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,
Respondent.

CTA CASE NO. 7935

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

DEC 20 2012 1:45 p.m.

x- -x

DECISION

COTANGCO-MANALASTAS, J.:

This resolves the instant Petition for Review filed by petitioner Philippine Airlines, Inc. (PAL) to seek the refund of the total amount of P10,889,672.72 specific taxes paid, which were erroneously collected from petitioner.

THE FACTS

Petitioner PAL is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, Metro Manila.[1]

---

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 260.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the 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 141, 142, 143, and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[2]

Likewise named as respondent is the Commissioner of Customs (COC), who is the Commissioner of the Bureau of Customs (BOC), which is the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on distilled spirits, wines, fermented liquors, cigars and cigarettes under Sections 141, 142, 143 and 145, respectively, of the NIRC of 1997, as amended, on the basis of the delegated authority of respondent CIR, through an Authority to Release Imported Goods (BIR Form No. 1918) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC, as amended.[3]

On June 11, 1978, petitioner was granted a franchise to establish, operate, and maintain air transport services within the

[2] Par. 2, Facts, JSFI, docket, pp. 260-261.
[3] Par. 3, Facts, JSFI, docket, p. 261.

Philippines and other countries by Presidential Decree No. 1590 (PD 1590).[4]

On January 1, 2005, Republic Act No. 9334 (RA 9334), took effect. Section 6 of RA 9334 provides:

> "Section 131. Payment of Excise Taxes on Imported Articles. –
> (A) Person 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 customs house, 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 he 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: 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

[4] Par. 4, Facts, JSFI, docket, p. 261.

> 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 an introduction into the Philippine customs territory."

On February 3, 2005, then BIR Commissioner Guillermo Parayno wrote then BOC Commissioner George M. Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise tax "on all importations destined for Duty Free Philippines (DFP) and the Freeport zones such as the Subic Bay Freeport Zone". Furthermore, in said letter, the BIR requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to the DFP and the Freeport zones be immediately collected.[5]

On February 4, 2005, then Commissioner George M. Jereos issued a Memorandum to the BOC officers and personnel directing them to "effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport zones."[6]

On March 1, 2005, the new BOC Commissioner Alberto D. Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provided for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free

---

[5] Exhibit "D".
[6] Exhibit "E".

Shops and Free-Port Zones pursuant to RA No. 9334 and BIR Revenue Regulations No. 13-2004."[7]

Paragraph IV of CMO 13-2005, subtitled "Operational Provisions", required the accomplishment of consumption entries, instead of the previously required warehouse entries, as a requisite for the clearance of imported cigarettes and liquors, to wit:[8]

> "In lieu of the warehousing entry required under Customs Administrative Order No. 1-97 and Customs Memorandum Order Nos. 17-97 and 17-97A, all shipments of cigar and cigarettes, distilled spirits, wines and liquors destined for duty-free shops and free-port zones shall be covered by consumption entries filed at the Port of Discharge following the procedures for cargo clearance under CAO Nos. 2-95 and 5-2001, CMO Nos. 3-2000 and 3-2001 and other existing customs rules and regulations."

On April 4, 2005, petitioner wrote a letter to Atty. Felipe Bartolome, District Collector of Customs, Manila International Container Port, Bureau of Customs, Manila, requesting the immediate release of its shipment alleging that the articles imported are for its commissary supplies; which are exempt from all taxes under Section 13 of PD 1590.[9]

Petitioner's April 4, 2005 letter was endorsed to the Legal Service of the BOC, which responded to its request for release of the imported cigarettes by issuing a Memorandum on April 25, 2005 addressed to COC Commissioner Alberto D. Lina. The April 25, 2005 Memorandum simply expressed that petitioner is "liable for the payment of excise tax on all their importation of the subject articles,

---

[7] Exhibit "F"
[8] Par. 10, Facts, JSFI, docket, p. 264.
[9] Exhibit "G".

even under the old and previous Section 131 of the NIRC of 1977; subject however to duty drawback and/or tax refund, if applicable".

Considering that the subsequent importations of wine, liquor and cigarettes for petitioner's commissary supplies were also withheld release from the customs ports pending payment of taxes, duties, and fees with danger of spoilage and possible loss while in storage;[10] and considering further the alleged failure of the COC to take formal action on the April 25, 2005 recommendation of the BOC's Legal Service, petitioner paid under protest the excise taxes due on the following importations, detailed as follows:

Import Entry No.	Articles	Date of Arrival	ATRIG No.	Amount Due
3722	Mild Seven Cigarette	March 29, 2006 (Exh. J)	74453 (Exh. S)	P 500,000.00
3724	Chivas Real Whisky	March 13, 2006 (Exh. K)	74482 (Exh. T)	390,096.00
3990	West King Size Cigarettes	April 14, 2006 (Exh. L)	74828 (Exh. U)	250,000.00
14309	Davidoff Lights	November 30, 2005 (Exh. M	74451 (Exh. V)	175,000.00
14313	Camus XO Superieur	December 15, 2005 (Exh. N)	74445 (Exh. W)	20,563.20
14314	Piper Heidsieck	December 10, 2005 (Exh. (O)	74544 (Exh. X)	393,120.00
14317	Vin De Table Balnc Vin De Table Rouge	December 15, 2005 (Exh. P)	74420 (Exh. Y)	180,972.00
3729	Salem M King Cigarette	April 5, 2006 (Exh. BB)	74829 (Exh. GG)	750,000.00
3730	Carlos I	March 27, 2006 (Exh. CC)	74915 (Exh. HH)	860,267.52

[10] Par. 15, Petition for Review, docket, p. 6.

3732	Royal Salute Whisky, Ballantine Scotch Whiskey, Carlos I Brandy and Martel VSOP Cognac	March 31, 2006 (Exh. P-7)	74860 (Exh. II)	648,889.92
4056	Mild Seven Lights Cigarettes	April 19, 2006 (Exh. LL)	74874 (Exh. QQ)	500,000.00
14302	Remy Martin XO Remy Martin VSOP Piper Heidsieck	October 29, 2005 (Exh. MM)	Exh. RR	745,355.52
14303	J & B rare JW Black Label	October 22, 2005 (Exh. NN)	74589 (Exh. SS)	653,728.32
14305	Jack Daniels, Regal Whisky, cutty sark, royal salute, finlandia vodka	November 19, 2005 (Exh. VV)	74455 (Exh CCC)	1,069,951.68
14306	J & B Rare; JW Black Label	November 28, 2005 (Exh. WW)	74546 (Exh DDD)	653,728.32
14310	Chivas Regal Whisky	November 2, 2005 (Exh. XX)	74547 (Exh. EEE)	610,500.24
14307	Winston Red King Size; Winston Lights King Size; Mild Seven	November 11, 2005 (Exh. YY)	74586 (Exh FFF)	2,187,500.00
10346	Davidoff Classic Lights	September 20, 2005 (Exh. ZZ)	58281 (Exh GGG)	300,000.00

On April 22, 2008, petitioner simultaneously filed before respondent CIR three (3) written claims for refund[11] of excise taxes

[11] Exhibits "AA", "KK", "UU", and "III".

alleged to have been erroneously paid on June 25, 2007[12], July 10, 2007[13], July 20, 2007[14], and July 30, 2007[15].

However, respondent CIR failed to act on the said administrative claims for refund. Hence, petitioner filed the instant Petition for Review on June 24, 2009.

Respondent CIR filed her Answer and interposed the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau;
>
> 5. The amount of P10,889,672.72 being claimed by petitioner as specific taxes allegedly paid on June 25, 2007, July 11, 2007 (and) July 20, 2007 and July 30, 2007 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor. *Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"[16]

On the other hand, respondent COC filed his Comment[17] on August 10, 2009.

Thereafter, a Notice of Pre-Trial Conference was issued by the Court on August 12, 2009, setting the case for pre-trial conference on

---

[12] Exhibit "R".
[13] Exhibit "FF".
[14] Exhibit "PP".
[15] Exhibit "BBB".
[16] Docket, pp. 186.
[17] Docket, pp. 200-214.

August 28, 2009. Accordingly, Petitioner's Pre-Trial Brief[18] was filed on August 24, 2009; while Respondent's Pre-Trial Brief[19] was filed on September 3, 2009.

On November 20, 2009, the parties filed their Joint Stipulation of Facts and Issues[20], which the Court approved in a Resolution[21] dated November 26, 2009. In the same Resolution, the pre-trial was considered terminated.

During trial, petitioner presented and formally offered its documentary and testimonial evidence, and in the Resolutions dated November 10, 2011[22] and January 26, 2012[23], Exhibits "B" to "WWW-3" were admitted as part of petitioner's documentary evidence.

On the other hand, respondents' counsels manifested that they will not be presenting evidence. Thus, the parties were granted thirty (30) days from March 7, 2012, or until April 6, 2012 to submit their memoranda.[24]

On April 2, 2012[25] and April 10, 2012[26], the Memoranda for respondent CIR and respondent COC were filed, respectively. Petitioner's Memorandum was filed through registered mail on May 4,

[18] Docket, pp. 217-226.
[19] Docket, pp. 234-240.
[20] Docket, pp. 260-266.
[21] Docket, p. 268.
[22] Docket, pp. 897-899.
[23] Docket, pp. 912-913.
[24] Resolution dated March 23, 2012, docket, p. 917.
[25] Docket, pp. 918-929.
[26] Docket, pp. 934-960.

2012.[27] Thereafter, the case was submitted for decision on May 15, 2012.[28]

ISSUES

The parties submitted the following issues for this Court's disposition:

"1. Whether or not the Commissioner of Customs is merely an agent of the Commissioner of Internal Revenue deputized to collect internal revenue taxes on imported goods, and therefore, did not incur any liability from the collection of the taxes due;

2. Whether or not petitioner's franchise, Presidential Decree No. 1590, has been amended by Republic Act No. 9334 in so far as petitioner's exemption from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption, is concerned;

3. Whether or not petitioner's importations of liquors and cigarettes form part of its commissary supplies for international flights;

4. Whether or not PAL is entitled to a refund of the following specific taxes:

   (1) Php 1,909,751.20 paid under protest 25 June 2007;
   (2) Php 2,259,157.44 paid under protest on 11 July 2007;
   (3) Php 1,899,083.84 paid under protest on 20 July 2007; and
   (4) Php 4,821,680.24 paid under protest on 30 July 2007; or a total amount Php 10,889,672.72

5. Whether or not the specific taxes subject of petitioner's claim for refund have actually been paid.[29]

---

[27] Docket, pp. 966-995.
[28] Resolution dated May 15, 2012, docket, p. 997.
[29] *Docket*, pp. 264-265.

THE RULING OF THE COURT

As regards the first issue, respondent COC avers that it merely acted for and in behalf of the CIR in assessing and collecting excise tax on imported articles. And where the COC acted on matters within the scope of his authority, he did not acquire any right or incurred any liability from the collection of the taxes due.

On this matter, Section 2 of Rule 3 of the Revised Rules of Court explicitly provides that every action must be prosecuted and defended in the name of the real party in interest.

Relevantly, in the case of *Walter Ascona Lee, et al. vs. Hon. Manuel Romillo, Jr., et al.* [30], the High Court said:

> "A real party in interest-plaintiff is one who has a legal right while a **real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal rights of the former**." (*Emphasis supplied*)

In this case, it may be observed that the kind of tax subject of the instant Petition for Review is excise tax which is imposed under Title VI of the NIRC. Being an internal revenue tax, the power to collect excise taxes is vested on the CIR. As for respondent COC, he was the one who collected from petitioner the excise taxes as the constituted agent of the CIR. Accordingly, both the CIR and the COC are real parties in interest-defendants in this case. Nevertheless, it can be noted that the COC may be named as a defendant in this case

---

[30] G.R. No. L-60937, May 28, 1988.

only in his capacity as the constituted agent of the CIR in accordance with Section 12(a) of the NIRC of 1997, as amended.

Now as to the determination of whether petitioner complied with the procedures governing the proper filing of administrative claims for refund, the Court found relevant the provisions of Sections 204 and 229 of the NIRC of 1997, as amended, which provides for the procedure governing the refund or recovery of erroneously collected internal revenue taxes. The pertinent portion of Sections 204 and 229 of the NIRC of 1997, as amended reads:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may —
>
> xxx xxx xxx
>
> "(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "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, **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**." *(Emphasis supplied)*

Records of this case would show that petitioner on different dates paid its excise taxes for its importation of commissary and catering supplies and filed the corresponding administrative and judicial claims for refund for such taxes paid, detailed as follows:

Import Entry No.	Total Amount Paid	Official Receipt No.	Date of Payment	Date of Filing the Administrative Claim	Date of Filing the Judicial Claim	Last Day for Filing the Judicial Claim
3722 3724 3990 14309 14313 14314 14317	P1,909,751.20	140945962 (Exh. R)	June 25, 2007	April 22, 2008	June 24, 2009	June 24, 2009
3729 3730 3732	2,259,157.44	141165787 (Exh. FF)	July 11, 2007	April 22, 2008	June 24, 2009	July 10, 2009
4056 14302 14303	1,899,083.84	141733426 (Exh. PP)	July 20, 2007	April 22, 2008	June 24, 2009	July 20, 2009*
14305 14306 14310 14307 10346	4,821,680.24	141820445 (Exh. BBB)	July 30, 2007	April 22, 2008	June 24, 2009	July 29, 2009

*July 19, 2009 is a Sunday

Perusal of above table would show that both the administrative and judicial claims for refund were filed within the two-year prescriptive period provided by law.

Now, the Court shall proceed with the resolution of the remaining issues submitted for this Court's disposition.

Petitioner avers that RA 9334 did not amend petitioner's franchise insofar as its exemption from payment of excise tax on the wines and cigarettes imported by petitioner for international consumption is concerned. Accordingly, petitioner believes that it can still enjoy the exemption granted under its charter and is thus entitled to a refund of the excise tax it allegedly paid on its importation of the subject articles for international consumption

However, both respondent CIR and COC claim otherwise.

Respondent CIR alleges that a close reading of the third paragraph of Section 131 of the National Internal Revenue Code, as amended by RA 9334, reveals the unmistakable intent of Congress to withdraw exemptions granted to petitioner under Section 6 of PD 1590. First, Section 6 of RA 9334 employs the clear and all-encompassing phrase "The provision of any special or general law to the contrary notwithstanding." RA 9334 therefore repeals any inconsistent provision whether contained in general or special statues like PD 1590, which is petitioner's franchise. Second, Section 6 of RA 9334 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 wines and tobacco products for its commissary and catering supplies.

Respondent COC likewise avers that a special statute, as the term is generally understood, is one which relates particular things of a class or to a particular portion or section of the statute only. Tax

Laws treat of a special subject, *i.e.* taxes. As such, tax laws are special laws. And a perusal of RA 9334 reveals that it treats of only one subject – tax, or specifically, excise tax. The oft-repeated rule is clear – 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 the instant case, RA 9334 is the special and later law that governs the imposition of excise taxes on alcoholic and tobacco products. Section 13 of RA 9334, in no uncertain terms, revoked petitioner's exemption under PD 1590 when it categorically required the payment of the applicable taxes, duties, charges, including excise taxes on all importation of cigars and cigarettes, distilled spirits, fermented liquors, and wines into the Philippines, even if destined for tax and duty-free shops.

Furthermore, respondent COC alleges that Congress intended to subject the importations of cigars and cigarettes, distilled spirits, fermented liquors, and wines into the Philippines to taxes and duties, including excise taxes. The statement "the provision of any special or general law to the contrary notwithstanding", couched with the repealing clause of the statute, strongly manifests the intent of Congress to amend any special or general law inconsistent with it, like PD 1590. For clearly, the exemption granted to petitioner under the former enactment is inconsistent and irreconcilable with the more recent law – RA 9334.

On the issue of whether or not Section 6 of RA 9334 repealed the exemption granted to petitioner under PD 1590, the Court cites Section 6 of RA 9334, to wit:

> "Section 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> Section 131. *Payment of Excise Taxes on Imported Articles.* –
> (A) Person 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 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: *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 an introduction into the Philippine customs territory." *(Emphasis supplied)*

There is nothing in the above-quoted provision which would show that the exemptions granted to petitioner under PD 1590 are already repealed.

It is true that Section 6 of RA 9334 states the all-encompassing phrase "the provision of any special or general law to the contrary notwithstanding". However, such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. As laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter, unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier. It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[31] Thus, all doubts must be exerted in order to harmonize and give effect to all laws on the subject.[32]

---

[31] *Tan, et al., vs. Pereña*, G.R. No. 149743, February 18, 2005.
[32] Agpalo, Statutory Construction, 2003 Edition, pp. 405.

In this case, the Court finds no repugnancy between the provisions of PD 1590 and Section 131 of the NIRC of 1997, as amended by RA 9334. In fact, Section 131 actually recognized the existence of entities that are legally entitled to exemption, such as herein petitioner. The pertinent portion of Section 131 reads:

> "Section 131. *Payment of Excise Taxes on Imported Articles.* –
> *(A) Person 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**." *(Emphasis supplied)*

Since no irreconcilable repugnancy exist between the provisions of PD 1590 and RA 9334, the same should be interpreted in harmony with one another in order to give effect to all laws on the subject. In this regard, the rules of statutory construction dictate 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.[33]

---

[33] *Commissioner of Internal Revenue vs. Philippine Airlines*, G.R. No. 180066, July 7, 2009.

Let it be noted that PD 1590 is a special law which governs the franchise of petitioner. Significantly, in the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[34], the High Court classified the Tax Code as a general law, the pertinent portion of which reads:

> "Sixth and last, RA 7432 is a special law that should prevail over the **Tax Code -- a general law**. 'x x x [T]he 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, '[w]here 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." *(Emphasis supplied)*

Accordingly, between the provisions of PD 1590, which, among others, specifically provides for petitioner's tax exemption on its importation of commissary supplies for international consumption, as against the provisions of the NIRC of 1997, as amended by RA 9334, which is a general law, the former necessarily prevails.

In view of respondent's failure to show the clear intent of the legislature to repeal the exemption granted to petitioner under PD 1590, the Court shall now proceed in determining whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemptions granted under its charter.

---

[34] G.R. No. 159647, April 15, 2005.

The Court finds relevant the pertinent portions of Section 13 of PD 1590, which read:

> "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:
>
> xxx xxx xxx
>
> 2. **All taxes**, including compensating taxes, duties, charges, royalties, or fees due on **all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form **and other articles, supplies, or materials**; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**;" *(Emphasis supplied)*

In other words, petitioner may be exempted from paying all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by petitioner of commissary and catering supplies and other articles, supplies, or materials upon payment under either of the above-mentioned alternatives, provided that:

1. Such articles, supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and

2. They are not locally available in reasonable quantity, quality or price.

Let it be noted that Section 22 of RA 9337, which took effect on July 1, 2005, abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and VAT. Nevertheless, the same Section provides that petitioner 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.

Section 22 of RA 9337 reads:

> "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 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."

Consequently, petitioner is only left with one option, which is to pay its basic corporate income tax, the payment of which shall be in lieu of all taxes with the exception of VAT, subject to certain conditions as may be provided under petitioner's charter.

To substantiate its claim, petitioner presented its Annual Income Tax Return[35] for the fiscal year ended March 31, 2008, showing that it filed its Income Tax Return for fiscal year 2008. Petitioner likewise presented its Certificate of VAT Registration[36] and its VAT Return for the fourth quarter of fiscal year ended March 31, 2008 to prove that it accounted for the value-added tax on its sales of goods, property or services and its lease of property for the fiscal year 2008.[37]

As regards its payment of the excise tax on imported articles claimed for refund, petitioner submitted copies of Informal Import Declaration Entries, Official Receipts issued by the Bureau of

---

[35] Exhibits "OOO", "OOO-1", "OOO-2", "OOO-3", and "OOO-4".
[36] Exhibit "PPP".
[37] Exhibit "RRR".

Customs, and the Authority to Release Imported Goods, the contents of which are detailed as follows:

Import Entry No.	Articles	Date of Arrival	ATRIG No.	Amount Due	Total Amount Paid	Official Receipt No.	Date of Payment
3722	Mild Seven Cigarette	March 29, 2006 (Exh. J)	74453 (Exh. S)	P 500,000.00	**P1,909,751.20**	140945962 (Exh. R)	June 25, 2007
3724	Chivas Real Whisky	March 13, 2006 (Exh. K)	74482 (Exh. T)	390,096.00			
3990	West King Size Cigarettes	April 14, 2006 (Exh. L)	74828 (Exh. U)	250,000.00			
14309	Davidoff Lights	November 30, 2005 (Exh. M	74451 (Exh. V)	175,000.00			
14313	Camus XO Superieur	December 15, 2005 (Exh. N)	74445 (Exh. W)	20,563.20			
14314	Piper Heidsieck	December 10, 2005 (Exh. (O)	74544 (Exh. X)	393,120.00			
14317	Vin De Table Balnc Vin De Table Rouge	December 15, 2005 (Exh. P)	74420 (Exh. Y)	180,972.00			
3729	Salem M King Cigarette	April 5, 2006 (Exh. BB)	74829 (Exh. GG)	750,000.00	**2,259,157.44**	141165787 (Exh. FF)	July 11, 2007
3730	Carlos I	March 27, 2006 (Exh. CC)	74915 (Exh. HH)	860,267.52			
3732	Royal Salute Whisky, Ballantine Scotch Whiskey, Carlos I Brandy and Martel VSOP Cognac	March 31, 2006 (Exh. P-7)	74860 (Exh. II)	648,889.92			
4056	Mild Seven Lights Cigarettes	April 19, 2006 (Exh. LL)	74874 (Exh. QQ)	500,000.00	**1,899,083.84**	141733426 (Exh. PP)	July 20, 2007
14302	Remy Martin XO Remy Martin VSOP Piper Heidsieck	October 29, 2005 (Exh. MM)	Exh. RR	745,355.52			
14303	J & B rare JW Black Label	October 22, 2005 (Exh. NN)	74589 (Exh. SS)	653,728.32			

14305	Jack Daniels, Regal Whisky, cutty sark, royal salute, finlandia vodka	November 19, 2005 (Exh. VV)	74455 (Exh CCC)	1,069,951.68	**4,821,680.24**	141820445 (Exh. BBB)	July 30, 2007
14306	J & B Rare; JW Black Label	November 28, 2005 (Exh. WW)	74546 (Exh DDD)	653,728.32			
14310	Chivas Regal Whisky	November 2, 2005 (Exh. XX)	74547 (Exh. EEE)	610,500.24			
14307	Winston Red King Size; Winston Lights King Size; Mild Seven	November 11, 2005 (Exh. YY)	74586 (Exh FFF)	2,187,500.00			
10346	Davidoff Classic Lights	September 20, 2005 (Exh. ZZ)	58281 (Exh GGG)	300,000.00			

An examination of the records would show that the amount of the excise tax liability subject of the instant claim for refund as stated in the letters submitted to Silveria Salazar, Chief of the Collection Division in the BOC NAIA Customhouse[38] and in the above-mentioned Authority to Release Imported Goods actually correspond to the amount of taxes which petitioner paid for the release of the subject imported articles, as evidenced by the above-stated Official Receipts issued by the Bureau of Customs. Thus, petitioner was able to substantiate its payment of the total amount of excise tax subject of the instant claim for refund.

Anent the question of whether or not the subject imported articles were imported for the use of petitioner in its transport and non-transport operations and other activities incidental thereto, a

[38] Exhibits "Q", "EE", "OO", "AAA", and "AAA-1".

perusal of the Authority to Release Imported Goods issued by the CIR would show that the subject imported articles will be used exclusively for international in-flight consumption.

Now, as to the requirement that the subject imported articles are not locally available in reasonable quantity, quality or price, respondent CIR argued that petitioner failed to prove the same. According to respondent CIR, no independent and credible evidence was presented to prove this matter. It is highly self-serving for petitioner's very own employee to certify that the imported products are not locally available in reasonable quantity, quality and price. Furthermore, the study on prices is not comprehensive in nature.

For its part, petitioner presented the testimony of Mr. Victor Santos, the Assistant Vice President in charge of the Catering and In-flight Sub-department of petitioner PAL. In his Judicial Affidavit[39], Mr. Santos stated that PAL imported alcoholic products because the importation of said products is cheaper than buying them locally, and in the case of cigarettes, there are no local suppliers or dealers big enough to supply the various foreign brands of cigarettes PAL is importing, and if ever there are, the selling prices of those local dealers would definitely be higher than PAL's cost of importing the cigarettes. This is further supported by a tabulation made by Mr. Santos comparing the cost of importing the subject articles and the

[39] Exhibit "WWW".

cost of purchasing them locally[40], the invoices issued to PAL for its purchase of the subject articles[41], the Price List for 2005 of Duty Free Philippines[42] and the 2005[43] and 2006[44] Price List issued by the Philippine Wine Merchants corresponding to the same articles subject of this claim for refund.

Upon examination of the items on the tabulation made by Mr. Santos, it can be noticed that the 2005 Price List of Duty Free Philippines[45] failed to provide the prices for the articles Mild Seven Cigarette, West King Size Cigarettes, Davidoff Lights, Piper Heidsieck, Salem M King Cigarette, Winston Red King Size, Winston Lights King Size, Davidoff Classic Lights, Carlos I, Remy Martin XO, Remy Martin VSOP, J&B Rare, JW Black Label and Cutty Sark. Nevertheless, the local prices for Carlos I, Remy Martin XO, Remy Martin VSOP, J&B Rare, JW Black Label, Jack Daniels and Cutty Sark are reflected in the 2005[46] and 2006[47] Philippine Wine Merchants' price list.

As to the importation of the foregoing brands of cigarettes, Mr. Santos admitted that the cost of locally buying the same product for the same year cannot be established since no price thereof is available for Duty Free Philippines in 2005 as well as in the Philippine Wine Merchants Price Lists, which contain only the prices for wines. Mr.

[40] Exhibit "WWW-2".
[41] Exhibits "J-2", "L-2", "M-2", "N-2", "P-2", "BB-2", "LL-2", "NN-2", "WW-2", "YY-2" and "ZZ-2".
[42] Exhibit "TTT".
[43] Exhibit "UUU".
[44] Exhibit "VVV".
[45] Exhibit "TTT".
[46] Exhibit "UUU".
[47] Exhibit "VVV".

Santos likewise added that if ever there are local suppliers of the cigarettes involved, its selling price would definitely be higher than the importation cost of PAL of said cigarettes; which is exempt from duties and taxes under its franchise inasmuch as local suppliers will have to pay excise taxes and customs duties.[48]

However, other than the testimony of the said witness, there is nothing in the evidence presented by petitioner which would support a conclusion that the subject cigarettes are not locally available in reasonable quantity, quality or price.

Also, the Court observes that petitioner failed to present the sales invoices or official receipts for its purchase or importation of the following articles from which the local prices can be compared:

Import Entry No.	**Articles**
3724	Chivas Real Whisky
14314	Piper Heidsieck
3730	Carlos I
3732	Royal Salute Whisky, Ballantine Scotch Whiskey, Carlos I Brandy and Martel VSOP Cognac
14302	Remy Martin XO Remy Martin VSOP Piper Heidsieck
14305	Jack Daniels, Regal Whisky, Cutty Sark, Royal Salute, Finlandia Vodka
14310	Chivas Regal Whisky

In this regard, it must be noted that the Court may not consider the comparison made by petitioner between the Unit Costs of the articles as per Informal Import Declaration Entry No. and the local

48 Exhibit "WWW".

prices of the same articles considering that, as per the testimony of Mr. Santos, the said Unit Costs are merely the valuations given by the Bureau of Customs from which they assessed and collected the excise tax due[49] and thus, are not the actual cost or price of the subject imported articles.

Accordingly, out of the importations subject of the instant Petition for Review, only the payment of excise tax on the following importations, which was sufficiently supported by invoices, Bureau of Customs Official Receipts, Authority to Release Imported Goods and other documentary evidence, may be refunded:

Import Entry No.	Articles	Date of Arrival	ATRIG No.	Amount Due	Official Receipt No.	Date of Payment
14313	Camus XO Superieur	December 15, 2005 (Exh. N)	74445 (Exh. W)	P20,563.20	140945962 (Exh. R)	June 25, 2007
14317	Vin De Table Balnc Vin De Table Rouge	December 15, 2005 (Exh. P)	74420 (Exh. Y)	180,972.00		
14303	J & B rare JW Black Label	October 22, 2005 (Exh. NN)	74589 (Exh. SS)	653,728.32	141733426 (Exh. PP)	July 20, 2007
14306	J & B Rare; JW Black Label	November 28, 2005 (Exh. WW)	74546 (Exh DDD)	653,728.32	141820445 (Exh. BBB)	July 30, 2007
			TOTAL	**P1,508,991.84**		

It is true that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[50] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed

[49] Exhibit "WWW"

[50] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

strictissimi juris against the person or entity claiming the refund.[51] However, petitioner was able to discharge such burden of proof as regards the duly substantiated portion of its excise tax paid on the subject importations. Hence, the instant claim for tax refund of petitioner's erroneously paid excise tax should be granted but only in the amount of P1,508,991.84.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondents are **ORDERED** to **REFUND** in favor of petitioner the amount of **ONE MILLION FIVE HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY-ONE PESOS AND 84/100 (P1,508,991.84)**, representing petitioner's erroneously paid excise tax on June 25, 2007, July 20, 2007, and July 30, 2007.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(Retired)
OLGA PALANCA-ENRIQUEZ
Associate Justice

[51] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice