REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE AIRLINES INC., *Petitioner,*	**CTA *EB* NO. 2730** (CTA Case No. 9979)
-versus-	Present: **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 14 2025 4:10 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner Philippine Airline Inc.'s ("PAL") Motion for Reconsideration (Re: Decision dated 08 May 2024), filed on May 29, 2024 ("Motion"),[1] together with respondent Commissioner of Internal Revenue's ("CIR") Opposition (Re: Petitioner's Motion for Reconsideration dated 29 May, 2024), filed on June 28, 2024.[2]

In its Motion, PAL emphasizes that the Court *En Banc* erred in denying the former's claim for refund of alleged illegally collected and paid under protest excise taxes amounting to Php5,847,417.35, imposed on petitioner's various alcohol products as part of its in-flight and commissary supplies. The dispositive portion of the Decision dated May 8, 2024 ("Assailed Decision")[3] states:

> **FOR THESE REASONS**, the Petition for Review, filed on February 2, 2023, is hereby **DENIED** for lack of merit. The Assailed

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[1] *Rollo*, pp. 137-154.
[2] *Id.*, at 159-168.
[3] *Id.*, at 111-124.

Decision, dated September 20, 2022, and the Assailed Resolution, dated January 12, 2023, of the Court in Division are hereby **AFFIRMED**.

The Court *En Banc* discussed in the Assailed Decision that the denial of the refund is not simply because there were two price lists presented, as the presentation of one would suffice, but because the evidence presented was not reliable. Further, the following reasons were cited as additional basis for the denial of the refund claim:

1. The price list prepared by Future Trade International was effective February 1, 2013, and there was no indication that prices were the same in 2014;

2. The Table of Comparison's pricing pertains to different years, other than 2014;

3. In the Table of Comparison, not all imported products were compared with the product's pricing offered by the local supplier, which shows that petitioner miserably failed to exert diligent effort to study the availability of local products and the reasonableness of their prices from other local suppliers;

4. The Table of Comparison failed to present a fair comparison as regards Asahi Super Dry Beer as not all factors affecting the costs of importation were fully considered in the computation.

For his part, respondent agrees with this Court's finding that the evidence presented was insufficient for petitioner's refund claim.

Now, in the instant Motion, petitioner raises various arguments which the Court *En Banc* still finds unmeritorious.

Petitioner failed to prove that the 2013 price list from Future Trade International remains effective in 2014.

Petitioner submits that its failure to provide a 2014 pricelist from Future Trade International should hold no value since the 2013 pricelist covers the period when the products were considered for importation in 2013. Further, it insists that while there is indeed an indication that the date of effectivity of the pricelist is on February 1, 2013, there is, however, no indication until when the pricelist is effective. Petitioner now urges Us to assume that the prices remained the same until an updated pricelist was provided by the supplier.

We disagree. While there is no statement as to the end of the effectivity of the provided price list, the documentary and testimonial evidence submitted by petitioner are likewise devoid of any indication regarding the applicability of the same pricelist to the subject year 2014. The Court *En Banc* cannot just plainly rely on petitioner's claim that an updated price list should have been sent by supplier should there be any changes in the 2013 prices. Mere allegation from petitioner, without confirmation from local supplier Future Trade International as regards such claim is deemed uncorroborated, thus, unacceptable to the Court *En Banc*.

Petitioner failed to present fair comparison as regards Asahi Super Dry Beer, and to exert diligent effort to study the availability of local products in reasonable quantity, quality or price.

Indeed, regardless of the inapplicability of Future Trade International's pricelist, such fact by itself should not be a reason for the disallowance of the refund claim due to the submission of another price list. However, the 2014 price list from Absolute Sales Corporation ("Absolute Sales") still proves incompetent to support the instant refund claim.

As equally observed by the Court in Division and Court *En Banc*, there is only one imported product that was compared to the price list of Absolute Sales: Asahi Super Dry Beer. It was found, however, that petitioner failed to make a fair comparison of the local price with the total costs of product's importation. As confirmed by petitioner's witness, Cheryl V. Capinpin, during her testimony, the prices for the imported products as presented in the Table of Comparison do not take into account other expenses such as transportation cost, duties, operation and other incidental expenses. Consistently, as noted by the Court in Division in the Resolution on the Motion for Reconsideration[4] and by the Court *En Banc* in the Assailed Decision,[5] petitioner used as price point for the imported product the Product Value (based on Sales Invoice) amounting to HKD12,000.00 and not the Dutiable Value (base on the IDE) of USD 2,199.70 [or HKD17,056.57, if converted] *vis-à-vis* the local price provided by Absolute Sales. Moreover, the value-added tax (VAT) for the imported product was not also considered in the Table of Comparison.

According to petitioner, as the incidental expenses were not included in the prices provided by local suppliers, there is no reason why these factors should be included in the pricing of the imported products.

The Court *En Banc* is not convinced.

[4] *Id.*, at 64-70.
[5] *Supra* note 3.

Foremost, there is no indication that the price provided by Absolute Sales excludes VAT. Petitioner implores Us to adopt the definition of "net retail price" under *Section 145 of the National Internal Revenue Code, as amended (Tax Code)*. However, We find that the "price per bottle," "price per case," or "suggested retail price" provided by Absolute Sales in its price list should not automatically be deemed tantamount to "net retail price" absent the keyword "net".

Under the Tax Code, "net retail price" means the price at which the distilled spirits is sold on retail in at least five major supermarkets in Metro Manila, excluding the applicable excise tax and VAT. The same definition was adopted by the Bureau of Internal Revenue (BIR) in *Revenue Regulations No. 17-12*.[6] Meanwhile, in the same regulations, the BIR has consistently referred to "suggested net retail price." The only time that the regulations mentioned "suggested retail price" was when it instructed local manufacturers or importers of alcohol and tobacco products to submit a sworn statement showing, among others, *suggested retail price, both gross and net of VAT and excise tax, per pack or per bottle, as the case may be.* Inevitably, We are inclined to conclude that the price per Absolute Sales price list is gross of VAT, unlike the price point for the imported products which excludes VAT.

As regards the other incidental costs, We believe that the failure to impute these in the amounts per Table of Comparison proves inaccuracy in properly showing the total cost of importing versus total cost of sourcing locally and, thus, the failure to prove non-availability of the products in the local market at a reasonable price. Delivery costs of purchasing from a local supplier could significantly differ from expenses of importing the same type of product since importation results not only to logistic expenses but also to duties and other fees before clearance from customs shall be issued. While petitioner mentioned in the instant Motion that, in some cases, the shipment of imported products are at no or minimal cost as they are shipped through PAL's own flights, this remains unsupported and uncorroborated.

All told, the foregoing findings support Our earlier conclusion that petitioner failed to present a fair comparison of prices as regards Asahi Super Dry Beer.

Meanwhile, as regards the products not found in the Absolute Sales price list, petitioner insists that the absence in the price lists of local suppliers does not negate that these articles are not locally available in reasonable quantity, quality, or price. According to petitioner, that these brands and/or volumes are not found in the price lists of other local suppliers bolsters the

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[6] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10352 and to Clarify Certain Provisions of Existing Revenue Regulations, dated December 21, 2012.

fact that the alcohol products are not available in sufficient quantity or quality in the Philippine local market.

PAL narrates that it sends out requests for price lists for the wines and liquors, as well as the quality and volume it requires as commissary and catering supplies for its international flights to different suppliers. These suppliers, in turn, would submit their price lists containing their price quotation for each wine and liquor depending on the volume PAL requires. Thus, according to petitioner, the absence of price quotations for certain wines and liquors in a given supplier's price list can only mean that the supplier does not have these products or the sufficient quantity of its products in its inventory, not to mention those who do not respond to PAL's request for price list at all.

We, again, are not convinced.

Notably, the price list and cover letter from Absolute Sales, or even Future Trade International, do not indicate that the other wines and liquors listed by PAL in its request for price list, if any, are not available from such supplier. If indeed a request was sent out by PAL, the non-availability of the other products can be expected to be mentioned by the suppliers.

Moreover, assuming that the products are indeed not offered by Absolute Sales, the conclusion that the subject wines and liquors are not available in sufficient quantity in local stocks appears to be *non sequitur*. To the Court's mind, the sufficiency of one price list could only be upheld if the list of products substantially covers most, if not all, the subject wines and liquors. Here, and to reiterate, only the price list from Absolute Sales can be duly considered by the Court *En Banc* due to non-applicability of the 2013 price list from Future Trade International. The Absolute Sales price list, however, only accounts for one product (i.e., Asahi Super Dry Beer), representing measly four percent of the imported products. Thus, absent any clear statement from other suppliers that the products sought are not available locally, the Court *En Banc* inevitably concludes that petitioner has indeed miserably failed to exert diligent effort to study the availability of local products and the reasonableness of their prices from other local suppliers.

Again, the Court *En Banc* is well-informed about the plethora of Supreme Court cases involving the petitioner for the same claim for excise tax refund related to different taxable periods. Petitioner insists that it had always presented pieces of evidence of the same kind and nature, only differing in the periods covered, thus, urges the Court *En Banc* to similarly rule in its favor.

We reiterate, however, that the departure from the favorable ruling already obtained by petitioner is due to Our finding of unreliableness of evidence presented considering the covered period of the claim. What may be deemed applicable, reliable, and relevant to one taxable period cannot be deemed automatically acceptable for a different year. The passage of time is essential considering that prices of consumable commodities consistently vary due to several factors. In which case, petitioner cannot insist that the stability of jurisprudence was ruined due to a mere "flimsy element."

The Court *En Banc* emphasizes time and again that tax refunds are construed strictly against the taxpayer, and liberally in favor of the State. Thus, the law upon which the claim of refund is made, as well as the documents presented to prove such entitlement to the refund are construed *strictissimi juris* against the taxpayer. Accordingly, it is incumbent upon the claimant to establish the factual basis of his or her claim for tax credit or refund. This petitioner failed to do.

ACCORDINGLY, petitioner's Motion for Reconsideration (Re: Decision dated 08 May 2024), is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice