REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	C.T.A. CASE NO. 8340
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: FEB 17 2015 9:30 a.m.

x- -x

DECISION

FABON-VICTORINO, J.:

This Petition for Review filed by petitioner Philippine Airlines, Inc., prays for the refund of the amount of P5,553,624.40, allegedly representing erroneously paid excise taxes on its importations of liquor, wine and cigarettes for international flight consumption.

Petitioner is a domestic corporation, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[1]

Respondent is the Commissioner of Internal Revenue (CIR) with authority to assess and collect all national internal revenue taxes, fees and charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC)

---

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 257.

of 1997, as amended, with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent is the Commissioner of Customs (COC) whose office is tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, by virtue of delegated authority by issued by respondent CIR through Authority to Release Imported Goods (BIR Form No. 1918) (ATRIG) pursuant to Section 12(a) of the NIRC of 1997, as amended. He holds office at the G/F OCOM Bldg., Bureau of Customs, Port Area, Manila.

On June 11, 1978, petitioner was granted a franchise to operate air transport services domestically and internationally[2] under Presidential Decree (P.D.) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries".[3] Section 13 thereof specifically provides:

> "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°/o) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that

[2] Par. 4, JSFI, docket, p. 258.
[3] Exhibit "A".

> with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

On January 1, 2005, Republic Act (R.A.) No. 9334,[4] also known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of

---

[4] Exhibit "B".

the NIRC of 1997, as Amended" took effect.[5] Section 6 thereof provides:

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

---

[5] Par. 6, JSFI, docket, p. 259.

> 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. xxx"

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George M. Jereos calling his attention on BOC's failure to collect excise taxes on all importations for Duty Free Philippines and the Freeport zones such as the Subic Bay Freeport Zone, citing Section 6 of R.A. No. 9334.[6] For this reason, he requested COC Jereos to immediately collect excise taxes due on the imported alcohol and tobacco products brought to the Duty Free Philippines and the Freeport zones.[7]

On February 4, 2005, COC Jereos issued a Memorandum[8] to BOC officers and personnel to "effect collection of excise tax due on imported alcohol and tobacco products, including those for Duty Free Philippines and Freeport Zones".[9]

On March 1, 2005, then Collector of Customs (COC) Alberto D. Lina issued Customs Memorandum Order (CMO)

[6] Exhibit "C".
[7] Par. 7, JSFI, docket, p. 260.
[8] Exhibit "D".
[9] Par. 8, JSFI, docket, p. 260.

No. 13-2005[10], providing for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to R.A. No. 9334 and BIR Revenue Regulation No. 12-2004".[11] Paragraph IV of CMO 13-2005, subtitled "Operational Provisions" required the accomplishment of consumption entries, vice the previously required warehouse entries, for the clearance of imported cigarettes and liquors, to wit:

> "In lieu of the warehousing entry required under Customs Administrative Order No. 1-97 and Customs Memorandum Order Nos. 17-97 and 17-97A, all shipments of cigar and cigarettes, distilled spirits, wines and liquors destined for duty-free shops and free-port zones shall be covered by consumption entries filled at the Port of Discharge following the procedures for cargo clearance under CAO Nos. 2-95 and 5-2001, CMO Nos. 3-2000 and 3-2001 and other existing customs rules and regulations."

On April 4, 2005, petitioner formally assailed the Memorandum and the COC's refusal to release its imported items unless the taxes and duties were first paid. In addition, petitioner requested to release its imported two (2) pallets of cigarettes for its commissary supplies.[12]

In response to petitioner's reaction, the BOC's Legal Service issued a Memorandum dated April 25, 2005 addressed to COC Alberto D. Lina indicating that petitioner was liable to pay excise taxes on all its importation of the subject articles, even under the Section 131 of the NIRC of 1977, subject however to duty drawback and/or tax refund, if applicable.[13]

On May 16, 2005, petitioner formally informed respondent COC that it would pay under protest the

---

[10] Exhibit "E".
[11] Par. 9, JSFI, docket, p. 260.
[12] Exhibit "F".
[13] Par. 11, JSFI, docket, p. 261

assessed taxes, duties and fees for its shipment of Australian wine.[14]

For the period August 2007 to December 2008, petitioner's importations of wine, liquor and cigarettes for its international flight consumptions arrived at the Ninoy Aquino International Airport (NAIA)[15].

On April 23, 2009, and May 20, 2009, Acting Chief Gilda L. Cinco of Warehousing Assessment Unit (WAU) of the BOC, submitted to Chief Collector Silveria Salazar of the Collection Division, NAIA Customhouse, documents covering petitioner's liabilities for customs duties, taxes, and charges on its importations of liquors and/or cigarettes for catering and commissary supplies in the aggregate amount of P2,630,868.83[16] and P2,922,755.57,[17] respectively, pursuant to CMO No. 13-2005 and Revenue Regulations No. 3-2006.[18]

On September 23, 2009, petitioner paid under protest the total excise taxes of P2,630,868.83[19] and P2,922,755.57,[20] under BOC Receipt Nos. 167361092 and 16731083, respectively. Subsequently, petitioner filed separate written claim for refund with respondent COC on September 30, 2009 and with respondent CIR, on January 28, 2010.

Due to respondent CIR's alleged inaction on its administrative claims for refund, petitioner filed the instant Petition for Review on September 23, 2011.

On October 19, 2011, respondent CIR filed her Answer[21], stating that the burden of proof to establish entitlement to refund sought rest upon petitioner especially considering that it was not properly documented. Moreover, Presidential Decree No. 1590, particularly Section 13

---

[14] Exhibit "H".
[15] Exhibits "I" to "Q-1", "T" to "BB" and "FF" to MM-2".
[16] Exhibit "CC".
[17] Exhibit "XX".
[18] Exhibits "R" and "NN".
[19] Exhibit "S".
[20] Exhibit "OO".
[21] Docket, pp. 187-192.

thereof, had been expressly repealed by Republic Act No. 9334 effective January 1, 2005. According to respondent CIR, "the third paragraph of Section 131 of the National Internal Revenue Code, as amended by RA 9334, reveals the unmistakable intent of the Congress to withdraw tax exemptions in favor of petitioner under Section 6, P.D. 1590." Respondent added that claim for refund is construed strictly against the claimant for it is in the nature of a tax exemption.

On the other hand, respondent COC, in his Answer filed on November 4, 2011[22], stated that Section 131 of the National Internal Revenue Code provides that all importation of cigars and cigarettes, distilled spirits, fermented liquors and wines are now subject to tax and any exemption previously granted have been withdrawn including those enjoyed by petitioner under Section 13 of P.D. 1590. He claims that his position is strengthened by Section 10 of R.A. 9334. Further, petitioner's contention that Section 131, as amended by R.A. 9334, only pertains to free ports and duty-free shops has no legal mooring. Contrary to petitioner's claim, the amendatory law is not limited to duty free shops and free ports for it covers all importations of cigars and cigarettes, distilled spirits, fermented liquors and wines. Finally, there is no vested right in a tax exemption, which is strictly construed against the taxpayer. It being a mere statutory privilege, it may be modified or withdrawn at will by the granting authority.

In support of its case, petitioner presented Jonathan R. Castillo Lee, Ma. Evelyn L. Taghap and Cheryl V. Capinpin as its witnesses.

Petitioner's Company Materials Handling Division Manager since May 2008 **Jonathan R. Castillo Lee** testified[23] that he ensures the timely release of petitioner's importations of commissary and catering supplies from different cargo warehouses and files proper documentation for such importations. From August 18, 2007 to December 19, 2008, petitioner's nine (9) importations arrived at the NAIA, covered by the corresponding Informal Import

[22] Docket, pp. 201-208.
[23] Exhibits "BBB" and "BBB-1".

Declaration and Entry Nos. 8905, 9551, 9474, 9477, 11132, 11647, 12006, 12784 and 13393[24] and ATRIG Nos. 00030390, 00030389, 00030392, 00030395, 00026669, 00026670, 00026899, 00026175 and 00026897.[25]

PAL under its charter is exempted from payment of excise tax on its importation of commissary and catering supplies. However, upon the enactment of R.A. No. 9334 in 2005, respondents BOC and BIR started to assess and collect excise taxes on such importation by PAL. Hence, for the release of the subject shipments, petitioner paid under protest the amount of P2,630,868.83 on September 23, 2009[26]. On September 23, 2009, he filed a formal protest addressed to Mrs. Silveria Salazar, the Chief of the Collection Division of BOC Collection District III, against the assessment and collection of said amount[27].

