REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8130

Members:

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

Promulgated:

MAR 20 2015
11:42 a.m.

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RESOLUTION

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

In its Motion For Partial Reconsideration dated December 19, 2014 petitioner seeks to reverse the Decision dated December 1, 2014, which denied its claim for refund in the amount of P6,941,490.21, allegedly representing excise taxes paid under protest on its various importations of cigarettes, liquors and wines for international flight consumption.

While the Court agrees that petitioner is exempt from the payment of excise tax on its importation of cigarettes, liquor and wine under its franchise pursuant to Presidential Decree (PD) No. 1590, the subject claim for refund should be denied nonetheless for petitioner's failure to prove that the subject imported cigarettes, liquors and wines are not locally available in reasonable quantity, quality, or price.

Petitioner, however, is not convinced. It insists on its claimed exemption having allegedly proved that the subject imported cigarettes, liquors and wines were not locally available in reasonable quantity, quality, or price. The fact that it was unable to submit a comparative list of local prices is inconsequential on its claim for refund given that it was able to establish the lack if not the absence of local suppliers capable of supplying their requirement for international flight consumption. While petitioner concedes that it submitted only one price list from a single supplier, it argues that the absence of certain brands, or the lack of sufficient quantity of these brands in the price list of local suppliers indicates that these items are not locally available in sufficient quantity or quality.

As to its imported cigarettes, petitioner claims that it has complied with the condition for exemption having proved, through the testimony of witness Cheryl Capinpin, that the imported cigarette brands necessary for its international flight consumption could not be regularly sourced locally and at a lower price. Petitioner also opines that the "refusal of other suppliers to furnish petitioner with a price list" gives credence to its witness' testimony that its required brands of cigarettes were and still are not available in the local market.

Petitioner also harps on the Court's observation that the testimony of its own employee is less credible as it was self-serving. According to petitioner the testimony of a single witness in a criminal case, if credible, is sufficient to convict. With more reason in the instant civil case wherein only preponderance of evidence is required.

Petitioner also points out respondent's alleged admission in her Memorandum that the prices of the subject imported articles are less than when purchased locally. For petitioner, such admission is binding upon respondent and could not simply be ignored.

Finally, petitioner puts premium on its previous cases of similar nature wherein the Court allegedly ruled that it was able to prove that its imported cigarettes, wines and liquors for international flight consumption were not locally available in reasonable quantity, quality, and price. The Court should not deviate from such ruling.

In opposition, respondent Commissioner of Internal Revenue (CIR) counters that petitioner failed to prove by independent and credible evidence that the subject imported products are not locally available in reasonable quantity, quality, and price warranting the denial of the refund sought. Respondent posits that the testimony of petitioner's employee is self-serving. Her testimony that there are no local suppliers or dealers big enough to meet their requirements for various foreign brands of cigarettes sold during international flights is not conclusive. Her alleged study on the subject matter is definitely not comprehensive to deserve credence.

In his belatedly filed Comment, respondent Commissioner of Customs (COC) joins his co-respondent in the view that petitioner was unable to prove that the subject imported products are not locally available in reasonable quantity, quality, and price in the absence of a credible comparative list of local prices juxtaposed with the imported products. *Sans* any supporting evidence, petitioner simply failed to satisfy all the requirements for exemption under PD 1590 and ultimately for entitlement to the refund sought.

As to petitioner's claim that in other cases the Court allowed its claim for refund, respondent COC counters that each case is decided on the merits. Obviously in this case, petitioner failed to prove its case.

Petitioner's Motion For Partial Reconsideration is without merit, hence, must be denied.

All the issues raised by petitioner in this incident have been sufficiently addressed by the Court in the assailed Decision of December 1, 2014.

Again, to be entitled to the refund sought, petitioner must prove compliance with all of the requisites for exemption. One of the requisites is that the cigarettes, liquors and wines for international flight consumption that it is importing are not locally available in sufficient quantity, quality, or price. To be sure, a price list from a single supplier of wine and liquor does not prove that these imported items are not available locally in sufficient quantity, quality, or price. Petitioner's inability to secure price lists of imported cigarettes does not also translate into an air-tight conclusion that they are not available locally in sufficient quantity, quality, or price. To rule otherwise is to set a bad precedent.

Anent the contention that the testimony of a single witness should not be discounted since in criminal cases, the testimony of a single witness is sufficient to establish the guilt of an accused, suffice to say that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer on whose shoulder lies the burden of proving compliance with all the conditions for the grant of the tax refund or credit.[1] And petitioner utterly failed on this regard.

On the argument that in its other cases for refund of excise taxes, this Court granted the relief prayed for, it is well to remember that Courts may be required to take judicial notice of the decisions of the appellate courts but not of the decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory.[2]

More importantly, as correctly emphasized by respondent COC, each case must be decided on its own merits and on the probative value of the evidence presented, which in this case, is totally deficient.

Finally, it is the duty of the petitioner, as a party-litigant, to properly lay before the court the evidence it relies upon in support of the relief it seeks, instead of imposing that same duty on the court.[3]

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[1] Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301, March 11, 2013 and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. NO. 194637

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

[3] Republic vs. Sandiganbayan, G.R. No. 152375, December 13, 2011

WHEREFORE, the Motion For Partial Reconsideration dated December 19, 2014 filed by petitioner Philippine Airlines, Inc., is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice