REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB CASE NO. 928
(CTA CASE NO. 7843)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

-*versus*-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB CASE NO. 929
(CTA CASE NO. 7843)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:
OCT 21 2013 9:00 a.m.

x---x

DECISION

BAUTISTA, J.:

The Case

The case involves the Petitions for Review filed by petitioners Commissioner of Internal Revenue and Commissioner of Customs on September 9, 2012 and September 14, 2012, respectively, praying for the Court *En Banc* to reverse and set aside the Decision dated May 18, 2012,[1] and the Resolution dated August 3, 2012,[2] rendered by the Second Division of the Court ("Court in Division"), and accordingly for the denial of the claim for refund filed by Philippine Airlines, Inc.

The Parties[3]

Petitioner Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC), as amended.[4]

Petitioner Commissioner of Customs (COC), is the chief of the Bureau of Customs (BOC), 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 wines and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended.[5]

Respondent Philippine Airlines, Inc. is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with its principal office located at the PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, Metro Manila.[6]

The Facts

The facts as narrated in the Decision by the Court in Division dated May 18, 2012,[7] are as follows:

> "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 Other Countries,"

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[1] Penned by Justice Juanito C. Castaneda, Jr., concurred by Justice Caesar A. Casanova, while Justice Cielito N. Mindaro-Grulla was on leave, pp. 36-64, Annex "*A*."
[2] *Rollo*, CTA EB Case No. 928, pp. 65-73, Annex "*B*."
[3] *Id.*, pp. 36-38.
[4] *Id.*
[5] *Id.*
[6] *Id.*, p. 36.
[7] *Id.*, pp. 36-64.

petitioner was granted a franchise to operate air transport services domestically and internationally.

Section 13 of PD No. 1590 in part provides:

> "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 non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to 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;'

On January 1, 2005, Republic Act (RA) No. 9334 took effect, increasing the excise tax rates imposed on alcohol and tobacco products and amending several provisions of the NIRC of 1997.

On October 6, 2006, petitioner's importation of 1,020 packages of wines arrived in Manila on board the vessel Hanjin Athens, covered by Informal Import Declaration and Entry No. 98992704, Bill of Lading No. 0609/321, and Authority to Release Imported Goods (ATRIG) No. 00084278 dated October 12, 2006.

The Authority to Release Imported Goods No. 00084278 dated October 12, 2006, issued by the CIR and addressed to the COC, provided 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' and is subject to the payment of the excise tax under Section 142(b) of the NIRC of 1997, computed as follows:

	Total
450 CS x 12 = 5,400 x .75 = 4,050 x 17.47	P 70,753.50
570 CS x 12 = 6,840 x .75 = 5,130 x 17.47	P 89,621 .10
TOTAL EXCISE TAX	**P 160,374.60**

Furthermore, the ATRIG provided that 'the aforementioned shipment may now be released from your custody after the payment of the abovementioned taxes.'

On October 18, 2006, petitioner paid under protest to the Bureau of Customs the amount of P160,374.60, representing the excise taxes on the importation of 1,020 packages of wines.

> On January 25, 2007, petitioner filed an administrative claim with respondent Commissioner of Internal Revenue for the refund of P160,374.60, representing its excise tax paid on October 18, 2006, through the BOC, for the said importation of wines.
>
> Due to respondent's inaction on the said administrative claim for refund, petitioner filed the instant Petition for Review on October 14, 2008."[8]

On May 18, 2013, the Court in Division promulgated a Decision,[9] stating that:

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED.** Accordingly, respondents are hereby **ORDERED TO REFUND** to petitioner the amount of P160,374.60, representing petitioner's erroneously paid excise tax on October 18, 2006.
>
> **SO ORDERED."**

On June 6, 2012, respondent COC filed his "Motion for Reconsideration (Re: May 18, 2012 Decision)," also respondent CIR filed her "Motion for Reconsideration." However, the "Motion for Reconsideration (Re: May 18, 2012 Decision)" and "Motion for Reconsideration" were denied via a Resolution dated August 3, 2012.[10]

Not satisfied with the ruling of the Court in Division, both respondents filed their respective Petitions for Review with the Court *En Banc.* On September 5, 2012, respondent CIR filed her "Petition for Review,"[11] which was docketed as CTA EB Case No. 928, while respondent COC filed his "Petition for Review" on September 19, 2012, docketed as CTA EB Case No. 929.[12]

On October 5, 2012, the Court issued a Resolution ordering the consolidation of CTA EB Case No. 929 with CTA EB Case No. 928.[13]

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[8] *Id.*, pp. 37-40.
[9] *See* Note 1.
[10] *Rollo*, CTA EB Case No. 928, pp. 65-73.
[11] *Id.*, pp. 8-31.
[12] *Rollo*, CTA EB Case No. 929, pp. 48-85.
[13] *Rollo*, CTA EB Case No. 928, pp. 80-81.

On January 1, 2013, respondent CIR filed a "Manifestation" stating that she is adopting the "Petition for Review" in CTA EB Case No. 928 as her Memorandum,[14] while COC filed his "Manifestation and Motion," on March 8, 2013, requesting the same.

On March 13, 2013, Court issued a Resolution submitting the case for decision.

Hence, this Decision.

The Issues

The sole issue posited in the "Petition for Review"[15] filed by CIR is:

> "WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX REFUND IN THE AMOUNT OF P160,374.60 ALLEGEDLY REPRESENTING ERRONEOUSLY PAID EXCISE TAX ON 18 OCTOBER 2006"

On the other hand, COC raised two issues in his "Petition for Review,"[16] stating that:

> "I
>
> THE HONORABLE COURT'S SECOND DIVISION GRAVELY ERRED IN FINDING THAT RESPONDENT PAL IS EXEMPT FROM THE PAYMENT OF EXCISE TAX FOR ITS IMPORTATION OF 1,020 PACKAGES OF WINE; and
>
> II
>
> THE HONORABLE COURT'S SECOND DIVISION GRAVELY ERRED IN FINDING THAT RESPONDENT PAL IS ENTITLED TO A REFUND OF THE EXCISE TAX PAID ON OCTOBER 18, 2008 IN THE AMOUNT OF P160,373.60."

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[14] *Id.*, pp. 105-107.
[15] *Id.*, pp. 24.
[16] *Rollo*, CTA EB Case No. 929, pp. 58-59.

The Ruling of the Court En Banc

The CIR in contesting the Decision and Resolution of the Court in Division states that PD 1590, specifically Section 16 shows that respondent has no vested rights under the law.[17] The CIR argues that this is more so when it deals with tax exemptions and that an amendment renders the continuance of said exemption as doubtful.[18] The CIR states that PD 1590 has been amended by RA 9334 and therefore the latter repealed any inconsistent provisions of the former. Thus, it is the theory of the CIR that upon the amendment, legislators intended to withdraw the tax exemption that was previously granted to respondent under its franchise.[19]

The CIR also points out that the previous exemption granted to respondent was not absolute, since there were conditions attached to it. The CIR states that by applying the Court in Division's Decision and Resolution, it is akin to an absolute exemption already.[20]

The COC, on the other hand states that petitioner is liable to pay the taxes on its importation of the 1,020 packages of wine, and that petitioner failed to prove that it has complied with the conditions set forth in its franchise law.[21] The COC states that nowhere in the law does it explicitly exempt petitioner from payment of excise tax for its importations of liquor, wines and cigarettes.[22]

After reviewing the issues raised by the parties in this case, the Court *En Banc* sees no reason to deviate from the Decision dated May 18, 2012 and the Resolution dated August 3, 2012, both by the Second Division of the Court. All of the grounds for arguments raised by respondents were extensively discussed in both the Decision and Resolution of the Court in Division.

Basically, both Petitions for Review filed by the parties attack the entitlement of petitioner to the exemption. However, the Court in Division has already shown that the theory posited by respondents is incorrect, and discussed it extensively in the said Decision dated May 18, 2012, which is reproduced below:

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[17] *Rollo*, CTA EB Case No. 928, p. 24.
[18] *Id.*, pp. 24-25.
[19] *Id.*, p. 28.
[20] *Id.*, pp. 28-29.
[21] *Rollo*, CTA EB Case No. 929, pp. 60-61.
[22] *Id.*, p. 64.

"Section 13 of PD No. 1590 provides as follows:

> '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 non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to 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)*

According to the afore-quoted provision, the taxation of petitioner Philippine Airlines (PAL), during the lifetime of its franchise, shall be governed by two fundamental rules, namely: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration , license, and other fees and charges, except only real property tax. The tax paid under Section 13 of PD No. 1590 shall be in lieu of, among others, taxes, duties, charges, royalties, or fees due on all importations of 'commissary and catering supplies' provided that the following are present:

> 1. such articles or 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.

Congress later passed RA No. 9337 in 2005, with Section 22 thereof providing as follows:

> 'SECTION 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.'** *(Emphasis supplied)*

As pointed out by petitioner, the amendment introduced by RA No. 9337 only modified or altered petitioner's options for the payment of taxes since petitioner is now obliged to pay the corporate income tax and the value added tax *in lieu of all other taxes,* with the franchise tax being expressly abolished.

In this case, petitioner submitted in evidence its original Annual Income Tax Return and amended Annual Income Tax Return, all for fiscal year 2007. A perusal of the said returns shows that petitioner opted to pay the basic corporate income tax for the fiscal year ended March 31, 2007 in accordance with its franchise. Petitioner was also able to prove that it is a VAT-registered entity and paid its value-added tax for the fiscal year ended March 31, 2007, as evidenced by its Certificate of Registration dated December 18, 2007, Certificate of Registration dated August 4, 2004, Payment Form No. 060527, and VAT Return for the year 2007.

The Authority to Release Imported Goods No. 00084278 dated October 12, 2006 issued by the CIR and addressed to the COC provided 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.'

To support the claim that the subject 1,020 package of wines were not locally available in reasonable quantity, quality or price, petitioner presented Mr. Andy Li, petitioner's Vice President for Corporate Logistics and Services Department, who testified through his Supplemental Judicial Affidavit that the price per 750 mi. bottle of white/red wine quoted by its foreign supplier Decker Handels G.m.b.H. was $1.82; while the price per 750 mi. bottle of white/red wine quoted by local suppliers, such as Premier Freeport, Inc. was $2.50; Enzima International, Inc. was P160.00 or $3.48; and Duty Free Philippines ranges from $6.00 to $19.00 per 750 mi. bottle, depending on the brand and source of wine. According to said witness, importing said supplies was cheaper for petitioner than if it is purchased locally because the CIF Manila price includes the new duties and taxes of the government; while the price quotation of its foreign supplier does not include duties and taxes of the government.

In order to corroborate the foregoing testimony, petitioner submitted in evidence the Letter of Decker Handels G.m.b.H. dated May 29, 2005, Premier Freeport, Inc. Price List for Philippine Airlines, Inc. as of April 18, 2005, Enzima International, Inc. letter dated March 28, 2006, and Duty Free Philippines 2005 Price List on various wines.

Likewise, petitioner submitted in evidence the Bureau of Customs Official Receipt No. 13561158536 and the Authority to Release Imported Goods No. 0008427837 dated October 12, 2006. The said BOC Official Receipt indicates that on October 18, 2006, petitioner paid to the Bureau of Customs the amount of P160,374.60, representing petitioner's excise tax payable under Section 142(b) of the NIRC on its importation of 1,020 packages of wines as stated in ATRIG No. 00084278 dated October 12, 2006.

After a careful evaluation of the evidence presented, this Court finds that petitioner was able to substantially prove that it paid its basic corporate income tax liability for the fiscal year ending March 31, 2007, as well as the value-added tax for the fiscal year ending March 31, 2007; the articles imported by petitioner for its commissary and catering supplies, consisting of 1,020 packages of wines, were intended to be used in its transport and nontransport operations and other activities incidental thereto; the imported articles were not locally available at reasonable prices; and it paid to the Bureau of Customs the amount of P160,374.60, representing petitioner's excise tax payable under Section 142(b) of the NIRC on its importation of 1,020 packages of wines as stated in A TRIG No. 00084278 dated October 12, 2006. And the evidence for petitioner remained unrebutted.

Anent respondents' contention that Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334, which took effect on January 1, 2005 and which allegedly mandated the collection of excise taxes on all importations of cigars, cigarettes and liquor without distinction, the same is bereft of merit.

Section 6 of RA No. 9334 provides:

> 'SECTION 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.'

Based on the foregoing, other than a specific mention of RA Nos. 7227, 7922, and 7903, there is no express mention of PD No. 1590 with respect to petitioner's payment to the government of excise tax.

Thus, Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise. Had Congress intended to repeal petitioner's franchise, it could have easily included PO No. 1590 among the enumeration of those liable for such excise tax, not only under RA No. 9334, but also under the later law, RA No. 9337.

That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after petitioner PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.

Moreover, this Court in *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue and Commissioner of Customs* held that Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise, to wit:

> **'While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding,' such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are 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.

> Equally noteworthy is the fact that **Republic Act No. 1590** *(sic)* **is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily 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 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.
>
> **Considering respondent's failure to prove that the exemption granted to petitioner under P.O. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to be refunded of the amount claimed on the basis of the exemption granted under its franchise.**' *(Emphasis supplied)*"[23]

Both the Petitions for Review filed by the CIR and COC cite the case of *Cagayan Electric Power & Light Co., Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals* ("*Cagayan Electric case*").[24] However, the Court *En Banc* agrees to the discussion of the Court in Division as to the non-applicability of this to the present case, citing the case of *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue and Commissioner of Customs*,[25] which held as follows:

> "In the aforesaid case of *Cagayan Electric Power and Light Co., Inc. vs. Commissioner of Internal Revenue* the Supreme Court, in its narration of facts of the case stated

[23] *Rollo*, CTA EB Case No. 928, pp. 55-63.
[24] G.R. No. L-60126, September 25, 1985, 198 SCRA 629.
[25] CTA Case Nos. 7665 and 7713, Resolution dated June 28, 2012.

that RA 5431 amended [S]ection 24 of the Tax Code by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c)(1) of said section and [S]ection 27 of the Tax Code notwithstanding the 'provisions of existing special or general laws to the contrary.' As regards the effect of RA 5431, the Supreme Court ruled as follows:

> 'Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in [S]ection 27 of the Code, had the effect of withdrawing petitioner's exemption to income tax.'

The foregoing pronouncement would show that the reason of the Supreme Court in considering RA No. 5431 as amending Section 24 of the Tax Code is not merely because of the use by Congress of the proviso 'the provision of any special or general law to the contrary notwithstanding,' but rather, it is for the reason that RA 5431 specifically subjected to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code. In other words, there was express repeal in the above-cited case because RA 5431 identified or designated the acts that are intended to be repealed.

In comparison to this case, and as already ruled by the Court, while it is true that Section 6 of RA 9334 states that all-encompassing phrase 'The provision of any special or general law to the contrary notwithstanding,' such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or that are intended to be repealed. Also, there designate the acts ns nothing in RA No. 9334 which specifically modify, amend or visions under PD 1590, which is being repeal any of the pro required by Section 24 of PD 1590."

As the Court in Division discussed, PD 1590 in Section 13(2) states clearly that to avail of the exemption from taxes, the same must not be locally available in reasonable quantity, quality or price, emphasizing on the conjunction "or" and not "and" among the three factors.[26] Also, as the Court in Division pointed out, petitioner was able to present independent and credible evidence to support its claim.[27]

Thus, the Court *En Banc* sees no reason to disturb the findings disclosed by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petitions for Review filed by both Commissioner of Internal Revenue and Commissioner of Customs are hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 18, 2012 and the Resolution dated August 3, 2012 rendered by the Second Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[26] *Rollo*, CTA EB Case No. 928, p. 72.
[27] *Id.*, pp. 72-73.

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 928 (C.T.A. CASE NO. 7843)**
-versus-	
PHILIPPINE AIRLINES, INC. (PAL), Respondent.	

x---------------------------------------x

COMMISSIONER OF CUSTOMS, Petitioner,	**CTA EB NO. 929 (CTA Case Nos. 7843)**
- versus -	*Present:* **DEL ROSARIO,** ***PJ,*** **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** ***and*** **RINGPIS-LIBAN,** ***JJ.***
PHILIPPINES AIRLINES, INC. (PAL), Respondent.	**Promulgated:** OCT 2 1 2013 9:00 a.m.

X--X

DISSENTING OPINION

RINGPIS-LIBAN, J.:

The *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista denied for lack of merit the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Commissioner of Customs (COC). Majority of this Court sustained the findings of the CTA-

Second Division that Section 6 of Republic Act (RA) No. 9334[1] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590[2].

I respectfully vote to **DISAGREE** with the majority opinion and join the Honorable Presiding Justice Roman G. Del Rosario in his dissent.

It is a well-settled principle in statutory construction that, "When 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."[3]

In fact, this was determined to be a core issue of the matter at hand -- whether Sections 6 and 10 of RA 9334 (the provisions requiring payment of excise tax on imported articles) have repealed Section 13 of PD 1590 (provisions of tax exemptions under PAL's franchise). It is also on this basis that the *ponencia* upheld the former Second Division's Decision[4] dated May 18, 2012 in CTA Case No. 7843, and its Resolution[5] dated August 3, 2012.

The majority opinion further holds that although Sec. 6 of RA 9334 states the all-encompassing phrase "the provision of any special or general law to the contrary notwithstanding", such phrase could not be considered an express repeal of the exemptions granted under PAL's franchise because it failed to identify or designate the acts that are intended to be repealed and failed to expressly mention PD 1590, specifically, with respect to paying the government excise tax.

On the one hand, we have PD 1590 which granted PAL its franchise and contains tax exemption provisions. Because such enactment is only applicable to PAL, it is, by all means, considered a special law. A special statute, as the term is generally understood, is one which relates to particular person or things of a class[6] or to a particular portion or section of the state only.[7]

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[1] Republic Act No. 9334, 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.
[2] Presidential Decree No. 1590, An Act Granting a New Franchise to Philippine Airlines, inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.
[3] Manila Rairoad Co. v. Rafferty, 40 Phil. 224
[4] En Banc docket, pp. 36-64, *Annex "A"*.
[5] En Banc docket, pp. 65-73, *Annex "B"*.
[6] Valera v. Tuason, 80 Phil. 823 (1948).
[7] U.S. v. Serapio, 23 Phil. 584 (1912).

On the other hand, we have RA 9334 an act which specifically increases excise tax rates imposed on alcohol and tobacco products and which amended several sections of the National Internal Revenue Code of 1997 (RA 8424), including Section 131 thereof. RA 9334 is considered to be an amendatory statute. Amendments are to be construed together with the original act to which they relate as constituting one law, and also with other statutes on the same subject, as part of a coherent system of legislation.[8] RA 9334, therefore, must be read together with RA 8424 which is a general statute. A general statute is a statute which applies to all of the people of the state or to all of a particular class of person in the state with equal force.[9] It is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.[10]

Applying the rules of statutory construction, then the special law -- PD 1590 -- would indeed be considered to remain an exception to RA 8424, the general law, and PAL would still be exempt from the payment of excise taxes on cigars and cigarettes, fermented spirits and wines that it imported.

However, the rule is not absolute and admits of exceptions. I believe that the case at bar falls under those exceptions.

One exception to the principle is where the special law merely establishes a general rule while the general law creates a specific and special rule, in which case the general law prevails over the special law.[11] The principle that a special law on a subject prevails over a general law on the same subject presupposes that the general law refers to the subject in general and the special law treats the same subject in particular. The rule does not apply where the situation is reverse, that is, the general law treats the subject in particular and the special law refers to it in general. In this situation, the general law prevails over the special law in the event of repugnancy or conflict between the two laws.[12]

Under PD 1590, the subject of excise taxes due on its importations of cigars and cigarettes, fermented spirits and wines, are treated generally and are considered encompassed in Section 13 thereof. In that section, in consideration of the franchise granted to PAL, it shall pay either basic

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[8] *Statutory Construction*, Rodriguez, Rufus B. 1999, citing 82 C.J.S. Statutes § 384.
[9] U.S. v. Serapio, 23 Phil. 584 (1912).
[10] Valera v. Tuason, 80 Phil. 823 (1948); Villegas v. Subido, G.R. No. 31711, Sept. 30, 1971, 41 SCRA 190 (1971).
[11] City of Manila v. Teotico, G.R. No. 23052, Jan. 29, 1968, 22 SCRA 276 (1968).
[12] Bagatsing v. Ramirez, G.R. No. 41636, Dec. 17, 1976, 74 SCRA 306 (1976).

corporate income tax or a franchise tax. **Section 13** further denotes the treatment of the tax paid, thus:

> "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**:
>
> x x x
>
> 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; x x x"[13]

In fact, PD 1590 does not even mention "cigars and cigarettes, distilled spirits, fermented liquors and wines" with any particularity and such items would only fall under the generic phrase **"commissary and catering supplies"** which would consist of many other products than just alcohol and tobacco. In contrast, RA 9334 deals with the excise tax rates imposed on, specifically, alcohol and tobacco products. The fact that Sec. 6 of RA 9334, in its third paragraph, is preceded by the phrase, **"The provision of any special or general law to the contrary notwithstanding x x x"** evinces a clear intent to withdraw prior exemptions of excise tax when it comes to "cigars and cigarettes, distilled spirits, fermented liquors and wines".

The case at bar therefore falls under the exception where a general law treats the subject in particular and the special law refers to it in general, and in such a case, the general law -- RA 8424 as amended by RA 9334 -- must prevail.

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[13] Section 13, Presidential Decree No. 1509, An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Other Countries, June 11, 1978.

The case of ***Republic of the Philippines v. Caguioa***[14] elucidates the matter further. In that case, the petitioners, via a Petition for Certiorari and Prohibition, sought to annul the orders of Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City which granted a writ of preliminary injunction to respondents, in effect staying the implementation of RA 9334. On a head-on collision with RA 9334 was RA 7227 (The Bases Conversion and Development Act of 1992) which, among other things, created the Subic Special Economic and Freeport Zone (SBF) and the Subic Bay Metropolitan Authority (SBMA).

Private respondents in the *Caguioa* case were all domestic corporations doing business at the Subic Bay Freeport. They applied for and were granted Certificates of Registration and Tax Exemption by the SBMA which allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, **including alcohol and tobacco products**, and **uniformly granted them tax exemptions for such importations** as contained in their respective Certificates.

Although the Supreme Court in the *Caguioa* case limited itself to resolving the most pertinent and justiciable matter at hand, i.e. the propriety of preliminary injunction granted to respondents, it however opined, thus:

> "It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.
>
> By subsequently enacting R.A. No. 9334, however, **Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines**. Juxtaposed to show this intention are the respective provisions of Section 131 of the NIRC before and after its amendment by R.A. No. 9334:

[14] G.R. No. 168584, October 15, 2007.

Sec. 131 of NIRC before R.A. No. 9334	**Sec. 131, as amended by R.A. No. 9334**
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 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 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. Provided, however,	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 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 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**

/n/

That **<u>this *shall not apply* to cigars and cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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 are not transshipped to any other port in the Philippines: *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, charges, including excise tax due thereon; *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 "tax and duty-free" and "not for resale": Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally,	**taxes due thereon. <u>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 Economic Freeport Zone, created under Republic Act No. 7227</u>**; 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 "tax and 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.

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That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. x x x x.	(Emphasis and underscoring supplied)

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF."[15]

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, the Supreme Court went on to state several basic principles and observations, the relevant ones of which, I find, should also shed light on the case at bar, to wit:

"*Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege[16], a tax exemption may be modified or withdrawn at will by the granting authority.[17]

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so

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[15] *Supra.*

[16] *Supra*; citing United Paracale Mining Co. v. De la Rosa, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.

[17] *Supra*; citing Abakada Guro Party List Officers v. Ermita, G.R. Nos. 168056, 168207, 168461 and 168463, September 1, 2005, 469 SCRA 1, 134.

searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.[18]

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[19] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.[20] In case of doubt, non-exemption is favored.[21]

Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal.[22] Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI[23] of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334."

Based on the foregoing, I vote to grant the instant Petitions for Review respectively filed by the CIR and the Republic of the Philippines, as represented by the COC.

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[18] *Supra*; citing Tio v. Videogram Regulatory Board, G.R. No. L-75697, June 18, 1987, 151 SCRA 208, 215.
[19] *Supra*; citing Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152; Philippine Long Distance Telephone Company, Inc. v. City of Davao, 447 Phil. 571, 584 (2003); Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc., G.R. No. L-71122, March 25, 1988, 159 SCRA 199, 210; City of Baguio v. Busuego, L-29772, September 18, 1980, 100 SCRA 116, 123.
[20] *Supra*; citing Caltex Philippines, Inc. v. Commission on Audit, G.R. No. 92585, May 8, 1992, 208 SCRA 727, 753.
[21] *Supra*; citing Benguet Corporation v. Central Board of Assessment Appeals, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 587.
[22] *Supra*; citing Commissioner of Internal Revenue v. Court of Appeals, February 6, 1997, citing Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc., 88 SCRA 294, 452.
[23] Sec. 28 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB NO. 928
(CTA Case No. 7843)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB NO. 929
(CTA Case No. 7843)

Present:

DEL ROSARIO, ***PJ,***
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, ***and***
RINGPIS-LIBAN, ***JJ.***

Promulgated:

OCT 2 1 2013 9:00 a.m.

x---x

DISSENTING OPINION

DEL ROSARIO, PJ.:

In the *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, the Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) and the Commissioner of Customs (COC), are both denied for lack of merit. The Decision of the former Second Division of this Court ("CTA-Second Division") dated May 18, 2012 and its

Resolution dated August 3, 2012 are affirmed. The *ponencia* sustained the findings of the CTA-Second Division that Section 6 of Republic Act (RA) No. 9334[1] did not repeal the tax exemption granted to Philippine Airlines (PAL) under Presidential Decree (PD) No. 1590.[2]

It is with utmost respect that I express my dissent in the *ponencia.*

The issue that needs to be resolved is whether or not RA No. 9334 repealed the excise tax exemption granted to respondent PAL under PD No. 1590 on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

On June 11, 1978, PD No. 1590 was issued wherein respondent PAL was granted a franchise to establish, operate and maintain air transport services within the Philippines and other countries. PD No. 1590 explicitly states that the tax paid by respondent PAL under Section 13 (a) or (b) shall be in lieu of all other taxes, duties, royalties, registration, license, other fees and charges, including but not limited to 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.

Relevant portions of Section 13 of PD No. 1590 state as follows:

> "**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.

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[1] 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".

[2] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES.

> **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, <u>commissary and catering supplies</u>, 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;"** (Emphases supplied)

On January 1, 1998, RA No. 8424, otherwise known as the *"Tax Reform Act of 1997"* took effect. RA No. 8424 amended the National Internal Revenue Code[3] ("NIRC") which has since been known as the "National Internal Revenue Code of 1997" ("1997 NIRC").

With the amendments introduced by RA No. 8424, importation of cigars and cigarettes, distilled spirits and wines into the Philippines became subject to all applicable taxes, duties, charges, which include excise taxes. Section 131 of the 1997 NIRC provides that:

"SECTION 131. Payment of Excise Taxes on Imported Articles. —

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[3]"SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

'TITLE I

Organization and Function of the Bureau of Internal Revenue

'SECTION 1. Title of the Code. — This Code shall be known as the National Internal Revenue Code of 1997."

(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.

<u>The provision of any special or general law to the contrary notwithstanding</u>, the importation of cigars and cigarettes, distilled spirits 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: Provided, however, That this <u>shall not apply</u> to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal

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> Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (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." (Emphases supplied)

Noticeably, Section 131 of the 1997 NIRC clearly provides that *"the provision of any special or general law to the contrary notwithstanding,"* the importation of cigars and cigarettes, distilled spirits and wines into the Philippines are subject to all applicable taxes, duties and charges, which include excise taxes. The only exception to the taxability of such importation are those specifically mentioned therein, that is - - the importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, and which are not transshipped to any other port in the Philippines. Moreover, importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP) shall also be exempt from taxes, duties, charges, including excise taxes.

On May 24, 2005, Section 131 of the 1997 NIRC was amended by RA No. 9334. Section 131 of the 1997 NIRC, as amended by RA No. 9334 states:

> "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.
>
> **<u>The provision of any special or general law to the contrary notwithstanding</u>, the importation of cigars and cigarettes, distilled**

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> **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 on introduction into the Philippine customs territory.
>
> Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.
>
> Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.
>
> The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.
>
> (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." (Emphasis supplied)

While it is expressly provided under Section 131 of the 1997 NIRC that all taxes, duties and charges, including excise taxes, shall *not apply* to importations of cigars, cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, with the subsequent enactment of RA No. 9334, Congress categorically *withdrew* the tax exemption of importations of cigars, cigarettes, distilled spirits, fermented liquors and wines that are brought directly into the duly chartered or legislated freeports.

In truth, the exemption of respondent PAL from excise taxes on its importations of cigars, cigarettes, distilled spirits and wines under Section 13 of PD No. 1590 was necessarily withdrawn with the enactment of RA No. 8424 (specifically under Section 131 of the 1997 NIRC) albeit importations of afore-stated items remained exempt if brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, the Cagayan Special Economic Zone and Freeport, and the Zamboanga City Special Economic Zone, under conditions therein specified. Eventually, Section 131 of the 1997 NIRC was amended by Section 6 of RA No. 9334. Under Section 131 of the 1997 NIRC, as amended by Section 6 of RA No. 9334, 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. Fermented liquor was further added as among the items subject of taxation.

With the clear wordings of the third paragraph of Section 131 of the 1997 NIRC, it is my humble view that the use of the all-encompassing phrase "*[T]he provision of any special or general law to the contrary notwithstanding*" shows the clear intent of the legislature to withdraw the tax exemption granted on respondent PAL's importation under Section 13(2) of PD No. 1590. Moreover, the repealing clause of RA No. 8424 is most revealing:

> "SECTION 7. Repealing Clauses. — (A) xxx xxx xxx.
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly."

Otherwise stated, in enacting RA No. 8424, specifically Section 131 thereof, Congress intended to repeal other laws, decrees, orders or regulations which are inconsistent therewith. The repeal necessarily includes Section 13(2) of PD No. 1590 as it is inconsistent with Section 131 of the 1997 NIRC.

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As afore-stated, Section 131 of the 1997 NIRC, prior to its amendment by RA No. 9334, specifically identified which importations of cigars, cigarettes, distilled spirits and wines are exempt from applicable taxes, duties, charges, including excise taxes. Respondent PAL's importation was not among those identified by Congress as exempt from applicable taxes, duties, fees, charges, including excise taxes. The clear intent of the legislature to withdraw the tax exemption previously granted to respondent PAL on its importation of afore-mentioned articles pursuant to Section 13(2) of PD No. 1590 cannot simply be ignored.

In the case of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*[4] ("*Cagayan case*"), the Supreme Court essentially ruled that all corporate taxpayers not expressly exempted under Section 24(c)(1) and Section 27 of the Tax Code, as amended by RA No. 5431, shall be subject to corporate income tax. Relevant pronouncements of the Supreme Court in the *Cagayan case* are quoted hereunder:

> "This is about the liability of petitioner Cagayan Electric Power & Light Co., Inc. for income tax amounting to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax.
>
> The petitioner is the holder of a legislative franchise, Republic Act No. 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted" (Sec. 3).
>
> On June 27, 1968, Republic Act No. 5431 amended section 24 of the Tax Code **by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary".** Thus, franchise companies were subjected to income tax in addition to franchise tax.
>
> xxx xxx xxx.
>
> We hold that Congress could impair petitioner's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise.
>
> The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public

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[4] G.R. No. L-60126, September 25, 1985.

> interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution).
>
> Section 1 of petitioner's franchise, Republic Act No. 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636 whose Section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.
>
> Republic Act No. 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing petitioner's exemption from income tax.
>
> The Tax Court acted correctly in holding that the exemption was restored by the subsequent enactment on August 4, 1969 of Republic Act No. 6020 which reenacted the said tax exemption. Hence, the petitioner is liable only for the income tax for the period from January 1 to August 3, 1969 when its tax exemption was modified by Republic Act No. 5431."(Emphasis supplied)

Applying the principles laid down in the *Cagayan case* to the case at bar, my position is that that the all-encompassing phrase *"the provision of any special or general law to the contrary notwithstanding"* should be construed as an effective repeal of the exemptions granted under Section 13 of PD No. 1590. In particular, when Section 131 of the 1997 NIRC specifically identified the importations of cigars, cigarettes, distilled spirits and wines which are exempt from applicable taxes, duties, charges, including excise taxes, which identification did not include respondent PAL's importations, there is a repeal of the exemptions granted under Section 13 of PD No. 1590 insofar as said items of importations are concerned.

Citing Sections 16 and 24 of PD No. 1590, respondent PAL contends that before its franchise can be amended, altered or repealed by competent authority, a special law or decree must be enacted or issued that shall specifically modify, amend, or repeal its franchise or any section or provision thereof. Respondent PAL also posits that the legislature is prohibited from repealing its franchise except in the manner stated under Section 24 of PD No. 1590.

I am of the view that the arguments raised by respondent PAL are bereft of constitutional moorings. Sections 16 and 24 of PD No. 1590 provide that:

> "**Section 16.** This franchise is granted with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires."

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> "**Section 24.** This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof."

Respondent PAL essentially proposes to put a limitation on the power of Congress, in the valid exercise of its lawmaking power, to enact a law withdrawing a previously granted tax exemption. Respondent PAL's proposition is contrary to the principles emphasized by the Supreme Court in the case of *"Republic of the Philippines vs. Hon. Ramon S. Caguioa, Presiding Judge, Branch 74, RTC, Third Judicial Region, Olongapo City, et al."*[5], *viz*:

> "To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall not apply to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.
>
> On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall apply to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.
>
> Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.
>
> *First.* Every presumption must be indulged in favor of the constitutionality of a statute. The burden of proving the unconstitutionality of a law rests on the party assailing the law. In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.
>
> ***Second.* There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**
>
> **To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.**

[5] G.R. No. 168584, October 15, 2007.

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored.

Fourth. **A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal. Flowing from the basic precept of constitutional law that no law is irrepealable, Congress, in the legitimate exercise of its lawmaking powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28 (4) of Article VI of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.**

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights in esse — those clearly founded on or granted by law or is enforceable as a matter of law.

These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right. **The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure. A license can thus be revoked at any time since it does not confer an absolute right.**

While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked." (Emphases supplied)

Furthermore, in the case of *Pedro M. Duarte vs. Waller H. Dade, Director of Prisons*[6], the Supreme Court clarified that the power of the legislature to make laws includes the power to amend and repeal these laws, and that the present legislature cannot bind a future legislature to a particular mode of repeal, to wit:

"A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless

[6] G.R. No. L-10858, October 20, 1915, 32 Phil. 36, 49 (1915), citing Lewis' Southerland on Statutory Construction, section 244. Also cited in the consolidated cases of Kida vs. Senate of the Philippines, G.R. No. 196271, Mapupuno vs. Brillantes, G.R. No. 196305, Lagman vs. Ochoa, Jr., G.R. No. 197221, Tillah vs. COMELEC, G.R. No. 197280, Macalintal vs. COMELEC, G.R. No. 197282, Biraogo vs. COMELEC, G.R. No. 197392, Paras vs. Ochoa, Jr., G.R. No. 197454, promulgated on February 28, 2012.

> prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.**"

The Congress is indeed vested with the power to amend PD No. 1590 in a manner it deems proper. By expressly stating in Section 131 of the 1997 NIRC the all-encompassing phrase *"[T] provision of any special or general law to the contrary notwithstanding"*, Congress evidently intended to withdraw the tax exemption that was previously granted on respondent PAL's importations.

It should be noted that Section 22 of RA No. 9337[7], which took effect on July 1, 2005, abolished the franchise tax provided under respondent PAL's charter and subjected respondent PAL to corporate income tax and value-added tax (VAT). Section 22(D) of RA No. 9337 provides that respondent PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise agreement. Section 22 of RA No. 9337 is quoted hereunder:

> "SECTION 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

[7] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

> (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."

At the time of the enactment of RA No. 9337, respondent PAL is no longer exempt from excise taxes on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines in view of the withdrawal of said tax exemption by RA No. 8424 and the amendment introduced by RA No. 9334. There is nothing in RA No. 9337 which shows that the tax exemption on respondent PAL's importation of afore-stated articles was reenacted or restored, although it remains exempt from other taxes, duties, royalties, registration, license and other fees and charges not otherwise withdrawn by RA No. 8424, as amended by RA No. 9334.

In sum, it is clear that as early as January 1, 1998, the date when RA No. 8424 took effect, the exemption of respondent PAL's importations of cigars and cigarettes, distilled spirits, fermented liquors and wines from taxes, duties, charges, including excise taxes, has been withdrawn. At the time that respondent PAL paid excise taxes on its importation of commissary supplies consisting of 1,020 packages of wines made on October 6, 2006, Section 131 of the 1997 NIRC, as amended by RA No. 9334, is effective and respondent PAL is already subject to excise tax on its importations of cigars and cigarettes, distilled spirits, fermented liquors and wines.

Accordingly, it is my humble opinion that PAL is not entitled to the refund of the amount of Php160,374.60, representing the excise taxes paid by PAL on its importations of commissary supplies consisting of 1,020 packages of wines made on October 6, 2006. In this regard, I vote to grant the instant Petitions for Review respectively filed by the CIR and the COC.

ROMAN G. DEL ROSARIO
Presiding Justice