He added that from December 11, 2008 to February 10, 2009, additional eight (8) importations of petitioner arrived at the NAIA, covered by corresponding Informal Import Declaration and Entry Nos. 12836, 529, 507, 566, 671, 678, 1261 and 12820[28] and ATRIG Nos. 00026168, 00026672, 00026900, 00026888, 00030388, 00026896, 00026671 and 00026174.[29] Again, petitioner paid the amount of P2,922,755.57 on September 23, 2009[30] with formal protest addressed to Mrs. Silveria Salazar[31].

There being on action from respondent COC, petitioner filed two (2) separate requests for refund with respondent CIR on January 28, 2010[32]. Respondent CIR similarly failed to act on petitioner's claim for refund, hence, the instant petition filed on September 23, 2011.

On cross examination[33], witness Lee explained that once his division receives an advice from the purchasing

[24] Exhibits "I" to "Q".
[25] Exhibits "T" to "BB".
[26] Exhibit "S".
[27] Exhibit "CC".
[28] Exhibits "FF" to "MM"
[29] Exhibits "PP" to "WW".
[30] Exhibit "OO".
[31] Exhibit "XX".
[32] Exhibits "EE" and "ZZ".
[33] Transcript of Stenographic Notes, April 17, 2012, pp. 5-13.

division that an incoming shipment, clearances from the public warehouses are readily process as well as the transfer of the imported items to petitioner's funded warehouse. He added that petitioner's importations of cigarettes and liquors are for in-flight sales.

In her Judicial Affidavit,[34] petitioner's second witness, **Ma. Evelyn L. Taghap**, testified that she has been petitioner's Tax Services and Compliance Department Manager since 1999 and as such, she handles petitioner's tax liabilities to the government and prepares and files its various tax returns.

For the fiscal years ended March 31, 2008 and March 31, 2009, petitioner filed its corporate income tax returns for the importations of the subject commissary products. In its amended Income Tax Return for fiscal year ended March 31, 2008[35], petitioner did not pay any income tax since petitioner had a total tax credits/payments of P328,157,218.16. In petitioner's Annual Income Tax Return for the fiscal year ended March 31, 2009, it reflected a taxable loss of P10,071,605,780.22[36].

Petitioner is a VAT-registered entity and was issued Certificates of Registrations on August 4, 2004[37] and December 18, 2007[38]. As a VAT-registered corporation, petitioner accounted for the VAT on its sale of goods, properties or services and its lease of property for the fiscal years ended March 31, 2008[39] and March 31, 2009[40].

Petitioner's last witness **Cheryl V. Capinpin** testified[41] that as petitioner's In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department Manager she was familiar with the subject importations being with the same department previously as a Supervisor under witness Lee.

---

[34] Exhibits "CCC" and "CCC-1".
[35] Exhibit "EEE".
[36] Exhibit "FFF".
[37] Exhibit "HHH".
[38] Exhibit "GGG".
[39] Exhibits "KKK" to "NNN".
[40] Exhibits "OOO" to "RRR".
[41] Exhibits "DDD" and "DDD-1".

She explained that petitioner imports alcoholic products as it is cheaper than to buy locally. Insofar as foreign brand cigarettes, there are no local suppliers or dealers big enough to supply petitioner's demand and if there are, the selling price is higher than petitioner's cost of importing the same. She reasoned that the selling price of local suppliers are higher as they will also pay the excise taxes and customs duties for the importation of the foreign branded cigarettes. In contrast, petitioner, by virtue of its franchise, need not pay the excise taxes and customs duties on its importation of cigarettes for use in its international flights.

Further, if the local suppliers will source cigarettes from local manufacturers, if there are any, the excise taxes and other costs paid by the manufacturers will be added to the selling price and eventually charged to the buyer such as petitioner.

To establish her point, the witness prepared a comparative table[42] showing that importing alcoholic products and cigarettes is cheaper than sourcing them locally. The data in the comparative data for liquors came from the Price Lists of Philippine Wine Merchants,[43] Future Trade International Retail Price List and from a survey of the selling prices of the same products in Duty Free Philippines[44]. However, the cost of imported cigarettes was based solely on the survey at the Duty Free Philippines[45] since there are no local suppliers who could regularly supply petitioner's demand for its commissary supplies in its international flights. And if there are local suppliers of said cigarettes, the selling price is definitely higher than importation cost.

During cross-examination[46], witness Capinpin admitted that only one supplier submitted a quotation for wines. With respect to cigarettes, she reiterated that either no supplier could meet petitioner's demand or the cost of importing them is cheaper[47].

---

[42] Exhibit "DDD-2".
[43] Exhibits "DDD-3" to "DDD-5".
[44] Exhibit "DDD-6".
[45] *Ibid.*
[46] Transcript of Stenographic Notes, October 16, 2012, pp. 6-10.
[47] *Ibid,* pp. 11-12.

She added that in importing liquors and cigarettes, petitioner first takes into account the price of the item from the source and second, the availability of the product locally.

Respondent CIR did not present any evidence[48] on the ground that no Report of Investigation was submitted in the administrative proceeding. Respondent COC followed suit in his Manifestation posted November 7, 2013[49] on the ground that the issues for resolution are purely legal.

After the parties submitted the required memorandum on December 10, 2013[50], December 26, 2013[51] and February 10, 2014[52], the case was submitted for decision on February 19, 2014.[53]

STATEMENT OF ISSUES

The following issues[54] were submitted for the resolution of the Court:

> "1.) Whether or not petitioner PAL, under its franchise, Presidential Decree No. 1590, is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;
>
> 2.) Whether or not Republic Act No. 9334 amended, modified, or repealed PAL's exemption under its franchise, Presidential Decree No. 1590, from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

---

[48] Minutes of the hearing on September 16, 2013, docket, p. 966.
[49] Docket, pp. 977-979.
[50] Docket, pp. 989-1007.
[51] Docket, pp. 1012-1043.
[52] Docket, p. 1060.
[53] Resolution, docket, p. 1083.
[54] Docket, pp. 443-444.

3.) Whether or not PAL is entitled to a refund of the total amount of Php5,553,624.40 specific taxes paid under protest to respondent CIR through the COC as follows:

(a) Php2,630,868.83 specific tax paid on 23 September 2009; and

(b) Php2,922,755.57 specific tax paid on 23 September 2009.

4.) Whether respondent COC has the authority to entertain and grant refund of petitioner's specific taxes under the National Internal Revenue Code."

THE RULING OF THE COURT

First the Court will determine if it has the competence to entertain the present petition.

Section 204(C) of the NIRC of 1997, as amended, provides:

"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."

In relation to the foregoing provision, Section 229 of the same Tax Code provides:

> "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."

Based on the afore-quoted provisions, Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. It is a well-settled rule that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

Petitioner paid the excise taxes subject of this case on September 23, 2009.[55] From September 23, 2009,

---

[55] Exhibits "S" and "OO".

petitioner had two years or until September 23, 2011, within which to file its administrative and judicial claims for refund.

Since petitioner filed the claim for refund with respondent CIR on January 28, 2010[56] and the instant Petition for Review on September 23, 2011, the two were well within the two-year prescriptive period.

Next, on petitioner's assertion that respondent COC has no authority to grant its claim for refund of excise taxes it paid for the subject importation.

Respondent COC feigns not any authority to entertain or grant the subject claim for refund despite being an agent of respondent CIR pursuant to Section 12 of the NIRC of 1997, as amended. He even admits that his authority is limited to grant claims for refund of customs duties as provided in Section 1708 of the Tariff and Customs Code.

With the foregoing admission, the last issue raised in this petition has been rendered moot and academic. The remaining issues, on the other hand, may be reduced into two, to wit:

> 1. Whether PD No. 1590 was expressly amended by RA No. 9334 with respect to petitioner's exemption from the payment of excise taxes on imported cigarettes, liquor and wine for its catering and commissary supplies for its international flights; and
>
> 2.) Whether or not petitioner is entitled to a tax refund in the amount of P5,553,624.40, representing the specific taxes it paid under protest to respondent CIR through respondent COC.

Anent the first of the two remaining issues, petitioner asserts that under its franchise, specifically Section 13 of P.D. No. 1590, it is exempt from the payment of all taxes,

[56] Exhibits "EE" and "ZZ".

duties and other fees and charges of any kind or nature on all its importations of commissary and catering supplies, and other articles, supplies or materials imported by it for use in its transport and non-transport operations and other activities incidental thereto. Section 13 of P.D. No. 1590 reads:

> "SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] 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 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**:
>
> 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, 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 nontransport 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;"

Petitioner asserts that under its franchise it is exempted from paying the excise taxes assessed against it by respondent on its importations of liquor, wine and cigarettes for international flight consumption.

A franchise is a legislative grant to operate a public utility. In its franchise under P.D. No. 1590, petitioner is granted an option to pay the lower of two alternatives: (a) the basic corporate income tax based on petitioner's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or (b) a franchise tax of two percent of gross revenues.

It is clear that P.D. No. 1590 intended to give respondent the option to avail itself of Subsection (a) or (b) as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser or the seller, producer, 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." Hence, it is clear that petitioner, by exercising the alternative of either paying its basic corporate income tax or franchise tax becomes exempted from paying all other taxes.

On the second issue, petitioner maintains that the enactment of R.A. 9334 did not repeal, modify or amend its franchise, thus, it remains exempted from payment of excise taxes on its importations of commissary and catering supplies for international consumption under P.D. No. 1590.

Both respondents CIR and COC take contrary position contending that the NIRC already expressed the legislative intent to subject importations of cigars and cigarettes, distilled spirits and wines to all applicable taxes, duties and charges, including excise taxes, the provision of any special or general law to the contrary notwithstanding, as categorically stated in Section 131 of the Tax Code, as amended by R.A. No. 9334.

The Court has consistently held in a number of cases involving the same parties in the present case that R.A. No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, P.D. No. 1590.[57] In the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[58] this Court already laid to rest the issue of whether R.A. No. 9334 amended P.D. No. 1590, in the following manner:

---

[57] CTA EB No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 and 7746, August 24, 2012); CTA EB Nos. 942 and 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 and 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Nos. 920 and 922, September 9, 2013 (CTA Case Nos. 7665 and 7713, April 17, 2012); CTA Case No. 8153, January 17, 2013; CTA Case No. 7935, December 20, 2012; CTA Case No. 8361, March 26, 2014.

[58] CTA EB Nos. 920 and 922, September 9, 2013.

"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.

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 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."

Similarly, in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et al.*[59], the Court held that:

> "It is true that Section 6 of RA 9334 states the all-encompassing phrase 'the provision of any special or general law to the contrary notwithstanding.' However, such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to specifically identify PD 1590 as one of the acts 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. xxx"

No less than the Supreme Court sustained the foregoing stance of this Court that R.A. No. 9334 did not amend P.D. No. 1590. In *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[60] The Final Arbiter explained its ruling in this wise:

> "It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute.[9]So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec.131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much

[59] CTA Case No. 7935, December 20, 2012, citing *Tan, et al. vs. Perena*, G.R. No. 149743, February 18, 2005.
[60] G.R. Nos. 212536-37, August 27, 2014.

in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc*:

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

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:

> While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding,*" such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed.xxx
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary 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 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 other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case."

The Court of Last Resort has spoken on the matter. Section 13 of P.D. No. 1590 was not amended by R.A. No. 9334. This Court needs only to apply the tenet in similar cases before it.

Finally, the Court will determine whether petitioner is entitled to its claim for refund in the total amount of P5,553,624.40 excise taxes it paid under protest.

Petitioner claims that it has established compliance with the requirements for exemption on its importation of commissary supplies, such as cigarettes, liquor and wine, for its international flight consumption.

Respondent CIR for her part insists that even assuming that Section 13 of P.D. No. 1590 was not amended by R.A. No. 9334, petitioner still failed to prove that its claim that its commissary supplies are not locally available in reasonable quantity, quality and price. No independent and credible evidence was presented to bolster petitioner's self-serving declaration.

According to respondent CIR, reasonable price is the decision reached jointly between buyer and seller high enough to cover the cost and a reasonable profit, as defined by *Black's Law Dictionary*, or high enough to cover a seller's cost and a reasonable margin, but not high enough for the seller to realize monopolistic profit, as defined by the *Business Dictionary*.

With regard to petitioner's compliance with the requisites under P.D. No. 1590, Section 13 thereof provides as follows:

"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 nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

(2) **All taxes**, including compensating taxes, duties, charges, royalties, or fees due on **all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form **and other articles, supplies, or materials**; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities**

> **incidental thereto and are not locally available in reasonable quantity, quality, or price.**" *(Emphasis supplied)*

Evident from the afore-quoted provision that payment of basic corporate income tax or franchise tax, in lieu of all other taxes, exempts petitioner from the payment of excise tax on its importation of cigarettes, liquor and wine. However, for the exemption to apply, three requisites must be complied with by petitioner, namely:

1. it paid its corporate income tax and VAT liabilities for the subject period of importation;

2. the imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

In support of the first requisite, petitioner presented in evidence its Annual Income Tax Returns for the fiscal years ending March 31, 2008[61] and March 31, 2009[62]. Also, petitioner proved that it is a VAT-registered entity and that it accounted and paid for the VAT on its sales/receipts as evidenced by its BIR Certificates of Registration[63], Payment Form No. 0605[64], and Quarterly VAT Returns for fiscal years 2008[65] and 2009[66].

Petitioner as well complied with the second requisite. Under the column "Description of Articles" of the "Informal Import Declaration and Entry" (IIDE) documents submitted by petitioner, the imported articles were described as "Inflight Materials". Similarly, in the ATRIGS issued by the

---

[61] Exhibit "EEE".
[62] Exhibit "FFF".
[63] Exhibits "GGG" and "HHH".
[64] Exhibits "III" and "JJJ".
[65] Exhibits "KKK", "LLL", "MMM", and "NNN".
[66] Exhibits "OOO", "PPP", "QQQ", and "RRR".

respondent CIR addressed to respondent COC, it was indicated that "the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption".

The third condition requires that the imported liquors, wines and cigarettes must not be locally available in reasonable quantity, quality, or price. To support its claim, petitioner presented several documents, which includes, the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[67], the Philippine Wine Merchants (PWM) Price List for the years 2007[68], 2008[69] and 2009[70], the Affidavit of Gilbert M. Galedo[71], the Future Trade International Price List dated April 8, 2009[72], the Letter of Ms. Marianne C. Raymundo, petitioner's Vice President for Financial Services with the subject "Booking Rates-August 2007"[73], and the Monthly Philippine Dealing System (PDS) rates for the years 2000 to 2010[74].

Petitioner also presented its Manager for In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department Cheryl Capinpin, who testified on the matter, as follows:

"12. Q. Looking at Annex 'A' of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?

12. A. The costs of importing the commissary supplies involved and listed under the column 'Product Imported', are specified under the columns labelled 'Sales Invoice/Quantity & Value per Sales Invoice/Unit Cost Per Sales Invoice', 'Authority to Release Imported

---

67 Exhibit "DDD-2".
68 Exhibit "DDD-3".
69 Exhibit "DDD-4".
70 Exhibit "DDD-5".
71 Exhibit "DDD-6".
72 Exhibit "DDD-7".
73 Exhibit "DDD-8".
74 Exhibit "DDD-9".

Goods (ATRIG) No./Unit Cost per ATRIG', and 'Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.', 'Informal Import Declaration Entry No./Unit Cost per Informal Import Declaration Entry No.' while the costs of locally buying the same supplies are specified under the columns labelled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', 'Philippine Wine Merchants 2009 Price List', Duty Free Phils 2009 Retail Prices', and 'Future Trade International Travel Retail Price List as of Feb 2009'. As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.

13. Q. What are those sales invoices mentioned in your table which are the bases of your costs of importing the products involved?

13. A. They are the sales invoices of PAL's suppliers of the imported product.

14. Q. How did you arrive at the unit cost per sales invoice?

14. A. As shown by the table, in the case of alcoholic products, I divided the cost per case or carton stated in the sales invoice, by twelve (12), the number of bottles per case or carton of the alcoholic product covered by the invoice, to arrive at the unit cost per bottle.

In the case of tobacco products or cigarettes, I divided the total value of the product as stated in the sales invoices, by the number of cartons or cases also stated therein, to arrive at the cost per carton. I then divided the cost per carton by fifty (50), the number of reams per cartons to arrive at the cost per ream of cigarettes. To arrive at the unit cost per pack of cigarettes, I divided the cost per ream by ten (10) which is the number of packs in a ream.

15. Q. How about the 'Unit Cost per ATRIG'? How did you arrive at the unit cost of the imported product?

15. A. The total number of cases of all the products imported and the total value of such number of cases are usually stated in the ATRIG or the Authority to Release Imported Goods issued by the BIR. To arrive at the cost per case, I just divided the total value of the product by the total number of cases stated therein. As in the case of the computation of unit costs of alcoholic products per sales invoice, I then divided the value per case by twelve (12) bottles to arrive at the unit cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total value of the importation as given by the ATRIG by the total number of bottles. The resulting figure is the importation value per bottle.

In the case of cigarettes, the total number of cases of all the cigarettes imported and the total value of such number of cases are usually stated in the ATRIG. I divided the total value by the total number of cases to arrive at the cost per case. I then divided the cost per case by fifty (50) ream to arrive at the cost per ream. I then divided the cost per ream by ten (10) packs to arrive at the unit cost per pack.

16. Q. How about the 'Unit Cost per Informal Import Declaration Entry No.'? How did you arrive at the unit cost of the imported product?

16. A. I follow the same computation as in the case of the ATRIG. The Informal Import Declaration Entry usually states the total dutiable value of all the imported products. It does not state the dutiable value of each product. In such a case, I divided the total dutiable value by the number of cases of the product imported. I then divided the average value per case by the number of bottles contained therein to arrive at the average cost per bottle.

In case the total number of bottles of the alcoholic products imported is stated in the ATRIG, I divided the total dutiable value of the importation as given by the Informal Import Declaration Entry by the total number of bottles. The resulting figure is the average importation value per bottle.

17. Q. Why do you still have the unit cost per ATRIG and Informal Declaration Entry in addition to your 'Unit Cost per Sales Invoice'?

17. A. I am showing the said unit costs to show the cost of importing the same product as fixed or determined by the Bureau of Internal Revenue, in the case of the ATRIG, and by the Bureau of Customs, in the case of the Informal Import Declaration Entry. I have to show those alternative sources of importation costs especially when the sales invoice of the foreign supplier of product involved is no longer available. Said sources are reliable considering that the number of cases imported shown in the ATRIG is the source of the BIR in computing the excise taxes due thereon, while the total dutiable value of the products given by the BOC as shown by the Informal Import Declaration Entry is their basis in computing the duties due thereon.

18. Q. How do the 'Unit Cost per ATRIG' and the 'Unit Cost per Informal Import Declaration Entry No.' compare with the 'Unit Cost per Sales Invoice' of the product.

18. A. As you can see in Annex 'A', they are about the same, if not slightly higher or lower..

19. Q. What do the columns labelled 'Philippine Wine Merchants Price List 2007', 'Philippine Wine Merchants Price List 2008', and 'Philippine Wine Merchants Price List 2009' contain?

19. A. Said columns contain the local unit cost per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2007 2008, and 2009, respectively, of the alcoholic products mentioned therein, if the same products were purchased from them.

20. Q. What is your source of the local price of Philippine Wine Merchants for the years 2007, 2008, and 2009?

20. A. **My source is the 2007, 2008, and 2009 Price Lists of Philippine Wine Merchants given to us by Philippine Wine Merchants, a local wine dealer.**

21. Q. Showing to you these documents labeled 'Philippine Wine Merchants 2007 Price List', 'Philippine Wine Merchants 2008 Price List', and 'Philippine Wine Merchants 2009 Price List', with a signature appearing at the bottom of the page of each Price List, on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and attached as Annexes 'B', 'C', and 'D', respectively, how are they related to the 2007, 2008, and 2009 Price Lists of Philippine Wine Merchants which you

mentioned as your source of the local prices of Philippine Wine Merchants for the years 2007, 2008, and 2009 appearing in your table of comparison?

21. A. Those are the price lists for the years 2007, 2008, and 2009 of Philippine Wine Merchants which I mentioned.

22. Q. Do you have other sources of local prices of the products involved?

22. A. **Except for the year 2009, we have no other sources of said local prices because the other local wine merchants or dealers, including Duty Free Philippines, refused to give us their list of prices despite our persistent requests. For the year 2009, due to the refusal of Duty Free Philippines to give us their price list, we sent our Senior Planning & Purchasing Specialist of In-Flight Materials Purchasing Division, Corporate Logistics & Service Department, Mr. Gilbert M. Galedo, to at least look at the shelf prices of various wines, liqueurs, and cigarettes similar to our importation.**

23. Q. And what were the findings of Mr. Galedo?

23. A. Mr. Galedo found out that the prices of Duty Free Philippines of the products similar to our importations are very much higher than our importation cost.

xxx xxx xxx

25. Q. Aside from Duty Free Philippines, do you have other sources of local prices of the products involved?

25. A. As shown in Annex 'A', for the year 2009 we have another source and that is the Future Trade International Retail Price List as of Feb. 2009.

xxx xxx xxx

27. Q. How about the local costs of the imported cigarettes involved?

27. A. **Except for the costs of the cigarettes sold by Duty Free Philippines for the year 2009 appearing in the list attached to the affidavit of Mr. Galedo, I have no local costs of the imported cigarettes involved because as I have stated earlier there are no local suppliers of the said cigarettes who could regularly supply PAL with the quantity and brand of the cigarettes it needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.**" *(Emphasis supplied)*

In sum, petitioner compared the prices of its imported wines and/or liquors with the quotation of a single supplier known in the business as the Philippine Wine Merchant. Moreover, the witness admitted that petitioner did not compare the price of its imported cigarettes against the price in the local market and merely assumed that local prices of the same products would be more expensive. Without any solid back-up, she said that no local supplier of the same brand of imported cigarettes could provide petitioner requirements on a regular basis.

Without hesitation, witness Cheryl V. Capinpin confirmed this fact during her cross examination, in the following fashion:

"ATTY. BABARAN:
Q. **Now, I noticed that in this table you only made a cost comparison only with one supplier, the Philippine Wine Merchants?**

MS. CAPINPIN:
A. Yes, Ma'am.

ATTY. BABARAN:
Q. So, there were no other suppliers where you inquired from?

MS. CAPINPIN:
A. We inquired from other suppliers, but unfortunately only the Philippine Wine Merchants really submitted quotation.

ATTY. BABARAN:
Q. So, Ms. Witness, would you know also if there were other cost comparisons made or there were other surveys made aside from this one prepared by petitioner regarding the cost of local and imported products?

MS. CAPINPIN:
A. There is no other cost comparison aside from this.

ATTY. BABARAN:
Q. So, only this one, which the petitioner prepared?

MS. CAPINPIN:
A. Yes." *(Emphasis supplied)*

Evidently, petitioner failed to make a comprehensive study on the availability, quantity, and price of the subject imported wines or alcoholic drinks and cigarettes in the local market as to justify importation of the said items.

Note that insofar as the imported wines are concerned, only the price lists from Philippine Wine Merchant covered the years 2007, 2008 and 20089, while the price list given by the Future Trade International covered only the period of February 2009, and the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty Free Philippines was only made by petitioner's employee, Mr. Gilbert Galedo.

The aforesaid pricelist of Future Trade International and the one made by Mr. Galedo, in addition to the price lists of Philippine Wine Merchants, are not sufficient to prove the unavailability in the local market of the commissary supplies imported by petitioner. The alleged inquiry could not even approximate substantial compliance with the legal requirement on the matter.

To be sure, the information gathered from the said sources insofar as imported wine and liquors are concerned are seriously deficient to justify conclusion that the said imported items are not available in reasonable quantity, quality or price in the local market. Petitioner cannot just rely on the fact that it is exempt from paying excise tax on the subject importations, it must prove by sufficient and credible evidence that it is entitled to the said exemption.

The lack of sufficient justification for the exemption is more evident in the case of imported cigarettes. Absent any pretension, petitioner merely assumed that its requirement on imported cigarettes could not be satisfied by any local supplier. This is certainly not in accord with the conditions set forth for exemption from excise tax which must be strictly construed against the claimant.

In fine, without any study or at least solid information on the non-availability in the local market in terms of quantity, quality, and price of the subject imported cigarettes, petitioner cannot possibly seal its claim for exemption.

As previously ruled, a tax refund partakes of the nature of a tax exemption,[75] which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly. Further, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption for it is a derogation of the sovereign authority.[76]

WHEREFORE, the Petition for Review filed by Philippine Airlines, Inc. on September 23, 2011 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[75] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999

[76] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

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

ROMAN G. DEL ROSARIO
Presiding Justice