Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

## FIRST DIVISION

**PHILIPPINE AIRLINES, INC. ,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,**
Respondent

**CTA Case No. 8184**
For: Refund of erroneously Paid Excise Tax

Members:
DEL ROSARIO, PJ, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
MAR 2 5 2014 ; 10:00 a.m.

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## DECISION

***MINDARO-GRULLA, J.:***

This is a Petition for Review filed on October 28, 2010 by Philippine Airlines, Inc. (PAL) as petitioner, against the Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) as respondents, for the Court in Division, pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. *c*

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1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner PAL[3] prays that it be declared under its franchise (Presidential Decree No. 1590[4]) exempt from excise tax on importation of liquors, cigarettes and wines for international flight consumption; and order respondents COC[5] and/or CIR[6] to refund the alleged erroneously collected

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. (Joint Stipulation of Facts, CTA Docket, p. 440)

[4] "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries"

[5] Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), a government agency in charge 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 of the NIRC, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (ATRIG), duly issued by the CIR

excise tax in the amount of five million six hundred forty four thousand three hundred one pesos and 51/100 centavos (₱5,644,301.51).

The antecedent facts are as follows:

On January 1, 2005, Republic Act No. 9334 ( RA 9334), otherwise 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 the National Internal Revenue Code of 1997, as Amended" took effect.[7]

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes ". . . on all importations destined for Duty Free Philippines ("DFP") and the Freeport Zones, such as the Subic Bay Freeport Zone", and requested the BOC to immediately collect the excise taxes due on the imported alcohol and tobacco products brought to the DFP and Freeport Zones.[8]

On February 4, 2005, then COC George Jereos issued a Memorandum to the BOC officers and personnel directing them to "effect collection of excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones."[9]

On March 1, 2005, COC Alberto Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including

addressed to COC, in accordance with Section 12 (a) of the NIRC. (Joint Stipulation of Facts, CTA Docket, p. 441)

[6] Commissioner of Internal Revenue is the Commissioner of the Bureau of Internal Revenue (BIR), a government agency in charge of the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 142 and 145, respectively, of the National Internal Revenue Code (NIRC), as amended. (Joint Stipulation of Facts, CTA Docket, p. 440)

[7] Joint Stipulation of Facts, CTA Docket, p. 441

[8] Exhibit "C", CTA Docket pp. 62-63.

[9] Exhibit "D", CTA Docket p. 64.

Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulations No. 12-2004."[10]

In view thereof, petitioner's importation of assorted cigarettes, and liquors allegedly for catering and commissary supplies were subjected to excise tax and withheld from release pending payment of said taxes, duties and fees.

Thus, on October 28, 2008 petitioner paid under protest [11] the following assessed excise taxes due on importation of assorted cigarettes.

| ENTRY NO. | ATRIG NO. | ARRIVAL DATE | EXCISE TAX |
|---|---|---|---|
| 4923 | 00015168 | 05-09-08 | P 403,930.00 |
| 4265 | 00015167 | 04-26-08 | 416,960.00 |
| 3750 | 00015166 | 04-12-08 | 456,050.00 |
| 2513 | 00011286 | 03-15-08 | 351,810.00 |
| 2493 | 00011288 | 03-14-08 | 859,980.00 |
| 1527 | 00011287 | 02-15-08 | 1,498,450.00 |
| TOTAL | | | P3,987,180.00[12] |

Likewise, on October 28, 2008 petitioner paid under protest [13] the following assessed excise taxes due on importation of assorted liquors.

| ENTRY NO. | ATRIG NO. | ARRIVAL DATE | EXCISE TAX |
|---|---|---|---|
| 2468 | 00011380 | 03-07-08 | P 172,440.58 |
| 2519 | 00011395 | 03-17-08 | 84,058.49 |
| 2039 | 00011381 | 03-01-08 | 647,631.94 |
| 1546 | 00011379 | 02-13-08 | 742,990.50 |
| TOTAL | | | P1,657,121.51[14] |

On October 31, 2008 petitioner filed before the District Collector of NAIA two (2) written protest letters on the assessment and collection of taxes praying the refund of

[10] Exhibit "E", CTA Docket p. 65.
[11] Exhibit "W", CTA Docket p. 94.
[12] Exhibit "O" & "P", CTA Docket pp. 87-88.
[13] Exhibit "JJ", CTA Docket p. 130.
[14] Exhibit "DD" & "EE", CTA Docket pp. 124-125.

₱3,987,180.00 [15] and ₱1,657,121.51 [16], respectively. Thereafter, on March 5, 2009 petitioner filed before the Commissioner of Internal Revenue two (2) written protest letters on the assessment and collection of taxes praying the refund of ₱3,987,180.00 [17] and ₱1,657,121.51 [18], respectively. The claim for refund before the respondent CIR and COC has not been acted upon, hence, this petition.[19]

Respondent CIR's Answer[20] alleged by way of special and affirmative defenses the following:

> *"6. The claim for refund in the amount of Five Million Six Hundred Forty Four Thousand Three Hundred One [Pesos and] 51/100 (P5,644,301.51) being claimed by petitioner paid and incurred for the taxable year 2008 is not warranted.*
>
> *7. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It provides:*
>
>> *SECTION 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, of any sum alleged to have been excessively or in any manner wrongfully 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)*

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[15] Exhibit "X" , CTA Docket pp. 95-105.
[16] Exhibit "KK", CTA Docket pp. 131-140.
[17] Exhibit "Y", CTA Docket pp. 106-115.
[18] Exhibit "LL", CTA Docket pp. 142-151.
[19] Filed on October 28, 2010, CTA Docket pp. 5-162. Raffled to the Second Division of the Court Tax Appeals.
[20] CTA Docket pp.173-182.

> *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.*

*It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications (BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003). A perusal reading of the provision will emphasize that to validly substantiate a claim for refund, the taxes must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rests on vague inference.*

*8. Presidential Decree 1590 (P.D. 1590) signed on June 11, 1978 granted to the petitioner the franchise to operate air-transport services. Among the provisions of PD 1590 is Section 13 to wit:*

*'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 . . .'*

*On July 26, 2004, Republic Act 9334 took effect. RA 9334 served as the basis for assessment and collection of excise taxes, it provides:*

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

*'(A) Persons Liable. — . . .*

*'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. . . .*

*'Section 10.Repealing Clause. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders and such other presidential issuances as are inconsistent with any of the provisions of this Act*

*are hereby repealed, amended or otherwise modified accordingly.'*

*The contention of petitioner that its tax exemption under its franchise subsists notwithstanding the passage of Republic Act 9334 is clearly unfounded. The approval of PAL's franchise does not serve to provide it a blanket tax exemption which will bar any act of the government to enforce its power to tax. It must be stressed that taxation is the rule and exemption is the exception. Tax exemption is by no means irrevocable. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. (Tolentino vs. Secretary of Finance, G.R. 155455, August 25, 1994)*

*No less than the 1987 Philippine Constitution upholds this claim when it provides that 'Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires.' (Section 11, Article XII) There can be no restrictions for a future amendment or repeal without impinging the carte blanche legislative authority of Congress and without defying the fundamental law.*

*There can be no serious doubt as to the intention of the Congress to withdraw tax exemption. The explicit language of Section 6 of Republic Act 9334 which authorizes the imposition of excise taxes "notwithstanding contrary provisions in general or special law" is all-encompassing and clear. The doctrine laid down in the case of the National Power Corporation vs. City of Cabanatuan (G.R. No. 149110, April 9, 2003) is on all fours applicable. In the foregoing case, the Supreme Court had an occasion to rule that NPC's exemption from all taxes by virtue of its charter has been repealed by the enactment of Local Government Code. The Supreme Court held:*

> *'Section 137 of the LGC clearly states that the LGUs can impose franchise tax 'notwithstanding any exemption granted by any law or other special law.' This particular provision of the LGC does not admit any exception. In City Government of San Pablo, Laguna v. Reyes, MERALCO's exemption from the payment of franchise taxes was brought as an issue before this Court. Ruling in favor of the local government in both instances, we ruled that the* c

*franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws.'*

*9. In the case of Manila Electric Company vs. City of Laguna, the Supreme Court clarified that:*

> *'It is true that the phrase 'in lieu of all taxes' found in special franchises has been held in several cases to exempt the franchise holder from payment of tax on its corporate franchise imposed of the Internal Revenue Code, as the charter is in the nature of a private contract and the exemption is part of the inducement for the acceptance of the franchise, and that the imposition of another franchise tax by the local authority would constitute an impairment of contract between the government and the corporation. But these 'magic words' contained in the phrase 'shall be in lieu of all taxes' have to give way to the peremptory language of the LGC specifically providing for the withdrawal of such exemption privileges.'*

*Therefore, petitioner forthwith cannot seek refuge in the said phrase to indiscriminately refuse to pay taxes duly imposed by the taxing authorities. In providing 'in lieu of all taxes' clause, Congress does not perpetually divest its power to tax. Clearly, Republic Act 9334 is indicative of a later legislative will.*

*10. Taxes are essential to government's very existence; (CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008) Since tax refunds are regarded as tax exemptions and these are to be construed strictissimi juris against the person or entity claiming the exemption. (Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. 141973, June 28, 2005).*

*11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."* c

In the interest of justice, the Court admitted and deemed as an answer[21]respondent COC's Comment[22]. COC asserts that the assessment and collection of excise taxes on PAL's importation of alcohol and tobacco products is in accordance with law. COC argues that the passage of RA 9334 effectively revoked PAL's previous exemption under its charter and claims that a franchise to operate a public utility vehicle is at all times subject to amendment by congress and that statutes granting tax exemptions are considered as a derogation of the sovereign authority, thus, are strictly construed against the person or entity claiming the exemption.

During trial, petitioner presented documentary and testimonial evidence to substantiate its claim for refund. Petitioner presented three (3) witnesses, namely: Joseph Brian T.L. Tan, Ma. Evelyn L. Taghap and Cheryl V. Capinpin.

Thereafter, petitioner formally offered its documentary evidence which were admitted by the Court in the Resolutions dated November 21, 2012[23] and February 15, 2013[24].

The documentary evidence formally offered and admitted are as follows:

| Exhibit | Description |
|---|---|
| A | Presidential Decree No. 1590, Petitioner's franchise |
| B | Republic Act No. 9334, "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 the National Internal Revenue Code of 1997, As Amended."*c* |

[21] Resolution dated March 1, 2011,CTA Docket pp. 237-239.
[22] CTA Docket pp. 196-209.
[23] CTA Docket pp. 1031-1035.
[24] CTA Docket pp. 1068-1074.

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| C | 03 February 2005 letter of CIR Guillermo Parayno to COCO George M. Jereos |
| D | 04 February 2005 Memorandum of COC George M. Jereos |
| E | Customs Memorandum Order No. 13-2005 dated 01 March 2005 of COC Alberto D. Lina |
| F | 04 April 2005 letter of petitiioner addressed to Atty. Felipe Bartolome, District Collector of Customs |
| G | 25 April 2005 Memorandum of the Bureau of Customs addressed to Customs Commissioner, Alberto D. Lina |
| I | Informal Import Declaration and Entry No. 4923 |
| I-1 | Air Waybill No. 2999480-1 dated 10 May 2008 |
| I-2 | Imperial Tobacco Invoice No. 9020002548 dated 15.03.2008 for 160 reams of West Menthol, 10 reams of Davidoff Lights, 30 reams of Davidoff Lights and 70 reams of Davidoff Classic amounting to US$6,967.50. |
| J | Informal Import Declaration and Entry No. 4265 |
| J-1 | Air Waybill No. 2999455-4 dated 26 April 2008 |
| K | Informal Import Declaration and Entry No. 3750 |
| K-1 | Air Waybill No. 2999406-4 dated 12 April 08 |
| K-2 | Global Trader, Ltd. Sales Invoice No. GTL041108 dated 11-Apr-08 for 10 reams of Salem M King, 5 reams of Salem L King and 20 reams Winston Red KS amounting to US$9,450.00. |

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| L | Informal Import Declaration and Entry No. 2503 |
| L-1 | Air Waybill No. 2999336-4 dated 15 March 2008 |
| L-2 | Imperial Tobacco Invoice No. 9020002874 dated 09.05.2008 for 160 reams of West Ice, 80 reams of Davidoff Lights and 70 reams of Davidoff Classic amounting to US$8,337.50. |
| M | Informal Import Declaration and Entry No. 2493 |
| M-1 | Air Waybill No. 2999334-2 dated 15 March 2008 |
| M-2 | Global Trader, Ltd. Sales Invoice No. GTL031308 dated 13-March-08 for 15 reams of Mild Seven Lights, 10 reams of Mild Sever Super Lights, 15 reams of Salem M. King, 10 reams of Salem L King, 10 reams of Winston Red KS, 6 reams of Winston Lights KS amounting to US$17,920.00. |
| N | Informal Import Declaration and Entry No. 1527 |
| N-1 | Air Waybill No. 2999266-4 dated 16 February 2008 |
| N-2 | Global Trader, Ltd. Sales Invoice No. GTL021408 dated 14-Feb-08 for 25 reams of Mild Seven Lights, 20 reams of Mild Seven Super Lights, 20 rams of Salem M King, 10 reams of Salem L King, 30 reams of Winston Red KS, 10 reams of Winston Lights KS amount to US$3,1250.00. |
| O | July 22, 2008 letter of Gilda L. Cinco, Acting Chief, WAU/FED of the BOC, submitting to Silveria Salazar, Chief, Collection Division, MAIA Customshouse, documents covering petitioner's payment fo duties, taxes, and other charges pursuant to CMO 13-2005 and Revenue Regulations No. 3-2206 |

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| P | Bureau of Customs Official Receipt No. 156847205 dated 10/28/08 |
| Q | Authority to Release Imported Goods (ATRIG) No. 00015168 dated July 17, 2008 issued by the BIR addressed to the Collector of Customs |
| R | Authority to Release Imported Goods (ATRIG) No. 00015167 dated July 17, 2008 issued by the BIR addressed to the Collector of Customs |
| S | Authority to Release Imported Goods (ATRIG) No. 00015166 dated July 17, 2008 issued by the BIR addressed to the Collector of Customs |
| T | Authority to Release Imported Goods (ATRIG) No. 00011286 dated June 4, 2008 issued by the BIR addressed to the Collector of Customs |
| U | Authority to Release Imported Goods (ATRIG) No. 00011288 dated June 4, 2008 issued by the BIR addressed to the Collector of Customs |
| V | Authority to Release Imported Goods (ATRIG) No. 00011287 dated June 4, 2008 issued by the BIR addressed to the Collector of Customs |
| W | Written formal protest of Jonathan R. Castillo Lee, Manager-Company Materials Handling Division of PAL, addressed to the Bureau of Customs, Collection District 111, NAIA, Pasay City, regarding the assessment and collection from PAL of PHP3,987,190.00 excise tax allegedly due on its importation of liquors for catering and commissary supplies, signifying that PAL is paying under protests the aforementioned amount on October 28, 2008 |
| X | October 29, 2008 letter to Atty. Carlos T. So of the Bu. Of Customs *c* |

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| Y | February 23, 2009 letter to Hon. Sixto Esquivias IV of BIR |
| Z | Informal Import Declaration and Entry No. 2468 |
| Z-1 | Air Waybill No. 3012821-0 dated March 8, 2008 |
| Z-2 | Camus Cognac Commercial Invoice No. 25196 dated 07/04/2009 for 30 cases of Camus Cognac VSOP Elegance, 10 cases of Camus Cognac VSOP Elegance amounting to US$4,920.00. |
| Z-2-a | Camus Cognac Commercial Invoice No. P15195 dated 06/03/2008: Camus Cognac XO Superieur - 20 cases; amounting to US$4,200.00 |
| AA | Informal Import Declaration and Entry No. 2519 |
| AA-1 | Air Waybill No. 2999341-2 dated March 17, 2008 |
| AA-2 | Interlocal Exim Pte Ltd Proforma Invoice No. 10002820 dated 12 Mar 2008 for 20 cartons of JW Gold Label, 4 cartons of JW Gold Label amounting to US$6,200.00 |
| BB | Informal Import Declaration and Entry No. 2039 |
| BB-1 | Air Waybill No. 2999317-6 dated March 1, 2008 |
| BB-2 | Interlocal Exim PTE LTD Proforma Invoice No. 1000270 dated 27 Feb 2008: JW Black Label - 120 cases; amounting to US$16,560.00 |
| BB-2-a | Interlocal Exim PTE LTD Proforma Invoice No. 1000271 dated 27 Feb 2008: J & B Rare - 108 cases; amounting to US$7,257.60 |
| CC | Informal Import Declaration and Entry No. 1546 |

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| CC-1 | Air Waybill No. 2999264-2 dated 13 February 2008 |
| CC-2 | Maxxium Tax Invoice No. 271060125 dated 12 Feb 2008 for 175 cases of Piper-Heidsieck Brut amounting to US$46,500.57 |
| DD | July 22, 2008 letter of Gilda L. Cinco, Acting Chief, WAU/FED of the BOC, submitting to Silveria Salazar, Chief, Collection Division, MAIA Customshouse, documents covering petitioner's payment of duties, taxes, and other charges pursuant to CMO 13-2005 and Revenue Regulations No. 3-2206. |
| EE | Bureau of Customs Official Receipt No. 156847223 dated 10/28/08 |
| FF | Authority to Release Imported Goods (ATRIG) No. 00011380 dated June 12, 2008 issued by the BIR addressed to the Collector of Customs |
| GG | Authority to Release Imported Goods (ATRIG) No. 00011395 dated June 13, 2008 issued by the BIR addressed to the Collector of Customs |
| HH | Authority to Release Imported Goods (ATRIG) No. 00011381 dated June 12, 2008 issued by the BIR addressed to the Collector of Customs |
| II | Authority to Release Imported Goods (ATRIG) No. 00011379 dated June 12, 2008 issued by the BIR addressed to the Collector of Customs |
| JJ | Written formal protest of Jonathan R. Castillo Lee, Manager-Company Materials Handling Division of PAL, addressed to the Bureau of Customs, Collection District 111, NAIA, Pasay City, regarding the assessment and collection from PAL of PHP1,657,121.51 excise tax allegedly due on its importation of liquors for catering and commissary supplies, |

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| | signifying that PAL is paying under protests the aforementioned amount on October 28, 2008 |
| Kk | October 29, 2008 letter to Atty. Carlos T. So of Bu. Of Customs |
| LL | February 23, 2009 letter to Hon. Sixto Esquivias IV of BIR |
| MM | Letter of Instruction No. 684 issued on 04 April 1978 |
| NN | BIR Ruling No. 097-94 dated 13 April 1994 |
| OO | Opinion No. 44 dated 17 June 1996 of the Department of Justice |
| PP | Petition for Review docketed as CTA Case No. 8184 |
| PP-1 | Date filed with the CTA – October 28, 2010 |
| QQ | Judicial Affidavit dtd. May 27, 2011 of Joseph Brian T. L. Tan, Manager-Aircraft Materials Purchasing Division of PAL |
| QQ-1 | Signature of Joseph Brial T. L. Tan on last page of Affidavit |
| RR | July 18, 2005 Official Gazette: Republic Act No. 9337 dated 26$^{th}$ July 2004 |
| SS | PAL's Annual Income Tax Return with Reference No. 120900003098256; |
| SS-1 | Date Filed: July 15, 2009 05:29 PM |
| TT | Certificate of Registration specifying VAT as one of the type of tax to be paid, dated December 18, 2007 |
| UU | Certificate of Registration specifying VAT as one of the type of tax to be paid, dated August 04, 2004 |
| VV | Payment Transaction No. 0605, ₱500.00, filed on January 14, 2009 10:30 AM |

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| VV-1 | VAT Return for the Fourth Quarter of Fiscal Year ended March 2009 |
| WW | Judicial Affidavit of Ma. Evelyn L. Taghap, Manager of the Tax Services and Compliance Department of PAL |
| WW-1 | Signature of Ms. Taghap on top of name Ma. Evelyn L. Taghap appearing on last page of Judicial Affidavit |
| XX | Compliance of Ma. Evelyn L. Taghap dated Sept. 6, 2011 |
| XX-1 | Letter from the Office of the Solicitor General addressed to Atty. Antonio V. Ocampo, Corporate Secretary & SVP-Corporate Counsel of petitioner dated January 16, 1998 |
| XX-2 | Letter from undersigned counsel addressed to the BIR Attention: Hon. Estelita C. Aguirre, Deputy Commissioner, OIC Large Taxpayers Service, dated Feb. 13, 2004 |
| XX-3 | Letter from the Supreme Court of the Philippines, Judgment Division, addressed to, among others, the undersigned counsel, sending him a photocopy of the Entry of Judgment in the case G.R. No. 18006 (Commissioner of Internal Revenue vs. Philippine Airlines, Inc.) as well as, a copy of the Decision of the Supreme Court in the said case promulgated July 07, 2009 |
| XX-3-a | Copy of the Decision promulgated July 07, 2009 |
| YY | Judicial Affidavit of Cheryl V. Capinpin, Manager-In-Flight Materials Purchasing Division of PAL dated Feb. 29, 2012 |
| YY-1 | Annex "A" of Exhibit "YY" – Table of Comparison between cost of importing and cost of locally purchasing commissary and catering supplies involved in this case ***c*** |

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| YY-2 | Annex "B" of Exhibit "YY" Philippine Wine Merchants Price List 2008 |
| YY-3 | Annex "C" of Exhibit "YY" Monthly Philippine Dealing System (PDS) rates |

On March 18, 2013, the scheduled initial presentation of evidence for the respondents, counsels manifested the absence of BIR records, that only legal issues were raised and that they have no witness to present. Hence, the Court granted the parties a period of thirty (30) days from March 18, 2013 or until April 17, 2013 within which to file their Memoranda[25].

On April 1, 2013 [26], pursuant to CTA Administrative Circular No. 01-2013 dated March 26, 2013, "Reorganization of the Three(3) Divisions of the Court of Tax Appeals, this case was transferred to the First Division.

On July 15, 2013, the case was submitted for decision, taking into consideration CIR's Memorandum[27] filed on April 10, 2013, PAL's Memorandum[28] filed on April 17, 2013 and COC's Memorandum[29] on June 14, 2013.

The following are the parties' jointly stipulated issues[30] submitted for this Court's resolution:

(a) 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;

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[25] CTA Docket p. 1081.
[26] CTA Docket p. 1082.
[27] CTA Docket pp. 1089-1100.
[28] CTA Docket pp. 1101-1136.
[29] CTA Docket pp. 1314-1341.
[30] CTA Docket pp. 442-443.

(b) Whether or not Republic Act No. 9334 amended, modified, or repealed PAL's exemption under its franchise, Pres. 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;

(c) Whether or not petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

(d) Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund;

(e) Whether petitioner's claim for tax credit or refund of the alleged erroneously paid specific taxes for the tax year 2008 and filed within the period prescribed by law; and

(f) Whether or not PAL is entitled to a refund or tax credit in the total amount of PHP 5,644,301.51 specific taxes paid under protest to the Commissioner of Internal Revenue through the Commissioner of Customs as follows:

(1) PHP 3,987,180.00 paid on 28 October 2008; and
(2) PHP 1,657,121.51 paid on 28 October 2008"

The core issue is whether petitioner PAL is entitled to a tax refund in the amount of ₱5,644,301.51 representing alleged erroneously paid excise tax in 2008.

We resolve.*ℓ*

**PAL's exemption from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of commissary and catering supplies and other articles, supplies, or materials is clear.**

Subject to the conditions stated under Presidential Decree No. 1590, PAL is EXEMPT from taxes on all its importations of catering and commissary supplies and other articles, supplies, or materials. These include taxes on importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

Section 13 of Presidential Decree No. 1590 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%) 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 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.*
>
> *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;*** *xxxx." (Emphasis supplied)*

The Supreme Court in interpreting the above provisions has established[31] that the taxation of PAL, during the lifetime of its franchise, shall be governed by two (2) fundamental rules, particularly:

> (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and
>
> (2) **the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges,** except only real property tax.[32]

A governing principle in taxation states that tax exemptions are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority and should be granted only by clear and unmistakable

[31] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 160528, October 9, 2006; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180043, July 14, 2009; Republic of the Philippines as represented by Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 179800, February 4, 2010; Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 198579, July 1, 2013.
[32] Ibid.

terms[33]. The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clear. The basic corporate income tax or franchise tax paid by respondent shall be "in lieu of all other taxes" including taxes due on importations by the grantee of commissary and catering supplies, provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price. These include taxes on importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

**Republic Act No. 9334 or Republic Act No. 8424 did not amend, modify, or repeal Presidential Decree No. 1590, but rather by Republic Act No. 9337[34] (RA9337).**

Section 6 and 10 of Republic Act No. 9334 provides :

> *"**SEC. 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.***

[33] CHINA BANKING CORPORATION, vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 175108. February 27, 2013.
[34] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

> *"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 City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law:***
>
> *xxx xxx xxx*
>
> ***SEC. 10. Repealing Clause.*** *- All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.*

Respondent CIR claims that the above provision of the RA 9334 reveals the unmistakable intent of congress to withdraw the conditional tax exemption granted to PAL by PD 1590. Respondent CIR argued as follows:

> *"xxx.First, Section 6 of R.A. 9334 employs the clear and all- encompassing phrase "**The provision of any special***

> ***or general law to the contrary notwithstanding".*** *R.A. 9334, therefore, repeals any inconsistent provision whether contained in general or special statutes like P.D. 1590, petitioner's franchise. Second, Section 6 mandates the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction. Said provision contains no proviso exempting petitioner's importation of said wine and tobacco products for its commissary and catering supplies. Third, Section 10 categorically provides thus:*
>
> > ***SEC. 10. Repealing Clause.*** *- All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly."*[35]

Anchoring in the Cagayan Case[36], respondent CIR asserts the similarity to the instant case. Respondent claim that Congress used the same proviso "The provision of any special or general law to the contrary notwithstanding" and that both involve a special and general law. Thus, respondent CIR maintains that the same result should follow- that the repeal is effective.

Respondent COC on the other hand claims that RA 9344 is a special law and the latter law that governs the imposition of excise taxes on alcoholic and tobacco products, which in no uncertain terms revoke PAL's exemption under PD 1590.

We are not persuaded.

Prior to the amendment introduced by RA 9334, Republic Act No. 8424 (RA 8424)[37], otherwise known as Tax Reform Act of 1997, likewise, contains a similar provision in SEC. 131. - "Payment of Excise Taxes on Imported Articles".

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[35] Supra Note 26.
[36] G.R. No. L-60126, September 25,1985.
[37] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

Specifically, said provision similarly provides that "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." Likewise, RA 8424, contain a repealing clause which provides, as follows:

> "*Section 7. Repealing Clauses. -(A) xxx xxx xxx.*
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or controlled corporations, decrees, orders, or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly."

Thus, it was the opinion[38] that as early as January 1, 1998 the enactment of RA 8424, the exemption granted to PAL from excises taxes on its importation of cigars, cigarettes, distilled spirits and wines under Section 13 of PD 1590 was necessarily withdrawn. Stated otherwise, it is claimed that it is not RA 9334 but rather RA 8424 that amended the exemption from taxes granted to respondent by PD 1590.

However, this Court, held that the exemption from taxes granted to respondent PAL by PD 1590 specifically ***"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***

[38] by our esteemed Presiding Justice Roman G. Del Rosario.

***available in reasonable quantity, quality, or price"*** is neither repealed by RA 9334[39] nor by RA 8424[40].

We have two (2) laws: one, PD 1590, specifically exempting an entity from payment of all taxes due from importation subject to certain conditions; and two, RA 8424, a later law, imposing tax on the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines. As to which is the general law or specific law and whether the general law repealed the specific law, in the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066*[41] although it involves a different type of tax, the Supreme Court ruled that RA 8424 did not repeal PD 1590. The pronouncements made by the Supreme Court therein are still significant and applicable in the instant case, to wit:

> *"Between Presidential Decree No. 1590, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is 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. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.*
>
> *Neither can it be said that the NIRC of 1997 repealed or amended Presidential Decree No. 1590.*

[39] 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 THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED"
[40] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES
[41] July 7, 2009.

*While Section 16 of Presidential Decree No. 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires, Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal said franchise or any portion thereof. No such special law or decree exists herein.*

*The CIR cannot rely on Section 7 (B) of Republic Act No. 8424, which amended the NIRC in 1997 and reads as follows:*

> *Section 7. Repealing Clauses. —*
> *xxx xxx xxx*
>
> *(B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or controlled corporations, decrees, orders, or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.*

*The CIR reasons that PAL was a government-owned and controlled corporation when Presidential Decree No. 1590, its franchise or charter, was issued in 1978. Since PAL was still operating under the very same charter when Republic Act No. 8424 took effect in 1998, then the latter can repeal or amend the former by virtue of Section 7 (B).*

*The Court disagrees.*

*A brief recount of the history of PAL is in order. PAL was established as a private corporation under the general law of the Republic of the Philippines in February 1941. In November 1977, the government, through the Government Service Insurance System (GSIS), acquired the majority shares in PAL. PAL was privatized in January 1992 when the local consortium PR Holdings acquired a 67% stake therein.*

*It is true that when Presidential Decree No. 1590 was issued on 11 June 1978, PAL was then a government-owned and controlled corporation; but when Republic Act No. 8424, amending the NIRC, took effect on 1 January*

> *1998, PAL was already a private corporation for six years. The repealing clause under Section 7 (B) of Republic Act No. 8424 simply refers to charters of government-owned and controlled corporations, which would simply and plainly mean corporations under the ownership and control of the government at the time of effectivity of said statute. It is already a stretch for the Court to read into said provision charters, issued to what were then government-owned and controlled corporations that are now private, but still operating under the same charters.*
>
> *That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. From the moment PAL was privatized, it had to be treated as a private corporation, and its charter became that of a private corporation. It would be completely illogical to say that PAL is a private corporation still operating under a charter of a government-owned and controlled corporation."*[42]

We will no longer belabor the Supreme Court's pronouncement that *"between Presidential Decree No. 1590, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978, and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails".* It is clear. The Supreme Court ruled that it can neither be said that RA 8424 repealed or amended Presidential Decree No. 1590.[43] Similarly, RA 9334 likewise can neither be said to have repealed or amended Presidential Decree No. 1590. Both, RA 8424 and RA 9334 did not repeal or amend Presidential Decree No. 1590.

Moreover, the abovementioned case involves the interpretation of PD 1590 and RA 8424 specifically the provisions pertaining to the exemption granted to PAL and the repealing clauses therein. Hence, it is more applicable in the instant controversy than the Cagayan Case which

[42] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009.
[43] Ibid.

involves the interpretation of the franchise of Cagayan Electric Power and Light Co. Inc. which is distinct and different from PAL. The Cagayan Case involves an express repeal by subjecting to income tax all corporate taxpayers not expressly exempted which is not in the instant case.

Furthermore, Section 16 of PD 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires. Section 24 of the same decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal said franchise or any portion thereof.[44] However, the provisions under Section 31 of RA 9334 or RA 8424 do not expressly repeal the exemption granted to PAL.

Indeed, there is no vested right in a tax exemption, a mere statutory privilege which may be modified or withdrawn at will by the granting authority. Congress in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same.[45] When RA 8424 and RA 9334 were enacted, it specifically did not intend to modify, amend, or repeal Presidential Decree No. 1590 or any portion thereof.

On the contrary, when Republic Act No. 9337 (RA 9337)[46] was enacted the intent of legislature to modify, amend, or repeal Presidential Decree No. 1590 is apparent. Section 22 of RA 9337 provides:

> *"SEC. 22. Franchises of Domestic Airlines. - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the*

[44] Ibid.
[45] Republic of the Philippines, represented by the Honorable Secretary of Finance vs. Hon. Ramon S. Caguioa et. al., G.R. No.168584, October 15, 2007.
[46] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

*franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:*

> *(A) The franchise tax is abolished;*
>
> *(B) The franchisee shall be liable to the corporate income tax;*
>
> *(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and*
>
> *(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."*

Based on the foregoing, the legislature's intent to specifically modify, amend, or repeal PD 1590 through RA 8424 and RA 9334 is wanting but in RA 9337, it is very clear. RA 9337 abolished the franchise tax but in return made PAL liable to corporate income tax and value added tax. Nevertheless, the legislature retains PAL's exemption given under PD 1590.

**PAL's claim for tax credit or refund of the alleged erroneously paid specific taxes for the tax year 2008 was filed within the period prescribed by law.**

Sections 229[47] of the NIRC of 1997, as amended, is the pertinent provision to a refund claim arising from erroneous

[47] *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,

payment of taxes. It provides that the claim for refund should be filed within two (2) years from the date of payment of the tax.[48]

Records show that PAL paid under protest the excise tax of ₱3,987,180.00[49] and ₱1,657,121.51[50] or a total of P6,329,735.21 to the Bureau of Customs on October 28, 2008.Thus, the March 5 , 2009[51] administrative claim and October 28, 2010[52] judicial claim fell within the two-year prescriptive period.

**PAL is entitled to a refund in the total amount of ₱1,657,121.51 excise tax paid under protest to Commissioner of Internal Revenue through the Commissioner of Customs.**

The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption as amended by Section 22 of RA 9337, is clear. The franchise tax is abolished, however, the franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property. Moreover, the basic corporate income tax by respondent shall be "in lieu of all other taxes"

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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.

[48] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 198579, July 1, 2013.

[49] Exhibit "O" & "P", CTA Docket pp. 87-88.

[50] Exhibit "JJ", CTA Docket p. 130.

[51] Exhibit "Y", CTA Docket pp. 106-115 & Exhibit "LL", CTA Docket pp. 142-151.

[52] CTA Docket pp. 5-162 .

including taxes due on importations by the grantee of commissary and catering supplies, provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

Petitioner submitted in evidence its original Annual Income Tax Return[53] for fiscal year 2008. Likewise, PAL proved that it is a VAT-registered entity[54] and paid its Value-Added Tax for the fiscal year ended March 31, 2009, as evidenced by its Certificate of Registration dated December 18, 2007, Certificate of Registration dated August 4, 2004, Payment Form No. 0605[55], and quarterly VAT Return[56].

The Authority to Release Imported Goods issued by the CIR and addressed to the COC provided that 'the shipment to be released at the Port of Manila consisting of the described articles, will be used exclusively for international inflight consumption. To wit:

Importation of assorted cigarettes:

| ENTRY NO. | ATRIG NO. | ARRIVAL DATE | EXCISE TAX |
|---|---|---|---|
| 4923 | 00015168[57] | 05-09-08 | P 403,930.00 |
| 4265 | 00015167[58] | 04-26-08 | 416,960.00 |
| 3750 | 00015166[59] | 04-12-08 | 456,050.00 |
| 2513 | 00011286[60] | 03-15-08 | 351,810.00 |
| 2493 | 00011288[61] | 03-14-08 | 859,980.00 |
| 1527 | 00011287[62] | 02-15-08 | 1,498,450.00 |
| TOTAL | | | P3,987,180.00[63] |

Importation of assorted liquors: ¿

[53] Exhibit "SS", CTA Docket pp. 469-474.
[54] Exhibit "TT" & "UU".
[55] Exhibit "VV", CTA Docket p. 461.
[56] Exhibit "VV-1", CTA Docket pp. 462-468.
[57] Exhibit "Q", CTA Docket p. 730.
[58] Exhibit "R", CTA Docket p. 731.
[59] Exhibit "S", CTA Docket p. 732.
[60] Exhibit "T", CTA Docket p. 733.
[61] Exhibit "U", CTA Docket p. 734.
[62] Exhibit "V", CTA Docket p. 735.
[63] Exhibit "O" & "P", CTA Docket pp. 87-88.

| ENTRY NO. | ATRIG NO. | ARRIVAL DATE | EXCISE TAX |
|---|---|---|---|
| 2468 | 00011380[64] | 03-07-08 | P 172,440.58 |
| 2519 | 00011395[65] | 03-17-08 | 84,058.49 |
| 2039 | 00011381[66] | 03-01-08 | 647,631.94 |
| 1546 | 00011379[67] | 02-13-08 | 742,990.50 |
| TOTAL | | | P1,657,121.51[68] |

To prove that the above-enumerated imported articles were not locally available in reasonable quantity, quality, or price, PAL presented Mrs. Cheryl V. Capinpin, PAL's Manager of In flight Materials Purchasing Division, Catering & In flight Materials Purchasing Sub-Department, who testified through her Judicial Affidavit that the importation of alcoholic products is cheaper than buying them locally, while as regards the cigarettes, either there are no local suppliers or dealers big enough to supply various foreign brands of cigarettes or the selling prices of the local dealers are higher than the cost of importation (Exhibit "YY")[69]. To bolster its claim, petitioner also presented the Philippine Wine Merchants' Price List for 2008 (Exhibit "YY-2") [70] and a comparison of prices of commissary articles as those imported by petitioner and locally available articles (Exhibit "YY-1"')[71].

However, unlike the importation of assorted liquors wherein the prices can be compared with the Philippine Wine Merchants 2008 pricelist, evidence reveal that local prices with regard to PAL's imported cigarettes is not available.[72] Other than testimony of Mrs. Cheryl V. Capinpin, that there are no local suppliers or dealers big enough to supply various foreign brands of cigarettes or the selling prices, no other evidence was presented to support a conclusion that the imported cigarettes are not locally available in reasonable quantity, quality or price.

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[64] Exhibit "FF", CTA Docket p. 754.
[65] Exhibit "GG", CTA Docket p. 755.
[66] Exhibit "HH", CTA Docket p. 756.
[67] Exhibit "II", CTA Docket p. 757.
[68] Exhibit "DD" & "EE", CTA Docket pp. 124-125.
[69] CTA Docket pp. 583-594.
[70] CTA Docket pp. 632.
[71] CTA Docket pp. 595-599.
[72] Ibid.

After a careful examination of the evidence adduced by petitioner, and undisputed by respondents, the Court is convinced that the imported liquors used by petitioner in its inflight services wherein the amount of ₱1,657,121.51 were paid, are either not reasonably available in the local market or the selling prices of the local suppliers are higher than the cost of importation.

In sum, we find that petitioner has complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies, specifically the imported liquors used for its inflight consumption.

**WHEREFORE**, premises considered, the instant Petition is hereby **PARTIALLY GRANTED**. Accordingly, respondents are **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION SIX HUNDRED FIFTY SEVEN THOUSAND ONE HUNDRED TWENTY ONE PESOS AND 51/100 (₱1,657,121.51),** representing petitioner's erroneously paid excise tax on October 28, 2008.

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

*(With Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice

## CERTIFICATION

Pursuant to Section 13 Article VIII 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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice
Chairperson, First Division

REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

***FIRST DIVISION***

**PHILIPPINE AIRLINES, INC ,**
Petitioner,

**CTA CASE NO. 8184**

*Members*:

- versus -

**DEL ROSARIO,** *PJ,*
**UY,** *and*
**MINDARO-GRULLA,** *JJ.*

**COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,**
Respondents.

Promulgated:

MAR 2 5 2014 ; 10:30 a.m.

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## DISSENTING OPINION

***DEL ROSARIO, PJ.:***

In her *ponencia*, my esteemed and learned colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, partially grants the Petition for Review filed by petitioner Philippine Airlines, Inc. (PAL) and orders the refund in favor of PAL the total amount of ₱1,657,121.51, representing erroneously paid excise tax on October 28, 2008 for its importations of cigarettes and liquors.

With utmost respect, I dissent.

The crux of the controversy boils down to whether or not the excise tax exemption granted to PAL under PD No. 1590 on its importation of cigarettes and liquors has been repealed.

On June 11, 1978, PD No. 1590 was issued wherein PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to 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.

Relevant portions of Section 13 of PD No. 1590 state 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**:
>
> 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;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997"* took effect. RA No. 8424 amended the National Internal Revenue Code[1] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424, I am of the humble view that **importation by PAL of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes**. Section 131 of the 1997 NIRC provides that:

> "SECTION 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.
>
> **<u>The provision of any special or general law to the contrary notwithstanding</u>, the importation of cigars and cigarettes, distilled spirits 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**: Provided, however, That this <u>shall **not** apply</u> to cigars and cigarettes, distilled spirits 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,**

[1] "SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I

Organization and Function of the Bureau of Internal Revenue

'SECTION 1. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

> created under Republic Act No. 7922; and the **Zamboanga City Special Economic Zone**, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by **a government-owned and operated duty-free shop**, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.
>
> xxx xxx xxx.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." (Emphases supplied)

In other words, Section 131 of the 1997 NIRC clearly provides that importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise taxes - - *"the provision of any special or general law to the contrary notwithstanding."* The **only exceptions** specified therein are those importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the **Subic Special Economic and Freeport Zone**, the **Cagayan Special Economic** Zone and Freeport, and the **Zamboanga City Special Economic Zone**, as well as those importations of cigars and cigarettes, distilled spirits and wines **by a government-owned and operated duty-free shop**, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334, made applicable the imposition of excise tax on importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports, *viz.*: om

"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 <u>shall apply</u> 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 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 on introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance,

> upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (B) Rate and Basis of the Excise Tax on Imported Articles. — Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes shall not apply to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically withdrew the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

Based on the foregoing, the exemption of PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 **was actually withdrawn as early as January 1, 1998 with the enactment of RA No. 8424 albeit RA No. 9334 later expanded the list of importations which are subject to excise taxes**. Under Section 131 of the NIRC of 1997, as amended by RA No. 9334, any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, **fermented liquors** [2] 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. Fermented liquor was simply added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, I find that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on PAL's importation under Section 13(2) of PD No. 1590. Suffice it to say, the repealing clause of RA No. 8424 expressly provides that:

[2] Fermented liquors was included in the list of importations which shall be subject to excise tax.

> "SECTION 7. Repealing Clauses. — (A) Xxx xxx xxx.
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly."

The above-cited Section of RA No. 8424 is explicit and clear. In enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

It may not be amiss to point out that Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes. This shows the clear intent of the legislature to withdraw the tax exemption previously granted to PAL on its importation of afore-stated articles pursuant to Section 13(2) of PD No. 1590.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[3] ("*Cagayan case*"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which

[3] G.R. No. L-60126, September 25, 1985.

> taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> Xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, it is my humble view that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should therefore be construed as an express repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, Section 131 of the 1997 NIRC specifically identified the entities that are exempt from excise tax on importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges. Since said identification did not include PAL's importations, it necessarily follows that there is an express repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as afore-stated items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. PAL also posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

Sections 16 and 24 of PD No. 1590 cited by petitioner, provide that:

> "**Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."
>
> "**Section 24.** This franchise, as amended, or any section or provision hereof may **only** be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof." (Emphasis supplied)

I find the arguments raised by PAL bereft of constitutional moorings. PAL proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption in the mode or manner it deems proper. PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[4], *viz*:

> "To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.
>
> On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.
>
> Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should

[4] G.R. No. 168584, October 15, 2007.

throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

*First.* Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**

**To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.**

*Third.* As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

*Fourth.* **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**

*Fifth.* The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.

These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**

**While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the**

> **inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked."** (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[5], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

> "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.**" (Emphasis supplied)

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on PAL's importations.

I take note of Section 22 of RA No. 9337[6], which took effect on July 1, 2005, abolishing the franchise tax provided under PAL's charter and subjecting PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and

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[5] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

[6] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

charges, as may be provided by its franchise agreement. Section 22 of RA No. 9337 is quoted hereunder:

> "SECTION 22. Franchises of Domestic Airlines. — The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

**It is my view that at the time of the enactment of RA No. 9337, PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines** in view of the withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on PAL's importation of afore-stated articles was reenacted or restored, **although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334.**

While I am not unaware of the pronouncement of the Supreme Court in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*,[7] it is my position that the same is not applicable to the present case. For one, in *Philippine Airlines, Inc.*, the Supreme Court, **in re-confirming PAL's tax exemption under its franchise, made a specific reference only to PAL's excise tax exemption on petroleum products**. In contrast, the present case involves excise tax on importation of cigarettes and liquors. While Section 131 of RA No. 8424 (1997 NIRC) withdrew PAL's excise tax exemption on importation of cigarettes and liquors by the use of the all-encompassing phrase *"[T]he provision of any special or general law to the contrary*

[7] G.R. No. 198759, July 1, 2103.

*notwithstanding"*, PAL's exemption from both direct and indirect taxes on its importation of petroleum products remained even after the enactment of RA No. 8424 (1997 NIRC).

Note that in *Philippine Airlines, Inc.,* the Supreme Court merely clarified that with regard to PAL's purchases of petroleum products, LOI 1483 divested PAL of its tax exemption on purchases of domestic petroleum products for use in its domestic operations but not PAL's exemption from excise tax on its importation of petroleum products, *viz.*:

> "B. Coverage of LOI 1483.
>
> LOI 1483 amended PAL's franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. It pertinently provides:
>
> > NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the **tax-exemption privilege granted to PAL on its <u>purchase of domestic petroleum products for use in its domestic operations</u> is hereby withdrawn**. (Emphasis and underscoring supplied)
>
> On this score, the CIR contends that the purchase of the aviation fuel imported by Caltex is a "purchase of domestic petroleum products" because the same was not purchased abroad by PAL.
>
> The Court disagrees.
>
> Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on **<u>all taxes</u>** on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.
>
> Viewed within the context of **<u>excise taxes</u>**, it may be observed that the **<u>first kind</u>** of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the **<u>second kind</u>** of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on

excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the **third kind** of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.

In view of the foregoing, the Court observes that the phrase "purchase of domestic petroleum products for use in its domestic operations" — **which characterizes the tax privilege LOI 1483 withdrew — refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale** and **does not, in any way, pertain to any of PAL's tax privileges concerning imported goods**, may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) PAL's tax exemption on its direct excise tax liability when it imports the goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:

***First***, examining its phraseology, the word "domestic," which means "of or relating to one's own country" or "an article of domestic manufacture," clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term "domestic petroleum products" could not refer to goods which are imported.

***Second***, examining its context, certain "whereas clauses" in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for **domestic sales**. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term "purchase of **domestic petroleum products** for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for **domestic sales** or consumption or for any other disposition," and not to "things imported." In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist." 

In fine, there is no dispute that PD No. 1590 is valid in so far as PAL's exemption from excise tax on its importation of aviation fuel is concerned since there is nothing in RA No. 8424 which removed said excise tax exemption. But as to PAL's exemption from excise tax on its importation of cigarettes and liquors, PD No. 1590 is no longer valid as it was repealed or modified by Section 131 of RA No. 8424 (1997 NIRC) by the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*".

Based on the foregoing, I submit that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of PAL from excise taxes on its importations of cigarettes and liquors has been withdrawn. Hence, when PAL paid the excise taxes on October 28, 2008 for its importations of cigarettes and liquors, during which Section 131 of RA No. 8424 (1997 NIRC), as amended by RA No. 9334 is effective, PAL is subject to excise tax on said importations. Accordingly, PAL is not entitled to the refund of the amount of Php5,644,301.51, representing the excise taxes that PAL paid on its afore-stated importations of cigarettes and liquors.

In this regard, I vote to DENY the Petition for Review filed by PAL.

**ROMAN G. DEL ROSARIO**
Presiding Justice