Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,

CTA EB NO. 1731
(CTA Case No. 8495)

-versus-

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
UY
FABON-VICTORINO
MINDARO-GRULLA
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

PHILIPPINE AIRLINES, INC.,
Respondent.

Promulgated:
FEB 07 2019
4:07 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En Banc Docket, pp. 56-93.

dated April 5, 2017, rendered by the Third Division[3] of this Court in CTA Case No. 8495, and its Resolution[4] dated October 10, 2017. The Third Division of this Court granted the claims for refund in the amount of Php137,099,144 for excise taxes paid for the importation of Jet A-1 fuel.

Petitioner Commissioner of Customs ("COC" for brevity) assails both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 5, 2017:

*"**WHEREFORE**, the Petition for Review is **GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue tax credit certificate in favor of petitioner Philippine Airlines Inc. in the amount of **ONE HUNDRED THIRTY-SEVEN MILLION NINETY-NINE THOUSAND AND ONE HUNDRED FORTY-FOUR PESOS (₱137,099,144.00)** representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period April 2010 to June 2010.*

SO ORDERED."

Resolution dated October 10, 2017:

*"Considering that no new matters have been raised, the CIR and the COC's respective Motions for Reconsideration are **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court in Division in its Decision are as follows:

"PAL[5] 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 8th Floor,

[3] Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Bautista; Associate Justice Esperanza R. Fabon-Victorino with Dissenting Opinion, Id. at. pp. 92-93.
[4] En Banc Docket, pp. 94-96.
[5] Philippine Airlines, Inc. (PAL) was the petitioner before the Court in Division and thereafter the respondent before this Court *En Banc*.

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PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, 1300, Pasay City.

xxx Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax of P3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148(g) of the National Internal Revenue Code (NIRC) of 1997, as amended, with principal office at the BIR National Office Building, Agham Road, Dillman, Quezon City.

xxx Commissioner of Customs (COC)[6] *is the head of the Bureau of Customs (BOC) delegated and authorized by respondent CIR, through an Authority to Release Imported Goods (ATRIG), to assess and collect custom duties and all other lawful charges from imported articles, including the excise tax of P3.67 per liter on imported aviation turbo jet fuel imposed by Section 148(g) of the NIRC of 1997. He holds principal office at the Port Area, Manila.*

THE FACTS

Section 13 of PAL's franchise, PD No. 1590, which took effect on June 11, 1978, provides for the conditions which airlines are required to comply with in order to continue enjoying tax exemptions on their importation of petroleum products, 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, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future but not limited to the following:*
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> *xxx xxx xxx.*
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> *(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importation by the grantee of aircraft, engines,*

[6] Commissioner of Customs (COC) was one of the respondents before the Court in Division and thereafter the sole petitioner before this Court *En Banc*.

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> *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 imposed 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'*

On November 1, 1985, Letter of Instructions (LOI) No. 1483 withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations. LOI No. 1483 provides in part:

> *'WHEREAS, this tax-exemption privilege enjoyed by PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.*
>
> *NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn.*
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> *This Letter of Instructions shall take effect on November 1, 1985.'*

On January 29, 1999, respondent CIR issued BIR Ruling No. 013-99, which reads:

> *'It is represented that Sec. 13(b) Par. 1 and 2 of PD No. 1590, provides among others, that purchases by PAL of aviation gas, fuel and oil to be used in its transport and nontransport operations are exempt from the payment of all taxes, duties, charges, royalties or fees; that since then, PAL had been enjoying this tax-exemption privileges until the same was withdrawn partially when LOI No. 1483 was issued by the President of the Philippines, the main text of which is quoted as follows:*
>
> > *' ... the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn' (emphasis supplied)*

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> *that the wordings of LOI No. 1483 is very clear that the tax exemption privilege being withdrawn refers specifically to the purchase of domestic petroleum products by PAL for use in its domestic operations, that it does not include purchases from abroad or foreign countries, and that it is for this reason that the Bureau of Customs does not impose any tax or customs duties on arrivals of petroleum products imported or purchased by PAL from abroad.*
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> *In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations. "*

The Secretary of Finance issued a letter on September 8, 1999 to confirm BIR Ruling No. 013-99, which provides:

> *'I confirm BIR Ruling, dated January 29, 1999, which confirms PAL's exemption from specific and ad valorem taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights.'*

However, on January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-2003, addressed to petitioner, to Philippine Airlines (PAL), to Cebu Air, Inc. (CAI), and to Pacific Airways Corporation, the significant parts of which read as follows:

> *'In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies ipso facto to other airlines. Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.*

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This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.'

On the basis of BIR Ruling No. 001-2003, respondent CIR, acting through respondent COC, assessed petitioner for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

From April 2010 to July 2010, petitioner made the following importations and corresponding payments under protest of the specific tax assessed by the Collector of Customs of the Port of Batangas, Batangas City. The payment made by petitioner is evidenced by the respective Philippine National Bank official receipts (ORs), as follows:

Date of Importation	Date of Payment	Amount Paid in Php (₱)	OR No.
April 23,2010	May 20, 2010	68,111,897.00	C872
June 27, 2010	July 29, 2010	68,987, 247.00	C001371

Accordingly, petitioner filed with the District Collector of Customs, Port of Batangas, Batangas City, formal written protests for the refund of the respective specific taxes on the following dates:

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest	Amount involved in Php (₱)
April 23,2010	May 20, 2010	June 3, 2010	68,111,897.00
June 27, 2010	July 29, 2010	August 11, 2010	68,987, 247.00

Petitioner alleges that the protests were not acted upon by respondent COC, so to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC of 1997, it was constrained to file a written claim for refund for the specific taxes paid for both importations on May 17, 2012 with respondent CIR.

Claiming inaction on the part of respondent CIR, petitioner filed with this Court on May 21, 2012 its judicial claim via its Petition for Review docketed as CTA Case No. 8495.

Both respondents moved for extensions of time to file their respective Answers which were granted by the Court. The Court granted the CIR until July 26, 2012 within which to file an Answer and the COC was granted until August 3, 2012 within which to file an Answer as well.

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On July 26, 2012, respondent CIR flied her Answer, alleging the following Special and Affirmative Defenses:

1) *the Court has no jurisdiction over the subject matter as petitioner primarily seeks the nullification of BIR Ruling No. 001-2003 and its failure to appeal the same to the Office of the Secretary of Finance or to seek redress from the Department of Energy's Certification as provided under Department Circular No. 2002-07-004, which was duly issued pursuant to the provisions of Section 5(k) of R.A. 7638, otherwise known as the Department of Energy Act of 1992, is a failure to exhaust administrative remedies, hence, the petition must be dismissed;*

2) *Presidential Decree No. 1590 (PD 1590 for brevity) does not serve to provide petitioner a blanket tax exemption which will bar any act of the government to enforce its power to tax;*

3) *Congress intended to withdraw the tax privilege of the petitioner upon the occurrence of the conditions provided under Section 13(1) and (2) of the PD 1590;*

4) *BIR Ruling No. 001-03 declared the absence of the second condition required for petitioner to continue to enjoy tax exemptions on their importations of petroleum products for domestic operations and, thus, gave rise to the extinguishment of its tax privilege;*

5) *BIR Ruling No. 001-03 is a valid delegation of power as Congress may delegate to an administrative agency the power to ascertain facts as basis to determine when a law may take into effect or whether a law may be suspended or come to an end, in accordance with the purpose or policy of the law and the standard for the exercise of the power delegated;*

6) *unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Ruling No. 001-03 shall be considered valid in full force and effect;*

7) *BIR Ruling No. 001-03 effectively revoked and superseded BIR Ruling No. 013-99 and all other rulings contrary thereto;*

8) *by virtue of BIR Ruling No. 001-03, petitioner cannot validly claim tax exemptions on specific tax on Jet A-1 fuel importation;*

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9) petitioner failed to present proof that it filed an administrative claim for refund with the BOC and that the excise taxes it allegedly paid were actually remitted by the BOC to the BIR;

10) petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau of Internal Revenue;

11) taxes collected are presumed to be in accordance with laws and regulations;

12)exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;

13)petitioner miserably failed to prove that it is entitled to its claim and that all requisites for a claim for refund were not complied with; and

14) tax exemptions are to be construed strictissimi juris against the person or entity claiming the exemption.

On August 2, 2012, respondent COC filed his Answer, alleging the following Special and Affirmative Defenses:

1) the second condition in Section 13 of PD 1590 which is that the imported petroleum products are not locally available in reasonable quantity, quality or price is not present to exempt petitioner from the payment of specific taxes;

2) the BIR Ruling No. 001-2003 which relied on the 2002 DOE Certification is valid as the DOE's competence to issue such certification is beyond question, being a specialized government agency;

3) the CTA is not the proper forum to question the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price and the CTA has no jurisdiction over the issue;

4) BIR Ruling No. 001-2003 is an interpretative ruling which does not need notice, hearing and publication to be valid;

5) BIR Ruling No. 001-2003 has long become final as petitioner failed to question it before the Secretary of Finance within thirty (30) days from receipt thereof

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as provided for under RMC NO. 44-2001 dated October 11, 2001; and, finally,

6) in an action for tax refund/ credit, the taxpayer has the burden to establish his right to refund and failure to sustain the burden is fatal to his claim for refund.

On September 5, 2012, respondent CIR filed her Pre-Trial Brief. Petitioner filed its Pre-Trial Brief on September 10, 2012 while respondent COC filed his Pre-Trial Brief on September 24, 2012.

During the Pre-Trial conference held on September 27, 2012, the parties were ordered to submit their Joint Stipulation of Facts & Issues (JFSI) by October 17, 2012. However, despite having been granted an extension until October 27, 2012 to file the same, the parties were unable to submit a JFSI due to the difference in their respective positions.

On November 16, 2012, the Court issued the Pre-Trial Order. On November 29, 2012, however, respondent CIR filed a "Motion to Modify Pre-Trial Order" to include the issue of jurisdiction of the Court as an issue. During the hearing held on December 6, 2012, the Court granted this motion and embodied its order in Resolution dated December 17, 2012.

During trial, petitioner presented the following witnesses together with their respective Judicial Affidavits: (1) Mr. Elvis A. Yao, Senior Assistant Vice President - Fuel Management Department of PAL, (2) Ms. Ma. Evelyn L. Taghap, Manager-Tax Services and Compliance Department of PAL, (3) Atty. Antero Jose M. Caganda, Senior Partner of Zambrano and Gruba Law Offices, (4) Ms. Myra Celeste O. Dabalos, Court Commissioned Independent Certified Public Accountant (ICPA), (5) Mr. Fredieric B. Landicho, Court Commissioned Independent Certified Public Accountant (ICPA), and (6) Mr. Mario Tiaoqui, an expert witness whose entire testimony given at the joint hearing of the consolidated cases of CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, 7518, the consolidated cases of CTA Case Nos. 7670, 7818, 7869, 7954, 8034, CTA Case No. 8143, and CTA Case No. 8220 on June 11, 2012 and August 16, 2012, was made part of the record of this case in a Resolution dated December 6, 2013.

Ms. Myra Celeste O. Dabalos was commissioned by the Court as an Independent Certified Public Accountant pursuant to a motion filed by petitioner on May 29, 2013 which was accompanied by her Judicial Affidavit in support

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thereof. The motion was granted during the hearing held on June 3, 2013 and, on June 24, 2013, Ms. Dabalos submitted her ICPA report to the Court.

On July 24, 2013, petitioner filed a "Manifestation with Motion (to Reset Hearing on 27 July 2013)" wherein it manifested, among others, that Ms. Dabalos was in the process of preparing a Supplemental ICP A Report and that she would be presented as a witness again.

On August 28, 2013, respondents filed their "Opposition/Objection" to the recall of Ms. Dabalos, but despite that, the Court granted petitioner's motion in a Resolution dated October 3, 2013.

In a Manifestation filed on February 20, 2014, petitioner manifested that despite exerting effort to get in touch with Ms. Dabalos regarding her Supplemental Report, it was unable to reach her, but that they would continue to exert effort to do so.

In a turn of events, however, petitioner filed on July 3, 2014, a "Manifestation and Motion" that Ms. Dabalos could no longer perform the duties and responsibilities of a court-appointed ICPA with a prayer that she be discharged and that it be allowed to select a new ICPA. Petitioner's motion was granted by the Court in a Resolution dated August 26, 2014.

On September 8, 2014, petitioner flied a "Motion to Re-Commission an Independent Certified Public Accountant" and moved that Mr. Fredieric B. Landicho be appointed as the new ICPA for the purpose of preparing a Supplemental ICPA Report. The Court granted petitioner's motion in a Resolution dated October 13, 2014. Subsequently, on September 26, 2014 and on November 10, 2014, petitioner submitted the Judicial Affidavits of Mr. Landicho.

On December 22, 2014, petitioner filed its Formal Offer of Evidence offering Exhibits "A" to "SSSS-1", inclusive of sub-markings, as its documentary evidence.

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During the hearing held on February 1, 2016, respondents manifested, through their respective counsels, that they would no longer present any evidence, but would file Memoranda instead. The Court noted said manifestations and ordered the parties to submit their respective Memorandum.

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> *Complying therewith, respondent COC submitted his Memorandum on March 30, 2016 while petitioner submitted its Memorandum on March 31, 2016. As regards respondent CIR, however, the Judicial Records Division issued a Records Verification Report dated March 23, 2016 stating that respondent CIR failed to file his Memorandum within the period granted.*
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> *After the submission of the parties' respective Memorandum, this Court, in its Resolution dated April 6, 2016, deemed the case submitted for decision." (Citations Omitted)*

On April 5, 2017, the Court in Division granted respondent PAL's claim for refund in the amount of ₱137,099,144.00, representing excise taxes paid on importations of Jet A-1 fuel. Thereafter, on October 10, 2017, the Court in Division denied the motion for reconsiderations, respectively filed by the Commissioner of Customs (COC) and Commissioner of Internal Revenue (CIR). Hence, the present petition was filed by petitioner COC.

On February 7, 2018, respondent PAL filed a "Comment/Opposition (to Respondent Commissioner of Customs' Petition for Review dated 09 November 2017)". In its comment, respondent PAL maintains that the contentions of petitioner COC in the petition are mere rehash of the arguments raised before and passed upon by the Court's Division. Respondent PAL asserts the following:

1. The subject matter of the case falls within the jurisdiction of this Honorable Court notwithstanding the inaction of the COC on respondent's protest;

2. The Court has jurisdiction over the instant claim for refund and incidentally the determination of the validity of 2003 BIR Ruling and DOE Certification;

3. Respondent sufficiently proved that there is no locally available Jet A-1 fuel in reasonable quantity, quality or price;

4. The Authority to Release Imported Goods (ATRIG) and the testimony of Mr. Elvis A. Yao sufficiently proves that

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respondent used the imported Jet A-1 fuel in its transport and non-transport operations;

5. The ATO certifications were properly given weight by the Court; and

6. The Court correctly relied on the findings of the ICPAs that the cost of importing Jet A-1 fuel is reasonably lower than the cost of purchasing the same fuel locally.

In a Resolution dated March 1, 2018, the petition was submitted for decision.

The grounds relied upon by Petitioner COC in the petition are the following:

> **"I.**
> **THE HONORABLE COURT'S THIRD DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION.**
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> **II.**
> **THE HONORABLE COURT'S THIRD DIVISION ERRED IN RULING THAT RESPONDENT IS EXEMPTED FROM PAYING EXCISE TAXES ON ITS IMPORTATION OF JET A-1 FUEL."**

Petitioner asserts that the subject matter of this case does not fall within the jurisdiction of the Court. Citing the case of Caltex (Philippines) Inc. vs. Commissioner of Internal Revenue[7], petitioner argues that administrative claim for refund of internal revenue of taxes was filed with the Collector of Customs and the same had not decided or ruled thereon, thus, respondent's Petition for Review should have been dismissed for being premature and for lack of cause of action.

Petitioner also argues that respondent PAL is guilty of deliberate forum shopping by filing identical claim for refund with the Collector of Customs and with Bureau of Internal Revenue; that the Court's Division has no jurisdiction to

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[7] G.R. No. L-20462, June 30, 1965.

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declare the DOE Certification and BIR ruling as invalid; and that respondent PAL did not exhaust administrative remedies in assailing BIR Ruling No. 001-2003 pursuant to Section 3 of Revenue Memorandum Circular (RMC) No. 44-2001 dated October 11, 2001, when it did not seek reconsideration from the Secretary of Finance, who has jurisdiction to rule over the same.

Furthermore, petitioner insists that respondent PAL failed to establish that there is no locally available Jet A-1 fuel in reasonable quantity, quality or price; and that there is no sufficient proof which would show that respondent actually used the imported Jet A-1 fuel in its transport and non-transport importations.

We resolve.

The fact that respondent PAL made the following importations, corresponding payments under protest and formal written protests of the specific tax assessed by the Collector of Customs of the Port of Batangas, Batangas City is undisputed, to wit:

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest	Amount involved in Php (₱)
April 23,2010	May 20, 2010	June 3, 2010	68,111,897.00
June 27, 2010	July 29, 2010	August 11, 2010	68,987,247.00

Likewise, it is undisputed that respondent PAL filed a written claim for refund for the specific taxes paid for both importations on May 17, 2012 with the Commissioner of Internal Revenue (CIR) as the protest with the Collector of Customs were not acted upon and to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC of 1997. Thereafter, respondent PAL filed with this Court on May 21, 2012 its judicial claim via its Petition for Review docketed as CTA Case No. 8495.

Petitioner posits that being a Court of limited jurisdiction, the Court may only take cognizance of the cases expressly enumerated under Section 7 of R.A. 9282, thus, the alleged inaction of the Collector of Customs in resolving

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PAL's claims for refund is not one of the cases falling within the jurisdiction of this Court.

We are not persuaded.

Section 4 of the National Internal Revenue Code[8] 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[9], amending Republic Act No. 1125[10], 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 or other laws administered by the Bureau of Internal Revenue;*
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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*

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[8] 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.

[9] 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.

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

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National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of 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;

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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[11] (C) and 229[12] of the National Internal

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[11] **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.

[12] **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.

Revenue Code (NIRC) of 1997, as 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.

In the case of CBK Power Company Limited vs. Commissioner of Internal Revenue and Commissioner of Internal Revenue vs. CBK Power Company Limited[13], 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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> > *SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may -*
> >
> > *x x x x*
> >
> > *(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***

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.

[13] G.R. Nos. 193383-84 and G.R. Nos. 193407-08, January 14, 2015

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> ***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.*
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> *x x x x*
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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 collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,* ***until a claim for refund or credit has been duly filed with the Commissioner****; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.*
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> ***In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty*** *regardless of any supervening cause that may arise after payment 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 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*

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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:*
>
> > *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 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*

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> *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.*
>
> *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[14] is a taxpayer claimant's right. Thus, even if there is a pending administrative protest before the Collector of Customs, had respondent PAL awaited the action of the Collector of Customs and COC on its protest prior to taking court action pursuant to the NIRC, 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 excise taxes it erroneously paid to the government thereby suffering irreparable damage. 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.

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

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Furthermore, in the *Nestle Case*[15], the Supreme Court ruled that "once a written protest is seasonably filed with the Collector of Customs, the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, if any is proven, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes." The Supreme Court instructively held as follows:

> *Sections 2308 and 2309 of the Tariff and Customs Code provide that:*
>
> > *Sec. 2308. Protest and Payment upon Protest in Civil Matter.* ***When a ruling or decision of the collector is made whereby liability for duties,*** *taxes, fees, or other charges* ***are determined,*** *except the fixing of fines in seizure cases,* ***the party adversely affected may protest such ruling or decision*** *by presenting to the Collector* ***at the time when payment*** *of the amount claimed to be due the government* ***is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee,*** *as provided for in Section 3301.*
> >
> > *Sec. 2309. Protest Exclusive Remedy in Protestable Case.* ***In all cases subject to protest, the interested party*** *who desires to have the action of the collector reviewed,* ***shall make a protest, otherwise, the action of the collector shall be final and conclusive against him,*** *x x x.*

[15] NESTLE PHILIPPINES, INC., (FORMERLY FILIPRO, INC.) v. HONORABLE COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF CUSTOMS, G.R. No. 134114. July 6, 2001.

> *SEC. 2312. Decision or Action by the collector in Protest and Seizure Cases. - When a protest in a proper form is presented in a case where protest is required,* ***the collector shall*** *issue an* ***order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented.*** *Upon termination of the hearing,* ***the Collector shall render a decision within thirty (30) days,*** *and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary. x x x .*

In the light of the above-cited provisions of the Tariff and Customs Code, it appears that in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. This written protest which must set forth the claimants objection to the ruling or decision in question together with the reasons therefor must be made either at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter. In conjunction with this right of the claimant is the duty of the Collector of Customs to hear and decide such protest in accordance and within the period of time prescribed by the law.

Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, if any is proven, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes. Indeed the State must lead by its own example of honor, dignity and uprightness.

Here, it is undisputed that the inaction of the Collector of Customs of Manila for nearly six (6) years on the protests seasonably filed by the petitioner has caused the latter to immediately resort to the CTA. The petitioner did so on the mistaken belief that its claims are governed by the rule on quasi-contract or solutio indebiti which prescribes in six (6) years under Article 1145 of the New Civil Code.

This belief or contention of the petitioner is misplaced. In order for the rule on solutio indebiti to apply it is an essential condition that petitioner must first show

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> *that its payment of the customs duties was in excess of what was required by the law at the time when the subject sixteen (16) importations of milk and milk products were made. Unless shown otherwise, the disputable presumption of regularity of performance of duty lies in favor of the Collector of Customs.*
>
> *In the present case, there is no factual showing that the collection of the alleged overpaid customs duties was more than what is required of the petitioner when it made the aforesaid separate importations. There is no factual finding yet by the government agency concerned that petitioner is indeed entitled to its claim of overpayment and, if true, for how much it is entitled. It bears stress that in determining whether or not petitioner is entitled to refund of alleged overpayment of customs duties, it is necessary to determine exactly how much the Government is entitled to collect as customs duties on the importations. Thus, it would only be just and fair that the petitioner-taxpayer and the Government alike be given equal opportunities to avail of the remedies under the law to contest or defeat each other's claim and to determine all matters of dispute between them in one single case. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if truly proven, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."*

Consequently, despite the absence of a ruling on its protests from both the Collector of Customs and the Commissioner of Customs, the Supreme Court in the *Nestle Case* remanded the same before the Court of Tax Appeals for factual finding. Concomitantly, We find that the Court in Division did not err in taking cognizance of the case and in proceeding to try the case for factual finding.

As to the findings of this Court's Division, after careful scrutiny of the arguments and issues presented before the Court *En Banc*, We find that the same have already been discussed and threshed out in the assailed Decision dated April 5, 2017, and Resolution dated October 10, 2017. To reiterate, respondent PAL complied with the three (3) requisites to be exempt from all taxes under Section 13[16] of PD No. 1590[17].

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[16] 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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Pursuant to Section 13 of PD No. 1590, in order for petitioner to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provlslons of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2o/o) 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**:

xxx xxx xxx.

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

[17] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES

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PAL's compliance with the first requisite is undisputed. As to the second requisite, We find that the Court in Division correctly ruled as follows:

> ***"Second Requisite: Imported Jet A-1 fuel must be for use in its Transport and Non-Transport Operations***
>
> *To prove the fact of importations of Jet A-1 fuel, petitioner submitted its Bills of Lading, Commercial Invoices, and Import Declarations. As regards the question of whether such imported Jet A-1 fuel was used for petitioner's transport and non-transport operations and other activities incidental thereto, petitioner submitted ATRIGs and presented Mr. Elvis A. Yao as witness. In his Judicial Affidavit, Mr. Yao made the following statements:*
>
> *"Q2: What is your present occupation?*
>
> *A: I am the Senior Assistant Vice President - Fuel Management Department of Philippine Airline, Inc. ("PAL").*
>
> *Q3: Since when have you been such Senior Assistant Vice President?*
>
> *A: Since 1997*
>
> *Q4: Can you mention some of your more important functions?*
>
> *A: I am in charge of the procurement both by importation and by local purchase, of aviation fuel also known as Jet A-1 fuel, for both the international and domestic operations of PAL. Because of this, I am familiar with relevant documents, the BIR Rulings and Government Certification's affecting PAL's importation of Jet A-1 fuel.*
>
> *xxx xxx xxx.*
>
> *Q5: Do you remember shipments of Jet A-1 aviation fuel imported by PAL which arrived at Pinamucan, Batangas on 23 April 2010 and 27 June 2010?*
>
> *A: **Yes, we imported these Jet A-1 aviation fuel for use in PAL's transport operations**." (Emphasis supplied)*

There is no question that ATRIGs provide prima facie proof, as well as the testimony of the witness, that the

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imported Jet A-1 fuel are to be used for respondent's transport and non-transport operations, and other activities incidental thereto. There is neither evidence to prove that the imported Jet A-1 fuel are not fully used nor actually used for respondent's transport and non-transport operations. Considering that petitioners presented no controverting evidence to prove otherwise, the said respondent PAL's ATRIG and testimonies of witnesses have sufficiently proven the second requisite.

Likewise, there was compliance with the third requisite. We find that the Court in Division correctly ruled as follows:

> ***"Third Requisite: Imported Articles must not be Locally Available in Reasonable Quantity, Quality or Price***
>
> *To prove that the imported aviation fuel is not locally available in reasonable quantity, quality or price, petitioner presented certifications from the Air Transportation Office (ATO), now the CAAP. A review of the ATO Certifications shows that the ATO interposed no objections to the importations made. Said ATO Certifications state:*
>
> > *'TO WHOM IT MAY CONCERN:*
> >
> > *This is to certify that the Authority interposes no objection for importation of Jet A-1 (Aviation Fuel) under B/L No. x x x covered by Invoice No. x x x. This is not locally available (in reasonable quantity, quality and price) but is necessary /incidental for the operation of Philippine Airlines.'*
>
> *Petitioner also made a comparison between total refinery production and the total industry petroleum products demand, specifically of jet fuel or kerosene, and concluded that the demand outweighed the local refinery production, on the basis of the table on Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April 14, 2011 from the DOE.*
>
> *xxx xxx xxx.*
>
> *In determining Total Local Available Supply, the sum of the Inventory (Beginning), Production Local and Importation were considered. Thus, the Total Local*

Available Supply of all three kinds of fuels for the year 2010 exceeded the demand.

However, in Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs[18], this Court has previously held that importations are excluded in determining locally available fuel. xxx

xxx xxx xxx

Given the foregoing, a reproduction of the table above that does not include Importations as an addend in computing the Total Local Available Supply would yield different results, to wit:

	2010		
DETAILS	***Jet Fuel***	***Kerosene***	***Kero-Jet***
Inventory(Beginning)	*577*	*321*	*898*
Production Local	*6,103*	*1,067*	*7,190*
Importation	*3,519*	*289*	*3,808*
Total Local Available Supply	***6,680***	***1,388***	***8,088***
Demand	***9,617***	***1,159***	***10,776***
Export	*59*		*59*
+(-) Local Available Supply vs. Demand	*582*	*538*	*1,061*

As can be seen above, in the case of Jet Fuel for the year 2010, the Demand in the amount of 9,617 MB clearly exceeds the Total Local Available Supply of 6,680 MB. As the Jet-A1 fuel petitioner imported was not locally available in reasonable quantity, this gives rise for petitioner's entitlement to the tax exemption because it is sufficient for petitioner to be able to prove even just one qualification."

xxx xxx xxx.

xxx,[P]etitioner also proved the unavailability of locally supplied Jet A-1 fuel at reasonable price. In Mr. Tiaoqui's testimony on June 11, 2012, he stated that Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) are now the only two (2) local refiners in the Philippines, as Caltex had closed down its refinery. Those two corporations, therefore, are the only possible sources of locally supplied aviation fuel whose prices are to be used in benchmarking.

Both court-commissioned ICPAs, Ms. Dabalos and Mr. Landicho, came to the conclusion that based on the

[18] CTA Case Nos. 8039, 8069, 8104 & 8113, July 1, 2016.

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comparison of the cost of importation of Jet A-1 fuel and the cost of domestic purchases of Jet A-1 fuel using the price quotations issued by Petron and Shell, the cost per liter of importation of Jet A-1 fuel for the subject period is consistently lower than the cost of Jet A-1 fuel if purchased locally from either Petron or Shell.

Ms. Dabalos' findings included the following:

> *'The cost per liter of importation of aviation turbo jet fuel or Jet A -1 per liter for the period from April and June 2010 (relating to Petitioner's payments of Specific Taxes for the period from May and July 2010) is consistently lower than the cost of aviation turbo jet fuel or Jet A-1 if purchased locally from Petron Corporation and/ or Pilipinas Shell Petroleum Corporation (PSPC). Based on our comparisons,* ***by importing rather than purchasing locally from either Petron or PSPC, Petitioner was able to save P126,252,129.46 and P159,254,152.60, respectively on said importations.*** *(Emphasis supplied)'*

Mr. Landicho arrived at similar findings as well. He concluded:

> *'x x x [T]he costs per liter of importation of aviation turbo jet fuel or Jet A-1 fuel for the months of April 2010 and June 2010 are consistently lower than the costs of aviation turbo jet fuel or Jet A-1 fuel if purchased locally either from Petron Corporation or Pilipinas Shell Corporation. Had PAL purchased locally from Petron Corporation the total volume of 37,356,715 liters of aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010, it would have cost PAL an additional PhP126,252,129.46 (Exhibit No. "QQQQ"). Likewise, had PAL purchased locally from Pilipinas Shell Petroleum Corporation the total volume of 37,356,715 liters of aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010, it would have cost PAL an additional PhP342,461,205.36 (Exhibit No. "RRRR"). Clearly the costs of importing aviation turbo jet fuel or Jet A-1 fuel during the months of April 2010 and June 2010 is consistently lower than purchasing them locally either from Petron Corporation or Pilipinas Shell Petroleum Corporation. (Emphasis supplied)'*

In sum, the petition has no merit. There is no compelling reason to disturb the findings and conclusions of the Court in Division as they are supported by the evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated April 5, 2017, rendered by the Third Division of this Court in CTA Case No. 8495, and its Resolution dated October 10, 2017 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

I maintain my Dissenting Opinion dated April 5, 2017
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice