REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1648
(CTA Case Nos. 8708 and 8770)

-versus-

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

PHILIPPINE AIRLINES, INC.,
Respondent.

Promulgated:

JAN 29 2019
4:10 p.m.

x- x

RESOLUTION

MANAHAN, J.:

For resolution is petitioner CIR's *Motion for Reconsideration Re: Decision promulgated on October 18, 2018* filed on November 7, 2018, with respondent Philippine Airlines' (PAL) *Comment (Re: Motion for Reconsideration dated 7 November 2018),* filed through registered mail and received by this Court on January 3, 2019.

Petitioner seeks reconsideration of the Decision of the Court *En Banc* promulgated on October 18, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision of the Court in Division dated January 13, 2017 and the Resolution dated April 20, 2017 of the CTA First Division in CTA Case Nos. 8708 and 8770, are hereby **AFFIRMED.**"

A synopsis of the *En Banc* Decision would reveal that the Court found and ruled that respondent PAL was able to fulfill the conditions laid down in its franchise or more particularly, Section 13 of P.D. 1590 to warrant the grant of the tax refund/tax credit of excise taxes paid on its importation in the years 2006, 2008 to 2012 of assorted liquor, wine and cigarettes constituting its commissary and catering supplies for international flight consumption.

Petitioner disagrees with this conclusion and firmly maintains that respondent was not able to prove that the imported goods and supplies are not locally available in reasonable quantity, quality or price, a condition which petitioner submits is essential to warrant the grant of the claim for refund pursuant to Paragraph 13 of Presidential Decree (P.D.) No. 1590. He contends that the fact that the price of imported materials is lower than the price in the domestic market does not mean that the price in the domestic market is unreasonable. He assails the subject Decision and argues that the Court *En Banc* erroneously equated "reasonableness" with cheaper prices because respondent's quoted importations will "forever" be cheaper because it is the base international price while local suppliers will add other factors to their prices such as taxes/duties and their profit margin making said importations relatively cheaper over locally available products.

It is for this reason that petitioner maintains that local prices are still "reasonable" and a reasonable price is not necessarily the lowest price. This is the perspective that petitioner would like the Court *En Banc* to look into in deciding in his favor. Finally, petitioner asks the Court *En Banc* to take a second look at its conclusion by setting forth the argument that price quotations from abroad will always be cheaper because the latter do not have the excise tax component as well as importation costs that local suppliers have to necessarily add to their prices.

In his Comment, respondent points to the repetitions and reiterations made by petitioner in his arguments against the Decision which are by its nature a rehash of its prior submissions to the Court *En Banc* which the latter have already weighed and considered in the Decision promulgated on October 18, 2018. It cites a Supreme Court ruling that warranted a denial of a motion for reconsideration which raises no new or substantial issue. Petitioner therefore asks the Court *En Banc* to outrightly deny the motion for reconsideration of petitioner. Nevertheless, respondent confronts the substantive issues raised by petitioner by stating that it was able to fulfill all the conditions for entitlement to the tax exemption and consequent refund of excise taxes pursuant to P.D. 1590. It lists down the evidence it presented during trial, primarily to prove that the imported articles in question are not locally available in reasonable quantity, quality or price. We list down the evidence enumerated by respondent in tis Comment, to wit:

(a) Judicial Affidavit of Ms. Cheryl Capinpin;
(b) Philippine Wine Merchant's List ("PWM") Price Lists for the years 2006, 2008, 2009, 2010, 2011 and 2012;
(c) Future Trade International (FTI) price lists dated April 8, 2009, October 1, 2010 and for the years 2006 to 2013; and,
(d) The 2010 BIR Price Survey and the report of the court-commissioned Independent Certified Public Accountant ("ICPA").

Respondent harps on the lack of evidence of petitioner during trial, to rebut or contravene the aforesaid evidence it presented.

On the argument that the Court *En Banc* erred in equating reasonableness with cheaper prices, respondent finds this a futile attempt to convince the Court to reverse its ruling. Respondent points out that it is a public utility whose business and operations are imbued with public interest and it is because of the nature of its services that the government granted PAL certain tax exemptions primarily to ease the financial burden for the services it provides to the public.

Respondent posits that if the Court would sustain petitioner's reasonings, it would never be able to avail of the tax exemptions provided under the law which is not only an absurdity but would be illogical.

Respondent also finds that the motion for reconsideration filed by petitioner is a mere scrap of paper for being violative of the three (3) day notice pursuant to Section 4 of Rule15 of the Rules of Court that requires a movant to ensure that the adverse party be served a copy of the motion at least three (3) days before the date of the scheduled hearing. Respondent alleges that it received a copy of the Motion for Reconsideration on November 13, 2018 with a hearing date set on November 12, 2018 which respondent believes to be violative of the three (3) day notice rule hence said motion should be outrightly dismissed.

RULING OF THE COURT

A perusal of the arguments of petitioner in his Motion for Reconsideration reveals that the issues presented therein are the very same issues which have already been thoroughly passed upon by the Court *En Banc* in the Decision promulgated on October 18, 2018. Nevertheless, we shall deal with said issues to put these to rest and to enable this Court to make some clarifications as to the rationale behind its conclusions.

Petitioner argues that in order to be exempted from taxes, duties, charges, royalties or fees on the importation of its commissary and catering supplies under Presidential Decree (P.D.) No. 1590, the claimant must prove, among others, that the imported articles are not locally available in reasonable quantity, quality or price. He therefore asserts that respondent PAL did not comply with this condition hence the refund for excise taxes must be denied.

We find petitioner's contention to be without merit and accordingly deny his motion for reconsideration.

The basis of respondent's claim for tax exemption and tax refund is Section 13 of P.D. 1590 and we quote, thus:

Presidential Decree No. 1590

xxx xxx xxx

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 percent (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 tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes and duties, royalties, registration, license and other fees and charges of any kind, nature or description, imposed, levied, established, assessed or collected by any municipal, city, provincial or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

(a) All taxes, including compensating taxes, duties, charges, royalties or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts and 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 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;" (emphasis supplied)

We reiterate our ruling that respondent PAL was able to comply with all of the aforementioned conditions for tax exemption under P.D. 1590, with certain exceptions as to the factual basis of the claim, thus resulting in the partial grant of the claim for refund of excise taxes.

We quote the pertinent portions of the *En Banc* Decision, thus:

> "We agree with the findings of the Court in Division that respondent PAL was able to comply with all of the aforementioned conditions for tax exemption under P.D. 1590, with certain exceptions as to the factual basis of the claim, thus resulting in the partial grant of the claim for refund of excise taxes. We again quote pertinent portions of the assailed Decision :
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> > "Thus only the importation cost of the following liquor, wine and cigarette products, as computed by the ICPA, can be compared with the local prices for the same liquor, wine and cigarette products reflected in the PWM and FTI Price List and BIR Price Survey Computation Presented by PAL.
> >
> > xxx xxx xxx
> >
> > Thus the Court finds that PAL has sufficiently proven its exemption from the payment of excise taxes only in the amount of Php12,912,430.88 xxx xxx xxx"

The evidence presented by respondent PAL, particularly the price lists from the Philippine Wine Merchants, are to our collective minds, sufficient bases of comparison to determine the disparity in the price of the same items when purchased locally and when purchased abroad.

As to the error ascribed by petitioner to the Court in equating reasonableness with cheaper prices, we find this to be without merit as this unnecessarily complicates the issue and veers away from the purpose of the tax exemption granted to PAL. If the evidence shows that imported products are relatively cheaper than when purchased locally then the tax exemption should apply. The fact that locally sourced products will always be more expensive than imported products because of several add-on factors is not essential to determine respondent's entitlement because as long as it can be proven by claimant that the imported products and supplies are not locally available in reasonable quantity, quality or price then certainly the choice of the former makes it fall within the coverage of the tax exemption. In such a situation, it is incumbent upon the taxpayer-claimant to offer evidence that would be sufficient to prove the disparity in price, quantity or quality between locally produced materials and imported ones. This Court found that the price lists from the Philippine Merchant Wine Lists, among others, are sufficient to provide us with the necessary bases for our conclusion. We quote the pertinent portions of our Decision, thus:

"More particularly, we concur with the Court in Division when it held that the Philippine Wine Merchants Price List is a valid reference material to prove that the costs of importation of the subject articles are lower than purchasing them locally, and we quote:

> With respect to the document described as the Price Lists from the Philippine Wine Merchants, **the same was given probative value in the earlier cases brought by petitioner before the Court, albeit involving different taxable periods in arriving at the conclusion that the costs of importing the articles are lower than purchasing them locally**." (emphasis supplied)

In arriving at our conclusion, we find it essential to filter the issue down to the degree of evidence required in proving one's entitlement to a claim for refund of alleged excessive or erroneously paid taxes. It is well-settled that tax refunds are construed *strictissimi juris* against the taxpayer-claimant as it partakes the nature of a tax exemption[1], as indeed it is in this case, because the claim for refund of respondent PAL is based on the tax exemption under its franchise, P.D. 1590. We strongly affirm that any tax refund anchored on the tax exemption under a special law or statute should be strictly construed against the claimant, such that an interpretation thereof should pass the crucible test of judicial scrutiny. The reason for the strict interpretation of tax exemptions is because they constitute a derogation of the sovereign authority to tax which would necessarily result to a loss or a reduction in revenues owed to the government. However, we must also temper this principle of strict interpretation of tax exemptions with the relevant provisions of the Revised Rules of Court relative to the degree of evidence required to prove entitlement to tax refunds in civil cases. Section 1, Rule 133 of the Revised Rules of Court provides as follows:

> **"Rule 133**
>
> Weight and Sufficiency of Evidence
>
> Section 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issue involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider

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[1] CIR vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010; Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. No. 159490, February 18, 2008.

the number of witnesses, though the preponderance is not necessarily with the greater number."

Seen from the perspective of proving tax exemption and and eventual claims for refund, this Court finds that respondent PAL sufficiently discharged the burden of proof especially in the face of a dearth of evidence on the part of the petitioner to prove otherwise.

As to the issue raised by respondent on the violation of the three (3) day notice rule in filing motions for reconsideration, we find that petitioner did not violate this rule as he merely estimated the said period from the time it filed its Motion for Reconsideration on November 7, 2018 thereby setting the hearing on November 12, 2018. The respondent could not have anticipated the date when petitioner would receive the same.

All told, We reiterate our ruling in favor of respondent PAL and partially grant the claim for refund of excise taxes paid during the taxable years 2006, 2008 to 2012.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit. The Decision of the Court *En Banc* dated October 18, 2018 in CTA EB No. 1648 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(I maintain my Concurring & Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(I maintain my Concurring & Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice