REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1400
(CTA Case No. 8644)

Members:
DEL ROSARIO, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN, *JJ.*

Promulgated:

SEP 13 2017 3:10 p.m.

x- x

DECISION

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

For determination is the Petition for Review dated January 6, 2015 filed by petitioner Philippine Airlines, Inc., assailing the Decision dated May 25, 2015 and the Resolution dated November 23, 2015, both rendered by the Court in Division.

The Decision of May 25, 2015 denied petitioner's claim for refund of excise taxes paid in connection with its importations of liquor, wine, and cigarettes for its catering and commissary supplies for international consumption for the period of April 20, 2011 to August 5, 2011 in the amount of P9,766,731.05.

On the other hand, the equally assailed Resolution dated November 23, 2015 denied, for lack of merit, petitioner's motion for reconsideration of the adverse Decision.

The following established facts are undisputed:

Petitioner Philippine Airlines, Inc. (PAL) is a domestic corporation, with office address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent is the Commissioner of Customs (COC), vested with authority, among others, to assess and collect lawful revenues from imported articles and all other dues, fees, charges, fines, and penalties accruing under the Tariff and Customs Code of the Philippines (TCCP). He holds office at the G/F OCOM Bldg., Bureau of Customs, Port Area, Manila.

On June 11, 1978, by virtue of Presidential Decree (PD) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries," petitioner was granted a franchise to operate air transport services domestically and internationally.

On January 1, 2005, Republic Act (RA) No. 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. Section 6 of RA No. 9334 relevantly 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.
>
> 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.
>
> x x x x x x x x x
>
> (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.

The said provision provides, among others, 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."

By virtue of the said provision, then CIR Guillermo L. Parayno, Jr., on February 3, 2005, sent a letter to then COC George M. Jereos. In the letter, the CIR noted the COC's failure to collect excise tax on all importations of alcohol and tobacco products destined for Duty Free Philippines (DFP) and the freeport zones such as the Subic Bay Freeport Zone.

On February 4, 2005, then COC Jereos issued a Memorandum addressed to the officers and personnel of the BOC directing them to effect collection of excise tax due on imported alcohol and tobacco products, even if destined for Duty Free Philippines and Freeport Zones pursuant to RA No. 9334.

On March 1, 2005, Customs Memorandum Order (CMO) No. 13-2005 was issued pursuant to RA No. 9334 and BIR Revenue Regulation No. 12-2004, directing 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 to Duty Free Shops and Freeport Zones.

On various dates from 2006 to 2010, petitioner's assorted imported cigarettes, liquors and wines arrived at the Ninoy Aquino International Airport (NAIA), covered by various Informal Import Declaration and Entry (IIDE), Air Waybills (AWB)/Bills of Lading (BL), and Authority to Release Imported Goods (ATRIG), with assessed excise tax thereon totaling P9,766,731.05.

On October 18, 2010, petitioner's importations were assessed for excise taxes, through letters from Gilda L. Cinco, Acting Chief, Warehouse Assessment Unit (WAU) of the BOC, addressed to Collector Silveria S. Salazar, Chief, Collection Division, NAIA Customshouse.

From April 20, 2011 to August 5, 2011, petitioner paid under protest the assessed excise taxes, as evidenced by the following BOC Receipts:

Date of Payment	Amount Paid (Php)	O.R. No.
April 20, 2011	54,406.80	01816598480
May 31, 2011	930,953.98	01818326368
July 1, 2011	1,695,338.30	01819067620
July 1, 2011	2,660,698.64	01819067608
July 1, 2011	1,117,618.41	01819067585
August 5, 2011	2,593,177.40	01820042120
August 5, 2011	714,537.52	01820042131

From April 20, 2011 to August 5, 2011, petitioner wrote several letters to Silveria Salazar formally protesting the assessment and collection of the subject excise taxes.

This was followed by several administrative claims for refund filed on different dates by petitioner with respondent CIR, to wit:

Date of Filing of Administrative Claim	Amount (Php)
September 7, 2011	54,406.80
September 7, 2011	930,953.98
September 7, 2011	1,695,338.30
September 7, 2011	2,660,698.64
September 7, 2011	1,117,618.41
October 11, 2011	2,593,177.40
October 11, 2011	714,537.52

Due to respondent CIR's inaction on the cited administrative claims for refund, petitioner filed a Petition for Review with the Court in Division on April 19, 2013, praying that it be declared exempt from the payment of specific taxes on all its importations of liquor, wine, and cigarettes for international flight consumption, as well as for respondents to refund the excise tax erroneously paid in the total amount of P9,766,731.05.

After trial on the merits, the Court in Division rendered a Decision dated May 25, 2015 disposing the case as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED for lack of merit.
>
> SO ORDERED.

The Court in Division held that while petitioner is exempt from excise taxes on its importations of liquor, wine, and cigarettes for international flight consumption under Presidential Decree (PD) No. 1590, which has not been repealed by Republic Act (RA) No. 9334, nonetheless, petitioner is not entitled to the refund sought for failure to prove that the imported articles are not locally available in reasonable quantity, quality or price, one of the requirements to entitle it to such exemption.

The adverse ruling was effectively affirmed when the Court in Division denied petitioner's plea for reconsideration in the Resolution dated November 23, 2015, thus:

> WHEREFORE premises considered, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.

Hence, the present Petition for Review before the Court *En Banc*.

Petitioner argues that the Division erred in finding that it was not able to prove its entitlement to the tax exemption granted under PD No. 1590, for failure to prove that its imported commissary supplies were not available locally in reasonable quantity, quality or price.

To the contrary, petitioner opines, it was able to establish such requirement under PD No. 1590. Petitioner theorizes that it was not necessary on its part to prove the absence of three quantifiers of quantity, quality, or price altogether. The absence of one of the three is sufficient to justify its importation.

Petitioner contends that the imported articles are not locally available in reasonable quantity, quality or price as testified to by its Manager in charge of supplies for in-flight materials Cheryl V. Capinpin. This uncontroverted declaration of its witness was bolstered by a comparative study denominated as "Table of Comparison Between Cost of Importing and Cost of Locally Purchasing In-flight and Commissary". The comparative study was based on the Philippine Wine Merchants 2010 Price List and Future Trade International Price List for the years 2006-2013. The Revised Table of Comparison, which witness Capinpin also prepared, further proved that the subject imported articles were not locally available in sufficient quantity, quality or price at the time of importation.

Petitioner further claims that based on the Comparative Table, the cost of importing its commissary supplies, based on unit cost per ATRIG and IIDE, and compared with the cost of the same items locally sourced, per the BIR Price Survey, Price Lists from Philippine Wine Merchants, and Future Trade International Price List is cheaper than when locally sourced.

Petitioner also opines that the absence of certain imported brands in the price lists of local suppliers presented in evidence indicates that these commissary supplies are not available in sufficient quantity, quality or reasonable price in the Philippine local market.

Petitioner also puts premium on the ICPA's conclusion reflected in the ICPA Report that petitioner's purchase price from seller's abroad, if exclusive of excise taxes, was consistently lower than the purchase price from sellers locally.

Petitioner also pointed to the CIR's Memorandum submitted before the Court in Division in which the CIR allegedly admitted that petitioner's quoted importation cost would always be cheaper than the cost of locally sourced articles since petitioner based its price on the international price while the CIR would always factor into the price taxes, duties, and profit margin of the local suppliers.

For his part, respondent CIR maintains that petitioner failed to prove that its imported commissary supplies at the time of importation were not locally available in reasonable quantity, quality and price. No independent and credible evidence was presented to prove this matter. The much-touted testimony of witness Cheryl Capinpin that the imported products are not locally available in reasonable quantity, quality and price is at most self-serving given that she is an employee of petitioner. Further, her study on prices of imported articles is rather limited and not comprehensive since it was based only on the quotations of two local liquor distributors. As to cigarettes, the witness merely generalized that there are no local suppliers big enough to provide the required volume of imported cigarettes necessary for petitioner's international flights.

Respondent CIR concludes that it was incumbent upon petitioner to prove its entitlement to the refund sought, which burden it failed to discharge.

Respondent COC, concurs in the foregoing conclusion made by his co-respondent CIR. According to him, to claim tax refund for the excise taxes paid on its catering and commissary supplies for international flight consumption, petitioner must establish that such items were not locally available in reasonable prices. However, petitioner utterly failed in this regard.

For respondent COC, petitioner's own Revised Table of Comparison, Philippine Wine Merchant 2010 Price List, Future Trade International Price List, and Letter from the National Tobacco Administration (NTA) are inconsequential, if not self-serving, as the data contained therein came from petitioner itself.

Further, the price lists submitted by petitioner do not represent the average prices of the subject articles throughout the country, as only two suppliers provided a pricelist. In fine, the price lists are not comprehensive and truly representative of the Philippine market.

Worse, petitioner failed to verify either with the Department of Trade and Industry (DTI), or the National Liquor Authority (NLA), the veracity of the data gathered on the average prices of liquors locally, or secure a list of existing distributors in the country for wider source of information. The absence of such data or research negates petitioner's claim that the absence of certain brands in its own pricelists means that these commissary supplies were not available in sufficient quantity, quality or price in the local market during the pertinent period.

Even the Letter from the NTA is inconclusive as it only states that the NTA does not have any data on the prices of the brands of tobacco being imported by petitioner.

The limited and very scarce data, according to respondent COC, hardly show that the subject imported articles were not locally available in sufficient quantity, quality or price during the period covered.

Further, respondent COC insists that Section 6 of RA No. 9334[1], effectively amended Section 131 of PD No. 1590, thereby making petitioner liable for excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines. The provision explicitly subjects all imported articles to excise taxes which must be paid to the proper Customs officer.

Further, RA No. 9334 is a specific law which deals with the imposition of excise tax on alcoholic and tobacco products must prevail over PD No. 1590, a general law on the taxes, duties, fees, and other charges which a taxpayer such as petitioner must pay. Section 6 of RA No. 9334 revoked petitioner's tax exemption under PD No. 1590.

Respondent COC also points out that tax exemptions must be clear and unequivocal and the claimant, such as petitioner, must be able to point to a specific provision of law granting such exemption. Thus, any doubt against its tax exemption must be construed against petitioner.

The instant Petition was submitted for decision on September 5, 2016.[2]

THE RULING OF THE COURT

Petitioner, invoking its franchise, particularly, Section 13 of PD No. 1590, assumes that it 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. Respondents, however, say otherwise.

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[1] 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.
[2] Resolution dated September 5, 2016.

w/

This issue is certainly not new.

The Supreme Court has long sustained this Court's ruling that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590. The High Court held, as follows:

> It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.:*
>
>> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
>
> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue* case:
>
>> While it is true that Sec. 6 of RA 9334 as previously quoted states that "*the provisions of any special or general law to the contrary notwithstanding,*" <u>such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed</u>. x x x
>>
>> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by [RA] 9334, which is a general law, the former necessary (sic) prevails. This is in accordance with

> the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted 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 other (sic) general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case."[3]

The recent cases of *Republic of the Philippines vs. Philippine Airlines, Inc. (PAL)*[4] and *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)*,[5] echoed the foregoing ruling in the following fashion:

> In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax – whichever is lower – shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, 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.[6]

Significantly, the repealing clause of RA No. 9334, specifically Section 10 thereof, did specify the laws or provisions of laws intended to be repealed. The repealing provision is too general without any mention of PD 1590 or petitioner's franchise as one of the acts intended to be repealed.

From the foregoing, the exemption granted to petitioner under its franchise (PD No. 1590) subsists, notwithstanding the passage of RA No. 9334.

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[3] Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., G.R. Nos. 212536-37, August 27, 2014.
[4] G.R. Nos. 209353-54, July 6, 2015.
[5] G.R. Nos. 211733-34, July 6, 2015.
[6] Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc., G.R. Nos. 215705-07, February 22, 2017.

On petitioner's alleged entitlement to the refund of the taxes paid on the subject importations, Section 13 of PD No. 1590 is instructive:

> 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)*

Thus, for petitioner to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, it must prove the following:

1. It paid its corporate income tax and VAT liabilities for the subject period of importation;

2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

Petitioner complied with the first requisite and paid its corporate income tax and VAT liabilities for the subject period of importation.

In support thereof, petitioner presented in evidence its Annual Income Tax Returns for the fiscal years (FY) ending March 31, 2007,[7] March 31, 2008,[8] March 31, 2009,[9] and March 31, 2011.[10] Petitioner likewise proved that it is a VAT-registered entity and that it accounted and paid for the VAT on its sales/receipts by submitting in evidence its BIR Certificate of Registration dated August 18, 2007, [11] Certificate of Registration dated August 6, 2004,[12] Payment Forms No. 0605,[13] and VAT Returns for the FYs 2007 to 2011.[14]

As to the second requisite, namely, the imported liquors, wines and cigarettes were for the use of petitioner in its transport and non-transport operations and other incidental activities, to prove this requirement, petitioner presented Informal Import Declaration and Entry (IIDE) documents,[15] wherein the imported articles were described

[7] Exhibits P-256 and P-257.
[8] Exhibits P-258, P-259, P-260, P-261, and P-262.
[9] Exhibit P-263.
[10] Exhibit P-264.
[11] Exhibit P-254.
[12] Exhibit P-255.
[13] Exhibits P-286, P-287, P-288, and P-289.
[14] Exhibits P-265 to P-285.
[15] Exhibits P-29 to P-80.

as "inflight materials." The ATRIG[16] issued by respondent CIR addressed to respondent COC indicated that "the shipment to be released at the Port of Manila consisting of the above described articles, would be used exclusively for international flight consumption." However, there is nothing beyond the IIDEs and the ATRIG that show that the imported articles were indeed actually used for international flight consumption. Note that the declaration that the imported articles were for international flight consumption came from petitioner, hence, at most self- serving.

To prove compliance with the third requisite, petitioner presented several documents, to wit:

1. Judicial Affidavit and Supplemental Judicial Affidavit of Cheryl V. Capinpin, petitioner's Manager in charge of supplies for in-flight materials;
2. Revised Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;[17]
3. Philippine Wine Merchants 2010 Price List dated January 8, 2010;[18]
4. Future Trade International Price List covering the years 2006-2013 dated July 15, 2013;[19]
5. Letter-response from the National Tobacco Administration (NTA) to PAL dated July 12, 2013;[20]
6. Letter-Request of PAL to NTA for price list dated July 11, 2013;[21]
7. Various Invoices;[22]
8. Monthly Philippine Dealing System (PDS) rates for the years 2006 to 2013;[23]
9. Monthly Booking Rates for the years 2006 to 2008;[24]
10. Exchange Rates-Philippine Peso per US Dollar;[25]
11. Cross Rates of the Peso;[26]

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[16] Exhibits P-133 to P-184.
[17] Exhibit P-186.
[18] Exhibit P-187.
[19] Exhibit P-188.
[20] Exhibit P-189.
[21] Exhibit P-190.
[22] Exhibits P-191 to P-245.
[23] Exhibit P-246.
[24] Exhibits P-247 to P-253.
[25] Exhibit P-297-1.
[26] Exhibit P-297-2.

12. Summary List of Imported Liquor, Wines, and Cigarettes which do not have any price quotation of FTI, PWN and 2010 BIR Price Survey;[27]
13. 2010 Price Survey.[28]

Contrary to petitioner's pretense, it did not present any evidence of alleged comparative study on the availability or price of its imported cigarettes as against those in the local market to justify conclusion that the said products, during the period covered were not locally available in sufficient quantity, quality, or price.

The Philippine Wine Merchants 2010 Price List dated January 8, 2010, as well as the Future Trade International Price List covering the years 2006-2013 dated July 15, 2013 solely pertained to wines and liquors. On the other hand, the Letter-response from the NTA dated July 12, 2013 stating that "NTA does not have any data series (2005-2013) on the retail prices of the different cigarette brands as requested," is not that considerable to clench petitioner's conclusion that the subject imported articles were not locally available in sufficient quantity, quality, or price on or about the time of importation.

Equally insignificant is the Revised Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies. All the entries pertaining to cigarettes state "Not included in 2003 and 2010 BIR Price Survey" based on the BIR Price Survey, and "Not Available" based on both the Philippine Wine Merchants Price List and Future Trade International Price List, indicating that petitioner did not compare the availability or price of the imported cigarettes with its local counterpart.

Petitioner's assumption that the imported cigarettes were not locally available in reasonable quantity and quality, and would be more expensive certainly failed to meet the requirement of the law.

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[27] Exhibit P-298.
[28] Exhibit P-299.

Petitioner cannot also rely on the BIR Price Survey pertaining to imported alcoholic products as it is inconclusive and hardly comprehensive for it covers only years 2003 and 2010. Note that the subject importations occurred on various dates from 2006 to 2010, hence, not a credible source of needed information.

The price lists provided by two (2) wine and liquor suppliers, namely, Philippine Wine Merchants and Future Trade International are also deficient to shore up petitioner's claim that the imported alcohol products were then not locally available in reasonable quantity, quality, or price. The information in the said price lists is simply too scarce to sustain petitioner's stance.

For failure to satisfactorily prove the existence of all the requisites entitling petitioner to tax exemption, its claim for refund of the excise taxes paid under protest must be denied. Being a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption.[29]

Well-settled is the rule that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven.[30]

WHEREFORE, the Petition for Review dated January 6, 2015 filed by petitioner Philippine Airlines, Inc. is hereby **DENIED**, for lack of merit.

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[29] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.

[30] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

Consequently, the Decision dated May 25, 2015 and the Resolution dated November 23, 2015, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join PJ's CDO)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join PJ's stand)
CAESAR A. CASANOVA
Associate Justice

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

(With due respect, pls. see dissenting opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

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Present:
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FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

SEP 13 2017 3:10 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I agree with the *ponencia's* conclusion that: (*i*) petitioner's tax exemption under Presidential Decree No. 1590 (PD 1590) subsists notwithstanding the passage of Republic Act No. 9334; and (*ii*) with respect to petitioner's importation of tobacco products and cigarettes, petitioner failed to prove that it is not available in reasonable quantity, quality or price in the local market.

With due respect, I am, however, constrained to withhold my assent to the *ponencia's* denial of petitioner's claim for refund or issuance of a tax credit certificate for excise taxes paid on its importation of liquor products and wines for its catering and commissary supplies for its international flights based on petitioner's alleged failure to prove compliance with the requirements set forth in Section 13 of PD 1590.

In affirming the Court in Division's assailed Decision and Resolution, the *ponencia* reiterates petitioner's tax exemption under its franchise but points out that "there is nothing beyond the IIDEs[1] and the ATRIG that show that the imported articles were indeed actually used for international flight consumption" and "the declaration that the imported articles were for international flight consumption came from petitioner, hence, at most self-serving."

It is settled that Section 13 of Presidential Degree No. 1590 exempts petitioner from paying taxes, duties, charges, royalties or fees on the importation of its commissary and catering supplies, viz:

> "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,

[1] Informal Import Declaration and Entry

> 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**; xxx xxx xxx"

Pursuant to the afore-quoted provision, in order to claim exemption from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, petitioner must prove that:

1. Its corporate income tax and VAT liabilities for the subject period of importation had been paid;

2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

Anent the imported liquor products and wines, the findings of the *ponencia* is that petitioner failed to comply with the second and third requisites. I submit, however, that petitioner sufficiently proved that its imported liquor products and wines were intended to be used in its transport and non-transport operations and other activities incidental thereto *and* that the imported liquor products and wines were not locally available in reasonable quantity, quality or price.

Records show that with respect to the second requisite, petitioner presented the Judicial Affidavit of Ms. Cheryl V. Capinpin, Manager for In-Flight and Commissary Materials Purchasing Division Corporate Logistics and Services Department of petitioner,[2] IIDEs[3] and ATRIGs[4] of its importations in proving that the imported articles are intended for petitioner's catering and commissary supplies for its international flights.

To my mind, these pieces of evidence are substantial evidence, sufficient to establish that the imported articles were indeed intended for petitioner's catering and commissary supplies for its international flights. To disregard these documents on the

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[2] CTA Case No. 8644 Docket Vol. II, pp. 559-583; Admitted into evidence per Resolution dated November 10, 2014, CTA Case No. 8644 Docket Vol. III, pp. 1548-1549.
[3] Exhibits P-29 to P-80.
[4] Exhibits P-133 to P-184.

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ground that they are self-serving is baseless. The phrase "self-serving evidence" is a concept that has a well-defined meaning. In *People vs. Omictin*,[5] the Supreme Court explains:

> **The phrase self-serving evidence is a concept which has a well-defined judicial meaning.** *Hernandez v. Court of Appeals* clarified what self-serving evidence is and what it is not, thus:
>
> > The common objection known as self-serving is not correct because almost all testimonies are self-serving. The proper basis for objection is hearsay.
> >
> > Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court.
> >
> > **Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.**
>
> This principle was reiterated in the more recent *People v. Villarama*, where the Court ruled, x x x **[A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court.** (Boldfacing supplied; citations omitted)

Here, respondent had the opportunity to cross-examine petitioner's witness, Ms. Capinpin but, interestingly, respondent did not cross-examine Ms. Capinpin when she testified in the Court in Division.[6] The fact that Ms. Capinpin's narration tend to support petitioner's cause of action does not by itself justify outright rejection of her testimony.

Anent the third requisite, in order to prove that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price, petitioner presented the Judicial Affidavit of Ms. Capinpin,[7] IIDEs[8] and ATRIGs[9] of its importations, Revised Table of Comparison Between Cost of Locally Purchasing In-Flight

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[5] G.R. No.188130, July 26, 2010.
[6] Minutes of March 3, 2014, Hearing, CTA Case No. 8644, Docket Vol. 1198.
[7] CTA Case No. 8644 Docket Vol. II, pp. 559-583; Admitted into evidence per Resolution dated November 10, 2014, CTA Case No. 8644 Docket Vol. III, pp. 1548-1549.
[8] Exhibits P-29 to P-80.
[9] Exhibits P-133 to P-184.

Catering Supplies,[10] Philippine Wine Merchants 2010 Price List dated January 8, 2010,[11] Future Trade International Price List covering the years 2006-2013 dated July 15, 2013,[12] Letter Response from the National Tobacco Administration (NTA) to PAL dated July 12, 2013,[13] Letter Request of PAL to NTA for price list dated July 11, 2013,[14] various invoices issued to PAL by its suppliers,[15] Monthly PDC Rates for the years 2006 to 2013,[16] 2006 Booking Rates for Months of June, October and November,[17] Revised 2007 Booking Rates for the month of July,[18] 2007 Booking Rates for the Month of October,[19] 2008 Booking Rates for the Months February and August,[20] Exchange Rates – Philippine Peso per US Dollar,[21] Cross Rate of Peso,[22] Summary List of Imported Liquor, Wines and Cigarettes,[23] and 2010 Price Survey.[24]

The issue relating to petitioner's compliance with the third requisite is not novel, as the same was raised in earlier cases before the CTA where the very same parties in this case are involved, albeit relating to different taxable years.

In the following cases, the CTA found that a **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies** and the local prices reflected in the **Philippine Wine Merchants' Price List** were sufficient to establish that the cost of importing the imported articles is lower than purchasing them locally and accordingly granted the claims for refund:

Case Number	Evidence Presented	Ruling
CTA Case Nos. 7677, 7685, and 7746 (Decision and Amended Decision); affirmed with modifications in CTA EB 954 & 1046, October 14, 2014	1. Affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight Sub-department; 2. **Table of Comparison Between Cost of Importing and Cost of Locally Purchasing**	The claim for refund was partially granted. The Court emphasized that imported articles are not locally available in reasonable quantity, quality or price provided that sales invoices, Bureau of Customs Official Receipts, Authority to

[10] Exhibit P-186.
[11] Exhibit P-187.
[12] Exhibit P-188.
[13] Exhibit P-189.
[14] Exhibit P-190.
[15] Exhibits P-181 to P-245 and P-301.
[16] Exhibit P-246.
[17] Exhibits P-247 to 249.
[18] Exhibit P-250.
[19] Exhibit P-251.
[20] Exhibit P-252 and P-253.
[21] Exhibit P-297-1.
[22] Exhibit P-297-2.
[23] Exhibit P-298.
[24] Exhibit P-299.

	Commissary and Catering Supplies; 3. Invoices issued to PAL for its purchase of the subject articles; 4. **Philippine Wine Merchants' Price List** for 2005 and 2006; and 5. Monthly Philippine Dealing Systems rates for the year 2005-2006.	Release Imported Goods and other documentary evidence are presented to prove such fact.
CTA Case No. 8153, January 17, 2013; affirmed in CTA EB Nos. 1029, 1031 and 1032, April 30, 2014	1. Judicial Affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Materials and Purchasing Subdepartment; 2. **Table of Comparison Between Cost of Locally Purchasing Commissary and Catering Supplies**; 3. **Philippine Wine Merchants' January 11, 2007 Price List**; 4. Monthly PDS rates for the year 2007-2008, 2008-2009 and 2009-2010; 5. Bureau of Customs Official Receipt No. 15545075775; and 6. Authority to Release Imported Goods issued on various dates for the said importation of liquors and cigarettes.	The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on wines and liquors fully complied with the requirements under PD 1590. The claim for refund on the excise tax payments on cigarettes, however, was denied for failure to present a price list of local dealers or suppliers.

From the foregoing, it appears that the presentation of at least one price list from a local supplier showing lower importation cost is sufficient to justify the claim. Consistent with the rulings in the abovementioned cases, I submit that the evidence on record are materially significant for the Court to make a determination whether the cost of importing liquor products and wines is lower than purchasing them locally.

With regard to the imported tobacco products and cigarettes, petitioner presented only the testimony of Ms. Capinpin to support its position that they are not available in reasonable quantity, quality or price locally. Ms. Capinpin's testimony standing alone *sans* any corroborative evidence or documentary basis is simply too unworthy of credit in establishing that indeed, the cost of importing tobacco products and cigarettes is lower than purchasing them locally or that they are not locally available in reasonable quantity, quality or price.

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All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review filed by petitioner Philippine Airlines, Inc. The case should be **REMANDED** to the Court in Division for the proper determination of the amount of refund or tax credit due to petitioner. Accordingly, the assailed Decision and Resolution of the Court in Division in CTA Case No. 8644 dated May 25, 2015 and November 23, 2015, respectively should be **SET ASIDE** in so far as it denied the refund of excise taxes paid on petitioner's importation of liquor products and wines.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB NO. 1400** (CTA Case No. 8644)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Respondent.	Promulgated: SEP 13 2017 3:16 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Fabon-Victorino, I register my dissent to the *ponencia* with respect to the findings that Philippine Airlines, Inc. (PAL) failed to comply with the second and third requisites required for it to be exempt from excise taxes on its importation of liquor, wine and cigarettes for its catering and commissary supplies in the amount of ₱9,766,731.05.

The second requisite requires that "the imported articles, supplies or material are intended to be used in its transport and non-transport operations and other activities incidental thereto".[1] The *ponencia* held that this requisite was not complied with by PAL as there was nothing beyond the Informal Import Declaration and Entry (IIDE) documents[2] and the Authority To Release

[1] Sec. 13(b)(2), P.D. No. 1590.
[2] Exhibits P-29 to P-80.

Imported Goods (ATRIGs)[3] to show that the imported articles were indeed actually used for international flight consumption, contrary to the finding of the Court in Division.

The Court in Division's finding on this matter is reproduced below:

> "[PAL], likewise, complied with the second requisite. As stated in the 'Informal Import Declaration and Entry' (IIDE) submitted by petitioner, the imported articles were described as "inflight materials". Also, in the ATRIGS issued by the respondent CIR addressed to respondent COC, it was indicated that **'the shipment to be released at the Port of Manila consisting of the above described articles, will be used exclusively for international inflight consumption'**." *(Emphasis supplied)*

In my humble opinion, the said ATRIGs, **which were issued by the CIR**, and which state that the articles imported by PAL are for its transport or flight operations should be considered compliance with the second requisite in the absence of proof by the CIR that it was used otherwise.

First, the ATRIG went through verification procedures and was issued by the Bureau of Internal Revenue (BIR) itself. The procedures for its issuance are embodied in BIR Revenue Memorandum Order (RMO) No. 32-2002, mandated by respondent CIR for the use of the BIR and for the Bureau of Customs (BOC) to use in its operations or collections as the BIR's agent.

Second, while one may argue that the IIDEs and ATRIGs fall under the disputable presumption "that official duty has been regularly performed"[4], that presumption has not been disputed by the CIR with any evidence as well. Still and all, **since the ATRIG has been issued by the CIR himself**, the presumption that attaches to it falls more accurately under *Conclusive Presumptions*[5]. Under the Rules of Court, an instance of a conclusive presumption is "whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it". In other words, the CIR cannot repudiate his own issuance.

I am also of the opinion that the third requisite has been complied with as well. In a long line of cases involving PAL, although involving different taxable periods, the Court *En Banc* consistently ruled that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the **Philippine Wine Merchants'**

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[3] Exhibits P-133 to P-184.
[4] Section 3(m), Rule 131, Rules of Court.
[5] Section 2(a), Rule 131, Rules of Court.

Price List and/or Duty Free Philippines Retail Prices, coupled with the testimony of petitioner's witness, were deemed sufficient to rule that that the cost of importing commissary and catering supplies is lower than purchasing them locally. The Supreme Court has likewise affirmed the findings of the CTA in *Republic of the Philippines, represented by the Commissioner of Customs vs. Philippines Airlines, Inc.*,[6] where the Court *En Banc* found that the 1) tabulation comparison of the cost of importing the subject articles and cost of purchasing them locally; 2) Price List for 2005 of Duty-Free Philippines; and 3) the testimony of petitioner's witnesses were sufficient to prove that the subject imported articles were not locally available in reasonable quantity, quality or price.

In *Commissioner of Internal Revenue v. Philippines Airlines, Inc.*,[7] *We* held that the law imposes an alternative, not cumulative, qualification for the determination of whether importations under Sec. 13(2) of PD 1590 will be subject to the exemption and that it would suffice for petitioner to be able to prove even just one qualification out of the three - not locally available in reasonable a) quantity, b) quality, or c) price. It is apparent in this case that the quantum of evidence that the Supreme Court itself set as regards proving local unavailability of liquor in reasonable price has been exceeded. There is likewise ample testimony on the record that points to the local unavailability of the brand of the alcohol and tobacco products imported which is why they could not provide comparative prices for them. Despite requests from the different government regulatory agencies, no prices could be provided as those particular brands were unavailable locally. This points to only one thing -- that they were not locally available in reasonable quantity.

In view of the foregoing, I vote to **GRANT** the instant Petition for Review.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[6] G.R. Nos. 209353-54, 211733-34, July 6, 2015.
[7] CTA EB Nos. 1308, 1309, and 1311, February 27, 2017.