Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISIONER OF CUSTOMS, Petitioner,	**CTA EB No. 1456** (CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734)
-versus-	
AIR PHILIPPINES CORPORATION, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners,	**CTA EB No. 1458** (CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
AIR PHILIPPINES CORPORATION, Respondent.	Promulgated: OCT 18 2017 4:02p.m.

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DECISION

CASANOVA, J.:

Before this Court are consolidated Petitions for Review separately filed by Commissioner of Customs on June 6, 2016, docketed as CTA EB No. 1456[1], and by the Commissioner of Internal Revenue and

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[1] EB No. 1456, En Banc Rollo, pp. 8-66.

Commissioner of Customs, on May 19, 2016, docketed as CTA EB No. 1458[2]. Both petitions seek the reversal and setting aside of the Decision[3] (assailed Decision) dated December 1, 2015, and Resolution[4] (assailed Resolution) dated May 3, 2016, both rendered by the CTA First Division in CTA Case Nos. 7630, 7642, 7643, 7673, 7712 and 7734, entitled *"Air Philippines Corporation (APC) vs. Commissioner of Internal Revenue and Commissioner of Customs."*

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder, to wit:

Decision dated December 1, 2015:

"**WHEREFORE**, all the foregoing considered, the Petitions for Review in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734 are hereby **GRANTED.**

Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED** to refund to Air Philippines Corporation the aggregate amount of **ONE HUNDRED TWELVE MILLION THREE HUNDRED EIGHTY THREE THOUSAND FOUR HUNDRED SIXTY THREE PESOS and NINETY NINE CENTAVOS (P112,383,463.99)**, representing the specific tax APC paid for the importation of Jet A-1 aviation fuel on the dates stated below and computed as follows:

CTA Case No.	**Date of Importation**	**Amount of Specific Tax Involved**
7630	April 15, 2005	P17,698,480.00
7642	June 13, 2005	P23,678,242.00
7673	August 4, 2005	P23,605,733.60
7712	November 28, 2005	P23,707,161.39
7734	February 22, 2006	P23,693,847.00
	Total	**P112,383,463.99**

On the other hand, the Petition for Review in CTA Case No. 7643 is hereby **DENIED** for insufficiency of evidence.

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[2] EB No. 1458, En Banc Rollo, pp. 1-30.
[3] Annex "A" to the Petition for Review, EB No. 1456, Ibid., pp. 68-104.
[4] Annex "B" to the Petition for Review, Id., pp. 106-117.

SO ORDERED."

Resolution dated May 3, 2016:

"**WHEREFORE,** in light of the foregoing considerations, both respondent's Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED."

Air Philippines Corporation (APC) is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at R-1 Hangar, APC Gate 1, Andrews Avenue, Nichols, Pasay City.[5]

Commissioner of Customs (COC) is the head of the Bureau of Customs, the government agency in charge of the assessment and collection of customs duties, fees and other charges under the Tariff and Customs Code of the Philippines (TCCP), and the enforcement of the TCCP and other related laws, rules and regulations, with office address at the OCOM Building, South Harbor, Gate 3, Port Area, Manila.[6]

On the other hand, Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds Office at the BIR National Office Building Diliman, Quezon City.[7]

The facts[8] of the case, as narrated by the CTA First Division in the assailed Decision, are as follows:

"Pursuant to Republic Act (RA) No. 8339, as amended by RA No. 9215, petitioner APC has been granted a legislative franchise to establish, operate and maintain domestic and international air transport services. Pertinent provisions of the said law (as amended) read as follows:

'SECTION 1. *Nature and Scope of Franchise.* — Subject to the provisions of the Constitution and applicable laws,

[5] Par. 3, The Parties, Petition for Review, EB No. 1456, En Banc Rollo, p. 11
[6] Par. 1, The Parties, Petition for Review, EB No. 1456, En Banc Rollo, p. 11.
[7] Par. 1, Parties, Petition for Review, EB No. 1458, En Banc Rollo, p. 2.
[8] Pages 2-26 of the January 5, 2015 Decision, EB No. 1456, Ibid., pp. 85-109.

rules and regulations, there is hereby granted to Air Philippines Corporation, hereunder referred to as the grantee, its successors or assigns, a franchise to establish, operate and maintain transport services for the carriage of passengers, mail, goods and property by air, domestic and international.

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SEC. 11. *Tax Provisions.* — The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of five percent (5%) of the gross revenues derived by the grantee from its transport operations.

In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed *ipso facto* part hereof and shall operate equally in favor of the grantee.

The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation.'

On October 23, 2000, the BIR issued BIR Ruling No. 048-2000, addressed to the attention of then EVP-Chief Operating Officer, Capt. Rogelio M. Narciso, the pertinent portion of which reads as follows:

'x x x on June 28, 2000, the Secretary of Finance issued a letter-decision resolving CAI's request for a reconsideration, the dispositive portion of which states:

'On the basis of the foregoing, BIR Ruling No. 013-2000 is hereby revoked. BIR Ruling No. 110-99, which provides for CAI's exemption from all taxes imposed by the NIRC on its importation or purchases of petroleum products from abroad for use in its domestic operations, is hereby reinstated.

'In the interest of a level playing field, this ruling shall also apply to other airlines similarly situated.'

On the basis of the letter-decision, it is now your contention that APC is likewise exempt from all taxes imposed by the NIRC on its importations or purchases from abroad of petroleum products, which are exempt from value-added tax for use in its domestic operations.

> In reply, please be informed that **pursuant to the provisions of Sec. 15 of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (Franchise of PAL)** and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, **APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109 (e) of the Tax Code of 1997, which importations shall be used for its domestic operations.'** (Emphases and underscoring supplied)

However, on January 29, 2003, then BIR Commissioner, Guillermo L. Parayno, Jr., issued BIR Ruling No. 001-2003, addressed to petitioner [APC], to Philippine Airlines, to Cebu Air, Inc., and to Pacific Airways Corporation, thereby superseding BIR Ruling No. 048-2000. The pertinent portion of the said BIR Ruling read as follows:

> '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 of 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 other airlines. Accordingly, your importations may not be given the same 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.
>
> This ruling takes effect immediately.' (Emphases and underscoring supplied)

Subsequently, petitioner imported Jet A-1 aviation fuel and paid under protest the specific tax assessed therefor by the pertinent Collector of Customs, detailed as follows:

Date of Importation	**Date of Payment**	**Amount Paid**	**Official Receipt No.**
April 15, 2005	April 28, 2005	P17,698,479.58	Equitable PCI Bank 000447C

June 13, 2005	June 22, 2005	P23,678,241.79	Equitable PCI Bank 000935C
June 8, 2005	June 29, 2005	P11,836,539.00	Security Bank Corporation 006015
August 4, 2005	August 16, 2005	P23,605,733.60	Equitable PCI Bank 042017C
November 28, 2005	December 16, 2005	P23,707,161.39	Equitable PCI Bank 016311C
February 22, 2006	March 9, 2006	P23,693,847.00	Equitable PCI Bank 017317C

Petitioner filed written protests with the pertinent District Collector of Customs, with requests for the refund of the above payments of specific taxes, the details of which are as follows:

For the Importation on:	Date of Filing Written Claim for Refund	Amount Claimed
April 15, 2005	March 26, 2007	P17,698,480.00
June 13, 2005		P23,678,242.00
June 8, 2005		P11,836,539.00
August 4, 2005	August 14, 2007	P23,605,733.60
November 28, 2005	October 19, 2007	P23,707,161.39
February 22, 2006	February 4, 2008	P23,693,847.00

In order to avoid the lapse of the two-year prescriptive period within which to file a claim for refund under Section 204(C) of the NIRC of 1997, petitioner was constrained to file written claims for refund of the above-stated payments with respondent CIR, as follows:

For the importation	Date of Filing Written Claim for Refund	Amount Claimed
April 15, 2005	March 26, 2007	P17,698,480.00
June 13, 2005		P23,678,242.00
June 8, 2005		P11 ,836,539.00
August 4, 2005	August 14, 2007	P23,605,733.60
November 28, 2005	October 19, 2007	P23,707, 161.39
February 22, 2006	February 4, 2008	P23,693,847.00

For the same reason and without awaiting action on the part of respondent CIR, petitioner filed separate Petitions for Review, praying for the refund of the amounts specific taxes paid under protest, to wit: *e*

CTA Case No.	For The Amount of:	Petition for Review Filed On	CTA Division
7630	P17,698,480.00	April 30, 2007	2nd Division
7642	P23,678,242.00	June 21, 2007	1st Division
7643	P11,836,539.00	June 27, 2007	1st Division
7673	P23,605,733.60	August 15, 2007	2nd Division
7712	P23,707,161.39	December 10, 2007	1st Division
7734	P23,693,847.00	March 7, 2008 3	1st Division

In her Answers in CTA Case Nos. 7630, 7642, 7643, 7673, 7712, and 7734, respondent CIR alleges the following Special and Affirmative Defenses, to wit:

1. The Petition for Review does not merit to be given due course. Well-settled is the rule that jurisdiction is determined by the allegations in the complaint or in this case, the petition. The allegations of petitioner point to a relief that entirely relies on the nullification of the Certification of the Department of Energy dated December 20, 2003 and the resultant BIR Ruling No. 001-2003. Aside from the allegations therein, this point is emphasized in petitioner's 'Prayer' which explicitly seeks to nullify the validity of the said Certification of the Department of Energy. It then further deteriorates to a point where petitioner is asking the Court to rule that the Department's factual finding that *'aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price'*, is not correct. Finally, petitioner prays for the nullification of the resultant BIR Ruling No. 001-2003. Clear as day, petitioner is primarily seeking the nullification of these issuances. The alleged cause of action for refund of taxes being merely consequential to that primarily sought. It cannot be denied that absent the nullification of the issuances, petitioner would have nothing to base its cause of action. However, the law provides the proper administrative remedies available to petitioner in contesting these issuances and which petitioner ignored. Instead, what petitioner undertook is a procedural shortcut by filing the instant petition, and this mis-step should be viewed with utmost disfavor.

2. 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.

3. 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), Presidential Decree (PD) No. 1590, exempting petitioner from taxes on its importation of Jet A-1 fuel have been met, namely: (1) the purchases by sale or delivery of aviation gas, fuel, and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto, and (2) in the case of importation that they are not locally available in reasonable quantity, quality, or price. 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.

4. BIR Ruling No. 001-2003 dated January 29, 2003 is a valid interpretation of the provisions of the National Internal Revenue Code (NIRC) of 1997.

5. Clearly, petitioner failed to exhaust all administrative remedies before elevating this case to this Court.

   5.1 Petitioner did not seek redress from the Department of Energy to assail the alleged invalid certification as provided under Department Circular No. 2002-07-004, which was duly issued pursuant to the provisions of Section 5 (k) of Republic Act (RA) No. 7638, otherwise known as the Department of Energy Act of 1992.

   5.2 Petitioner did not appeal to the Office of the President of the Republic of the Philippines 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 before petitioner questioned its legality before this Court. Petitioner precipitate act violates Section 1 (j) of Rule 16 of the 1997 Rules of Civil Procedure.

   5.3 Petitioner likewise failed to appeal to the Office of the Secretary of Finance, BIR Ruling No. 001-2003 dated January 29, 2003 before questioning its legality before this Court, in violation of Section 4 of the NIRC of 1997.

6. In effect, petitioner is asking this Court to override the factual determination made by the Secretary of the Department of Energy who acted within the scope of his official functions on a matter within the sphere of his competence/specialization, in order for petitioner to claim for refund. This is precisely one of the evils sought to be avoided by Section 1 (j) of Rule 16 of the Rules of Court. Respect for the factual determination of a co-equal branch of Government under the time-honored principle of Separation of Powers should stay this Court from exercising jurisdiction over this petition.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

8. Petitioner must prove that it paid the specific taxes so alleged.

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

10. Petitioner must prove that the alleged amounts sought to be refunded was erroneously or illegally collected by respondent, or that the same were properly documented.

11. Tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And if an exemption is found to exist, it must not be enlarged by construction since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute, the favor would be extended beyond dispute in ordinary cases.

12. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

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

14. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

On the other hand, respondent COC filed his separate Answers in CTA Case Nos. 7642, 7643, and 7734, substantially alleging the following Special and Affirmative Defenses:

1. 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 BOC hinges on the issue of the validity of the assailed BIR Ruling.

2. BIR Ruling No. 001-2003 did not alter or amend the franchise of petitioner. Said ruling merely and simply determined whether the two (2) conditions set forth in Section 13 of PD No. 1590, as amended by LOI 1483, to justify petitioner's exemption from taxes on its importation of Jet A-1 fuel have been met. Specifically, it only confirmed the absence of the second condition, that fuel is 'not locally available in reasonable quantity, quality or price' based on the DOE Certification.

3. The DOE is the government agency responsible for the administration of the energy section; hence, it is presumed to have regularly issued the Certification dated December 20, 2002 in the performance of its administrative function(s).

4. The Court is not the proper forum to question or contest the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price; hence the Court has no jurisdiction over the issue of whether the said DOE certification is valid.

5. At all events, petitioner failed to question the said BIR Ruling within thirty (30) days from receipt thereof before the Secretary of Finance as provided for under Revenue Memorandum Circular No. 44-2001 dated October 11, 2001:

> '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 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....'

6. Accordingly, said ruling had become final. Petitioner can no longer question the same through the present petition.

7. Petitioner's failure to exhaust all administrative remedies is fatal to its cause.

8. The BOC is a mere collection agency that does not have power and jurisdiction to adjudicate any issue arising from any tax imposition and other rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions.

9. In action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

10. Any claim for refund of customs duties take the nature of tax exemptions that must be construed strictissimi juris against the claimant and liberally in favor of the taxing authority.

Parenthetically, respondent COC failed to file his Answer in CTA Case Nos. 7630, 7673, and 7712; but of these cases, respondent COC was declared in default only in CTA Case No. 7712, upon oral motion of petitioner's counsel.

Pursuant to separate motions filed by petitioner, the instant cases were consolidated.

On August 15, 2008, respondent COC filed his Pre-Trial Brief (For Respondent Commissioner of Customs). Subsequently, petitioner filed its Petitioner's Consolidated Pre-Trial Brief on August 26, 2008.

On April 2, 2009, the parties filed their Consolidated Joint Stipulation of Facts and Issues, which was approved by the Court through the Resolution dated April 14, 2009, thus terminating the pre-trial stage. Thereafter, petitioner presented its evidence.

In support of its petitions, petitioner presented the following witnesses: Jhonathan Chiong — Manager of the Fuel Department of petitioner; Marides C. Canillo — Manager of the Financial Planning and Analysis of petitioner; Edwin J. Segundo — Supervisor of the Fuel Department of petitioner; Atty. Jonathan Andrew Lim — Senior Legal Counsel of petitioner; Myra Celeste O. Dabalos — Independent Certified Public Accountant (ICPA); Charleston A. Lopezgo — Manager of the Fuel Purchasing and Risk Management Division of Philippine Airlines, Inc. (PAL); Mary Ann Capuchino — Partner of the Tax Reporting and Operations Group of the Tax Division of SyCip Gorres Velayo & Co.; Glendalyn Dela Cruz — Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the Department of Energy (DOE); Atty. John Voltaire Almeda — Legal Counsel of petitioner; Jennifer I. Sedigo — Financial Reporting Manager of

Accounting of petitioner; Mario Tiaoqui — Former Secretary of the DOE; Apolinario Gonzales — Officer-in-Charge of the Legal Division of the Bureau of Customs, Port of Batangas; and Veronica Granadso — Customs Acting Appraiser of the Bureau of Customs, Port of Subic.

Petitioner formally offered its evidence on March 7, 2013 through its 'Petitioner's Formal Offer of Evidence (with reservation re: BIR and BOC records)', with the respective Comment (On Petitioner's Formal Offer of Evidence) of respondent CIR filed on March 22, 2013, and of respondent COC filed on April 25, 2013. Thereafter, on May 2, 2013, petitioner filed its Petitioner's Supplemental Formal Offer of Evidence, with respondent CIR's Comment (On Petitioner's Supplemental Formal Offer of Evidence) filed on May 24, 2013 and respondent COC's Comment (Petitioner's Supplemental Formal Offer of Evidence dated April 30, 2013) filed on June 3, 2013. On July 4, 2013, petitioner filed its Reply (To The Comment on Petitioner's Formal Offer of Evidence of Respondent Commissioner of Customs Dated April 24, 2013). Subsequently, on July 18, 2013, respondent COC filed a Rejoinder (On Petitioner's Reply dated July 4, 2013).

On September 10, 2013, the Court, admitted as petitioner's evidence, Exhibits 'A', 'B', 'C', 'C-1', 'D', 'E', 'F', 'G', 'G-1', 'G-2', 'H', 'H-1', 'I', 'I-5', 'I-6', 'I-7', 'I-8', 'I-9', 'J', 'J-11', 'Q', 'Q-1', 'T', 'T-2' 'T-3', 'U', 'V', 'V-1', 'W', 'W-1', 'W-3', 'W-4', 'W-5', 'X', 'Y', 'Y-1', 'Z', 'Z-1', 'Z-2', 'Z-3', 'AA', 'BB', 'BB-1', 'CC', 'CC-1', 'CC-2', 'CC-3', 'DD', 'EE', 'EE-1', 'FF', 'FF-1', 'FF-2', 'FF-3', 'GG', 'II', 'II-1', 'JJ', 'JJ-1', 'KK', 'KK-1', 'RR', 'SS', 'W', 'WW', 'XX', 'YY', 'HHH', 'III', 'KKKK', 'LLLL', 'MMMM', 'NNNN', 'UUUU', 'WWWW', 'XXXX', 'YYYY', 'YYYY-1', 'ZZZZ', 'ZZZZ-1', 'A^{5}', 'D^{5}', 'E^{5}', 'F^{5}', 'F$^{5-1}$', 'F$^{5-2}$', 'F$^{5-3}$', 'F$^{5-4}$', 'F$^{5-5}$', 'F$^{5-6}$', 'F$^{5-7}$', 'F$^{5-8}$', 'F$^{5-9}$', 'F$^{5-10}$', 'G^{5}', 'G$^{5-1}$', 'G$^{5-2}$', 'G$^{5-3}$', 'G$^{5-4}$', 'H^{5}', 'I^{5}', 'J^{5}', 'N^{5}', 'N$^{5-1}$', 'P^{5}', 'P$^{5-1}$', 'R^{5}', 'S^{5}', 'U^{5}', 'V^{5}', 'W^{5}', 'W$^{5-1}$', 'X^{5}', 'Y^{5}', 'Z^{5}', 'A^{6}', 'B^{6}', 'C^{6}', 'D^{6}', 'E^{6}', 'F^{6}', 'G^{6}', 'H^{6}', 'I^{6}', 'J^{6}', 'K^{6}', 'L^{6}', 'M^{6}', 'N^{6}', 'O^{6}', 'P^{6}', 'Q^{6}', 'R^{6}', 'S^{6}', 'T^{6}', 'X^{6}', 'X$^{6-1}$', 'Z^{6}', 'Z$^{6-1}$', 'A^{7}', 'A$^{7-1}$', 'B^{7}', 'B$^{7-1}$', 'C^{7}', 'D^{7}', 'E^{7}', 'F^{7}', 'G^{7}', 'H^{7}', 'I^{7}', 'J^{7}', 'K^{7}', 'K$^{7-1}$', 'L^{7}', 'L$^{7-1}$', 'N', 'N$^{7-1}$', and 'O^{7}'.

However, the Court denied the admission of Exhibits 'P', 'P-1', 'P-2', 'P-3', 'P-4', 'HH', 'HH-1' to 'HH-4', 'LL', 'MM', 'NN', 'OO', 'PP', 'QQ', 'TT', 'UU', 'BBB', 'CCC', 'DDD', 'EEE', 'FFF', 'GGG', 'JJJ', 'KKK', 'LLL', 'MMM', 'NNN', 'OOO', 'PPP', 'QQQ', 'RRR', 'SSS', 'TTT', 'UUU', 'VVV', 'WWW', 'XXX', 'YYY', 'ZZZ', 'AAAA', 'BBBB', 'CCCC', 'DDDD', 'EEEE', 'FFFF', 'GGGG', 'HHHH', 'IIII', 'JJJJ', 'OOOO', 'PPPP', 'QQQQ', 'QQQQ-1', 'RRRR', 'SSSS', 'TTTT', 'VVVV', 'L^{5}', 'L$^{5-1}$', 'T^{5}', 'U^{6}', 'U$^{6-1}$', 'V^{6}', 'V$^{6-1}$', 'W^{6}', 'W$^{6-1}$', 'Y^{6}', 'M^{7}', 'M$^{7-1}$', 'M$^{7-2}$', 'M$^{7-3}$', 'M$^{7-4}$', and 'M$^{7-5}$'.

On October 1, 2013, petitioner filed its Motion (For Partial Reconsideration of the Court's Resolution dated 10 September 2013). On October 24, 2013, respondent COC filed his Comment (On Petitioner's Motion for Partial Reconsideration). The Court granted the Motion in the Resolution dated February 26, 2014, admitting as petitioner's evidence, Exhibits 'P' 'P-1', 'HH', 'HH-1', 'HH-4', 'TT', 'UU', 'BBB', 'CCC', 'DDD', 'EEE', 'FFF', 'GGG', 'JJJ', 'KKK', 'LLL', 'MMM', 'NNN', 'OOO', 'JJJJ', 'OOOO', 'QQQQ', 'RRRR', 'SSSS', 'L^{5}', 'L$^{5-1}$', 'U^{6}', 'U$^{6-1}$', 'V^{6}', 'V$^{6-1}$', 'W^{6}', 'W$^{6-1}$', 'M^{7}', 'M$^{7-1}$', 'M$^{7-2}$', 'M$^{7-3}$', 'M$^{7-4}$', and 'M$^{7-5}$'.

On October 8, 2013, respondent COC filed his Omnibus Motion (To Reset October 17, 2013 Hearing and To Adopt the Testimony of Saturnino B. Dela Cruz as Respondent COC's evidence) to which petitioner filed its Comment filed on October 30, 2013. The Court granted the Omnibus Motion on November 26, 2013. Thereafter, on April 7, 2014, respondent COC filed his Urgent Omnibus Motion (a. To Adopt the Testimonies of Mr. Saturnino B. Dela Cruz and Ms. Zenaida Y. Monsada as Respondent COC's evidence, b. To Cancel the April 8, 2014 Hearing, and c. To Set a Commissioner's Hearing), which the Court granted in the Resolution dated April 8, 2014.

In the meantime, on April 4, 2014, petitioner filed its Manifestation and Request for Admission, stating that in the February 27, 2014 Decision of the Regional Trial Court (RTC) of Pasay City in the case entitled Philippine Airlines, Inc. vs. Secretary of the Department of Finance and Secretary of the Department of Energy (RTC-Decision), the RTC of Pasay City declared that the DOE Certification dated December 20, 2002 is null and void and of no force and effect; and praying that respondents CIR and COC admit the issuance and genuineness of the said Decision.

