REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA Case No. 8415

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
NOV 14 2014
1:17 p.m.

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RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is petitioner's *Motion for Reconsideration [with Motion to Take Judicial Notice]* filed on August 26, 2014. Petitioner seeks reconsideration of this Court's Decision, promulgated on August 7, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner maintains that the Court erred in denying its claim for refund of erroneously paid excise tax on its importation of liquors and cigarettes in the amount of P2,774,912.56. Petitioner argues that it was able to sufficiently prove its compliance with the requirements to entitle it to exemption from payment of excise tax.

In the assailed Decision, the Court ruled that importations made during the fiscal years ending March 2007 and March 2010 are not exempt from excise tax due to petitioner's failure to prove that it paid its corporate income tax for fiscal years ending March 2007 and 2010 and that it paid for its VAT for fiscal year ending March 2007.

In the interest of equity and justice, and without prejudice to petitioner's willingness to submit additional evidence in support of its motion, petitioner prays that the Court take judicial notice of its various resolutions and/or decision, in the following cases involving the same parties, wherein it found that petitioner duly filed and paid its income and VAT liabilities for the periods concerned:

a. *Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) vs. Philippine Airlines, Inc. (PAL)*, CTA EB Case Nos. 928 and 929 (CTA Case No. 7843) dated October 21, 2013, where the Court, citing the Decision dated May 18, 2012 of the Second Division, found that petitioner had filed and paid its basic corporate income tax and VAT for fiscal year ended March 31, 2007;

b. *PAL vs. CIR and COC*, CTA Case No. 8361 dated March 26, 2014, where the Second Division found that petitioner filed the necessary returns and paid for its corporate income tax for fiscal year ending March 31, 2008 and March 31, 2009;

c. In the assailed Decision, the Court found that petitioner presented its Quarterly VAT Returns for the four quarters of fiscal years ending March 2008, March 2009 and March 2010;

d. *PAL vs. CIR and COC*, CTA Case No. 8362, the First Division issued a Resolution dated February 3, 2014 which admitted as evidence petitioner's Annual Income Tax Return for fiscal year ending March 31, 2010.

Petitioner argues that Section 1 of Rule 129 of the Rules of Court mandates a court to take judicial notice, without introduction of evidence, of official acts of the legislative, executive and judicial departments of the Philippines. Hence, the decisions issued by this Court, in division or *en banc*, being an official act of the judicial department, should be taken judicial notice of.

With respect to the requirement that petitioner must prove that the imported articles were not locally available in reasonable quantity, quality or price, petitioner submits that the Court erred in its appreciation of the evidence presented as it had proven, by preponderant evidence, that the articles imported are not locally available in reasonable quantity, quality or price. The submission of comparative local price is not the only determining factor to justify the exemption of the imported product, more so when such comparative local price could not be provided in view of the absence of local suppliers capable of supplying the required amount of imported articles.

That certain brands and/or volumes of articles imported cannot be found in the price lists of local suppliers does not negate that these articles are not locally available in reasonable quantity, quality or price. Rather, that these brands and/or volumes are not found in the price lists of local suppliers bolsters the fact that these commissary supplies are not available in sufficient quantity or quality in the Philippine local market.

Petitioner stresses that respondent CIR herself, in her Memorandum, admitted that importation of the catering and commissary supplies costs less than purchasing them locally. Without conceding to respondent CIR's definition of a "reasonable price", petitioner submits that respondent CIR's definition itself provides that the reasonableness of the price depends on the joint decision reached between the buyer and the seller. It is but logical and reasonable for petitioner to consider the least cost in procuring the articles to be used for its pouring service for international flight. Respondent's CIR interpretation is, not only limited in scope being applicable only on instances wherein the use of the subject articles directly results to profit margin, but is also unrealistic, impractical, excessive and it unduly encroaches on the business prerogative of petitioner to determine the reasonableness of price of an article it intends to purchase for a specific use. Such an interpretation unduly and unjustly deprives petitioner of a tax exemption so clearly provided by the Legislature as it demands petitioner to locally purchase articles as long as they are available in the local market and the local seller gains a "profit margin" therefrom, notwithstanding the fact that the local price is unreasonably high for the specific purpose to which it is intended by petitioner.

On October 10, 2014, the Court received a copy of respondents' *Comment (On the Motion for Reconsideration [with Motion to Take Judicial Notice])*. Respondents contend that this Court cannot take judicial notice of the records of allied cases; petitioner failed to establish that the subject articles are not locally available in reasonable quantity, quality or price.

A *Reply to Comment (On the Motion for Reconsideration [with Motion to Take Judicial Notice])* was filed by petitioner on October 27, 2014. Petitioner insists that the decisions cited in the subject *Motion*, being official acts of the judicial department of the Philippines, should be taken judicial notice of by this Court; and that petitioner has established that the subject articles are not locally available in reasonable quantity, quality or price.

Hence, the subject *Motion* is deemed submitted for resolution.

We find no compelling reason to reverse or modify the assailed Decision.

As a general rule, courts are not authorized to take judicial notice of the contents of records in other cases tried or pending before the same court, even when those cases were heard or are actually pending before the same judge.[1] While this rule admits of exceptions, the Supreme Court reiterated in a subsequent case that "in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew."[2]

In view of the foregoing and considering that each and every case is distinct and separate in character and matter although similar parties may have been involved[3], petitioner's annual income tax returns and VAT returns presented in other

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[1] *Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005.
[2] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.
[3] *Ibid.*

cases cannot be considered in this instant case without being offered and admitted in evidence.

Anent the requirement that petitioner must prove that the imported articles are not locally available in reasonable quantity, quality or price, We agree that the submission of the comparative local price is not the only determining factor to justify the excise tax exemption of the imported product. However, as found in the assailed Decision, petitioner failed to present any other evidence that would convince this Court that indeed the imported articles are not locally available in reasonable quantity, quality or price.

To reiterate, a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[4] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[5]

WHEREFORE, premises considered, the instant *Motion for Reconsideration [with Motion to Take Judicial Notice]* is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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[4] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

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