REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC., Petitioner,	**CTA EB No. 1363 (CTA Case No. 8198)**
	Present:
- versus -	**DEL ROSARIO**, *PJ*, **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Respondents.	Promulgated: JUN 19 2018 3:45 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent Commissioner of Internal Revenue's **"Motion for Reconsideration Re: Amended Decision dated 13 February 2018"**[1] filed on March 23, 2018, without petitioner's comment as per Records Verification dated May 10, 2018, and respondent Commissioner of Customs' **"Motion fo: Reconsideration (of the Amended Decision dated February 13, 2018)"**[2] filed through registered mail on March 28, 2018, with petitioner's **"Comment/Opposition"** filed on May 7, 2018.

In their respective Motions, respondents pray that the Court *En Banc's* Amended Decision dated February 13, 2018 be reversed and set aside, and that its Decision promulgated on April 5, 2017 be

[1] *En Banc* Docket, pp. 755-764.
[2] *En Banc* Docket, pp. 766-789.

reinstated. The dispositive portion of the assailed Amended Decision reads:

> "**WHEREFORE**, in view of the foregoing considerations, the Motion for Reconsideration filed by petitioner Philippine Airlines, Inc. is **PARTIALLY GRANTED**. Let the case be **REMANDED** to the Court in Division for the determination of the amount of refundable, substantiated excise taxes paid on petitioner's importation of liquors.
>
> **SO ORDERED**."

Respondent Commissioner of Internal Revenue (CIR) asserts: (i) that petitioner failed to prove that the imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto, and the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price; (ii) that petitioner's witness, Mr. Joseph Brian T.L. Tan, has no personal knowledge of whether the goods subject of the informal entries and air waybill are for commissary and catering supplies nor does he have personal knowledge and/or direct participation in the preparation of the Informal Import Declaration and Entry Forms and Authorities to Release Imported Goods; (iii) that petitioner has no sufficient basis for comparison of the quality, quantity or prices of locally available liquors, wines and cigarettes as against the quality, quantity or prices of such imported goods since it provided a price list of only one supplier; (iv) that the statement of petitioner's witness, Ms. Cheryl Capinpin, that based on the Table of Comparison she prepared, the costs of importing petitioner's commissary supplies are lower than sourcing them locally, is self-serving; (v) that claims for refund of taxes are construed strictly against claimants for they partake of the nature of tax exemptions, and that petitioner's judicial claim was correctly denied for failure on its part to establish clearly and convincingly that it is entitled to the claim being sought; and (vi) that the case should not be remanded to the Court in Division for the determination of the amount refundable because there is no refundable amount to speak of.

On the other hand, respondent Commissioner of Customs (COC) seeks that judgment also be rendered declaring PD No. 1590 as having been repealed or modified by Republic Act (RA) No. 8424, as amended by RA No. 9334. Respondent COC posits that petitioner's claim should have been dismissed considering that RA Nos. 8424 and 9334 had repealed petitioner's charter, Presidential Decree (PD) No. 1590, thus resulting in the withdrawal of the tax exemption it previously enjoyed thereunder. The language itself of RA No. 8424 and 9334 reveals the indubitable intent of Congress to withdraw the tax privilege previously extended to petitioner under PD No. 1590. He contends that assuming arguendo that there was no such express repeal, the irreconcilable disparity between Section 6 of PD No. 1590 and RA No. 9334 would establish the manifest intent of Congress to repeal petitioner's franchise. Section 131 of RA No. 8424, as amended by RA No. 9334 is a special provision under a general law, and thus, it prevails over Section 6 of PD No. 1590, a general provision under a special statute. Besides, Section 22(D) of RA No. 9337 does not at all state that petitioner shall be exempt from payment of excise tax on its imported cigars, cigarettes and wines for its commissary supplies.

Respondent COC further submits the following propositions: (i) that even assuming that RA Nos. 8424 and 9334 did not repeal PD No. 1590, petitioner is not entitled to the refund because having become a private corporation, the condition for the grant of petitioner's tax privileges under Section 13 of PD No. 1590 ceased to exist, rendering it liable to pay excise taxes like any other similarly situated private corporation; (ii) that petitioner failed to establish that both the subject imported liquor and tobacco supplies are not locally available in reasonable quantity, quality or price; and (iii) that apart from the self-serving testimony of its own officer, petitioner did not present any independent and credible evidence on domestic liquor prices such as comprehensive industry-wide surveys of prices, relevant government statistics and market volumes of such goods.

After carefully reviewing the parties' respective arguments, the Court *En Banc* notes that respondents' arguments are reiterations or amplifications of those raised in respondent CIR's Comment Re: Petitioner's Motion for Reconsideration[3] dated July 18, 2017 and respondent COC's Opposition (To Petitioner's Motion for Reconsideration) dated August 3, 2017,[4] all of which were duly considered and threshed out in the assailed Amended Decision.

To be more specific, respondents' position that petitioner is not exempt from taxes has been found by the Court *En Banc* to be patently without basis. Indeed, the Court *En Banc* has made an extensive discussion on this matter in pages 4 to 9 of the assailed Amended Decision. Further, in pages 9 to 14 of the assailed Amended Decision, the Court *En Banc* exhaustively discussed that petitioner presented sufficient evidence showing it is entitled to a refund of excise taxes paid on its importation of liquors.

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[3] *En Banc* Docket, pp. 692-696.
[4] *En Banc* Docket, pp. 701-725.

For respondents' failure to raise any new or substantial ground to justify the reconsideration sought, the Motions for Reconsideration must perforce be denied.

All told, the Court *En Banc* finds no justifiable reason to reverse or set aside the assailed Amended Decision.

WHEREFORE, premises considered, respondent CIR's **"Motion for Reconsideration Re: Amended Decision dated 13 February 2018"** and respondent COC's **"Motion for Reconsideration (of the Amended Decision dated February 13, 2018)"** are hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

I join J. Mindaro-Grulla's Concurring and Dissenting Opinion.
JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
With due respect, I maintain my Concurring and Dissenting Opinion dated February 13, 2018.
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S.	(On Leave)
MA. BELEN M. RINGPIS-LIBAN	**CATHERINE T. MANAHAN**
Associate Justice	Associate Justice