Respondent COC filed his Comment (On Petitioner's Manifestation and Request for Admission dated April 4, 2014) on April 14, 2014, admitting the existence of the RTC-Decision but subject to the qualification that the same is not yet final, as the same is the subject of a Notice of Appeal filed on March 19, 2014. Respondent CIR filed her Comment (Re: Petitioner's Manifestation and Request for Admission) on May 5, 2014, also admitting the existence of the RTC-Decision but without, however, necessarily admitting the correctness of the contents, materiality and probative value of such. The Court noted such admission by respondents in a Resolution dated June 26, 2014.

On July 11, 2014, respondents CIR and COC filed their Joint Formal Offer of Evidence. Petitioner filed its Comment (To Respondents Joint Formal Offer of Evidence) on July 28, 2014. Subsequently, the Court issued the Resolution dated August 29, 2014, admitting Exhibits '1', '1-a', '2', '3', '3-a', '4', '5', '6', '7', and '8' as respondents' evidence.

Meanwhile, petitioner filed its Petitioner's Supplemental Formal Offer of Evidence on August 18, 2014, offering the RTC-Decision as Exhibit 'P7'. Respondent COC filed his Comment (On Petitioner's Supplemental Formal Offer of Evidence) on August 27, 2014. Thereafter, the Court admitted Exhibit 'P7' in the Resolution dated September 29, 2014, and directed the parties to file their respective memorandum within thirty (30) days from notice thereof.

Respondent COC, petitioner, and respondent CIR filed their respective Memorandum on November 7, 2014, on January 5, 2015, and on January 12, 2015. Correspondingly, the case was submitted for decision on January 22, 2015.

On January 28, 2015, petitioner filed its Motion for Leave to File Reply with Attached Reply (To Respondent CIR's Memorandum dated

27 November 2014), which the Court granted in the Resolution issued on January 30, 2015."

On December 1, 2015, the CTA First Division promulgated the assailed Decision denying the Petition for Review in CTA Case No. 7643 and granting the Petitions for Review in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734.

Thus, CIR and COC filed, on December 18, 2015, their respective Motions for Partial Reconsideration, which were both denied in a Resolution[9] promulgated on May 3, 2016.

Aggrieved, CIR and COC filed their respective appeals, via Petition for Review, with the Court En Banc.

The Court En Banc ordered APC to file its comment, not a motion to dismiss, within ten days from receipt of the Resolution[10] dated July 4, 2016. In compliance thereto, APC filed its Consolidated Comment (For CIR's Petition for Review dated 18 May 2015 and COC's Petition for Review dated 01 June 2016)[11] on July 25, 2016.

In a Resolution[12] promulgated on August 10, 2016, the Court En Banc gave due course to the Petitions and required the parties to submit their Memoranda within thirty (30) days from receipt thereof.

On August 31, 2016, CIR filed a Manifestation[13] stating that he is adopting the arguments raised in the Petition for Review filed on May 18, 2016, as his Memorandum. The same was noted by the Court En Banc in its Minute Resolution[14] dated September 1, 2016. APC filed its Memorandum[15] for Respondent on September 23, 2016, while COC filed his Memorandum[16] on September 23, 2016.

On October 17, 2016, the above-captioned cases were submitted for decision.

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[9] See Footnote No. 4
[10] EB Case No. 1456, En Banc Rollo (Vol. II), pp. 895-896.
[11] Ibid, pp. 897-914.
[12] Id., pp. 917-918.
[13] Id.,919-922.
[14] Id., p. 923.
[15] Id., pp. 924-952.
[16] Id., pp. 953-1018.

Hence, this Decision.

CTA EB No. 1456 (COC's Petition for Review):

COC believes that the CTA First Division committed a serious error in granting APC's Petition for Review in CTA Case Nos. 7630, 7642, 7673, 7712, and 7734 and in ordering CIR and COC to refund in favor of APC the aggregate amount of P112,383,463.99, on the following grounds:

1. APC is not exempt from the payment of specific taxes on its various importation of Jet A-1 aviation fuel; and,

2. APC miserably failed to comply with the requisites necessary for entitlement to excise tax exemption, as provided under its franchise, Republic Act No. 8339 (RA No. 8339), now Section 11 of Republic Act No. 9215 (RA 9215), in relation to Philippine Airlines, Inc.'s franchise, Presidential Decree No. 1590; and,

3. APC is not entitled to the refund of the specific taxes it paid on its various importations of Jet A-1 aviation fuel in the aggregate amount of P112,383,463.99.

COC opines that APC is not entitled to tax exemption as it failed to establish that PAL, or any of its other competitors, is receiving or enjoying the same tax exemption/privileges with respect to importations of Jet A-1 aviation fuel in the country.

Further, COC argues that APC failed to prove that the subject imported Jet A-1 aviation fuel shall be used in its transport operations on the following grounds: (i) that the Court cannot rely on the Authority to Release Imported Goods (ATRIG) in granting APC's claim for refund as the contents therein were merely supplied by APC itself; (ii) that there is no other concrete evidence to prove that, indeed, the subject importations of Jet A-1 aviation fuel were actually used in its domestic operations; (iii) that the self-serving declaration of Mr. Chiong that the "Jet A-1, which APC imported for its domestic operations" cannot establish that such importation of aviation fuel has been actually used by APC for its domestic operations.

COC, likewise, avers that the Air Transportation Office (ATO) Certifications[17] which the CTA First Division relied upon in concluding that APC complied with the third requisite for entitlement for exemption, are *ipso facto* null, for having been issued in *ultra vires* to the powers and duties of the ATO under its Charter. Accordingly, it is the Department of Energy (DOE) which is vested under the law with the express power and duty to monitor the prices, quality and supply of petroleum products of the country. Director Zanaida Y. Monsada of the DOE even testified that there is a reasonable supply, quality and price of aviation fuel during the period material to APC's importations subject of the instant case.

CTA EB No. 1458 (CIR's Petition for Review):

In his Petition, CIR raised the following issues for the consideration of the Court:

1. The Court erred in ruling that APC was able to prove that its importations of Jet A-1 Aviation fuel are used for its transport and non-transport operations; and,

2. The Court erred in ruling that APC was able to prove that the imported articles were not locally available in reasonable quantity, quality or price based solely on the ATO's Certifications issued to APC.

In support of his Petition, CIR mainly argues that ATRIGs alone are not sufficient to prove that the imported Jet A-1 aviation fuel was used for its transport and non-transport operations.

CIR also contends that it is the DOE and not CAAP that has the task to determine whether the total supply is enough for total demand.

He, likewise, argues that the Court in Division should have considered the testimony of Ms. Glendalyn P. Dela Cruz, a Senior Science Research Specialist of the DOE, who testified that the aviation fuel was locally available in sufficient quantity, quality and price.

With regard to the reasonableness of the price, CIR posits that reasonableness should not be equated with cheaper prices. Petitioner's quoted importations will most likely be cheaper because it is the base of

[17] Annexes "BBB", "CCC", "DDD", and EEE.

international price. On the other hand, the local suppliers will also pad other factors to their prices such as the taxes/duties, transport costs and their profit margin. Thus, the quoted price of imported fuel, which is tax and duty-free, cannot really be considered cheaper than locally refined fuel that is priced with all costs, taxes and duties.

APC's Consolidated Comment

Citing several cases of *Philippine Airlines, Inc. vs. CIR and COC*[18], APC argues that mere presentation of ATRIGs is sufficient to establish that the importations were used by APC for its transport and non-transport operations.

Further, APC contends that the argument of CIR and COC belie the significance and content of the subject ATRIGs which were processed, approved and issued by the BIR itself, and which is required and actually used by BOC in the collection and release of the subject imported fuel.

Furthermore, APC avers that his witness, Mr. Chiong, is in the best position to testify on APC's use of the subject imported Jet A-1 fuel since part of his functions is the procurement of Jet A-1 aviation fuel for APC's operations. Moreover, his testimony was undisputed and corroborated by the ATRIGs.

In addition, APC points out that the admission of APC's own witness, Dir. Zenaida Monsada, during her testimony on November 27, 2013, established that no domestic airline company has ever registered with the DOE to sell its importations of Jet A-1 fuel to the public. Thus, COC and CIR cannot disown or dispute the ATRIGs that BIR issued, utilized, verified and relied upon.

APC insists that the validity and sufficiency of the ATO Certifications were upheld by the Department of Finance and were deemed sufficient for purposes of tax exemption.

Moreover, APC argues that the DOE 2002 Certification cannot be relied upon because it was already declared null and void by the Pasay Regional Trial Court and the same was based on data from years 2001 and 2002 only.

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[18] CTA Case No. 8340, February 17, 2015; CTA Case No. 8514, January 6, 2015; and CTA Case No. 8415, August 7, 2014; CTA Case No. 8361, March 26, 2014; CTA Case No. 8184, March 25, 2014; CTA Case No. 7767, 7685 and 7746, August 24, 2012.

Lastly, APC argues that based on the cost comparison and analysis of the cost per liter of importation of the Jet A-1 fuel versus the cost per liter of the same purchased locally, the ICPA found that had APC purchased locally the same volume of Jet A-1 fuel subject of this case, it would have cost APC additional P218,176,057.73 if it purchased from Petron, and P329,979,146.87 if it purchased from Pilipinas Shell Corporation. Thus, the local price was completely unreasonable compared to the price of imported fuel.

After a careful and thorough evaluation and consideration of the records of the case, the Court En Banc finds no merit in the consolidated Petitions for Review. The records of these cases indubitably show that the CTA First Division had already fully and exhaustively resolved the foregoing issues since they are mere rehash of the arguments proffered by CIR[19] and COC[20] in their respective Motions for Partial Reconsideration (Re: Decision dated 1 December 2015), both filed on December 18, 2015. Be that as it may, *We* deem it proper to reiterate the points stressed by the CTA First Division.

CIR's claims that APC is not entitled to tax exemption as it failed to establish that Philippine Airlines, Inc., or any of its other competitors, is receiving or enjoying the same tax exemption/ privileges with respect to importations of Jet A-1 aviation fuel in the country.

We do not agree.

The issue need no longer be belabored for no less than Court of Tax Appeals ruled in a plethora of cases[21] involving APC, although of different taxable period, that APC's legislative franchise, Republic Act (RA) No. 8339, as amended by RA No. 9215, places the latter on equal footing with Philippine Airlines, Inc. (PAL). Section 15 of RA No. 8339 provides that APC is entitled to the same tax-exemption privileges

[19] Division Docket (Vol. V), pp. 3006-3019.

[20] Ibid, pp. 3020-3046

[21] Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 8039, 8069, 8104 and 8113, July 13, 2015; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 and 7566, October 2, 2015; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. C.T.A. CASE NOS. 7872, 7883, 7922, 7929 and 7952, April 1, 2016; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7966, 7990 and 8020, April 20, 2016; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839 and, 7851, June 10, 2016; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 8039, 8069, 8104 & 8113. July 1, 2016; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7966, 7990 and 8020, March 15, 2017; Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 and 7566, May 8, 2017.

currently enjoyed by PAL under the latter's franchise, Presidential Decree (PD) No. 1590, provided it satisfies the three conditions or requisites laid down in PD No. 1590.

Thus, there is no need for APC to establish that Philippine Airlines, Inc., or any of its other competitors, is receiving or enjoying the same tax exemption/privileges with respect to the importations of Jet A-1 aviation fuel in the country.

Having resolved the foregoing issue, We shall now determine APC's alleged compliance with the conditions stated under Section 13 (b) (2) of PD No. 1590 in order for its imported supplies to be considered exempt from excise tax, to wit:

> "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 non-transport 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; . . . ." (Emphases supplied)

Based thereon, it is clear that, in order for APC to be exempt from paying taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies, it must establish the following:

1. It paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies or materials are imported for APC's use 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.

First Requisite: Basic Corporate
Income Tax or Franchise Tax must
be paid

Records evidently show that APC complied with the first requisite through the following documentary evidence: APC's Annual Income Tax Returns for calendar years 2005[22] and 2006[23], filed on April 12, 2006 and April 11, 2007, respectively.

Likewise, to prove that it accounted for the VAT on its sales/receipts, APC submitted the following documents: Quarterly VAT Return for the First Quarter of Fiscal Year (FY) 2005[24]; Quarterly VAT Return for the Second Quarter of FY 2005[25]; Quarterly VAT Return for the Third Quarter of FY 2005[26]; Quarterly VAT Return for the Fourth

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[22] Exhibit "A7".
[23] Exhibit "B7".
[24] Exhibit "C7".
[25] Exhibit "D7".
[26] Exhibit "E7".

Quarter of FY 2005[27]; Quarterly VAT Return for the First Quarter of Fiscal Year (FY) 2006[28]; Quarterly VAT Return for the Second Quarter of FY 2006[29]; Quarterly VAT Return for the Third Quarter of FY 2006[30]; VAT Return for the Fourth Quarter of FY 2006[31].

Second Requisite:
Imported Jet A-1fuel must be
used in its Transport and Non-Transport
Operations

To prove the fact of importations of Jet A-1 fuel, APC presented the testimonies of Mr. Jonathan Chiong, Manager of the Fuel Department of APC[32] and Mr. Edwin Segundo[33], Supervisor of the Fuel Department of APC. It, likewise, presented the following documentary evidence: (1) Bills of Lading[34]; (2) Banks' Official Receipts[35] ; (3) Import Declaration Entries[36] ; (4) Authority to Release Imported Goods[37] (ATRIGs); and Air Transport Office's (ATO), now the Civil Aviation Authority (CAA) of the Philippines, certifications[38].

However, COC mainly argues that the ATRIGs, as well as Mr. Chiong's testimony, are self-serving declarations. Thus, the same cannot be relied upon by the Court in ascertaining APC's compliance with the second requisite.

Again, We do not agree.

The Court En Banc cannot brush aside the tedious process that an ATRIG undergoes before the same is issued. The said document provides the details of importation, the intended use of the same, as well as the destination of the shipment. Thus, *We* adopt the ruling of the First Division relative thereto, and quote pertinent portions thereon, as follows:

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[27] Exhibit "F[7]".
[28] Exhibit "G[7]".
[29] Exhibit "H[7]".
[30] Exhibit "I[7]".
[31] Exhibit "J[7]".
[32] Exhibit "JJ"
[33] Exhibits "YYYY" and "ZZZZ".
[34] Exhibits "I-5", "W-1".
[35] Exhibits "I-7", "W-3", "Z-1", "CC-1", "FF-1".
[36] Exhibits "I-8", "T-2", "W-4", "Z-2", "CC-2", "FF-2".
[37] Exhibits "CC-3", "I-9"', "T-3", "W-5", "Z-3", "FF-3".
[38] Exhibits "KKKK", "NNNN", "RRRR", and "WWWW".

> "On the probative value of the ATRIG, the Court agrees with petitioner that the ATRIG is a document that is issued by the BIR in accordance with the guidelines set forth in Revenue Memorandum Order No. 35-2002, and the same is addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable. And while respondent COC claims that the ATRIGs are self-serving, it cannot deny that said ATRIGs went through verification procedure by the BIR prior to its issuance. Therefore, it is not correct to claim that the contents thereof are self-serving."

Moreover, in the case of *Philippine Airlines, Inc. vs Commissioner of Internal Revenue and Commissioner of Customs*,[39] the Court of Tax Appeals considered ATRIGs as public documents since they were issued and certified by no less than the Commissioner of Internal Revenue himself. Thus, the entries in ATRIGS are *prima facie* evidence of the facts stated therein, pursuant to Section 19 (a), Rule 132 of the Rules of Court. Pertinent portions of the said Decision are herein quoted for ready reference:

> "An examination of the ATRIGs presented by petitioner shows that these are public documents pursuant to Section 19 (a), Rule 132 of the Rules of Court, and thus, prima facie evidence of the facts stated therein.
>
> Section 19 (a), Rule 132 of the Rules of Court reads:
>
>> Sec. 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private.
>>
>> Public documents are:
>>
>> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

[39] CTA Case No. 7632, May 3, 2016.

The ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGs are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court.

In the consolidated cases of Heirs of Jose Marcial K. Ochoa, et al. vs. G & S Transport Corporation, et al., the Supreme Court has held that public documents under Section 19 (a) of Rule 132 refers to those recording made by a public officer, to wit:

> Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents. As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States x x x. From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said

> Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is prima facie evidence of the facts stated therein. And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs. (Emphasis supplied)

> **Since ATRIGs are considered public documents, the authenticity and due execution of same are already presumed. Further, as a public document issued in the performance of a duty by a public officer, the subject ATRIGs are prima facie evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Rules of Court, which provides that 'public documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated.**"

It is also worth stressing that in plethora of cases of *Philippine Airlines, Inc. vs Commissioner of Internal Revenue and Commissioner of Customs*[40], the Court of Tax Appeals gave probative value to ATRIG in proving that the imported articles, supplies or materials are to be used for transport and non-transport operations and other activities incidental thereto.

Thus, so long as the ATRIG is corroborated by other documentary and testimonial evidence, as in the present cases, then they may be considered as proof that the imported aviation fuel was, indeed, used in APC's transport and non-transport operations and other activities incidental thereto.

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[40] Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7362, 7383, 7445, 7494, 7517, 7521and 7566, May 8, 2017, citing the cases of Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8340, February 17, 2015; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8415, August 7, 2014; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8361, March 26, 2014; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8184, March 25, 2014; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case Nos. 7677, 7685 & 7746, August 24, 2012.

With respect to the contention that the testimony of petitioner's witness, Mr. Chiong, is self-serving, the same deserves scant consideration on the ground that no controverting evidence was presented by CIR and COC to refute the same.

Third Requisite:
The imported articles must not
be locally available in reasonable
quantity, quality or price

COC avers that the ATO Certifications[41], which the CTA First Division relied upon in concluding that respondent complied with the third requisite for entitlement for exemption, are *ipso facto* null, for having been issued in *ultra vires* to the power and duty of the ATO under its Charter.

CIR, on the other hand, insists that it is the Department of Energy and not CAAP (Civil Aviation Authority of the Philippines) that has the task to determine whether the total supply is enough for total demand.

We fail to be persuaded.

In the recent decision of the Court of Tax Appeals in *Air Philippines Corporation vs. Commissioner of Internal Revenue*[42], the Court eloquently explained why the CAAP is not precluded from issuing the subject certifications, to wit:

> "**It must be stressed that the power and duties vested upon the CAA under RA No. 776, as amended, which, thereafter, were transferred to the ATO and later on assumed by the CAAP by virtue of RA No. 9497, are not, by themselves, exclusive in view of the absence of any qualifying or restrictive words to limit the same.** As correctly pointed out by petitioner, perusal of the **charters of CAA, ATO and CAAP does not specifically preclude them from issuing the subject certifications relating to the availability of supply of aviation fuel**. In fact, Section 35 (a) of RA No. 9497, which essentially reiterated Section 32 (1) of RA No. 776, as amended, states that the CAAP is vested with 'authority to take charge of the technical and operational phase of

[41] Annexes "BBB", "CCC", "DDD", and EEE
[42] CTA Case Nos. 7966, 7990 and 8020, March 15, 2017.

civil aviation matters' which, naturally, include aircraft fuel and oil." (Emphases Ours)

Thus, We see no persuasive reason to deviate from following factual findings of the Court in Division in the assailed Resolution, thus:

> "With regard to the third requisite, APC was able to show compliance thereon with respect to the following importations: on April 15, 2005, June 13, 2005, August 4, 2005, November 28, 2005 and February 22, 2006, which are covered by Bill of Lading Nos. 42636, 0506-2-04371-E, 05/746, 504710-00006492, and 06/139, respectively. This must be so because said importations are supported by Certifications dated April 14, 2005, August 8, 2005; November 30, 2005; and February 21, 2006, all of which were issued by the Air Transportation Office (ATO), through its Assistant Secretary, Nilo C. Jatico, stating to the effect that the imported Jet A-1 aviation fuel under the aforementioned Bills of Lading were not locally available in reasonable quantity, quality and price and is necessary/incidental for the operation of Air Philippines Corporation.
>
> The said ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court, which provides:
>
> > "SEC. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated."
>
> For their part, respondents insist that the Court cannot rely on the ATO Certifications in arriving at its conclusion that there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality and price during the period when the subject importations were made but must instead rely on the 2002 DOE Certification.
>
> The Court notes petitioner's manifestation in its 'REPLY (To CIR's Memorandum dated 09 January 2015)

filed on January 28, 2015 stating that the 2002 DOE Certification invoked herein by respondents, and on which the 2003 BIR Ruling is solely based, was already declared null and void by the Regional Trial Court of Pasay City, Branch 114, on 27 February 2014, in the case of '*PAL v. Secretary of the Department of Finance and Secretary of the Department of Energy* (Civil Case No. R-Psy-10-03889-CV).

Although as a general rule, courts are not authorized to take judicial notice of the foregoing action of the Regional Trial Court of Pasay City, in the case of '*Occidental Land Transportation Company, Inc. v. Court of Appeals and Heirs of Trencio Almedilla, et al.*,' the Supreme Court held that the general rule admits of exceptions, among which is, in the absence of objection, and as a matter of convenience to all parties.

In the instant case, respondents have not refuted nor objected to said contention. Thus, considering that the enforceability of said DOE Certification is still subject of appellate review, respondents' reliance thereon bears little probative value in this case.

On the other hand, We agree with petitioner and correspondingly find that when the ATO Certifications were issued by the Air Transportation Office or ATO, prior to its replacement by the Civil Aviation Authority of the Philippines under Republic Act (RA) No. 9497, it was not precluded from issuing the subject Certifications with respect to the availability of supply of aviation fuel. A perusal of the powers of the ATO (now CAAP) in relation with its authority to issue the ATO Certifications, would show that such is in line with its general powers under Sections 32 and 35 of its charter, RA No. 776, to wit:

> 'SECTION 32. **Powers and duties of the Administrator.** — Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:
>
> (1) To carry out the purposes and policies established in this Act; to enforce

> the provisions of, the rules and regulations issued in pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
>
> xxx xxx xxx
>
> (21) **To cooperate, assist and coordinate with any research and technical studies on** design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances and air navigation facilities **including aircraft fuel and oil**; Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. (Emphases and underscoring supplied)"

With the foregoing functions mandated by law before the abolition of the ATO, the latter had the means of knowing the facts stated in the subject ATO Certifications. Thus, there can be no merit on respondents' contention to the effect that it is only the DOE which is in a best position to determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 Aviation fuel.(Citations omitted).

x x x. Thus, there can be no merit in respondents' contention to the effect that it is only the DOE which is in a best position to determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 Aviation fuel."

Apart from the foregoing, the comparison made by the ICPA of the cost of importation of Jet A-1 fuel used in APC's domestic airline operations and the cost of domestic Jet A-1 fuel using the price quotations issued by local oil companies like Petron Corporation and Pilipinas Shell Corporation, convinced this Court that the subject aviation fuel is not locally available in reasonable price. It is clearly stated therein that had APC purchased locally the same volume of Jet A-1 fuel subject of this case, it would have cost the latter additional

P218,176,057.73[43] if it purchased from Petron Corporation, and P329,979,146.87[44] if it purchased from Pilipinas Shell Corporation. Thus, APC is correct in pointing out that the local price was completely unreasonable compared to the price of imported fuel.

In sum, the Court En Banc finds no cogent reason to reverse the findings of the Court in Division.

WHEREFORE, premises considered, the present consolidated Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

INHIBITED

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[43] Page 6 of Exhibit "DDDDD".
[44] Page 3 of Exhibit "N7".

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice