REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NOS. 8529 & 8590

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 04 2016
2:40 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

In its Motion For Reconsideration dated November 23, 2015, petitioner seeks to reverse the Decision dated October 27, 2015, denying its claim for refund in the amounts of P3,077,289.44 and P2,348,287.34, in CTA Case Nos. 8529 and 8590, respectively, representing specific taxes paid under protest on its importations on various dates in 2009 of assorted liquor, wine, and cigarettes for international flight consumption.

While the Court upheld petitioner's exemption from the payment of tax on its importation of cigarettes, liquor and wine under its franchise laid down in Presidential Decree (PD) No. 1590, nonetheless, the Court denied the subject claims for refund for petitioner's failure to establish that the imported cigarettes, liquors and wines during the pertinent periods were not locally available in reasonable quantity, quality, or price.

Petitioner however claims the contrary. For it, the testimony of its Manager-In-Flight Materials Purchasing Division Cheryl V. Capinpin established that the subject imported cigarettes, liquors and wines were not locally available in reasonable quantity, quality, or price during the period relevant to the present cases. The documents presented by the same witness, i.e., a Pricelists from Philippine Wine Merchants, Future Trade International and Duty Free Philippines, as well as the Table of Comparison she herself prepared, allegedly strengthened her testimony. Respondent's failure to present evidence as well gave credence to petitioner's uncontradicted evidence.

The evidentiary value of the foregoing evidence cannot be diluted by the mere claim that they came from or prepared by petitioner's employee, hence, self-serving. Petitioner paralleled this condition to the testimony of a single witness, the complainant, in a criminal case, which is by jurisprudence, sufficient to convict the accused. If a single witness is enough to sustain conviction in a criminal case which requires proof beyond reasonable doubt, credence should also be accorded to petitioner's witness in this civil case which requires only preponderance of evidence, petitioner says.

Also, the lack of evidence of comparative local price for the subject items should not be taken against petitioner. Allegedly, in another case, the Second Division of the Court acknowledged that the submission of comparative local price was not the only determining factor to justify the exemption of the subject imported items, especially when such comparative local price could not be provided in the absence of local suppliers capable of supplying the required quantity.

Further, the non-inclusion of the prices of the subject imported items in the list presented in evidence leads to a conclusion that these items were indeed not locally available.

Finally, respondent herself admits in her Memorandum that the importation of the subject commissary supplies costs less than sourcing them locally.

By way of comment, respondent Commissioner of Customs asserts that in these refund cases, petitioner had the burden of proving entitlement thereto and petitioner failed to discharge this burden. Precisely, respondents opted not to present countervailing evidence as it was not necessary under the circumstances.

Moreover, the only relevant evidence presented by petitioner to prove that the subject articles were not available locally during the pertinent period in reasonable quantity, quality, or price was the testimony of Cheryl V. Capinpin, which was not only self-serving but unreliable as well. The representative of the alleged three (3) suppliers were not presented to authenticate the pricelists. Thus, the testimony of witness Cheryl V. Capinpin was hearsay.

More importantly, the pricelist of the three suppliers could not represent the pricelist of the entire suppliers within the country, hence, inconclusive. The quotation from the three suppliers only signifies the lack of genuine attempt on the part of petitioner to determine the availability of the subject items in the local market. Petitioner's reliance on the BIR Price Surveys is also misplaced as petitioner gained knowledge of it only after these cases were filed. Besides, the BIR Price Survey was conducted in 2003 and 2010 while the subject articles were imported in 2009.

As to the Comparative Table prepared by the witness, the same was unreliable given that not all the items indicated therein were of the same brand, variety, or quantity, thus, there was no valid basis for comparison.

Contrary to petitioner's contention, the reasonableness in price contemplated under the pertinent law is not necessarily the cheaper price. The term "reasonable price" from a legal standpoint, is that which is high enough to cover the cost and reasonable profit, which provides the best total value, and not necessarily the lowest price. Petitioner in this case never alleged, much less proved that the local prices of the subject articles are excessive or unreasonable. In fact and as admitted by witness Capinpin, there was yet no standard set to determine if the prices of the subject articles were reasonable or not.

And even if the imported articles were indeed cheaper, petitioner failed to include in its computation of price other variables that would increase their cost such as shipping, other taxes and dues imposed, and incidental expenses for the importation. For respondent BOC, the alleged cheaper price of the imported articles was based on an unbalanced comparison with totally different criteria rendering it invalid. Even the exchange rate used by petitioner in making the comparison was invalid since it was not the actual exchange rate on the date of the purchase but monthly weighted rates, as admitted by petitioner's counsel in open court.

Respondent Commissioner of Internal Revenue (CIR) failed to register any objection or file any comment on the subject Motion despite notice.[1]

To be sure, the issues raised by petitioner in its Motion For Reconsideration have already been sufficiently addressed in the assailed Decision dated October 27, 2015 and no new argument has been put forward which will compel the Court to modify much less reverse its ruling.

Significantly, the present cases are not criminal in nature. Indeed, only preponderance of evidence is required to sustain the cases. However, the evidence must establish that the legally mandated requisites have been satisfied, lest a denial of petition is warranted. Also settled is the rule that petition for tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden was on petitioner to show compliance with all the conditions set forth by the law for the grant of the tax refund or credit,[2] which petitioner utterly failed to do.

On making reference to the decision rendered in another case by the Court, *viz-a-viz*, the therein ruling that comparative local price is not the only determining factor to justify the exemption of the subject imported items, let it be stressed that Courts may be required to take judicial notice of the decisions or rulings of the appellate courts but not of the decisions of the coordinate trial courts, or even of a

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[1] See Records Verification dated January 28, 2016
[2] Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301, March 11, 2013 and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. NO. 194637

decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory.[3]

More importantly, each case is decided on its own merit and on the probative value of the evidence presented therein, which in the present cases, are deficient.

WHEREFORE, the Motion For Reconsideration dated November 23, 2015, filed by petitioner Philippine Airlines, Inc., 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

[3] Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] vs. Central Azucarera De Bais, Inc. [CAB], G.R. No. 186605, November 17, 2010