REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 7665

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PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 7713

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 1 7 2012
2:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court are the consolidated cases filed by petitioner, seeking the refund of the total amount of P4,469,199.98 allegedly representing specific taxes which were erroneously collected from July 2005 to February 2006, broken down as follows:

CTA CASE NO.	DATE OF PAYMENT	AMOUNT OF CLAIM
7665	July 29, 2005	P 180,971.73
	August 15, 2005	625,000.00
7713	December 28, 2005	170,044.25
	January 19, 2006	3,320,231.00
	February 24, 2006	172,953.00
	TOTAL	P4,469,199.98

Petitioner Philippine Airlines, Inc. is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with its principal office at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila.[1]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC), as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Also named as respondent is the Commissioner of Customs (BOC) who is the chief of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended. Respondent COC has his office address at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

[1] Par. 1, Facts, Consolidated Joint Stipulation of Facts and Issues (CJSFI), docket, p. 249

On June 11, 1978, petitioner was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries by Presidential Decree (P.D.) No. 1590.[2]

On January 1, 2005, Republic Act (RA) No. 9334 took effect. Section 6 of RA No. 9334 provides:[3]

> "SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
>
> (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or

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[2] Par. 4, Facts, CJSFI, docket, p. 250
[3] Par. 5, Facts, CJSFI, docket, p. 250

> created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

In view of the said provision, and despite the exemption granted in favor of petitioner under its franchise, petitioner's importations were subjected to excise tax under Sections 142(B) and 145(C)(1) of the NIRC of 1997, as amended. Petitioner paid under protest the excise taxes due on the said importation, detailed as follows:

ARTICLES	IMPORT ENTRY NO.	DATE OF ARRIVAL	DATE OF PAYMENT	AMOUNT PAID
Table wines	95709302	June 15, 2005 (Exh. J-2)	July 29, 2005 (Exh. J-1)	P 180,971.73
Salem cigarettes	95709293	March 16, 2005 (Exh. I-2)	August 15, 2005 (Exh. I-1)	625,000.00
Australian wines	94846035	November 19, 2005 (Exh. O-1)	December 28, 2005 (Exh. O-4)	170,044.25
Inflight Materials Vodka Sky	91869111	August 7, 2005 (Exh. P-1)	January 19, 2006 (Exh. P-9)	3,320,231.00
Inflight Materials Camus XO Superieur	91869014	August 11, 2005 (Exh. P-2)		
Inflight Materials Whisky	91933563	August 21, 2005 (Exh. (P-3)		
Inflight Materials Cigarettes	91934193	August 18, 2005 (Exh. P-4)		
Inflight Materials Wine	92127305	September 5, 2005 (Exh. P-5)		

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Inflight Materials Jack Daniels Whisky Chivas Regal Whisky Royal Salute Martell VSOP Martell XO	92127524	September 3, 2005 (Exh. P-6)		
Inflight Materials Winston Cigarettes	92127515	September 3, 2005 (Exh. P-7)		
Australian wines	95709311	January 28, 2006 (Exh. Q-1)	February 24, 2006 (Exh. Q-4)	172,953.00

Thereafter, petitioner filed before the Commissioner of Internal Revenue three (3) written claims for refund on January 18, 2007 for excise taxes which were alleged to have been erroneously paid on July 29, 2005[4], August 15, 2005[5] and December 28, 2005[6].

On January 18, 2007, another two (2) written claims for refund were filed by petitioner with the Commissioner of Internal Revenue for excise taxes alleged to have been erroneously paid on January 19, 2006[7] and February 24, 2006[8].

The Commissioner of Internal Revenue failed to act however on the said administrative claims for refund. Hence, petitioner filed the instant Petitions for Review on July 30, 2007 and December 21, 2007; which were docketed as CTA Case No. 7665 and CTA Case No. 7713, respectively.

Respondents filed their Answers and interposed the following Special and Affirmative Defenses:

[4] Exhibit "J"
[5] Exhibit "I"
[6] Exhibit "O"
[7] Exhibit "P"
[8] Exhibit "Q"

CTA Case No. 7665

"5. She reiterates and pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.

7. Taxes remitted to the government are presumed to have been made in the regular course of business and in accordance with the provision of law.

8. Respondent Commissioner of Internal Revenue is not a proper party-in-interest. While the NIRC of 1997, as amended, provides for the imposition of excise taxes on wines and cigarettes under Sections 142 and 145 of the same NIRC, but by virtue of the delegation and authority to collect excise taxes on importation to the Bureau of Customs (BOC) through an Authority to Release Imported Goods (ATRIG, or BIR Form No. 1918) issued by the former and addressed to the latter, and in accordance with Section 12 (a) of the NIRC, respondent Commissioner of Internal Revenue, should not be impleaded as a party-in-interest. Taxes collected by the BOC on imported articles beginning year 2002 are accounted for as BOC's own collections and not of BIR's. Both agencies of the government are assigned respective revenue goals annually. Both also adopt extensive measures and programs to cope with the mandate of the law in meeting revenue targets. It will not be in consonance with the principle of *solutio in debiti*, not to mention justice and equity, to later direct the BIR to issue tax refund or tax credit certificate in favor of petitioner, assuming petitioner could prove entitlement thereto after trial, when in fact the subject matter of refund claims were remitted and accounted for in favor of the BOC's account.

9. In an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because 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. An exemption from common burden cannot be permitted to exist upon vague implications.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."[9]

CTA Case No. 7713

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P3,663,228.25 being claimed by petitioner as alleged specific taxes paid on 28 December 2005, 19 January 2006 and 24 February 2006 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. The petition for review was filed out of time. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run of 28 December 2005, 19 January 2006 and 24 February 2006, the date when it filed its administrative claims for refund. The said period expired on 26 April 2006, 18 May 2006 and 23 June 2006. Hence, the 30-day period within which to file the petition for review before this Honorable Court expired on 26 May 2006, 17 June 2006 and 23 July 2006. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

The instant case involves a claim for refund or tax credit of alleged specific taxes (VAT and excise) hence, Section 112 (D) of the NIRC of 1997 should apply as regards the prescriptive period for filing a claim for refund.

First, distinctions should be made in the application of Sections 112 (D) and 229 of the NIRC of 1997. Section 112 (D) specifically refers to refunds or tax credits of 'creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that said input tax has not been applied against output tax', while Section 229 of the same Code refers to 'any national

[9] Docket, pp. 144-146

internal revenue taxes alleged to have been erroneously or illegally assessed or collected.'

Second, Section 112 (D) provides for a specific period within which the claim for refund or tax credit of input VAT shall be made. It is clearly provided in said Section that in case of failure on the part of the Commissioner to act on the application, the claimant only has thirty (30) days from the expiry of the 120-day period within which to file the petition for review before the Honorable Court. There is no such specific period provided under Section 229 which merely provides for two (2) years from the date of payment of any national internal revenue tax.

Clearly, from the foregoing, Section 112 (D) is specific as to the prescriptive period for claiming refunds of excess or unutilized VAT.

In the case at bar, petitioner seeks for a refund of its alleged erroneously paid VAT. Hence, the 120-day period starts to run on 28 December 2005, 19 January 2006 and 24 February 2006, the date when it filed its administrative claims for refund. The said period expired on 26 April 2006, 18 May 2006 and 23 June 2006. Thus, the 30-day period within which to file the petition for review before this Honorable Court expired on 26 May 2006, 17 June 2006 and 23 July 2006. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.'

In the case of **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 24 April 2007**, the Supreme Court ruled thus:

> 'From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings **but inaction as well of the Commissioner of Internal Revenue**. The decisions, ruling or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, **or within 30 days after the expiration of the 180-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its**

> **assessments**. Such period is not merely directory but **mandatory** and it is beyond the power of the courts to extend the same. (Emphasis Supplied)
>
> xxx'

Although the above-decision is based on the provision of Section 228 of the Tax code, it may be applied to Section 112 (D) of the same Code on the basis of substantive justice and uniformity in the rules of taxation.

It bears stressing that the mandate under the said Section in filing an appeal before this Honorable Court, if not strictly complied with, would render the same inutile and impotent. It would again open the floodgates of confusion and chaos in the interpretation and implementation of filing judicial claims for refund, much like what happened to Section 228 of the NIRC of 1997.

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."[10]

After the filing by the parties of their Pre-trial Briefs in these two cases, CTA Case No. 7713 was consolidated with CTA Case No. 7665 on June 30, 2008.[11] The parties were also ordered to file a Consolidated Joint Stipulation of Facts and Issues.

On September 8, 2008, the parties filed their Consolidated Joint Stipulation of Facts and Issues[12], which was approved in a Resolution[13] dated September 10, 2008. In the same Resolution, the pre-trial was considered terminated.

[10] Docket, pp. 161-164
[11] Resolution dated June 30, 2008, docket p. 220
[12] Docket, pp. 249-254
[13] Docket, p. 256

During trial, petitioner presented and formally offered its documentary and testimonial evidence. In a Resolution dated April 29, 2011, Exhibits "A" to "QQ-2" were admitted as part of petitioner's evidence except Exhibits "C", "G", "JJ-1", "JJ-3", "JJ-5", "JJ-7", "JJ-8", "JJ-10", "H", and "H-1".[14]

On the other hand, respondent Commissioner of Internal Revenue's counsel manifested that she has no witness to present and that she is submitting the case for decision based on the pleadings.[15]

On September 6, 2011[16], September 13, 2011[17] and October 14, 2011[18], petitioner and respondents Commissioner of Internal Revenue and Commissioner of Customs, respectively, filed their Memoranda. Thereafter, the case was submitted for decision on November 8, 2011.[19]

The parties submitted the following issues for this Court's disposition:

> "1. Is petitioner no longer entitled to tax exemption, having become a private entity?
>
> 2. Did Section 6 of R.A. No. 9334 repeal the tax exemption granted petitioner PAL by Sections 13 and 24 of P.D. 1590?
>
> 2.1 Is PAL hence entitled to the refund of the following amount of excise taxes it paid under protest for imported tobacco and liquor products shipped in for its commissary supplies for internal consumption?
>
> a. PHP180,971.73 specific taxes paid under protest on July 29, 2005;
>
> b. PHP625,000 specific taxes paid under protest on August 15, 2005;

[14] Docket, pp. 498-500
[15] Resolution dated August 17, 2011, docket, p. 541
[16] Docket, pp. 542-561
[17] Docket, pp. 562-572
[18] Docket, pp. 584-603
[19] Resolution dated November 8, 2011, docket, p. 606

c. PHP170,044.25 specific taxes paid under protest on December 28, 2005;

d. PHP3,320,231.00 specific taxes paid under protest on January 19, 2006; and

e. PHP172,953.00 specific taxes paid under protest on February 24, 2006;

or a total amount of PHP4,469,199.98.

3. Granting petitioner remains exempt under P.D. No. 1590, who between the Commissioner of Internal Revenue and Commissioner of Customs is the proper party defendant in this case?

3.a. Granting the Commissioner of Internal Revenue is the proper party defendant,

a) Did petitioner comply with the governing rules and regulations for its administrative claim of refund?

b) Did petitioner file its claim for refund within the prescriptive period allowed by law;

3.b. Granting the Commissioner of Customs is the proper party defendant, should the petition be dismissed for lack of cause of action due to petitioner's failure to file a formal claim with the Bureau of Customs and hence exhaust its administrative remedies?"[20]

The Court shall resolve first the third stipulated issue and its sub-issues.

Respondent Commissioner of Customs avers that it cannot be made to answer for the refund of excise taxes it collected from petitioner on behalf of the Commissioner of Internal Revenue considering that it merely acted as a collecting agent. Furthermore, its act enjoys the presumption of regularity, having effected collection in such official capacity.

[20] Docket, pp. 251-252

To address the issue, the Court finds it relevant to quote Section 2 of Rule 3 of the Revised Rules of Court, which provides:

> "SEC. 2. *Parties in interest.* – xxx every action must be prosecuted and defended in the name of the real party in interest."

Significantly, in the case of *Walter Ascona Lee, et al. v. Hon. Manuel V. Romillo, Jr., et al.*[21], the High Court said:

> (A) real party in interest-plaintiff is one who has a legal right while a **real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former**. (*Emphasis supplied*)

The kind of tax subject of the instant Petitions for Review is excise tax, which is imposed under Title VI of the NIRC. Being an internal revenue tax, the power to collect excise taxes is vested on the Commissioner of Internal Revenue. As for respondent Commissioner of Customs, he was the one who collected from petitioner the excise taxes subject for refund as the constituted agent of the CIR. Accordingly, both the CIR and the COC are real parties in interest in this case. However, it can be noted that the COC may be named as a defendant in this case only in his capacity as the constituted agent of the CIR in accordance with Section 12(a) of the NIRC of 1997, as amended.

Now as to the determination of whether petitioner complied with the procedures governing the proper filing of administrative claims for refund, respondent CIR argues that there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund as mandated under Section 112(C) of the NIRC of 1997, as amended. On the

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[21] G.R. No. L-60937, May 28, 1988, 161 SCRA 589

part of respondent COC, he contends that petitioner failed to file the corresponding written claim for refund with the COC; thus, making the present action premature. Respondent COC believes that petitioner's non-observance of the doctrine of exhaustion of administrative remedies deprives petitioner of a cause of action and justifies the dismissal of the petitions.

The Court is not persuaded.

It must be emphasized that Section 112(C) of the NIRC of 1997, as amended, only applies to refund of input VAT and not to refund of excise taxes, which is the subject matter of the instant Petitions for Review. The said provision does not support respondent's allegation that petitioner failed to comply with a condition precedent prior to the institution of its Petitions for Review.

The applicable provisions instead are Sections 204 and 229 of the NIRC of 1997, as amended, which provide for the procedure for the refund or recovery of erroneously collected internal revenue taxes. Sections 204(C) and 229 of the NIRC of 1997, as amended read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing

an overpayment shall be considered as a written claim for credit or refund."

"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, 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." *(Emphases supplied)*

Notably, in the case of *Republic of the Philippines vs. Hon. Ramon S. Caguioa, et al.*[22], the Supreme Court opined that the relief of the taxpayer in case of excise taxes erroneously or illegally collected is the refund or recovery of taxes as provided under Sections 204 and 229 of the NIRC. The pertinent portion of the High Court's Decision reads:

"Besides, private respondents are not altogether lacking an appropriate relief under the law. As petitioners point out in their Petition before this Court, private respondents may avail themselves of a tax refund or tax credit should R.A. No. 9334 be finally declared invalid.

Indeed, **Sections 204 and 229 of the NIRC provide for the recovery of erroneously or illegally collected taxes which would be the nature of the excise taxes paid by private respondents should Section 6 of R.A. No. 9334 be declared unconstitutional or invalid**." (*Emphasis supplied*) Jc

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[22] G.R. No. 168584, October 15, 2007, 536 SCRA 193

Clearly, Sections 204 and 229 of the NIRC of 1997, as amended, and not Section 112(C) of the same Code, govern the procedure for the filing of administrative claim for refund of erroneously or illegally paid excise taxes.

Therefore, on the basis of Sections 204 and 229 of the NIRC of 1997, as amended, the Court shall proceed to ascertain whether petitioner complied with the procedure for filing its administrative claims for refund, which will also touch on the timeliness of the filing of both administrative and judicial claims for refund.

Sections 204 and 229 of the NIRC of 1997, as amended, provide that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected until a claim for refund or credit has been duly filed with the BIR Commissioner and that 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. In other words, the provisions only require that both the administrative and judicial claims for refund must be filed within two years from the date of payment of the tax.

Records would show that petitioner on different dates paid excise taxes for its importation of commissary and catering supplies and filed the corresponding administrative and judicial claims for refund for such paid taxes, detailed as follows:

IMPORT ENTRY NO.	AMOUNT PAID	DATE OF PAYMENT	DATE OF FILING OF THE ADMINISTRATIVE CLAIM FOR REFUND	DATE OF FILING OF THE JUDICIAL CLAIM FOR REFUND	LAST DAY FOR FILING BOTH CLAIMS FOR REFUND
95709302	P180,971.73	July 29, 2005	January 18, 2007	July 30, 2007	July 30, 2007*

		(Exh. J-1)	(Exh. J)		
95709293	625,000.00	August 15, 2005 (Exh. I-1)	January 18, 2007 (Exh. I)	July 30, 2007	August 15, 2007
94846035	170,044.25	December 28, 2005 (Exh. O-4)	January 18, 2007 (Exh. O)	December 21, 2007	December 28, 2007
91869111 91869014 91933563 91934193 92127305 92127524 92127515	3,320,231.00	January 19, 2006 (Exh. P-9)	January 18, 2007 (Exh. P)	December 21, 2007	January 19, 2008
95709311	172,953.00	February 24, 2006 (Exh. Q-4)	January 18, 2007 (Exh. Q)	December 21, 2007	February 24, 2008

*July 29, 2007 fell on a Sunday

As can be seen in the above table, both the administrative and judicial claims for refund were filed within the two-year prescriptive period provided by law.

Anent the issue regarding the filing of an administrative claim for refund with the COC, it must again be pointed out that the power to decide on claims for refund of internal revenue taxes is vested on the CIR as stated in Section 4 of the NIRC of 1997, as amended, to wit:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Law and to Decide Tax Cases.* xxx
>
> **The power to decide** disputed assessments, **refunds of internal revenue taxes**, xxx **is vested in the Commissioner**, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." (*Emphasis supplied*)

Since it is already established that petitioner complied with the procedure for filing its administrative and judicial claims for refund with the CIR, the filing of a similar claim with the COC, which is merely a constituted agent of the CIR, is deemed unnecessary.

After addressing the third stipulated issue and its sub-issues, the Court shall now proceed to resolve the remaining issues submitted for this Court's disposition.

Petitioner claims that it is still entitled to tax exemption despite the fact that it is now a private entity, and that Section 6 of RA No. 9334 did not repeal the tax exemption granted to petitioner by Sections 13 and 24 of P.D. No. 1590.

Respondent COC counters that petitioner is no longer entitled to tax exemption after becoming a private entity. Respondent COC maintains that a reading of P.D. No. 1590 reveals that petitioner's franchise was granted when it was still a government-owned and controlled corporation. He pointed out that the first whereas clause of P.D. No. 1590 states that, "WHEREAS, the ownership, control, and management of Philippine Airlines, our national flag carrier, have been reacquired by the Government." Thus, it can be reasonably inferred that the tax exemption under Section 13 was extended to petitioner in consideration of its former status as a government-owned and controlled corporation. Having been acquired by private investors in the late 1990s, petitioner cannot now assert the continued enjoyment of this privilege, especially in light of the modification of its franchise by RA No. 9334.

Furthermore, respondent CIR contends that P.D. No. 1590, particularly, Section 13 thereof had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005. Respondent CIR specifically mentioned of the portion of Section 131 of the NIRC, as amended by RA No. 9334 which employed the clear and all-encompassing phrase, "The provision of any special or general law to the contrary notwithstanding". According to respondent CIR, such phrase would show that RA No. 9334 repeals any inconsistent provision, whether contained in general or special statues like

P.D. No. 1590. Also, Section 6 of RA No. 9334 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction; without any proviso exempting petitioner's importation of said wines and tobacco products for its commissary and catering supplies.

We rule in favor of petitioner.

As aptly stated by petitioner in its Memorandum, the Supreme Court already ruled in the case of *Commissioner of Internal Revenue vs. Philippine Airlines*[23] that despite the fact that petitioner has become a private entity, it continues to enjoy the very same rights and privileges under the terms and conditions stated in its charter. The applicable parts of the High Tribunal's ruling read:

> "That the Legislature chose not to amend or repeal Presidential Decree 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter."

Consequently, the privatization of petitioner is of no moment considering the legislature's intent to let petitioner continue enjoying the very same rights and privileges under its charter even as a private corporation.

On the issue of whether or not Section 6 of RA No. 9334 repealed the exemption granted to petitioner under P.D. No. 1590, the Court hereunder quotes Section 6 of RA No. 9334:

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

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[23] G.R. No. 180066, July 7, 2009, 592 SCRA 237

'SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(B) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory." Je

While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, "The provision of any special or general law to the contrary notwithstanding", such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[24]

Equally noteworthy is the fact that Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be

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[24] *Leonardo Tan, et al. vs. Socorro Y. Pereña*, G.R. No. 149743, February 18, 2005, 452 SCRA 53

considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.[25]

Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise.

Section 13 of P.D. No. 1590 is quoted hereunder for ready reference:

> "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:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport 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:
>
> (1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, Je

[25] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009, 592 SCRA 237

> manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;
>
> (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 transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;" (*Emphasis supplied*)

In other words, petitioner may be exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies and other articles, supplies, or materials upon payment by the grantee under either of the above-mentioned alternatives, provided that:

1. Such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

2. They are not locally available in reasonable quantity, quality or price.

Let it be noted that Section 22 of RA No. 9337, which took effect on July 1, 2005, abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and value-added tax (VAT). Nevertheless, the same Section provides that petitioner shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement. Section 22 of RA No. 9337 states as follows:

> "SECTION 22. *Franchises of Domestic Airlines.* - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

Accordingly, petitioner is only left with one option, which is to pay for its basic corporate income tax; the payment of which shall be in lieu of all taxes with the exception of corporate income tax and VAT, and subject to certain conditions as may be provided under petitioner's charter.

In compliance with the foregoing, petitioner was able to establish that it opted to pay its basic corporate income tax for the fiscal year ending March 31, 2006 as evidenced by its Annual Income Tax Return[26] for the said taxable year and eFPS Payment Details[27] showing, among others, its payment of the

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[26] Exhibits "HH" and "HH-1"
[27] Exhibit "HH-2"

amount stated in its Annual Income Tax Return for the fiscal year ending March 31, 2006.

On the other hand, as to whether or not the subject imported articles are imported for the use of petitioner in its transport and non-transport operations and other activities incidental thereto, a perusal of the Authority to Release Imported Goods issued by the CIR would show that the imported articles subject of the instant petitions will be used exclusively for international inflight consumption.

Likewise, in order to prove that the subject imported articles are not locally available in reasonable quantity, quality or price, petitioner presented the testimony of Mr. Andy Y. Li, as Vice-President-Corporate Logistics and Services Department of petitioner. In his testimony, Mr. Li stated that importation of the subject articles was cheaper for petitioner than if it purchased the same locally. This is further supported by a copy of its letter addressed to Atty. Oscar C. Ventanilla, Jr.[28], which contained a tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally, invoices issued to PAL for its purchase of the subject articles[29] and Price List for 2005 of Duty-Free Philippines[30] corresponding to the same articles subject of this claim for refund. The said tabulation is hereunder reproduced:

PRODUCT	PAL'S UNIT PRICE	DFP'S UNIT PRICE
50 cases Salem Cigarettes arrived March 16, 2005	USD 5.40/ ream	USD 13.00/ream
1,151 cases Table Wines arrived on June 15, 2005	Euro 1.40/btl (or equivalent to USD 1.82/btl)	USD 6.00 to USD 14.00/btl

[28] Exhibit "JJ"
[29] Exhibits "JJ-2", "JJ-4", "JJ-6", "JJ-9", "JJ-11", and "JJ-11-a"
[30] Exhibit "KK"

1,673 cartons Australian Wines arrived on Nov. 19, 2005 -White Wine -Red Wine	USD 1.95/btl. USD 1.80/btl	USD 15.00 to USD 19.00/btl.
2 packages Vodka Sky arrived on August 7, 2005	USD 2.90/btl	USD 6.00/btl.
26 packages Camus XO Superieur arrived on August 11, 2005	USD 35.00/btl.	USD74.00/btl.
9 packages of Whisky arrived on August 21, 2005 -Chivas Regal -Royale Salute -Jack Daniels	USD 12.50/btl USD 51.00/btl. USD 9.00/btl.	USD 27.00/btl. USD 96.00/btl. USD24.00/btl.
4 packages of Cigarettes arrived on August 18, 2005 -Salem Menthol	USD 5.40/ream	USD 13.00/ream
195 packages of wine arrived on September 5, 2005	USD 3.25/btl.	USD 17.00/ btl.
6 packages of Whisky arrived September 3, 2005 -Jack Daniels -Chivas Regal -Royale Salute -Martel VSOP -Martel XO	USD 9.00/btl. USD 12.00/btl. USD 51.00/btl. USD 16.00/btl. USD 55.00/btl.	USD 24.00/btl. USD 27.00/btl. USD 96.00/btl. USD 40.00/btl. USD 112.00/btl.
2 packages Winston Cigarettes arrived on September 3, 2005	USD 5.40/ ream	USD 13.00/ream
1,700 cartons Australian Wines arrived on January 28, 2006 -Red Wine -White Wine	USD 1.80/btl. USD 1.95/btl.	USD 15.00 to USD 19.00/btl

It was also mentioned in the said letter that Duty-Free Philippines does not have wines that meet petitioner's price budget and required quality. In addition, the average price difference of the cost of imported wines, liquors and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by petitioner.

After a careful study of the pieces of evidence presented by petitioner, this Court finds the same substantial to establish that petitioner opted to pay its basic corporate income tax liability for the fiscal year ending March 31, 2006; that the articles imported by petitioner are intended to be used in its transport and non-transport operations and other activities incidental thereto; and that the imported articles are not locally available in reasonable quantity, quality or price. Clearly, petitioner complied with the requirements provided under its charter; and thus, entitled to exemption from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all its importations of commissary and catering supplies.

Now, to be entitled to the amount of refund claimed, petitioner must also show that it paid the total amount of P4,469,199.98, which allegedly represents the excise tax erroneously paid. To support its claim, petitioner submitted copies of official receipts issued by the Bureau of Customs and the Authority to Release Imported Goods, the contents of which are detailed as follows:

ARTICLES	AUTHORITY TO RELEASE NO.	OFFICIAL RECEIPT NO.	DATE OF PAYMENT	AMOUNT OF EXCISE TAX PAID
Table wines	55248 (Exh. J-4)	125598243 (Exh. J-1)	July 29, 2005	P 180,971.73
Salem cigarettes	55920 ((Exh. I-4)	126156021 (Exh. I-1)	August 15, 2005	625,000.00
Australian wines	58454 (Exh. O-3)	129698527 (Exh. O-4)	December 28, 2005	170,044.25
Inflight Materials Vodka Sky	56869 (Exh. P-10)	129519363 (Exh. P-9)	January 19, 2006	3,320,231.00
Inflight Materials Camus XO Superieur	56846 (Exh. P-11)			
Inflight Materials Whisky	56844 (Exh. P-12)			
Inflight Materials Cigarettes	56830 (Exh. P-13)			
Inflight Materials Wine	57254 (Exh. P-14)			
Inflight Materials Jack Daniels Whisky Chivas Regal Whisky Royal Salute Martell VSOP Martell XO	57265 (Exh. P-15)			
Inflight Materials Winston Cigarettes	57290 (Exh. P-16)			
Australian wines	72960 (Exh. Q-3)	130054251(Exh. Q-4)	February 24, 2006	172,953.00
TOTAL				P4,469,199.98

An examination of the evidence presented would show that the amount of the excise tax liability (under Sections 141, 142, 145 and 146 of the NIRC of 1997, as amended) subject of the instant claim for refund as stated in the Authority to Release Imported Goods corresponds to the amount of taxes which petitioner paid for the release of the subject imported articles as evidenced by the official receipts issued by the Bureau of Customs with the total amount of P4,469,199.98. It must also be noted that the Authority to Release Imported Goods submitted by petitioner, which states, among others, that the payment of the amount of tax liability shall effect the release of the imported articles, bears stamps indicating that the imported articles subject of the instant Petition were subsequently released. With the official receipts issued by the Bureau of Customs and the subsequent release of the subject imported articles, it is clear that petitioner paid the total amount of P4,469,199.98 representing erroneously paid excise tax.

It is true that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[31] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[32] Nevertheless, in this case, petitioner was able to discharge such burden of proof. Thus, the instant claim for refund of petitioner's erroneously paid excise tax in the amount of P4,469,199.98 should be granted.

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[31] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997, 230 SCRA 459

[32] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87

WHEREFORE, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED TO REFUND** in favor of petitioner the amount of P4,469,199.98, representing petitioner's erroneously paid excise tax for the period covering July 2005 to February 2006.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice