REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7152

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7155

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 7235

x--x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

-versus-

CTA CASE NO. 7247

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7305

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7454

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

x---x

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

CTA CASE NO. 7518

-versus-

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

OCT 22 2014
12:47 p.m.

x -- x

D E C I S I O N

BAUTISTA, J.:

The Case

The present case is a consolidation of seven (7) Petitions for Review filed pursuant to Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals in relation to the provisions of Republic Act ("RA") No. 1125, as further amended by Republic Act No. 9282, which prays for the refund of the aggregate amount of Nine Hundred Fifty Three Million Eight Hundred Twenty Thousand Five Hundred Fifty Three and 84/100 Pesos (Php953,820,553.84), representing specific taxes paid for petitioner's importation of aviation turbo jet fuel or Jet A-l for its domestic operations from the period of February 2003 to December 2004, broken down below:

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
7152	February 04, 2003	24,624,356.78
7155	February 14, 2003	56,169,229.00
7235	March 17, 2003	11,670,600.00
	May 15, 2003	58,316,300.00
7247	April 30, 2003	17,421,685.00
	May 14, 2003	24,816,609.73
	June 05, 2003	16,129,353.00
	June 29, 2003	23,651,333.33
7305	July 19, 2003	17,519,175.00
	August 8, 2003 (Subic)	88,890,058.00
	August 8, 2003 (Batangas)	24,619,461.00
	December 05, 2003	118,216,066.00
7454	April 05, 2004	59,272,886.00
	April 24, 2004	51,002,299.00
	June 14, 2004	59,309,039.00
	July 21, 2004	42,505,184.00
	July 28, 2004	24,426,368.00
7518	August 16, 2004	29,600,360.00
	August 28, 2004	39,072,222.00
	September 02, 2004	54,080,331.00
	October 10, 2004	56,166,231.00
	November 09, 2004	56,341,407.00

The Parties[1]

Petitioner Philippine Airlines, Inc. ("PAL") is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legazpi Sr., Legazpi Village, Makati City.

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner 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 PHP3.67 per liter of volume capacity on aviation turbo jet fuel imposed by Section 148 of the National Internal Revenue of 1997, as amended ("1997 NIRC"), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs ("COC") is the Commissioner of the Bureau of Customs ("BOC"), which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise tax of PHP3.67 per liter on imported aviation turbo jet fuel imposed by Section 148 of the 1997 NIRC, as delegated and authorized by the respondent CIR through an Authority to Release Imported Goods (ATRIG) (BIR Form No. 1918) duly issued by the latter and addressed to the former, in accordance with Section 12(a) of the 1997 NIRC.

The Facts

On June 11, 1978, former President Ferdinand E. Marcos issued Presidential Decree ("PD") No. 1590 granting petitioner a franchise to establish, operate, and maintain transport services for the Carriage of passengers, mail, and property by air in and between any and all points and places throughout the Philippines, and between the Philippines and other countries.[2]

Under its franchise, petitioner had the benefit of paying either the basic corporate income tax or a franchise tax of two percent (2%) of its gross revenues, which shall be in lieu of all other taxes, duties

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[1] *Records, CTA Case No. 7152, 7155, 7235, 7247, 7305, 7454 & 7518, Consolidated Joint Stipulation of Facts and Issues* ("Consolidated JSFI"), pp. 490-491.
[2] *Id., Memorandum* filed by Commissioner of Customs ("COC") citing Section 1, Presidential Decree No. 1590, p. 1817.

and fees that maybe imposed by the State. Specifically, Section 13(b) of PD No. 1590 states:

> "(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations, provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be 'in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> 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 on 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; x x x"

On October 11, 1985, Letter of Instruction ("LOI") No. 1483 was issued, essentially withdrawing the tax exemption privilege granted to petitioner on its purchase of domestic petroleum products for use in its domestic operations.[3]

[3] *Id., Memorandum* filed by petitioner, p. 1725.

On January 29, 1999, respondent Commissioner of Internal Revenue (CIR) issued BIR Ruling No. O13-99[4] 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 non-transport 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:
>
> > 'x x x the tax exemption privilege granted to PAL on its <u>purchase of domestic petroleum products for use in its domestic operations is hereby withdrawn</u>' (underscoring supplied)
>
> 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.
>
> 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 that 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."

On September 8, 1999, the Secretary of Finance issued a Letter,[5] confirming BIR Ruling No. 013-99, to wit:

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[4] *Id., Memorandum* filed by COC citing BIR Ruling No. 013-99 dated January 29, 1999, pp. 1817-1818.
[5] *Id.*, Consolidated JSFI, p. 1725.

> "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."

On December 20, 2002, the Department of Energy ("DOE") issued a Certification to the effect that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.[6]

On January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-2003, ("2003 BIR Ruling") addressed to PAL, Cebu Air, Inc., Air Philippines Corp., and Pacific Airways Corp., the pertinent portion of which reads as follows:

> "x x x 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 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 the other airlines. Accordingly, your importations may not be given the same tax treatment as before for as long as there is such available domestic supply of petroleum products.
>
> 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."[7]

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[6] *Id.*, *Memorandum* filed by COC, *Exhibit* "A-2," p. 1818.
[7] *Id.*, Consolidated JSFI, pp. 490-499.

On the basis of BIR Ruling No. 013-99, the CIR, through the COC, assessed petitioner for specific taxes on importations of aviation fuel or Jet A-1 for use in its domestic operations.[8]

From February 2003 and December 2004, petitioners made the following importations,[9] and corresponding payments under protest of the specific tax:

Case No.	Importation Date	Tax Paid (Php)	Official Receipt	Date
7152	February 04, 2003	24,624,356.78	Equitable PCI Bank OR No. 945014A	February 21, 2003
7155	February 14, 2003	56,169,229.00	Philippine National Bank OR No. 042459AW	February 28, 2003
7235	March 17, 2003	11,670,600.00	Security Bank OR No. 1190469	April 23, 2003
	May 15, 2003	58,316,300.00	Security Bank OR No. 1190692	May 30, 2003
7247	April 30, 2003	17,421,685.00	Philippine National Bank OR No. 0050808	May 13, 2003
	May 14, 2003	24,382,106.42	Equitable PCI Bank OR No. 1684218	May 20, 2003
		434,502.31	Equitable PCI Bank OR No. 176604	May 23, 2003
	June 05, 2003	15,920,302.00	Philippine National Bank OR No. 102010824	June 20, 2003
		209,051.00	Philippine National Bank OR No. 054211AW	June 30, 2003
	June 29, 2003	23,651,333.33	Equitable PCI Bank OR No. 183107	July 11, 2003
7305	July 19, 2003	17,519,175.00	Philippine National Bank OR No. 058553AW	August 05, 2003
	August 04, 2003	88,890,058.00	Security Bank OR No. 1230573	August 15, 2003
	August 04, 2003	24,619,461.00	Equitable PCI Bank OR No. 184741	August 21, 2003
	December 05, 2003	118,216,066.00	Security Bank OR No. 428108	December 30, 2003
7454	April 05, 2004	59,272,886.00	Security Bank Deposit Slip No. 000368	April 13, 2004
	April 24, 2004	51,002,299.00	Certification	May 13, 2004
	June 14, 2004	59,309,039.00	Security Bank OR No. 1667	June 29, 2004
	July 21, 2004	42,505,184.00	Certification	August 04, 2004
	July 28, 2004	24,426,368.00	Equitable PCI Bank OR No. 022532	August 10, 2004
7518	August 16, 2004	29,600,360.00	Security Bank OR No. 002782	September 9, 2004
	August 28, 2004	39,072,222.00	Equitable PCI Bank OR No. 23712C	September 27, 2004
	September 02, 2004	54,080,331.00	Philippine National Bank OR No. 04274	October 01, 2004
	October 10, 2004	56,166,231.00	Equitable PCI Bank OR No. 052575	October 20, 2004

[8] *Id., Memorandum* filed by petitioner, p. 1726
[9] *Id.*, Consolidated JSFI, pp. 490-499, 1726-140, 1813-1815

	November 9, 2004	56,341,407.00	Equitable PCI Bank OR No. 053313C	December 08, 2004

In each importation and payment under protest, petitioner file a written protest and claim for refund, as summarized[10] below:

Case No.	Importation Date	Date of Payment Under Protest	Date of Filing Protest Letter	Written Claim for Refund[11]
7152	February 4, 2003	February 21, 2003	March 6, 2003	March 19, 2003
7155	February 14, 2003	February 28, 2003	March 13, 2003	March 19, 2003
7235	March 17, 2003	April 23, 2003	May 5, 2003	April 15, 2005
	May 15, 2003	May 23 & 30, 2003	June 6, 2003	April 15, 2005
7247	April 30, 2003	May 13, 2003	May 26, 2003	April 15, 2005
	May 14, 2003	May 20 & 23, 2003	June 3, 2003	April 15, 2005
	June 5, 2003	June 20 & 30, 2003	July 3, 2003	April 15, 2005
	June 29, 2003	July 11, 2003	July 25, 2003	April 15, 2005
7305	July 19, 2003	August 5, 2003	August 18, 2003	July 20, 2005
	August 4, 2003	August 15, 2003	August 29, 2003	July 20, 2005
	August 4, 2003	August 21, 2003	September 2, 2003	July 20, 2005
	December 5, 2003	December 30, 2003	January 13, 2004	July 20, 2005
7454	April 5, 2004	April 13, 2004	April 27, 2004	March 26, 2006
	April 24, 2004	May 13, 2004	May 26, 2004	March 24, 2006
	June 14, 2004	June 29, 2004	July 14, 2004	March 24, 2006
	July 21, 2004	August 4, 2004	August 18, 2004	March 24, 2006
	July 28, 2004	August 10, 2004	August 24, 2004	March 24, 2006
7518	August 16, 2004	September 9, 2004	September 23, 2004	August 28, 2006
	August 28, 2004	September 27, 2004	October 11, 2004	August 28, 2006
	September 2, 2004	October 1, 2004	October 14, 2004	August 28, 2006
	October 10, 2004	October 20, 2004	November 4, 2004	August 28, 2006
	November 9, 2004	December 8, 2004	December 16, 2004	August 28, 2006

Petitioner alleges that none of the individual protests were acted upon by respondent, thus it was constrained to file the Petitions for Review[12] before us now.

A Petition for Review was filed on February 18, 2005, docketed as CTA Case No. 7152.[13]

On April 5, 2005, respondent CIR filed her Answer,[14] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

[10] *Id., Memorandum* filed by COC, pp. 1813-1815.
[11] *Id., Memorandum* filed by petitioner, pp. 1727-1740.
[12] *Id.*
[13] *Id.*, pp. 1-11, with attachments.
[14] *Id.*, pp. 144-147.

3. There is no cogent reason to disturb the certification and findings of the Department of Energy that ***'aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price'***, the same possessing the presumption of regularity.

4. Moreover, it must be stressed that no alteration or amendment was made in the franchise of petitioner by the issuance of the subject Ruling. It merely and simply determined whether the two conditions set forth in Section 13(2) of PD 1590 exempting petitioner from taxes on its importation of JET A-l fuel have been met, namely: (1) the purchases by sale or delivery of aviations gas, fuel, and oil, whether refined or in crude form, shall be for the exclusive use in the franchisees transport and nontransport operations and other activities incidental thereto, and, (2) in the case of importations that they are not locally available in reasonable quantity, quality, or price.

5. On the basis of the said certification issued by the Department of Energy, the aforementioned second condition for petitioner's exemption from taxes on its importation of JET A-1 fuel is wanting.

6. Petitioner failed miserably to show that the amount of P24,674,356.78, allegedly paid as specific tax on its importations of Jet A-l fuel for domestic operations, was erroneously or illegally collected or that the same was properly documented.

7. Taxes paid and collected are presumed to have been paid in accordance with law, hence, not refundable.

8. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code.

> 10. Well-established is the rule that refund/tax credits are consumed strictly against the taxpayer as they partake of the nature of exemption from tax."

On April 21, 2005, respondent COC filed a "Manifestation and Motion," praying that the Office of the Solicitor General be excused from filing an answer on behalf of respondent CIR and that COC be excused from participating in the case.[15]

On May 3, 2005, petitioner filed its "Petitioner's Pre-Trial Brief,"[16] while respondent CIR filed her "Respondent's Pre-Trial Brief" on May 4, 2005.[17]

On May 9, 2005, the Court issued a Resolution denying the "Manifestation and Motion" dated April 21, 2005.[18]

On May 16, 2005, the parties filed a "Joint Stipulation of Facts and Issues."[19]

On May 31, 2005, respondent COC filed a "Manifestation and Motion for New Period," praying that the Court allow him to file an answer, in light of the Resolution dated May 9, 2005,[20] which was granted.[21]

Thus, on July 14, 2005, respondent COC filed his "Answer,"[22] interposing the following Affirmative Defenses:

> "**<u>AFFIRMATIVE DEFENSES</u>**
>
> 7. Petitioner has no cause of action against respondent Commissioner of Customs:
>
> > 7.1 Cause of action is defined as an act omission by which a party violates a right of another. Its essential elements are:

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[15] *Id.*, pp. 150-156.
[16] *Id.*, pp. 158-170, with attachments.
[17] *Id.*, pp. 177-179.
[18] *Id.*, pp. 186-187.
[19] *Id.*, pp. 189-195.
[20] *Id.*, pp. 199-202.
[21] *Id.*, p. 204.
[22] *Id.*, pp. 210-217.

(1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created,
(2) an obligation on the pan of the named defendant to respect or not to violate such right; and
(3) an act or omission on the pan of the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

8. A reading of the present petition reveals that petitioner seeks a refund of specific tax on the Jet A-1 fuel importation it paid under protest with the Bureau of Customs on the ground that BIR Ruling No. 001-2003 which withdrew petitioner's tax exemption on importation of petroleum products for domestic operations as stated in Section 13 of petitioner's Charter, as amended by Letter of Instructions No. 1483, is not valid. The same petition prays for the following reliefs:

1. petitioner be declared that under its franchise, PD 1590, it is exempt from specific tax on its importations of Jet A-1 fuel for domestic operations, and therefore entitled to the refund of the PHP24,624,356.78 specific tax paid under protest on February 21, 2003 to the respondent Commissioner of Customs.

2. the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality, and price, be declared as without any factual basis and, therefore, not correct.

3. BIR Ruling No. 001-2003, dated January 29, 2003, or Ruling 2003, be declared as amounting to an unauthorized amendment or alteration of P.D. No. 1590,

the franchise of PAL, in violation of Sections 16 and 24 thereof.

9. Also, petitioner admits that said specific tax was collected by the Collector of Customs Batangas by virtue of the endorsement letters issued by the Bureau of Internal Revenue:

a. February 3, 2003 1st Endorsement addressed to the Commissioner of Customs, signed by OIC, Revenue Office Rogelio A. Casiguran of the Office of the Secretary of Finance, quoting the pertinent portion quoted above of Ruling 2003. A copy of the 1st Endorsement is hereto attached as Annex 'H.'

b. February 13, 2003 letter of the Assistant Commissioner Large Taxpayers Service Edwin R. Abella, forwarding to the Collector of Customs of Batangas the Authority to Release Imported Good (ATRIG) of PAL with ATRIG/SERIAL No. ATR 2000-00005129 and OFFICE/ CONTROL NO. OSLA-2003-LTAD II-0000014. A copy of said letter is hereto attached as Annexes 'I' and 'I-l'.

10. While the petition is entitled 'Refund of Specific Tax on Jet A-1 Importation,' the primary issue to be resolved is whether the assailed BIR Ruling is valid. Otherwise stated, the resolution of whether petitioner is entitled to a tax refund it paid under protest to the Bureau of Customs hinges on the issue of the validity of the assailed BIR Ruling.

11. Moreover, petitioners protest before the Bureau of Customs is actually against the assessment and collection of specific tax imposed by the BIR, hence, the BOC, Port of Batangas, properly held in abeyance further hearing on petitioner's protest filed before it considering that petitioner has a pending motion for reconsideration of the BIR Ruling No. 001-2003.

12. At all events, respondent Commissioner of Customs will abide by any final judicial determination of subject BIR ruling."

On July 20, 2005, respondent COC filed his "Pre-Trial Brief."[23] On September 28, 2005, the parties filed an "Amended Joint Stipulation of Facts and Issues,"[24] which was admitted on September 29, 2005.[25]

While the said case was pending, respondent filed an "Omnibus Motion for Consolidation" on October 13, 2005,[26] praying that the cases filed before the First and Second Division of the Court be consolidated, since it involved the same parties and issues.

On December 8, 2005, a Resolution was issued by the former First Division of the Court granting the consolidation of the cases docketed as CTA Case Nos. 7152, 7155, 7235, 7247 and 7305.[27]

On August 28, 2006, another Resolution was issued by the former First Division of the Court granting the consolidation of another case, docketed as CTA Case No. 7454.[28]

On November 21, 2006, the parties filed a "Consolidated Joint Stipulation of Facts and Issues."[29]

On December 13, 2006, respondents filed a "Motion to Set for Hearing Respondents' Affirmative Defenses,"[30] praying that a hearing over the affirmative defenses specifically the lack of jurisdiction over the subject matter of the petition and lack of cause of action.

On December 14, 2006, the Court issued a Resolution approving the Consolidated Joint Stipulation of Facts and Issues.[31]

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[23] *Id.*, pp. 232-237.
[24] *Id.*, pp. 248-257.
[25] *Id.*, p. 257.
[26] *Id.*, pp. 266-268.
[27] *Id.*, p. 277.
[28] *Id.*, p. 482.
[29] *Id.*, pp. 490-499.
[30] *Id.*, pp. 504-510.
[31] *Id.*, pp. 576-577.

On March 28, 2007, respondents filed a "Motion to Dismiss," praying for the dismissal of the cases docketed as CTA Case Nos. 7152, 7155, 7235, 7247, 7305 and 7454.[32]

On April 25, 2007, the Court issued a Resolution[33] granting the consolidation of another case, docketed as CTA Case No. 7518 with the rest of the consolidated cases, and to adopt the "Motion to Dismiss." However, on June 29, 2007, the Court promulgated a Resolution denying the "Motion to Dismiss."[34] The Court also issued a Resolution[35] denying the "Motion for Reconsideration (Of the Honorable Court's Resolution promulgated on June 29, 2007).[36]

On December 28, 2009, petitioner filed its "Petitioner's Formal Offer of Evidence with Motion to Remark Exhibit 'AA' (May 02, 2003 Letter of PAL) to Exhibit 'AA-1', & Exhibits 'AAA', 'AAAA-1', & 'AAAA-2' (Judicial Affidavit of Elvis Yao, dated November 6, 2009) to Exhibits 'MMMM', 'MMMM-1', & 'MMMM-2', respectively).[37]

On April 30, 2010, the Court issued a Resolution[38] on the Formal Offer of Evidence, to which petitioner filed an "Omnibus Motion,"[39] praying for the Court to reconsider and admit several Exhibits. The Court issued a Resolution[40] on August 16, 2010, allowing a Commissioner's Hearing for the remarking of evidence and the presentation of the Independent Certified Public Accountant ("ICPA"), as well as the recalled witnesses, while holding the resolution of the Motion for Reconsideration in abeyance.

After presenting several witnesses and remarking of Exhibits, petitioner filed on October 29, 2012 a "Petitioner's Supplemental Formal Offer of Documentary Evidence."[41] A Resolution was promulgated on January 23, 2013, admitting most of the Exhibits, with petitioner deemed to have rested its case.[42]

On February 11, 2013, petitioner filed a "Motion for Reconsideration (Re: The Resolution Dated 23 January 2013),"[43] thus

[32] *Id.*, pp. 527-539.
[33] *Id.*, p. 539.
[34] *Id.*, pp. 552-557.
[35] *Id.*, *pp.* 558-559.
[36] *Id.*, pp. 560-570.
[37] *Id.*, pp. 978-1026.
[38] *Id.*, pp. 1098-1103.
[39] *Id.*, pp. 1106-1129.
[40] *Id.*, pp. 1161-1165.
[41] *Id.*, pp. 1439-1457, with attachments.
[42] *Id.*, pp. 1634-1635.
[43] *Id.*, pp. 1637-1642.

the Court issued a Resolution on March 22, 2013,[44] allowing the presentation of the sole Exhibit in question.

Meanwhile, respondent CIR filed her "Respondent's Consolidated Pre-Trial Brief" on May 3, 2013.[45] Respondent COC filed his "Consolidated Pre-Trial Brief" through registered mail on May 6, 2013.[46]

On July 1, 2013, the Court issued a Resolution granting the "Motion for Reconsideration (Re: The Resolution Dated 23 January 2013)."[47]

On October 11, 2013, petitioner filed its "Memorandum for the Petitioner,"[48] as well as respondent CIR filing her "Memorandum."[49] On the same day, through registered mail, respondent COC filed his "Memorandum."[50]

Thus, on November 5, 2013, the Court submitted the case for decision.[51]

Hence, this Decision.

The Issues

The issues, as stated in the Consolidated JFSI dated November 21, 2006, are as follows:

> **"ISSUES TO BE TRIED OR RESOLVED**
>
> 1. Whether or not petitioner is exempt by virtue of its franchise, Presidential Decree No. 1590, from specific tax on its importations of Jet A-1 fuel for domestic operations, and therefore entitled to the refund of the following amount of specific taxes it paid to respondent Commissioner of Customs:

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[44] *Id.*, pp. 1654-1655.
[45] *Id.*, pp. 1659-1664.
[46] *Id.*, pp. 1670-1677.
[47] *Id.*, pp. 1690-1691.
[48] *Id.*, pp. 1719-1795.
[49] *Id.*, pp. 1786-1810.
[50] *Id.*, pp. 1843-1870.
[51] *Id.*, p. 1909.

a. PHP24,624,356.78 paid under protest on February 21, 2003.
b. PHP56,169,229.00 paid under protest on February 28, 2003.
c. PHP11,670,600.00 paid under protest on April 23, 2003.
d. PHP17,421,685.00 paid under protest on May 13, 2003.
e. PHP24,816,609.73 paid under protest in installments on May 20 & 23, 2003.
f. PHP58,316,300.00 paid under protest in installments, on May 23 & 30, 2003.
g. PHP16,129,353.00 paid under protest on June 20 and 30, 2003.
h. PHP23,651,333.35 paid under protest on July 11, 2003.
i. PHP17,519,175.00 paid under protest on August 5, 2003.
j. PHP88,890,058.00 paid under protest on August 15, 2003.
k. PHP24,619,461.00 paid under protest on August 21, 2003.
l. PHP118,216,066.00 paid under protest on December 5, 2003.
m. PHP59,272,886.00 paid under protest on April 13, 2004.
n. PHP51,002,299.00 paid under protest on May 13, 2004.
o. PHP59,309,039.00 paid under protest on June 29, 2004.
p. PHP42,505,1 84.00 paid under protest on August 04 2004.
q. PHP24,426,368.00 paid under protest on August 10 2004.

2. Whether or not the Certification of the Department of Energy dated December 20, 2002, which is the basis of BIR Ruling No. 001-2003 dated January 29, 2003, was issued without due process.

3. Whether or not the December 20, 2002 Certification of the Department of Energy that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality, and price, is correct, as far as PAL is concerned.

4. Whether or not BIR Ruling No. 001-2003, dated January 29, 2003, is valid.

5. Whether or not BIR Ruling No. 001-2003, dated January 29, 2003, amounts to an unauthorized amendment or alteration of P.D. NO. 1590, the franchise of PAL, in violation of Sections 16 and 24 thereof.

6. Whether the Honorable Court has jurisdiction over the Petitions for Review.

7. Whether Petitioners protests filed before the District Collectors of Customs concerned are valid.

8. Whether the Honorable Court is the proper forum to contest the Department of Energy's Certification dated December 20, 2002."

The Ruling of the Court

The Court finds no merit in the Petition for Review.

Petitioner's Arguments

Petitioner argues that the Court has jurisdiction under Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals, which was promulgated pursuant to Section 8 of RA No. 1124, as further amended by Republic Act No. 9282.[52] Petitioner points out that respondents' contention that the primary issue is the validity of the certification issued by the Department of Energy ("DOE") and the 2003 BIR Ruling, but that the Court already debunked this with its Resolution dated June 29, 2007, which held that the present case is mainly a refund of specific taxes, and the validity of the certification and the ruling were merely incidental issues.

Petitioner also points out that it started a separate action in another forum attacking directly the DOE Certification, praying for its nullification.[53] In addition, contrary to respondents' assertion that petitioner did not exhaust the administrative remedies, petitioner

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[52] *Id.*, p. 1742.
[53] *Id.*, p. 1745.

filed the judicial claim as the two-year prescriptive period was about to lapse.[54]

Petitioner claims that under PD No. 1590, it is exempt from specific tax on its importations of Jet A-1 fuel for domestic operations, and that the Letter of Instruction ("LOI") 1483 only withdrew the tax exemption privilege of petitioner on its purchase of domestic petroleum products for use in its domestic operations.[55] This did not include imported petroleum products which petitioner uses for domestic operations.

To enjoy such a privilege, PD No. 1590 requires that not only would such articles or supplies be imported, but that these must not be locally available in reasonable quantity, quality or price.[56] Petitioner points out that up to the year 2002, there was no locally available supply present, and as a non-oil producing country, the Philippines imports most, if not all, its crude oil and petroleum products. To support its claim that there was no sufficient supply of Jet A-1 fuel, petitioner has consistently been submitting a certification from the Air Transportation Office (now known as the Civil Aviation Authority of the Philippines).[57]

Petitioner alleges that the present controversy arose with the issuance of the 2003 BIR Ruling, which reversed and revoked the exemption enjoyed by petitioner.[58] The sole basis for the reversal was the DOE Certification dated December 20, 2002, which stated that there was enough aviation gas, fuel and oil for the use in domestic operations of domestic airline companies, in reasonable quantity, quality and price.[59] Petitioner claims that respondent can only revoke the privilege allowed under PD No. 1590 if it can prove that there is sufficient local supply of jet fuel in reasonable quantity, quality and price, but that the data actually proves otherwise.[60]

In addition, petitioner alleges that the DOE Certification was arbitrary, and that it did not elaborate on the basis for its issuance other than a sweeping statement that it was based on data and reports, without supporting documents or reference to any projections, studies or other proof.[61] Petitioner states that the DOE

[54] *Id.*, pp. 1746-1747.
[55] *Id.*, p. 1748.
[56] *Id.*, p. 1752.
[57] *Id.*
[58] *Id.*, pp. 1752-1753.
[59] *Id.*
[60] *Id.*, p. 1754.
[61] *Id.*

Certification has no basis and is in fact contrary to the data as provided by DOE itself.[62]

Petitioner further points out that the respondent's theory that "locally available supply" refers to the sum of refinery production, product importation and inventory is absurd, and that imported supply should not be included, as this runs contrary to the intent of PD No. 1590.[63] Petitioner cites the Supreme Court decision in the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, wherein it was ruled that domestic purchase only means goods manufactured or produced in the Philippines.[64] In fact, petitioner states, DOE has consistently understood "local supply" as synonymous to "local domestic refinery production."[65] Petitioner also stresses that there is not enough local production to satisfy the needs of petitioner's requirements, let alone the local airline industry.[66]

To bolster its arguments, petitioner submitted a cost comparison issued by the ICPA showing that imported Jet A-1 fuel was consistently cheaper than those sold by the two remaining refiners in the Philippines.[67]

Thus, petitioner is of the theory that the 2003 BIR Ruling, which was issued in connection with the DOE Certification, was issued in violation of due process, as it not merely interpreted the applicable tax laws, but substantially added or increased the burden upon the taxpayer, and as an administrative legislation it required compliance with the due process requirement of notice and hearing.[68] Petitioner alleges that it was never notified or even given a chance to present its views before said ruling was promulgated.[69]

In addition, petitioner states that the 2003 BIR Ruling went beyond the terms of PD No. 1590,[70] in that it essentially withdrew the privilege of an exemption without the proper legislative act.[71]

Petitioner states that pursuant to Sections 204(C) and 229 of the 1997 NIRC, it has complied with the requirements. First petitioner

[62] *Id.*, p. 1755.
[63] *Id.*, p. 1756.
[64] GR No. 198759, July 1, 2013.
[65] *Id.*, p. 1760.
[66] *Id.*, pp. 1763-1768.
[67] *Id.*, p. 1769.
[68] *Id.*, p. 1775.
[69] *Id.*, p. 1776.
[70] *Id.*, p. 1778.
[71] *Id.*, p. 1779.

claims that it filed its written protests with the District Collector of Customs concerned and that it filed written claims for refund with the BIR for all the subject importations. Second, all the protests and written claims for refund include a categorical demand for reimbursement of a specific amount. Third, all the protests, written claim for refund and Petition for Review were filed within the two (2) years counted from the date of payment of the tax subject of the particular claim.[72] Petitioner also claims to have sufficiently proven payment for specific taxes claim for refund or issuance of tax credit.[73]

Respondent CIR's Arguments

Respondent CIR contends that the consolidated Petitions for Review seek the nullification of the DOE Certification and 2003 BIR Ruling, and that the refund of taxes is a mere consequence.[74] Even assuming that the nullification was a mere consequence of a tax refund, it should be considered a collateral attack on a presumably valid administrative issuance and should not be allowed.[75] CIR also emphasized that petitioner failed to seek redress from the Department of Energy and Office of the Secretary of Finance, thus failed to exhaust all the administrative remedies before it elevated the case to the Court of Tax Appeals.[76] Further, respondent CIR states that the Certification issued by the DOE involves a factual determination, and by asking that the Certification be invalidated, petitioner is in effect overriding the factual determination by the Secretary of the DOE.[77]

CIR, on the other hand, alleges that petitioner failed to prove that aviation fuel is not locally available in reasonable quantity, quality and price.[78] Respondent CIR points out that petitioner conceded that the quality of Jet A-1 fuel is universally similar. Also, taking into consideration the DOE's interpretation as to quantity, three components are considered: refinery production, product importation and inventory. Thus, CIR states that "local available supply" is that which is locally available to the market, including importations.[79] As for the price, CIR states reasonable price is not necessarily the lowest price, so long as it is reasonable both in the legal and economic sense.[80]

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[72] *Id.*, pp. 1781-1785
[73] *Id.*, pp. 1785-1792.
[74] *Id.*, pp. 1799-1800.
[75] *Id.*, pp. 1800-1801.
[76] *Id.*, pp. 1802-1804.
[77] *Id.*, p. 1804.
[78] *Id.*, pp. 1805-1807.
[79] *Id.*
[80] *Id.*, p. 1808.

Respondent COC's Arguments

On the other hand, respondent COC alleges that while the Petition for Review in this case seeks a refund of specific taxes in connection with petitioner's Jet A-1 fuel importation, the resolution of this case hinges on the issue of the validity of 2003 BIR Ruling.[81]

Respondent COC states that petitioner failed to establish its entitlement to its claim for refund, when it failed to substantiate its claim that there was no locally available supply in reasonable quantity, quality or price.[82]

Respondent COC also points out that the 2003 BIR Ruling was issued by the BIR upon instruction of the Secretary of Finance to review the exemptions from taxes previously granted to airline companies on their importation of aviation gas, fuel and oil for use in their domestic operations.[83] That its issuance is an interpretative ruling which re-examined the exemptions allowed under PD No. 1590, in view of LOI No. 1483.[84] Thus, absent any showing that the new BIR Ruling was irregularly issued or is patently wrong, it remains valid[85] Respondent COC also states that petitioner did not show any evidence that it has sought reconsideration of the said ruling as provided under RMC No. 44-2001, and that a reconsideration was filed on March 19, 2003, beyond the 30-day period allowed.[86] Thus, for failing to question the said ruling, petitioner should not be allowed to elevate this to the Court.[87]

In addition, respondent COC states that the protests filed by petitioner with the District Collector of Customs are deemed invalid with its failure to pay the corresponding docket fees pursuant to Sections 2308 and 2309 of the Tariff and Customs Code.[88] It was neither alleged nor was there any indication on the protest letters themselves to show petitioner complied. Thus, with an invalid protest, the assessments issued are deemed final.[89]

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[81] *Id.*, pp. 1823-1828.
[82] *Id.*, p. 1838
[83] *Id.*, p. 1829
[84] *Id.*, pp. 1829-1831
[85] *Id.*, p. 1832
[86] *Id.*, p. 1833
[87] *Id.*, p. 1834
[88] *Id.*, pp. 1836-1837
[89] *Id.*, p. 1837

After studying all the issues raised, as well as the documents offered, the Court shall now resolve the Consolidated Petitions for Review.

Jurisdiction of the Court of Tax Appeals

At the onset, issue raised by the parties with regard to the Court's jurisdiction over the present case must be addressed.

It is clear that petitioner is asking for three separate actions from the Court.

First, petitioner is asking the Court to order the refund of the specific taxes it paid under protest for its importation of Jet A-1 fuel. Second, petitioner wants the Court to declare the DOE Certification dated December 20, 2002 without any factual basis. Third, petitioner wants Court to declare the 2003 BIR Ruling to be an unauthorized amendment or alteration of PD No. 1590.

While these issues are related, they can be resolved independently of each other.

With regard to the first issue, it must be emphasized that RA No. 9282, as amended, is the law that elevated the rank of the CTA to the level of a collegiate court with special jurisdiction. Basic is the rule that jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority, which organizes the court; it is given only by law and in the manner prescribed by law.[90] Therefore, the jurisdiction of the CTA is limited only to those provided in RA No. 9282, as amended.

With this in mind, the Court finds no reason to deviate from its earlier Resolution dated June 29, 2007,[91] with regard to the first prayer, wherein it was held that:

"This Court disagrees.

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[90] *(Hasegawa vs. Kitamura, supra)*
[91] 558-557

These petitions for review filed by petitioner seek mainly the refund of specific taxes on the Jet A-1 fuel importations it paid under protest; the two grounds aforementioned being incidental issues that must be resolved by this Court in the resolution of petitioner's claim for refund. And this Court exercises exclusive appellate jurisdiction to review by appeal the decision or inaction of respondent involving such claims for refund, as provided in Section 9(a) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, which reads:

> '**SEC. 7.** Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.
>
> xxx xxx xxx'

(Emphasis supplied.)

> Moreover, in this case, the two (2) year prescriptive period provided under Section 229 of the NIRC within which to file a suit or proceeding in court for the recovery of any national internal revenue tax would have expired had petitioner not filed its petitions for review with this Court. Thus, any allegation that the Certification and BIR Ruling No. 001-2003 should have been contested before the Department of Energy (DOE) and the Secretary of Finance, respectively, does not affect the jurisdiction of this Court."

While, petitioner's prayer asking for a refund is within the jurisdiction of the Court, the same cannot be said for petitioner's prayer for the invalidation of the DOE Certification and the 2003 BIR Ruling.

The Court is squarely gives the CIR the power to interpret tax laws, and the exercise of said power may be reviewed by the Secretary of Finance. The case of *St. Paul College of San Rafael v. Commissioner of Internal Revenue*,[92] this Court specifically explains:

> "Clearly, Section 4 of the 1997 Tax Code vests upon respondent the power to interpret tax laws, subject to review by the Secretary of Finance. The authority to interpret tax laws includes the power to issue rulings of first impression or to reverse, revoke, or modify any existing rulings of the BIR, again subject to review by the Secretary of Finance."

Furthermore, the Court also cites Department Order No. 23-01,[93] which serves as the guideline to implement Section 4 of the 1997

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[92]CTA EB CASE NO. 874, May 27, 2013.

[93] Section 3. Rulings Adverse to the Taxpayer. - A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must:
a) be addressed to the Secretary of Finance and filed with the Revenue Operations Group, Department of Finance, DOF Building, BSP Complex, Roxas Boulevard corner Pablo Ocampo Street, City of Manila;
b) contain the heading 'Request for Review of BIR Ruling No.;
c) allege and show that the request was filed within the reglementary period;
d) allege the material facts upon which the ruling was requested; e) state that exactly the same set of facts were presented to the BIR;
f) define the issues to be resolved;
g) contain the facts and the law relied upon to dispute the ruling of the Commissioner;
h) be signed by or on behalf of the taxpayer filing the request for review, provided that, only those lawyers engaged by the taxpayer and/or tax agents accredited by the BIR may sign on behalf of the taxpayer;
i) indicate the Taxpayer Identification Number (TIN) of the taxpayer;
j) be accompanied by a copy of the Commissioner's challenged ruling;

NIRC, in cases where an appeal from an adverse ruling is sought with the Secretary of Finance.[94] It is cleat that without first appealing to the Secretary of Finance, the petitioner failed to exhaust available administrative remedies before seeking judicial intervention.[95]

In the same case the Court discusses yet another limit to the jurisdiction of the Court of Tax Appeals. It makes clear that th Court had no jurisdiction to entertain a petition that mainly questions the validity and/or constitutionality of a BIR Ruling, and cited the discussion of the Court in Division:

> "As earlier discussed, the subject BIR Ruling No. 143-2010 was issued in the exercise of respondent's rule-making power under the first paragraph of Section 4 of the NIRC of 1997. Also, the issue on the validity and constitutionality of RR No. 9-2000 and RMC No. 025-08 was also raised by the parties in the instant Petition for Review. It is noteworthy that the issue as to the validity and constitutionality of such issuances is outside this Court's appellate jurisdiction.
>
> To reiterate the ruling of the Supreme Court in the case of *British American Tobacco vs. Jose Isidro N. Camacho* promulgated on August 20, 2008, it was held that the issue of validity and constitutionality of therein assailed Revenue Regulations and Revenue Memorandum Order was outside the jurisdiction of the Court. The pertinent portion of the said Decision reads:
>
>> 'Before going into the substantive issues of this case, we must first address the matter of jurisdiction, in light of Fortune Tobacco's contention that petitioner should have brought its petition before the Court of Tax Appeals rather than the regional trial court.
>>
>> xxx xxx xxx
>>
>> **While the above statute confers on the CTA jurisdiction to resolve tax disputes in**

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k) contain a statement of the Office of the Commissioner of Internal Revenue, indicating that a copy of the request for review of the ruling was received by the Commissioner's Office and;
l) specifically state that the taxpayer does not have a pending assessment or case in any court of justice where the same issues are being considered.
[94] See Note 92.
[95] *Id.*

> **general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts.** Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
>
> xxx xxx xxx
>
> xxx The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. Petitioner, therefore, properly filed the subject case before the RTC.'

While the Supreme Court recognized the general jurisdiction of this Court on tax disputes, as embodied in Section 7 of R.A. No. 1125, as amended by R.A. No. 9282;

> nevertheless, the High Court did not interpret the enumeration therein to include the issue regarding the validity of a rule or law issued by an administrative agency in the exercise of its quasi-legislative function. Instead, the Supreme Court categorically ruled that the jurisdiction over the issue of validity or constitutionality of a law or rule, such as those assailed in the present petition, is lodged with the Regional Trial Courts in the exercise of its general jurisdiction and not with this Court. xxx"

Applying the doctrine set forth in the case above to the present case, it is clear that petitioner's prayer to invalidate the 2003 BIR Ruling for effectively amending PD No. 1590, is outside the ambit of this Court.

Furthermore, the prayer to invalidate the DOE Circular is also beyond this Court's purview. The Court clearly does not have jurisdiction over such an issuance. The Court of Tax Appeals is a specialized court of limited jurisdiction, and only those cases as enumerated by law can be taken cognizance of.[96] Respondent COC correctly raises the issue that if the Court looks into the validity of the DOE Certification, it will be in violation of the principle of separation of powers, and that it is a generally accepted principle that the factual findings of a co-equal branch of Government must be respected.[97]

Petitioner cannot come before the Court and insist that it decide on a matter outside its jurisdiction and technical competency. For sure there are mechanisms in place that petitioner could have availed of to question the issuance of the said certificate.

Given this, the only issue to left to resolve in this case is whether or not petitioner is entitled to a refund of the specific taxes paid.

Exemption under Presidential Decree No. 1590 from specific tax on its importations of Jet A-1 fuel for domestic operation

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[96] *National Power Corporation v. The City Government of Tuguegarao, and Buenaventura Lagundi, in his capacity as City Treasurer of Tuguegarao*, CTA EB Case No. 696, October 10, 2012.
[97] *Id.*, p. 1836

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The Court agrees with petitioner that the exemption allowed under PD No. 1590 from specific tax on its importations of Jet A-1 fuel for domestic operations was not affected by the issuance of LOI No. 1483, as the latter only withdrew the tax exemption privilege of petitioner on its purchase of domestic petroleum products for use in its domestic operations.

This was extensively discussed by the Supreme Court in the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[98] which categorically declared that:

> "In view of the foregoing, the Court observes that the phrase 'purchase of domestic petroleum products for use in its domestic operations' - **which characterizes the tax privilege LOI 1483 withdrew** - ***refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/ produced goods for domestic sale*** and ***does not, in any way, pertain to any of PAL's tax privileges concerning imported goods***, may it be (*a*) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (*b*) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege).
>
> xxx xxx xxx
>
> Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.
>
> In this case, records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would

[98] See Note 64.

be liable to pay to the government on to the purchase price. Evidently, the said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483 as previously discussed. As such, considering the subsistence of PAL's tax exemption privileges over the imported goods subject of this case, PAL is allowed to claim a tax refund on the excise taxes imposed and due thereon."

Thus, with that in mind, a thorough analysis of Section 13 of PD No. 1590 is in order. The provision allows an exemption from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, but is subject to the following conditions:

1. articles or supplies or materials are imported for the use in its transport and non-transport operations and other activities incidental thereto; and
2. not locally available in reasonable quantity, quality, or price.

There is no question that in this case, petitioner has fulfilled the first condition set forth in the law. However, it must be determined is whether the petitioner was able to substantiate or support the existence of the second condition .

In this, the Court finds that petitioner failed to prove that there is no locally available supply in reasonable quantity, quality, or price.

It is a generally accepted principle in tax law that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[99] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[100]

The law in itself does not prescribe how a taxpayer may prove that there is not locally available in reasonable quantity, quality, or price. The respondents want to advance the theory that the DOE Certification and the 2003 BIR Ruling are conclusive in proving that

[99] *Citibank, N.A. v. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[100] *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87.

there was enough locally available supply in reasonable quantity, quality, or price. On the other hand, petitioner states that these were patently erroneous.

As previously discussed, the Court cannot rule on the validity of the DOE Certification or the 2003 BIR Ruling as both are beyond its technical competency and jurisdiction under the law. However, there is nothing that stands in the way of the Court to determine on its own the sufficiency of the evidence presented by petitioner to prove that the second condition existed at the time of importation, thus exempting it from the specific taxes which it is now claiming for refund.

The crux of this issue is the interpretation o the term "locally available supply." Petitioner puts foraward that it is synonymous to domestic manufacture or produced in the Philippines, while the CIR posits the interpretation that it means that which is locally available to the market, including importations.[101]

It is the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.[102] The exemption is when it is shown that the word is intended to be given a different or restricted meaning.[103]

To clarify, locally available should be taken in the plain, ordinary and common usage. Petitioner's theory that this should exclude importations is incorrect. The term "locally available supply," taken in its ordinary sense is the supply which is available to petitioner within the Philippines, be it imported or domestic production. Petitioner is also incorrect in saying that this interpretation will contribute to a condition that prevents it from using the same tax exemption.

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[101] *Id.*, pp. 1806-1807.
[102] Ruben E. Agpalo, *Statutory Construction*, pp. 177-178 (2003).
[103] *Id.*

Again, in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[104] the Court clarified that petitioner can claim an exemption either through its own importation, or its purchase of Jet A-1 Fuel from an importer. Either way, petitioner may take advantage of a tax exemption as allowed by its Charter, so long as the conditions under the law are met.

Unfortunate for petitioner, that in arguing on the definition of "locally available supply," it chose only to substantiate domestically manufactured supply in terms of quantity and price to prove that there was no locally available supply.[105] Petitioner chose not to consider the articles or goods which were already imported into the Philippines, which petitioner could have purchased. Had petitioner included this, the Court would have the ability to determine if the second condition to the tax exemption was fulfilled.

After a thorough review of the pieces of evidence and arguments presented, the Court finds that petitioner was not able to prove sufficiently that there was no locally available supply of Jet A-1 Fuel, in reasonable quantity, quality, or price.

Thus, there being no other independent and credible evidence was presented, the claim for refund must fail.

WHEREFORE, the Petition for Review filed by petitioner Philippine Airlines, Inc., is hereby **DENIED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[104] See Note 64.
[105] *Records*, pp. 1769-1771, 1756, 710-810, and 820-825.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice