REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2166
(CTA Case No. 9435)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 20 2021

11:55 a.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision dated 11 December 2020)"**[1] filed on January 4, 2021, without respondent's Comment, despite due notice, as per Records Verification Report[2] dated June 14, 2021. In the said Motion, petitioner prays for the reconsideration and setting aside of the Court's Decision dated December 11, 2020, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated August 8, 2019 and the Resolution dated September 26, 2019

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[1] Docket, pp. 109 to 122.

[2] Issued by Clerk IV Angel Magpantay of the Receiving Unit, and Chief Judicial Staff Officer Benjamin D. Pineda, Jr., of the Judicial Records Division.

rendered by the Second Division of this Court in CTA Case No. 9435 are hereby **AFFIRMED**.

SO ORDERED."

In support of its Motion, petitioner argues that:

1. PAL filed its administrative claim for refund with the CIR prior to the filing of its judicial claim for refund.
2. The subject imported wines, liquors, and cigarettes are not locally available in reasonable quantity, quality, or price.

As mentioned earlier, respondent failed to file his Comment to the instant motion. Hence, this resolution.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of petitioner's arguments in its Motion for Reconsideration, it is noted that the same are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that the filing of the administrative and judicial claim on the same day, does not comply with the requirements set forth in Section 229 of the NIRC of 1997, as amended.

Under the subject provision, two conditions must be complied with: 1) a claimant must first file an administrative claim with the CIR, before filing its judicial claim with the courts of law; and 2) both claims must be filed within the two (2) year reglementary period. Timeliness of the filing of the claim is *mandatory and jurisdictional*, and thus, the court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[3]

In this case, petitioner contends that its administrative claim for refund was filed with the CIR *prior* to the filing of its judicial claim for

[3] *Commissioner of Internal Revenue vs. San Miguel Corporation,* G.R. Nos. 180740 and 180910, November 11, 2019.

refund. However, as stated in the assailed Decision, this Court finds that petitioner has overstretched its interpretation of what constitutes *prior filing*, in order to justify the filing of both administrative and judicial claims on the *same day*.

It should be emphasized that the primary purpose of requiring the *prior filing* of an administrative claim, is to give notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.[4]

In this case, PAL had two (2) years from the date of payment of excise taxes to the Bureau of Customs on August 22, 2014, or until August 22, 2016, within which to file its administrative claim for refund. However, PAL inexplicably opted to file both its administrative claim[5] and its judicial claim[6] before the Court in Division on the *same day*.

In consideration of the rationale behind the rule requiring the prior filing of an administrative claim before the judicial claim for refund, this Court finds that the filing of both claims on the same day, is akin to the concurrent filing of the subject claims, and falls short of fulfilling its primary purpose, which is to give the CIR an opportunity to act on the administrative claim. Petitioner's insistence on what constitutes prior filing would render nugatory the purpose of the rule requiring that an administrative claim should be filed *before* a judicial claim is filed before the courts of law.

Again, it is stressed that PAL had sufficient time, or two (2) years from the date of payment of excise taxes, within which to file its administrative and judicial claims, and yet it proffered no reasonable explanation as to why it resorted to the filing of both claims on the *same day*, which effectively deprived the CIR of *any* opportunity to act on the said claim. Thus, this Court upholds the ruling that the administrative claim must *not* be filed on the same day as the filing of the judicial claim.

Anent petitioner's argument that the "*Imported Goods with No Local Quotation*" under Category C should be included as part of the tax-exempted importation, We find the same to be without merit.

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[4] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.
[5] Division Docket (CTA Case No. 9435), Vol. I, pp. 36 to 54.
[6] Division Docket (CTA Case No. 9435), Vol. 1, pp. 10 to 31.

In this case, petitioner failed to adduce evidence to prove the items falling under Category C, or *"Imported Goods with No Local Quotation,"* are not locally available in reasonable quality, quantity, or price. It should be stressed that the CTA is a court of record, and the cases filed before it are litigated *de novo,* hence, party litigants should prove every minute aspect of its case.[7] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[8]

The instant Motion for Reconsideration must be denied pursuant to the Revised Rules of the Court of Tax Appeals, as amended.

During the deliberation of the instant Motion for Reconsideration, the members of the Court *En Banc*[9] were divided in their votes. The ponente, together with Associate Justice Jean Marie A. Bacorro-Villena, Associate Justice Maria Rowena Modesto-San Pedro, and Associate Justice Marian Ivy F. Reyes-Fajardo voted that the assailed Decision of the Court *En Banc* dated December 11, 2020 be affirmed, or a total of four (4) votes.

On the other hand, Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Catherine T. Manahan, voted to grant the instant Motion, or a total of four (4) votes. In effect, said justices voted to reverse the assailed Decision of the Court *En Banc* dated December 11, 2020.

Nevertheless however, the assailed decision rendered in the instant case cannot be reversed pursuant to the provisions of Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503, and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), which respectively provide as follows:

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[7] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 201665 and 201668, August 30, 2017; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[8] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[9] The current members of the Court *En Banc* are: Presiding Justice Roman Del Rosario, Senior Associate Justice Juanito C. Castañeda, Jr., Justice Erlinda P. Uy, Justice Ma. Belen M. Ringpis-Liban, Justice Catherine T. Manahan, Justice Jean Marie A. Bacorro-Villena, Justice Maria Rowena Modesto-San Pedro, Justice Marian Ivy F. Reyes-Fajardo (took no part)

"**<u>Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503:</u>**

SEC. 2. ***Sitting En Banc or Division; Quorum; Proceedings.*** — The CTA may sit en banc or in three (3) Divisions, each Division consisting of three (3) Justices.

Five (5) Justices shall constitute a quorum for sessions en banc and two (2) Justices for sessions of a Division: Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Division of the Court to sit temporarily therein.

The affirmative votes of <u>five (5) members</u> of the Court *en banc* shall be necessary to <u>reverse a decision of a Division</u> but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.

<u>Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA):</u>

SEC. 3. ***Court en banc; quorum and voting.*** — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court en banc. The attendance of five (5) justices of the Court shall constitute a quorum for its session en banc. The presence at the deliberation and **<u>the affirmative vote of five (5) members of the Court en banc shall be necessary to reverse a decision of a Division</u>** but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied." *(Emphasis supplied.)*

From the foregoing, the affirmative votes of five (5) members of this Court sitting *En Banc* is necessary to reverse a decision of a Division thereof.

In the instant case, considering that only four (4) members of the Court *En Banc* voted to reverse the assailed Decision in the instant case, petitioner's motion for reconsideration shall be denied. Consequently, the Court in Division's assailed Decision dated August 8, 2019 and Resolution dated September 26, 2019 rendered in CTA Case No. 9435 is deemed affirmed, in accordance with Section 2 of RA No. 1125, as amended by RA No. 9503, and Section 3, Rule 2 of the RRCTA.

WHEREFORE, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case pursuant to Section 2 of R.A. No. 1125, as amended by R.A. No. 9503, in relation to Section 3 of Rule 2 of the RRCTA, the instant Motion for Reconsideration is **DEEMED DENIED**.

The assailed Decision dated August 8, 2019 and the Resolution dated September 26, 2019 rendered by the Court in Division in CTA Case No. 9435 are hereby **DEEMED AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.
(With due respect, I join Presiding Justice's Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join the Concurring and Dissenting Opinion of Presiding Justice)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join Presiding Justice's Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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COURT OF TAX APPEALS
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REYES-FAJARDO, JJ.

Promulgated:

OCT 20 2021 11:55 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, and after deep introspection, I am constrained to deviate from the position I have taken in the assailed Decision. I submit that petitioner has complied with the requirement laid down in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, that **an administrative claim for refund must first be filed before court action** may be maintained by a taxpayer seeking refund of any national internal revenue tax erroneously or illegally collected or paid.

Section 229 of the NIRC of 1997, as amended, reads:

> "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, 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) 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."

Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.[1] emphasized that Section 229 of the NIRC, as worded, only required that an **administrative claim should first be filed,** *viz.*:

"**Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR)**, viz.:

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Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code — [then Section 306 of the old Tax Code] — however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. Xxx

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In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. **Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed.** It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage." *(Boldfacing supplied)*

[1] G.R. No. 216130, August 3, 2016.

There is nothing in *Goodyear* which states that the administrative claim for refund must be filed at least one (1) day before the judicial claim for refund. *Goodyear* simply states that the administrative claim should first be filed before maintaining a suit or proceeding in any court for the recovery of the tax sought to be refunded. **The question then is the meaning of the phrase "administrative claim should first be filed". Should it be interpreted to mean that the administrative claim must be filed a year before, a month before, a day before, or an hour before the judicial claim is filed?**

Section 229 of the NIRC of 1997, as amended, does not quantify the time with which the judicial claim must be preceded by the filing of the administrative claim. *Ubi lex non distinguit nec nos distinguere debemus.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish.[2] Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated.[3] Thus, as long as the administrative claim for refund is shown to have been first filed before the filing of the judicial claim, I submit that the legal requirement is satisfied.

In the case at bar, records reveal that the filing of its administrative claim for refund preceded the filing of the Petition for Review before the Court in Division. **This is proven by the fact that the original of its administrative claim for refund dated August 19, 2016, which was filed with the Bureau of Internal Revenue – Regular Large Taxpayers Audit Division II on August 22, 2016, was attached to the Petition for Review filed with the Court in Division on August 22, 2016 at 4:15 P.M.**[4]

As succinctly pointed out by petitioner in its Motion for Reconsideration, **petitioner could not have attached its original administrative claim for refund to its Petition for Review had it not filed the former prior to filing the latter**.

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[2] *La Suerte Cigar and Cigarette Factory vs. Court of Tax Appeals*, G.R. No. L-36130, January 17, 1985.
[3] *Rey Nathaniel C. Ifurung vs. Hon. Conchita C. Carpio Morales in her capacity as the Ombudsman, et al.*, G.R. No. 232131, April 24, 2018.
[4] Annex P-2 of the Petition for Review in CTA Case No. 9435, Division Docket, Volume I, pp. 36-48.

Since it was shown that petitioner's administrative claim was first filed before its Petition for Review, albeit on the same day, I submit that petitioner has complied with Section 229 of the NIRC of 1997, as amended.

Anent the merits of petitioner's claim for refund, **I adopt the Court *En Banc's* factual findings in the assailed Decision that petitioner complied with the requirements for tax exemption in the amount of Php6,570,286.23**, as reported in the Final Report of the Court-commissioned Independent Certified Public Accountant, Enrico T. Pizarro.

In its Motion for Reconsideration of the assailed Decision, petitioner insists that the Court should have included the amount under Category C (amounting to Php1,386,700.00) which pertains to "imported goods with no local quotation" as part of the tax-exempted importation.

On this point, I concur with the *ponencia* that petitioner failed to adduce evidence to prove that the items falling under Category C are not locally available in reasonable quality, quantity, or price. Thus, I submit there is no basis to include the amount of Php1,386,700.00 in the total amount that is refundable to petitioner.

All told, I VOTE to: (i) **PARTIALLY GRANT** petitioner Philippine Airlines, Inc.'s Motion for Reconsideration (Re: Decision dated 11 December 2020); and, (ii) **ORDER** respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of petitioner Philippine Airlines, in the total amount of **Php6,570,286.23** representing excise taxes erroneously imposed against and paid under protest by petitioner Philippine Airlines on August 22, 2014.

ROMAN G. DEL ROSARIO
Presiding Justice