Commissioner of Internal Revenue v. Philippine Airlines, Inc., G.R. Nos. 212536-37, 27 August 2014.

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taxpayer claimant's right. The law does not require the CIR to act upon the administrative claim before claimant can file its judicial claim for refund. Section 229, as worded, **only requires that an administrative claim be filed prior to the judicial claim**.[25]

Clearly, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA pursuant to Section 229. In Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue[26], the Supreme Court had the occasion to explain anew Section 229 and denied a refund claim of final withholding tax for the taxpayer's failure to comply with the requisites therein:

> *"As may be gleaned from the foregoing provisions,* ***<u>a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA</u>****. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code - then Section 306 of the old Tax Code - however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)- year prescriptive period expire without the appropriate judicial claim being filed." (Emphasis and underscoring supplied)*

Records show that petitioner PAL paid under protest[27] the excise tax of ₱2,537,519.62[28], ₱1,953,486.64[29], ₱1,196,135.69[30], ₱1,767,691.11[31] and ₱1,529,918.87[32] or a

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[25] Commissioner of Internal Revenue v. Goodyear Philippines, Inc., G.R. No. 216130, August 3, 2016.
[26] G.R. No. 182582, April 17, 2017.
[27] Exhibits "P-154" to "P-158".
[28] Exhibit "P-159".
[29] Exhibit "P-160".
[30] Exhibit "P-161".

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total of ₱8,984,751.93 to the Bureau of Customs on August 22, 2014. Thereafter, petitioner simultaneously filed both its administrative claim[33] and judicial claim[34] on August 22, 2016.

Clearly, petitioners failed to establish that prior to the judicial claim for refund, administrative claims for refund were in fact filed with the respondent CIR in compliance with Section 229. There is non-compliance considering that both the administrative claim and the judicial claim for refund was simultaneously filed on August 22, 2016. Evidently, there is a violation of Section 229 of the law which requires that an administrative claim be filed prior to the judicial claim.

Thus, the primary purpose of the requirement that an administrative claim be filed prior to the judicial claim- that is to serve as a notice of warning to the CIR that court action would follow unless the tax alleged to have been collected erroneously or illegally is refunded, was defeated. A taxpayer should initially file the claim for refund before the Bureau of Internal Revenue (BIR). Failure to seek relief initially at the administrative level would result in dismissal of the judicial claim for refund once it is elevated to the Court of Tax Appeals (CTA).

Moreover, the Court finds that the claim for refunds are unsupported by substantial evidence. The Supreme Court in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.* [35] categorically declared that the enactment of R.A. No. 9334 did not repeal the tax exemption privileges of respondent under P.D. No. 1590. The privilege however is not without limitation. In order for petitioner to be exempt from excise taxes on its imported wines, liquors and cigarettes respondent must demonstrate by convincing proof that subject imported articles are to be exclusively used in its

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[31] Exhibit "P-162".
[32] Exhibit "P-163".
[33] Exhibit "P-2".
[34] Docket Vol. I, pp. 10-214.
[35] G.R. Nos. 212536-37. August 27, 2014.

flight and non-flight operations and other incidental activities; and the articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

To prove that the subject imported articles are to be used in its flight and non-flight operations and other incidental activities, petitioner presented various documents such as Informal Import Declaration and Entry[36] designating the imported commodities as "inflight materials," and Authority to Release Imported Goods ATRIGs [37] bearing notations that such articles would be for international inflight consumption, as well as the testimony of its Manager of the In-flight Materials Purchasing Division, Cheryl V. Capinpin who testified that the imported tobacco and alcohol products were part of its commissary and catering supplies for use international flights. However, said evidence will only tend to prove the fact that petitioner imported said articles and the reason for their payment of excise tax which it claims to have been erroneously collected.

There is no iota of evidence that said imported tobacco and alcohol articles were exclusively used for petitioner's transport and non-transport operations. Neither is there evidence that said alcohol and tobacco supplies has been part of the inventory of its commissary and catering supplies. An allegation that said alcohol and tobacco supplies has been used as commissary and catering supplies is just an allegation. We must delineate that not all importation of alcohol and tobacco product shall automatically privilege petitioner from the payment of excise tax. Petitioner has the burden to prove that the same were exclusively used and part of its commissary and catering supplies. Without any other evidence to substantiate that the imported tobacco and alcohol products were exclusively used for petitioner's transport and non-transport operations, the said pieces of evidence are not sufficient to establish petitioner's compliance.

In addition, to prove that the imported liquors, wines and cigarettes are not locally available in reasonable

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[36] "P-5" to "P-52".
[37] P-218.3.1 to P-218.3.47.

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quantity, quality, or price, among others, petitioner presented the testimony of its Manager of the In-flight Materials Purchasing Division, Cheryl V. Capinpin, who compared the prices of its tobacco and alcohol products with the local price list of Philippine Wine Merchants, Future Trade International, and Revenue Memorandum Circular 90-2012[38]. However, without evidence to prove that the list of prices of Philippine Wine Merchants and Future Trade represent the local market price for the subject goods in 2012, meaning the totality of local suppliers who are engaged in selling similar products that comprise the local market for these goods, we cannot conclude that "petitioner's comparison" of the price of its imported wines and liquor is deemed sufficient. The price lists of two suppliers do not represent the local market price of the subject goods. Likewise, considering that RMC 90-12 was based on the 2010 BIR price survey, no valid comparison can be made between the prices of the imported goods and locally available goods.

In sum, petitioner failed to present sufficient evidence to prove that the imported tobacco and alcohol products were not locally available in sufficient quantity, quality, or price at the time of importation.

Taxpayers must prove not only their entitlement to a refund, but also their compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of their claims.[39]

Petitioner, unfortunately, failed to discharge this burden. Claims for tax refunds are in the nature of tax exemptions, and as such, should be construed *strictissimi*

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[38] Revised Tax Rates of Alcohol and Tobacco Products under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as The National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes." Issued on 27 December 2012 by the Commissioner of Internal Revenue.
[39] Commissioner of Internal Revenue v. Manila Electric Company, G.R. No. 181459, June 9, 2014; Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

juris against the taxpayers and liberally in favor of the government.

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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