Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF THE BUREAU OF CUSTOMS, Petitioner,	**CTA EB CASE NO. 954** (CTA Case Nos. 7677, 7685 & 7746)
-versus-	
PHILIPPINE AIRLINES, INC., Respondent.	

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PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB CASE NO. 1046** (CTA Case Nos. 7677, 7685 & 7746)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: APR 10 2015 3:25 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves Philippine Airlines, Inc.'s (PAL) "Motion for Partial Reconsideration" of the Decision dated October 14, 2014 of this Court en banc, the dispositive portion of which states:

> ***"WHEREFORE, all** the foregoing considered, in **CTA EB CASE NO. 954**, Commissioner of Customs' Motion for Reconsideration is hereby **PARTIALLY GRANTED**. The assailed Decision dated January 29, 2014 is hereby **MODIFIED**. The August 24, 2012 Decision and October 15, 2012 Resolution of the former Third Division in CTA CASE Nos. 7677, 7685 & 7746 are accordingly **MODIFIED***

*such that the Commissioner of Internal Revenue and Commissioner of Customs are hereby **ORDERED TO REFUND** to petitioner the total reduced amount of **FIFTY SEVEN THOUSAND SEVEN HUNDRED FIFTY FIVE PESOS (P57,755.00)** representing petitioner's erroneously collected excise tax on its importation of commissary supplies for the period April 2005 to April 2006.*

*In **CTA EB CASE NO. 1046**, the Petition For Review is hereby **DISMISSED** for lack of merit. Accordingly, the April 25, 2013 Amended Decision and July 2, 2013 Resolution of the former Third Division CTA CASE Nos. 7677, 7685 & 7746 are hereby **AFFIRMED**.*

SO ORDERED."

In assailing this Court's Decision, PAL claims that the Court erred in denying the claim for refund of excise tax on its importation of liquors and cigarettes in the aggregate amount of P16,533,214.48. PAL argued as follows:

"A.

THE FACTUAL ISSUE OF WHETHER OR NOT THE COMMISSARY SUPPLIES IMPORTED BY PAL ARE NOT AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE HAS BEEN SETTLED BY THE HONORABLE COURT IN THE REVERSED DECISION.

B.

PAL IS ENTITLED TO THE REFUND OF ERRONEOUSLY PAID EXCISE TAX IN THE AMOUNT OF P3,258,213.04 ON CERTAIN BRANDS OF IMPORTED WINE AND LIQUORS DESPITE THE NON-PRESENTATION OF SALES INVOICES ON THEIR PURCHASE OR IMPORTATION.

C.

PAL IS ENTITLED TO THE REFUND OF ERRONEOUSLY PAID EXCISE TAX IN THE AMOUNT OF P13,275,000.00 ON ITS IMPORTED CIGARETTES DESPITE THE NON PRESENTATION OF PRICELIST FOR LOCALLY AVAILABLE PRODUCTS."

On December 22, 2014, the Court directed the Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) to file their respective Comments on PAL's Motion for Partial Reconsideration. Respondent CIR filed an Opposition and claimed that it is clear that PAL failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price since no independent and credible evidence was presented. On the other hand, this Court hereby notes the Manifestation[1] filed on February 2, 2015 by respondent COC's.

We resolve to deny the motion.

After a careful examination of PAL's "Motion for Reconsideration", the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Special Third Division's Decision dated April 25, 2013 and Resolution dated July 2, 2013 but also by this Court en banc's Decision dated October 14, 2014.

In main, PAL insists that the valuation indicated in the Informal Import Declaration Entry (IIDE) and the testimony of its witness is sufficient to prove that the commissary supplies are not locally available in reasonable quantity, quality and price. It is not. This Court has ruled in the consolidated cases of Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines Inc.,[2] that

[1] With Motion to be excused from filing Comment on petitioner PAL's Motion for Reconsideration of the October 14, 2014 Decision.
[2] CTA EB Nos. 1018, 1021 & 1022, July 2, 2014.

mere testimony of PAL's own employee is not enough to prove that the imported cigarettes are not available at reasonable quantity, quality or price in the local market and that the best evidence to show the actual price would be sales invoices and/or official receipts, to wit:

> *"PAL needs more than the testimony of Mr. Victor Santos, PAL's employee and lone witness on price comparison to establish and prove its compliance to the conditions under the law. The lack of pricelist in Duty Free Philippines for the locally available cigarettes did not prove that the imported cigarettes are not available at reasonable quantity, quality or price in the local market.*
>
> *On imported wine and liquor, if We are to compare its purchase price vis-avis local price, the best evidence to show the actual price would be the source documents, i.e., sales invoices and/or official receipts. xxx."*

To reiterate, as we have ruled in the assailed Decision:

> *"PAL claims that the valuation indicated in the Informal Import Declaration Entry (IIDE) is even higher than the actual prices of the subject imported goods indicated in the sales invoice since the IIDE computation includes adjustments consisting of commissions and brokerage fees, cost of containers, cost of packing, assists, royalties and license fees, cost of transport, loading and unloading and handling charges, and cost of insurance. If the actual unit cost of the subject imported articles is even lower than the values in the IIDE and the values in the IIDE are already lower than the prices of the goods if locally purchased, then PAL claim it established that the subject imported goods are not locally available in reasonable prices.*
>
> *We find no merit on PAL's petition. PAL claims that the valuation indicated in the IIDE is even higher than the actual prices of the subject imported goods indicated in the sales invoice. However, PAL failed to present the sales invoices or official receipts for its purchase or importation to prove that actual prices of the subject imported goods indicated in the sales invoice was indeed lower than valuation indicated in the IIDE. Absent the sales invoices or official receipts for its purchase or importation, we cannot say that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price. Concomitantly, COC has basis in the Motion for*

Reconsideration that PAL failed to prove that the imported catering and commissary supplies were not available in reasonable quantity, quality or price.

In order to be exempted from payment of taxes, duties, charges, royalties, or fees due on all importations commissary and catering supplies, it is imperative for PAL to prove, among others, that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price. Thus, we find the former Third Division aptly ruled as follows:

> *"Anent the second ground, we find respondent's argument that petitioner failed to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality or price to be partly meritorious.*
>
> *In order to prove that the imported alcohol and tobacco products were not locally available at a reasonable quantity, quality or price, petitioner presented the judicial affidavit of Mr. Victor Santos, Assistant Vice President in charge of the Catering and In-flight Sub-department of the petitioner. In his testimony, Mr. Santos stated that importing alcoholic products are much cheaper for the petitioner than purchasing them locally.*
>
> *Mr. Santos explained that for the cigarettes, there are no local suppliers big enough to supply the various foreign brands petitioner is importing. Moreover, if ever there are local suppliers, their selling price would definitely be higher than the importation cost of petitioner because of the customs duties and excise taxes they add on cigarettes should the same be imported by them directly.*
>
> *Petitioner submitted in evidence the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, invoices issued to PAL for its purchase of the subject articles, Philippine Wine Merchants' Price List for 2005 and 2006, and Monthly Philippine Dealing Systems rates for the year 2005-2006.*
>
> *Upon a re-examination of the items on the table made by Mr. Santos, we note that only the local prices for JW Black, Remy Martin VSOP, Piper Heidsieck Brut, J&B Rare Whisky, Camus XO Superieur, Australian wines, Cutty Sark Scotch, and Remy Martin XO Excellence were available as reflected on the 2005 and 2006 Philippine Wine Merchants' price list.*

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

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

C.T.A. Case No. 7677

IMPORT ENTRY NO.	EXHIBIT NO.	ARTICLE IMPORTED & QUANTITY
4068	I to I-2	Whisky JW Black, 48 cases
4113	J to J-2	Remy Martin VSOP, Piper Heidsieck Brut, 125 cartons
7254	M to M-2	JW Black and J&B Rare Whisky, 148 cases
5238	N to N-2	J&B Rare, 131 Cases
7247	P to P-2	Pinot Grigio Tamas Estates Monterey (Wines), 160 cases
7252	Q to Q-2	Hardy Wines, 200 cases
3837	R to R-2	&B Rare, 186 cases, JW Whisky, 175 cases
7250	S to S-2	Piper Heidsieck Cuvee Brut, 50 cases
7248	W to W-2	Camus XO Superieur, 26 cases
4061	X to X-2	Cabernet Sauvignon, 195 cartons

C.T.A. Case No. 7685

IMPORT ENTRY NO.	EXHIBIT NO.	ARTICLE IMPORTED & QUANTITY
14322	DD to DD-2	Australian Wines, 1,183 & 490 cartons
7279	HH to HH-2	Piper Heidsieck Brut, 85 cases
7693	II to II-2	Cutty Sark Scotch Whisky, 60 cases
7694	KK to KK-2	Tamas Estate Pinot Grigio, 160 cases
7272	LL to LL-2	Cabernet Sauvignon, 195 cases
10385	MM to MM-2	Remy Martin VSOP, 46 cases, Remy Martin XO, 8 cases

C.T.A. Case No. 7746

IMPORT ENTRY NO.	EXHIBIT NO.	ARTICLE IMPORTED & QUANTITY
12763	RR to TT	Wines, 3051 cases

It must be noted that the Court may not consider the comparison made by petitioner between the unit cost of the articles as per Informal Import Declaration Entry

Number and the local prices of the same articles considering that, per testimony of Mr. Santos, 10 the said unit costs are based on the valuations given by the Bureau of Customs from which they assessed and collected the excise tax due and thus, are not the actual cost or price of the subject imported articles.

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

IMPORT ENTRY NO.	*DATE OF IMPORTATION*	*ATRIG No*	*ARTICLE IMPORTED &QUANTITY*	*BOC OFFICIAL RECEIPT NO.*	*EXCISE TAX PAID*
C.T.A. Case No. 7677					
7251	*May 6, 2005 (Exh. T)*	*54528(Exh. T-2)*	*Wente Cabernet Sauvignon 2001, 195 cartons*	*126361243 (Exh. Y-1)*	*30,660.00*
C.T.A. Case No. 7685					
10384	*June 15, 2005(Exh. OO)*	*55128(Exh. OO-2)*	*Remy Martin XO, 8 cases*	*127859855 (Exh. PP-1)*	*27,095.00*
				TOTAL	*57,755.00*

A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. 13 Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption.

As required by PD No. 1590, in order to claim exemption from excise taxes, petitioner must prove that the articles imported are not locally available in reasonable quantity, quality or price. However, petitioner was able to discharge such burden of proof as regards the portions that were duly substantiated. Hence, petitioner's claim for refund of erroneously paid excise tax should be granted only in the amount of P57,755.00."

Furthermore, We find no merit on PAL's claim that the uncontroverted testimony of its lone witness sufficiently established that the imported cigarette brands cannot be secured locally in reasonable quantity, quality or price. To be clear the uncorroborated testimony of PAL's witness, Mr. Santos, that there are no local suppliers or dealers big enough to supply *various foreign brands of cigarettes is not sufficient evidence to support a conclusion that the imported cigarettes are not locally available in reasonable quantity, quality or price. Other than the testimony of PAL's witness, Mr. Santos, no other evidence was presented to support that the imported cigarettes are not locally available in reasonable quantity, quality or price.*

It is a settled rule that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven.[3]"

Overall, we find no valid justification to compel a modification or reversal of our Decision promulgated on October 14, 2014.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[3] ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent. G.R. No. 159490. February 18, 2008.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice