REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8143

Members:

BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 17 2017
11:00 a.m.

X--X

DECISION

RINGPIS-LIBAN, *J*.:

THE CASE

This Petition for Review filed by Philippine Airlines, Inc. ("PAL" for brevity) prays that petitioner be declared as exempted from specific tax on its August 8, 2008, August 9, 2008, August 23, 2008, September 24, 2008, and October 22, 2008 importations of Jet A-1 fuel for domestic operations, and therefore, entitled to the refund of or the issuance of a tax credit certificate in the total amount of Three Hundred Two Million Twelve Thousand One Hundred Ninety-Five Pesos and Eighty-Six Centavos (₱302,012,195.86).

THE FACTS

Petitioner PAL is a domestic corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at the 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City 1300.[1]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees and charges, including the excise tax on Jet A-1 fuel imposed by Section 148 of the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On the other hand, respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC) which is the government agency in charge of the assessment and collection of customs duties and other impositions from imported articles, including the excise tax on imported Jet A-1 fuel imposed by Section 148 of the NIRC of 1997, as amended, delegated and authorized by respondent CIR through an Authority to Release Imported Goods (ATRIG) duly issued by the latter and addressed to the former. As provided in Section 12 of the NIRC of 1997, as amended, respondent COC and his subordinates are the agents of respondent CIR with respect to the collection of national revenue taxes on imported goods. Respondent COC holds office at the Port Area, Bureau of Customs, Manila.[3]

Section 13 of petitioner's franchise, Presidential Decree (PD) No. 1590[4], which took effect on June 11, 1978, provides for the conditions which airlines are required to comply with in order to continue enjoying tax exemptions on their importation of petroleum products, to wit:

> "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:
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> > (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

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF), docket, vol. 1, p. 194.
[2] Par. 2, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 195.
[3] Par. 3, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 195.
[4] Exhibit "B", docket, vol. 2, pp. 769-776.

> 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.
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> 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:
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> 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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;
>
> xxx xxx xxx"

On October 31, 1985, Letter of Instructions (LOI) No. 1483[5] was issued withdrawing petitioner's exemption privilege with respect to its local purchase of aviation fuel for domestic operations. The said LOI states in part:

> "WHEREAS, this tax-exemption privilege enjoyed by the PAL has resulted in serious tax base erosions and distortions in the tax treatment of similarly situated enterprises.

[5] Exhibit "D", docket, vol. 2, p. 780.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct that the tax-exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operation is hereby withdrawn.

This Letter of Instructions shall take effect on November 1, 1985."

On January 29, 1999, respondent CIR issued BIR Ruling No. 013-99[6], which reads:

"It is represented that Sec. 13(b) Par. 1 and 2 of PD No. 1590, provides among others, that purchases by PAL of aviation gas, fuel and oil to be used in its transport and non-transport operations are exempt from the payment of all taxes, duties, charges, royalties or fees; that since then, PAL had been enjoying this tax-exemption privileges until the same was withdrawn partially when LOI No. 1483 was issued by the President of the Philippines, the main text of which is quoted as follows:

> 'xxx the tax exemption privilege granted to PAL on its <u>purchase of domestic petroleum products for use in its domestic operations</u> is hereby withdrawn' (underscoring supplied)

that the wordings of LOI No. 1483 is very clear that the tax-exemption privilege being withdrawn refers specifically to the purchase of domestic petroleum products by PAL for use in its domestic operations; that it does not include purchases from abroad or foreign countries, and that it is for this reason that the Bureau of Customs does not impose any tax or customs duties on arrivals of petroleum products imported or purchased by PAL from abroad.

In reply, please be informed that we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on

[6] Exhibit "C", docket, vol. 2, pp. 777-779.

domestic petroleum products purchased by PAL for use in its domestic operations."

The Secretary of Finance issued a letter[7] on September 8, 1999, confirming BIR Ruling No. 013-99, which provides:

> "I confirm BIR Ruling 013-99, dated January 29, 1999, which confirms PAL's exemption from specific and ad valorem taxes, on its importation of the foregoing petroleum products, whether for domestic or international flights."

The Department of Energy (DOE) issued a Certification dated December 20, 2002, stating that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price.[8]

On January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-03[9], addressed to petitioner, to Cebu Air, Inc., to Air Philippines, Inc., and to Pacific Airways Corporation, the significant parts of which read as follows:

> "In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to the other airlines. Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.
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> This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

Thus, BIR Ruling No. 001-03 essentially states that as per the December 20, 2002 Certification of the Department of Energy (DOE), one of the conditions allowing the tax-free importation of aviation fuel, as specified under

[7] Exhibit "E", docket, vol. 2, pp. 781-785.
[8] Par. 5, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 196.
[9] Exhibit "A", docket, vol. 2, pp. 767-768.

Section 13 of petitioner's franchise, PD No. 1590, *i.e.*, that the petroleum product must not be "locally available in reasonable quantity, quality, and price," is no longer present.[10]

On the basis of BIR Ruling No. 001-03, respondent CIR, acting through respondent COC, assessed petitioner for specific taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations.

For the period covering August 2008 to October 2008, petitioner made the following importations and corresponding payments under protest of the specific tax assessed by the Collector of Customs of the Port of Subic, Olongapo City, and the Collector of Customs of the Port of Batangas, Batangas City. The payments made by petitioner are evidenced by the official receipts (ORs), as follows:

Date of Importation	Date of Payment	Amount Paid	Official Receipt
August 8, 2008[11]	September 1, 2008	₱59,315,119.86	Security Bank Corporation OR No. 100756[12]
August 9, 2008[13]	August 15, 2008	₱47,625,389.00	Equitable PCI Bank OR No. 252623C[14]
August 23, 2008[15]	September 18, 2008	₱66,154,529.00	Equitable PCI Bank OR No. 253098C[16]
September 24, 2008[17]	October 22, 2008	₱65,019,122.00	Banco de Oro Unibank, Inc. OR No. 1691366A[18]
October 22, 2008[19]	November 19, 2008	₱63,898,036.00	Equitable PCI Bank OR No. 248117C[20]

Petitioner filed formal written protests for the refund of the respective specific taxes with the District Collector of Customs of the Port of Subic and the District Collector of Customs of the Port of Batangas, on the following dates:

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest with the COC

[10] Par. 6, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 196.
[11] Exhibit "K-4", docket, vol. 2, p. 804.
[12] Exhibit "K-2", docket, vol. 2, p. 802.
[13] Exhibit "M-4", BOC Records, pp. 10-12.
[14] Exhibit "M-1", BOC Records, p. 7.
[15] Exhibit "N-4", BOC Records, pp. 22-23.
[16] Exhibit "N-1", BOC Records, p. 20.
[17] Exhibit "O-4", BOC Records, pp. 35-36.
[18] Exhibit "O-1", BOC Records, p. 32.
[19] Exhibit "P-4", BOC Records, pp. 48-49.
[20] Exhibit "P-1", BOC Records, p. 45.

August 8, 2008[21]	September 1, 2008[22]	September 15, 2008[23]
August 9, 2008[24]	August 15, 2008[25]	August 28, 2008[26]
August 23, 2008[27]	September 18, 2008[28]	October 2, 2008[29]
September 24, 2008[30]	October 22, 2008[31]	November 5, 2008[32]
October 22, 2008[33]	November 19, 2008[34]	December 3, 2008[35]

For failure of respondent COC to act on the protests and to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC of 1997, as amended, petitioner was constrained to file a written claim for refund on November 18, 2009, for the specific taxes paid for all its importations with respondent CIR.[36]

Thereafter, to avoid the lapse of the two-year prescriptive period within which to recover the specific taxes erroneously paid, petitioner filed a Petition for Review[37] before this Court on August 17, 2010 in accordance with Section 229 of the NIRC of 1997, as amended.[38]

Within the extended time granted by the Court,[39] respondent CIR filed his Answer[40] on September 16, 2010, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

[21] Exhibit "K-4", docket, vol. 2, p. 804.
[22] Exhibit "K-2", docket, vol. 2, p. 802.
[23] Exhibit "K", docket, vol. 2, pp. 796-801.
[24] Exhibit "M-4", BOC Records, pp. 10-12.
[25] Exhibit "M-1", BOC Records, p. 7.
[26] Exhibit "M", BOC Records, pp. 1-6.
[27] Exhibit "N-4", BOC Records, pp. 22-23.
[28] Exhibit "N-1", BOC Records, p. 20.
[29] Exhibit "N", BOC Records, pp. 14-19.
[30] Exhibit "O-4", BOC Records, pp. 35-36.
[31] Exhibit "O-1", BOC Records, p. 32.
[32] Exhibit "O", BOC Records, pp. 26-31.
[33] Exhibit "P-4", BOC Records, pp. 48-49.
[34] Exhibit "P-1", BOC Records, p. 45.
[35] Exhibit "P", BOC Records, pp. 39-44.
[36] Exhibit "L", docket, vol. 2, pp. 806-812.
[37] Docket, vol. 1, pp. 1-16.
[38] Par. 7, Summary of Admitted Facts, JSFI, docket, vol. 1, p. 196.
[39] Order dated September 6, 2010, docket, vol. 1, p. 98.
[40] Docket, vol. 1, pp. 99-108.

6. Petitioner must prove that the aggregate amount of ₱302,012,195.86 representing specific taxes it paid under protest to the Commissioner of Custom allegedly on its (5) importations is properly documented.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

8. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim, for refund.

9. Taxes collected are presumed to be in accordance with laws and regulations.

10. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

11. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (***Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005***). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (***Sea-Land Service. Vs. Court of Appeals, 357 SCRA 444***).

12. The instant Petition for Review should not be given due course as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

Unmistakably, Section 1(j) of Rule 16 of the 1999 Rules of Civil Court Procedure provides that:

'MOTION TO DISMISS'

> Section 1. Grounds. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> xxx
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> (j) That a condition precedent for filing the claim has not been complied with.'

13. Revenue Memorandum Circular (RMC) No. 44-2001 entitled 'Circularizing Department 23-01 providing for the Implementing Rules of the First Paragraph of Section 4 of the NIRC of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99 which was issued on October 11, 2001 provides:

> 'Section 3. Rulings Adverse to the Taxpayer. A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, **<u>within thirty (30) days</u>** from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself of through his/its duly accredited agent or representative. The request for review shall be in writing and under oath and must:
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> xxx
>
> These are **<u>mandatory requirements and failure to comply with any of the stated substantive requirements</u>** shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review.' (Underscoring and emphasis supplied.)

14. Petitioner is given thirty (30) days from its alleged receipt of said BIR ruling dated January 29, 2003 or until February 28, 2003 within which to exhaust the above-mentioned remedy by filing before the Secretary of Finance a request for review in writing and under oath BIR Ruling 001-2003. However, petitioner slept on its right and allowed the period within which to present its side of the case to lapse.

15. Also, petitioner did not appeal to the Office of the President of the Republic of the Philippines the Certification of the Department of Energy dated December 20, 2002 that aviation fuel for use in domestic operation is locally available in reasonable quantity, quality and price prior to its questioning the legality before this Honorable Court. This is contrary to the requirements of the law that where there is a condition precedent, in this case, an appeal before the President of the Philippines, petitioner must observe the same. Petitioner, however, went straight before this Honorable Court which is a clear contravention of the law. Petitioner should therefore, suffer the consequence of its omission to exercise its rights.

16. In effect, petitioner is asking this Honorable Court to override the factual determination made by the Secretary of the Department of Energy, in order for petitioner to claim for refund. Said act by petitioner arises from its failure to recognize the condition precedent for filing its claim. This is precisely one of the evils sought to be avoided by Section 1(j) of Rule 16 of the Rules of Court. The fundamental advantage and the necessity of the independence of said three (3) departments from each other limited only by the specific constitutional precepts a check and balance between and among them, have long been acknowledged as more paramount than the serving of any temporary of passing governmental conveniences or exigencies.

17. Furthermore, petitioner again violated the law when it dodged the power of respondent CIR to construe tax laws and resolve challenges thereto pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997 which states as follows:

> 'Section 4. Power of the Commissioner to Interpret Tax Laws and Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> xxx.'

18. Petitioner alleged that BIR Ruling No. 001-2003 dated January 29, 2003 amounts to unauthorized amendment or alteration of P.D. No. 1590, the franchise of Philippine Airlines (PAL), in violation of Section 16 and 24 thereof. Respondent CIR

humbly submits that the questioned BIR Ruling is a valid interpretation of the provisions of the NIRC of 1997. It is widely accepted that interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by courts. Unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid and full force and effect.

Revenue Memorandum Circular (RMC) No. 44-2001, *supra*, provides:

> 'Section 2. Validity of Rulings. A ruling by the Commissioner of Internal Revenue shall be presumed valid unless modified, reversed or superseded by the Secretary of Finance.
>
> xxx'

Respondent CIR respectfully submits that rules and regulations issued by the administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect or partake of the nature, of a statute. These rulings were made by the CIR in the exercise of his power to 'make judgments or opinions in connection with the implementation of the provisions of the internal revenue code.' The opinions and rulings of officials of the government called upon to execute or implement administrative laws, command respect and weight (***Protector's Services, Inc. vs. Court Of Appeals And Commissioner Of Internal Revenue, G.R. No. 118176 April 12, 2000***).

19. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action."

Likewise, within the extended time granted by the Court,[41] respondent COC filed his Answer[42] on October 28, 2010, alleging the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

[41] Order dated September 27, 2010 and Resolution dated October 21, 2010, docket, vol. 1, pp. 114 and 123.
[42] Docket, vol. 1, pp. 124-135.

XV

Petitioner seeks a refund of the specific taxes on its Jet A-1 fuel importations which it paid under protest to the Bureau of Customs averring that it is exempted from paying the same under its Charter - Presidential Decree No. 1590, as amended by Letter of Instructions (LOI) No. 1483.

Section 13 of P.D. No. 1590, as amended, provides that petitioner's importation of petroleum products for domestic operations is tax-exempt on two (2) conditions, namely: (1) the purchase by sale or delivery of aviation gas, fuel and oil, whether refined or in crude form, shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and (2) the imported petroleum products are not locally available in reasonable quantity, quality or price.

In this case, the second condition is not present to exempt petitioner from the payment of specific taxes.

In BIR Ruling No. 001-03 embodied in a letter dated January 29, 2003 addressed to petitioner and other airline companies, then BIR Commissioner Guillermo L. Parayno, Jr., on the basis of an instruction from then Secretary of Finance to review the exemption granted by law to airline companies, ruled that their importations of petroleum products for domestic operations cannot be given the same tax treatment as before for as long as there is such available domestic supply thereof.

In so ruling, then BIR Commissioner Parayno relied on the December 20, 2002 Certification of former Department of Energy (DOE) Secretary Vincent Perez, Jr. to then Department of Finance (DOF) Secretary Jose Isidro Camacho, which expressly declared that '(B)ased on available data and records, we confirm and certify that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are **locally available in reasonable quantity, quality and price.**'

XVI

Petitioner seeks the nullification of BIR Ruling No. 001-2003 contending that it is void for relying on the 2002 DOE Certification which does not have any basis to support it.

Petitioner's argument is specious. To be sure, there was basis for the DOE Certification. The DOE, being the government instrumentality in charge with the administration of programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional, its competence to issue such certification is beyond question. Its knowledge of the supply of energy and fuel in the country, and its price, is beyond question.

Moreover, this Court does not interfere on matters left to the sound discretion of specialized government agencies like the DOE. The ruling of the Supreme Court in *Lopez v. City of Manila* is *apropos*:

> Courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

XVII

Corollarily, it is respectfully submitted that the Honorable Court is not the proper forum to question or contest the administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price. Necessarily, the Honorable Court has no jurisdiction over the issue of whether the DOE Certification is bereft of any basis to support the findings stated therein.

XVIII

Petitioner likewise contends that BIR Ruling No. 001-2003 is void on the ground that it failed to comply with the mandatory due process requirement of notice, hearing and publication. In this regard, petitioner cites the case *Commissioner of Internal Revenue vs. Lhuiller* as authority.

Petitioner's argument is misplaced. There is no need for notice, hearing and publication for BIR Ruling No. 001-2003 to be valid.

BIR Ruling No. 001-2003 is an interpretative ruling which re-examined and clarified the tax exemption given to petitioner under PD No. 1590 in view of LOI No. 1483 issued by then President Marcos on October 11, 1985 withdrawing its tax-exemption privileges. Said ruling is merely interpretative in nature, which can thus become effective without any prior need for notice and hearing, nor publication.

Accordingly and contrary to petitioner's contention, said ruling did not impose a tax burden on petitioner. It was the law, or specifically LOI No. 1483 which did so. Said ruling merely interpreted the tax privileges and exemption given to it under applicable laws.

The ruling in *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, Commissioner of the Bureau of Internal Revenue (BIR), and Revenue District Officer, BIR Misamis Oriental* is enlightening:

> *Second.* Petitioner complains that it was denied due process because it was not heard before the ruling was made. **There is a distinction in administrative law between legislative rules and interpretative rules. There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule. But it is not. It is a mere interpretative rule.**
>
> The reason for this distinction is that a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:
>
> xxx xxx xxx

> In addition, such rule must be published. **On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.**
>
> Accordingly, in considering a legislative rule a court is free to make three inquiries: (i) whether the rule is within the delegated authority of the administrative agency; (ii) whether it is reasonable; and (iii) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. **In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule.**
>
> In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an 'agricultural food product' within the meaning of § 103(b) of the NIRC. As the Solicitor General contends, 'copra *per se* is not food, that is, it is not intended for human consumption. Simply stated, nobody eats copra for food.' **That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.** (emphasis supplied)

Nonetheless, the letter embodying BIR Ruling No. 001-2003 had been specifically addressed and given to petitioner and other airline companies which were affected by such ruling.

XIX

Significantly, BIR Ruling No. 001-2003 had long become final. Petitioner failed to question before the Secretary of Finance said ruling within thirty (30) days from its receipt thereof as provided for under Revenue Memorandum Circular No. 44-2001 dated October 11, 2001, thus:

> Section 3. Rulings Adverse to the Taxpayer. A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. ... ...

As revealed in its Annex C, petitioner requested for a reconsideration of said ruling only on November 12, 2009 or almost seven years after it was issued.

Having failed to timely question said ruling, petitioner can no longer assail the same through the present petition filed before the Honorable Court.

XXI

Finally, it would not be trite to state that, in an action for tax refund/credit, the taxpayer has the burden to establish his right to refund and failure to sustain the burden is fatal to his claim for refund.

Thus, it is incumbent upon petitioner to show that the alleged specific taxes it paid in the total amount of P302,012,195.86 was erroneously and illegally collected. Verily, taxes paid and collected are presumed to have been paid in accordance with law and, therefore, not refundable."

The pre-trial conference was set on November 19, 2010.[43] Respondent CIR's Pre-Trial Brief[44] was filed on November 10, 2010; while petitioner's Pre-Trial Brief[45] was filed on November 15, 2010.

Respondent COC failed to file his Pre-Trial Brief. Moreover, during the pre-trial, counsel for respondent COC failed to appear despite notice.

On January 20, 2011, petitioner and respondent CIR submitted their Joint Stipulation of Facts[46]. This was adopted by the Court in the Pre-Trial Order[47] issued on January 26, 2011 which also terminated the pre-trial.

On April 12, 2011, petitioner filed a Motion to Declare Respondent Commissioner of Customs in Default [48]. Respondent COC filed a Manifestation[49] on April 25, 2011, explaining the circumstances relating to petitioner's allegations. This was adopted by respondent COC as his comment to petitioner's motion in his Manifestation[50] filed on May 5, 2011.

Petitioner then filed a Reply (To the Manifestation Dated 18 April 2011)[51] on May 13, 2011. On May 30, 2011, respondent COC filed a Rejoinder (to petitioner's Reply dated May 12, 2011) and Motion to Admit attached Pre-Trial Brief [52].

On July 22, 2011, the Court issued a Resolution [53] denying both petitioner's Motion to Declare Respondent Commissioner of Customs in Default and respondent COC's Motion to Admit attached Pre-Trial Brief.

Upon motion[54] of petitioner, the Court commissioned Ms. Myra Celeste O. Dabalos as the Independent Certified Public Accountant for the case on March 19, 2012.[55]

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[43] Notice of Pre-Trial Conference, docket, vol. 1, p. 137.
[44] Docket, vol. 1, pp. 138-144.
[45] Docket, vol. 1, pp. 146-162.
[46] Docket, vol. 1, pp. 194-198.
[47] Docket, vol. 1, pp. 218-222.
[48] Docket, vol. 1, pp. 242-247.
[49] Docket, vol. 1, pp. 260-264.
[50] Docket, vol. 1, pp. 292-294.
[51] Docket, vol. 1, pp. 297-306.
[52] Docket, vol. 1, pp. 310-321.
[53] Docket, vol. 1, pp. 348-351.
[54] Motion to Commission an Independent Certified Public Accountant, docket, vol. 1, pp. 404-407.
[55] Docket vol. 1, pp. 422-423.

In support of its claim, petitioner presented the following witnesses: Mr. Elvis A. Yao[56], Senior Assistant Vice President of petitioner's Fuel Management Department; Ms. Glendalyn P. Dela Cruz[57], Senior Science Research Specialist of the Oil Industry Competition and Monitoring Division of the Department of Energy; Ms. Myra Celeste O. Dabalos[58], the Court-commissioned Independent Certified Public Accountant; Mr. Mario V. Tiaoqui[59]; and Ms. Ma. Evelyn L. Taghap[60], Manager of petitioner's Tax Services Division.

Petitioner also presented and formally offered pieces of documentary evidence. Petitioner's Formal Offer of Documentary Evidence[61] was filed on July 18, 2014.

In a Resolution dated December 17, 2014[62], the Court admitted petitioner's Exhibits "A", "B", "C", "D", "E", "K", "K-2", "K-3", "K-4", "K-5", "L", "M", "M-1", "M-2", "M-3", "M-4", "M-5", "N", "N-1", "N-2", "N-3", "N-4", "N-5", "O", "O-1", "O-2", "O-3", "O-4", "O-5", "P", "P-1", "P-2", "P-3", "P-4", "P-5", "R", "R-1", "S", "S-1", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY", "ZZ", "AAA", "BBB", "CCC", "DDD", "EEE", "FFF", "GGG", "GGG-1", "HHH", "III", "JJJ", "KKK", "KKK-1", "KKK-2", "KKK-3", "LLL", "MMM", "NNN", "OOO", "PPP", "O^{5}", "P^{5}", "Q^{5}", "R^{5}", "S^{5}", "T^{5}", "U^{5}", "V^{5}", "W^{5}", "Y^{5}", "Y^{5}-1", "Z^{5}", "Z^{5}-1", "A^{6}", "B^{6}", "C^{6}", "D^{6}", "E^{6}", "F^{6}", "F^{6}-1", "I^{6}", "I^{6}-1", "J^{6}", "K^{6}", "M^{6}", "M^{6}-1 & M^{6}-1a", "M^{6}-2 & M^{6}-2a" "M^{6}-3 & M^{6}-3a", "N^{6}", "S^{6}", "S^{6}-1", "T^{6}", "T^{6}-1", "U^{6}", and "U^{6}-1". However, the Court denied the admission of Exhibits "K-6" and "X^{5}", for failure to present the original copies for comparison; Exhibits "F", "G", "I^{5}", "J^{5}", "K^{5}", "L^{5}", "M^{5}", "N^{5}", "E^{6}", "L^{6}", "L^{6}-1", "L^{6}-2", "L^{6}-3", "L^{6}-4", "L^{6}-5", "L^{6}-6", "L^{6}-7", "L^{6}-8", "L^{6}-9", "L^{6}-10", "L^{6}-11", "L^{6}-12", "L^{6}-13", "L^{6}-14", "L^{6}-15", "N^{6}-1",

[56] Exhibit "S", Judicial Affidavit of Mr. Elvis A. Yao dated 21 January 2011, docket, vol. 2, pp. 878-888; Exhibit "Z^{5}", Supplemental Affidavit of Mr. Elvis A. Yao dated 25 April 2011, docket, vol. 2, pp. 977-982; Exhibit "U^{6}", Judicial Affidavit of Mr. Elvis A. Yao dated 01 April 2014, docket, vol. 2, pp. 661-664; Exhibit "V^{6}", docket, vol. 3, pp. 1318-1324; Minutes of the Hearing dated February 23, 2011, July 18, 2011, and November 21, 2011, May 19, 2014, June 30, 2014, March 7, 2016, docket, vols. 1, 2, and 3, pp. 224, 345, 392, 703, 714, and 1361.

[57] Exhibit "Y^{5}", Judicial Affidavit of Ms. Glendalyn Dela Cruz dated 19 April 2011 (in Lieu of Direct Testimony), docket, vol. 2, pp. 972-976; Minutes of the Hearing dated May 4, 2011, June 6, 2011, July 18, 2011, and November 21, 2011, docket, vol. 1, pp. 291, 307, 345, and 392.

[58] Exhibit "F^{6}", Judicial Affidavit of Myra Celeste O. Dabalos (For Commissioning and Appointment as ICPA), docket, vol. 2, pp. 990-993; Exhibit "S^{6}", Judicial Affidavit of Myra Celeste O. Dabalos dated 15 October 2012 (On the ICPA Report Filed on 18 April 2012), docket, vol. 2, pp. 1003-1008; Minutes of the Hearing dated March 19, 2012, and October 18, 2012, docket, vol. 1, pp. 422 and 463.

[59] Exhibit "R^{6}", Curriculum Vitae Mario Vita Tiaoqui, docket, vol. 2, pp. 997-1002; Minutes of the Hearing dated June 11, 2012 and August 16, 2012, docket, vol. 2, pp. 441 and 444.

[60] Exhibit "T^{6}", Judicial Affidavit of Ma. Evelyn L. Taghap dated 20 November 2012, docket, vol. 2, pp. 1009-1013; Minutes of the Hearing dated November 26, 2012, docket, vol. 1, p. 504.

[61] Docket, vol. 2, pp. 718-766.

[62] Docket, vol. 3, pp. 1256-1258.

"N^6-2", "N^6-3", "O^6", "O^6-1", "O^6-2", "O^6-2-a", "O^6-2-b", "O^6-2-c", "O^6-3", "O^6-3-a", "O^6-4", "O^6-4-a", "O^6-4-b", "O^6-4-c", "O^6-5", "O^6-5-a", "O^6-5-b", "O^6-6", "O^6-6-a", "O^6-6-b", "O^6-7", "O^6-7-a", "O^6-7-b", "O^6-7-c", "O^6-8", "O^6-8-a", "O^6-8-b", "O^6-9", "O^6-9-a", "O^6-9-b", "O^6-9-c", "O^6-10", "O^6-10-a", "O^6-10-b", "O^6-10-c", "O^6-11", "O^6-11-a", "O^6-12", "O^6-12-a", "O^6-13", "O^6-13-a", "O^6-14", "O^6-14-a", "O^6-15", "O^6-15-a", "O^6-16, page 2 (Waybill No. 6581) & O^6-17", "P^6", "P^6-1", "P^6-2", "P^6-3", "P^6-4", "P^6-5", "P^6-6", "P^6-7", "P^6-8", "Q^6", "Q^6-1", "Q^6-2", "Q^6-4", "Q^6-5", and "Q^6-8", for failure to identify the same; and Exhibits "Q^6-3", "Q^6-6", "Q^6-7", "O^6-16, page 1 (Payment Order No. FMD #5371)" for failure to identify the same and for failure to present the original copies thereof for comparison.

Petitioner filed an Omnibus Motion (A) For Partial Reconsideration of the Court's Resolution dated 17 December 2014; and (B) For Recall of Witness and Re-Identification of Exhibits[63] on January 21, 2015.

On January 14, 2015, respondent COC filed through registered mail a Manifestation and Motion[64] stating that considering the issues are purely legal, he will no longer present witnesses. Likewise, respondent CIR filed a Manifestation and Motion[65] on February 27, 2015, stating that considering the issues involved in the instant case are purely legal, he will no longer be presenting any testimonial evidence.

In a Resolution[66] dated May 4, 2015, the Court granted petitioner's Motion for Recall of Witness and Re-Identification of Exhibits and the presentation of petitioner's recalled witness, Mr. Elvis Yao, was set on June 15, 2015. However, petitioner's counsel and witness failed to appear during the scheduled hearing despite notice, and petitioner also failed to serve the judicial affidavit of Mr. Yao to respondent. Thus, in the Resolution[67] dated June 30, 2015, petitioner was deemed to have waived the right to present the recalled witness and its Motion for Partial Reconsideration (of the Resolution dated December 17, 2014) was deemed submitted for resolution.

On July 10, 2015, petitioner filed a Motion for Reconsideration (of the Resolution dated 15 June 2015)[68] praying that a hearing be set for the presentation of its recalled witness, Mr. Elvis Yao, for the purpose of identifying some of its exhibits.

[63] Docket, vol. 3, pp. 1261-1273.
[64] Docket, vol. 3, pp. 1276-1278.
[65] Docket, vol. 3, pp. 1289-1291.
[66] Docket, vol. 3, pp. 1307-1309.
[67] Docket, vol. 3, p. 1312.
[68] Docket, vol. 3, pp. 1313-1317.

In a Resolution[69] dated July 28, 2015, the Court partially granted petitioner's Motion for Partial Reconsideration of the Court's Resolution dated 17 December 2015. Exhibits "M^6-2a" and M^6-3a" were admitted into evidence.

On November 27, 2015, the Court issued a Resolution[70] granting petitioner's Motion for Reconsideration (of the Resolution dated 15 June 2015) and set a hearing for the presentation of its recalled witness, Mr. Elvis Yao, on March 7, 2016.

Thereafter, the Court issued a Resolution[71] dated May 16, 2016, admitting into evidence petitioner's Exhibits "F", "G", "I^5", "J^5", "K^5", "L^5", "M^5", and "N^5". The parties were then asked to submit their respective memoranda.

On June 15, 2016, respondent CIR submitted his Memorandum[72]. Respondent COC filed his Memorandum[73] on July 14, 2016. On the other hand, the Memorandum for the Petitioner[74] was filed on July 19, 2016.

The case was then declared submitted for decision in the Resolution dated July 25, 2016.[75]

THE ISSUES

The parties submitted the following issues[76] for this Court's disposition:

1. Whether or not the Court has jurisdiction over the instant petition.

2. Whether or not BIR Ruling No. 001-2003 dated January 29, 2003 is valid.

3. Whether or not petitioner is entitled to the refund or issuance of tax credit certificate on the specific tax paid on petitioner's importations of Jet A-1 fuel or aviation fuel amounting to ₱302,012,195.86 for the period August 2008 to October 2008.

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[69] Docket, vol. 3, pp. 1326-1331.
[70] Docket, vol. 3, pp. 1357-1359.
[71] Docket, vol. 3, pp. 1364-1365.
[72] Docket, vol. 3, pp. 1366-1377.
[73] Docket, vol. 3, pp. 1392-1413.
[74] Docket, vol. 3, pp. 1415-1474.
[75] Docket, vol. 3, p. 1476.
[76] Memorandum, docket, vol. 3, p. 1367; Memorandum, docket, vol. 3, pp. 1398-1399; Memorandum for the Petitioner, docket, vol. 3, p. 1426.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court has jurisdiction over the instant petition under Rule 4 of Section 3 of the Revised Rules of the Court of Tax Appeals. It contends that it was constrained to file the instant petition due to the impending expiration of the two-year prescriptive period within which to file a judicial claim for refund in accordance with Section 229 of the National Internal Revenue Code of 1997, as amended. Petitioner alleges that contrary to respondents' contention, the principle of exhaustion of administrative remedies is not applicable in the instant case because the urgency of judicial intervention is readily apparent, considering the imminence of the expiration of the two-year prescriptive period.

Petitioner claims that it is exempt from payment of specific taxes on its importation of aviation fuel for its domestic operations. It explains that as a public utility, it is imbued with public interest and is necessarily granted numerous incentives such as special tax privileges and benefits. It insists that it is entitled to exemption under Section 13(B)(2) of PD No. 1590, as amended by LOI No. 1483, for its importations of petroleum products for use in its domestic operations.

According to petitioner, its exemption was arbitrarily taken away by the mere issuance of the 2003 BIR Ruling. It points out that the 2003 BIR Ruling is void for being patently wrong and bereft of factual basis, for being an unauthorized amendment of PD No. 1590 and for having been issued without due process.

Moreover, petitioner alleges that the sole basis for the 2003 BIR Ruling is the 2002 DOE Certification. It claims that the DOE Certification is void. Petitioner points out that the certification is arbitrary, as it consists merely of two sentences and does not elaborate on the basis for its issuance other than simply stating that it was based on data and reports, without disclosing concrete details and attaching supporting documents.

Furthermore, petitioner argues that the 2002 DOE Certification was declared null and void in a decision rendered by the Regional Trial Court of Pasay City on February 27, 2014. Likewise, it contends that the 2002 DOE Certification is contrary to the very data of DOE itself, which shows that there was no locally available supply in reasonable quantity.

Petitioner maintains that the BIR could only withdraw PAL's exemption from excise taxes on fuel importations by proving that there was a sufficient locally available supply of jet fuel in reasonable quantity, quality, and price. It asserts that the data consistently showed that there was no locally available supply, in reasonable quantity and/or in reasonable price. It further claims that contrary to respondents' argument, "locally available supply", by definition, excludes imported products.

According to petitioner, evidence shows that at the time of the subject importations, aviation fuel was not available in reasonable quantity, quality, and price.

Lastly, petitioner argues that it is entitled to the refund or tax credit in the amount of ₱302,012,195.86, representing specific taxes paid under protest corresponding to the importations of Jet A-1 fuel for its domestic operations for the period August 2008 to October 2008, having complied with the requirements for an administrative claim for refund and that the instant Petition for Review was filed within the two-year reglementary period.

RESPONDENT CIR'S ARGUMENTS

Respondent CIR argues that the instant Petition for Review does not merit to be given due course. He contends that the Petition for Review primarily seeks the nullification of the 2002 DOE Certification and BIR Ruling No. 001-2003, and that the refund of taxes is a mere consequence. Respondent CIR claims that as petitioner failed to appeal BIR Ruling No. 001-2003 to the Secretary of Finance and did not seek redress from the Department of Energy to assail the 2002 DOE Certification, it failed to exhaust all administrative remedies before elevating the case to this Court. Respondent CIR thus contends that the petition must be dismissed as the Court has no jurisdiction over the same.

Moreover, respondent CIR alleges that PD No. 1590 does not provide petitioner with a blanket tax exemption which will bar any act of the government to enforce its power to tax. According to respondent CIR, petitioner failed to prove that aviation fuel is not locally available in reasonable quantity, quality, and price. Respondent CIR contends that there is no qualification to the term "locally available" to make the term refer only to locally refined fuel; hence, the law makes no distinction between locally processed and imported products. Likewise, respondent CIR alleges that although petitioner's direct importations are cheaper over the locally available products, it does not make the locally available products' price "unreasonable", since a reasonable price is not necessarily the lowest price. Accordingly, respondent CIR submits that local prices are still reasonable.

Finally, respondent CIR maintains that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund.

Respondent CIR avers that all tax refunds, like tax exemptions, are construed strictly against the taxpayer.

RESPONDENT COC'S ARGUMENTS

On the other hand, respondent COC also argues that the Court has no jurisdiction over the instant Petition for Review on the ground that petitioner has no cause of action against respondent COC and that while the case is captioned as a refund of or issuance of tax credit certificate on specific tax on Jet A-1 fuel, the primary issue is the validity of BIR Ruling No. 001-2003.

Respondent COC contends that BIR Ruling No. 001-2003 remains to be valid and subsisting. According to respondent COC, it is an interpretative ruling which re-examined and clarified the tax exemption given to petitioner under PD No. 1590 in view of the issuance of LOI No. 1483 withdrawing its tax exemption privileges under applicable laws. Respondent COC claims that petitioner's belated questioning of the subject BIR Ruling is violative of the doctrine of exhaustion of administrative remedies which is fatal to its cause.

Moreover, respondent COC asserts that the subject DOE Certification on which the BIR Ruling No. 001-2003 was based was validly issued as the DOE's competence to issue such certification is beyond question, being a specialized government agency.

Respondent COC also insists that the protests filed by petitioner are not valid for failure of petitioner to pay the required docket fees and that such failure consequently rendered its protests void, making the assessment final.

Lastly, respondent COC alleges that petitioner failed to establish its entitlement to its claim for refund as it failed to establish that there was no locally available Jet A-1 fuel in reasonable quantity, quality or price justifying its resort to importations.

THE RULING OF THE COURT

Timeliness of petitioner's Administrative and Judicial Claims

The Court finds it proper to determine first whether petitioner's claim for refund was timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended, which provide for the procedure governing the refund of erroneously paid taxes, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC.[77] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[78], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[79]

Here, the dates of filing of petitioner's administrative and judicial claims for refund vis-a-vis the 2-year prescriptive period for filing such, are summarized as follows:

Date of Importation	**Date of Payment Under Protest**	**Date of Protest with BOC**	**Date of Filing the Claim for Refund with the CIR**	**Date of Expiration of 2-Year Prescriptive Period**	**Date of Filing of Petition for Review**
August 8, 2008[80]	September 1, 2008[81]	September 15, 2008[82]	November 18, 2009[83]	September 1, 2010	August 10, 2010[84]
August 9, 2008[85]	August 15, 2008[86]	August 28, 2008[87]	November 18, 2009	August 16, 2010[88]	August 10, 2010
August 23, 2008[89]	September 18, 2008[90]	October 2, 2008[91]	November 18, 2009	September 20, 2010[92]	August 10, 2010

[77] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973; *Commissioner of Internal Revenue vs. Insular Lumber Co., et al.*, G.R. No. L-24221, December 11, 1967.
[78] G.R. No. 216130, August 3, 2016.
[79] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[80] Exhibit "K-4", docket, vol. 2, p. 804.
[81] Exhibit "K-2", docket, vol. 2, p. 802.
[82] Exhibit "K", docket, vol. 2, pp. 796-801.
[83] Exhibit "L", docket, vol. 2, pp. 806-812.
[84] Docket, vol. 1, p. 1.
[85] Exhibit "M-4", BOC Records, pp. 10-12.
[86] Exhibit "M-1", BOC Records, p. 7.
[87] Exhibit "M", BOC Records, pp. 1-6.
[88] August 15, 2010 fell on a Sunday.
[89] Exhibit "N-4", BOC Records, pp. 22-23.
[90] Exhibit "N-1", BOC Records, p. 20.
[91] Exhibit "N", BOC Records, pp. 14-19.
[92] September 18, 2010 fell on a Saturday.

September 24, 2008[93]	October 22, 2008[94]	November 5, 2008[95]	November 18, 2009	October 22, 2010	August 10, 2010
October 22, 2008[96]	November 19, 2008[97]	December 3, 2008[98]	November 18, 2009	November 19, 2010	August 10, 2010

Based on the foregoing, petitioner's administrative and judicial claims for refund were all timely filed.

Jurisdiction of the Court of Tax Appeals

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are evidently within its jurisdiction.[99] The jurisdiction of the CTA is conferred by Republic Act No. 1125, as amended by Republic Act No. 9282, which provides in part:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in

[93] Exhibit "O-4", BOC Records, pp. 35-36.
[94] Exhibit "O-1", BOC Records, p. 32.
[95] Exhibit "O", BOC Records, pp. 26-31.
[96] Exhibit "P-4", BOC Records, pp. 48-49.
[97] Exhibit "P-1", BOC Records, p. 45.
[98] Exhibit "P", BOC Records, pp. 39-44.
[99] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

From the foregoing provisions, the CTA has the power to determine whether or not petitioner is entitled to the refund of the aggregate amount of ₱302,012,195.86, representing the specific taxes paid for the importation of Jet A-1 fuel for its domestic flight operations from August 2008 to October 2008.[100]

Further, in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*[101], the Supreme Court enunciated that the CTA has jurisdiction to rule on the validity of a particular administrative rule or regulation as long as it is within its appellate jurisdiction. The pertinent portion of the decision reads:

> "Evidently, *City of Manila* can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes British American Tobacco to the effect that **it is now within the power of the CTA**, through its power of certiorari, **to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**" *(Emphasis supplied)*

Moreover, in the case of *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[102], the Highest Tribunal held that:

> "**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals.** The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.
>
> **Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282,**

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[100] Section 3, Rule 4, Revised Rules of the Court of Tax Appeals.
[101] G.R. No. 210987, November 24, 2014.
[102] G.R. No. 198756, January 13, 2015.

such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> a. *Exclusive appellate jurisdiction to review by appeal* as herein provided:
>
> 1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*
>
> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue*, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. – No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera*, this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that* ***the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not the RTC.***
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops ..." (Emphases supplied)*

Considering that what is being assailed is a ruling of respondent CIR embodied in BIR Ruling No. 001-2003, this Court is vested with jurisdiction to rule on the validity thereof. Nonetheless, even without the issue of validity of the said BIR Ruling, this Court clearly has jurisdiction to decide on or to determine the propriety of the present refund claim.

Petitioner's Entitlement to the Claim for Refund or Tax Credit Certificate

Based on Section 229 of the NIRC of 1997, as amended, a taxpayer may recover any national internal revenue tax that has been erroneously collected or illegally collected, any penalty claimed to have been collected without authority, or any sum that has been excessively or in any manner wrongfully collected. In cases of refund of erroneously paid or illegally collected taxes, the burden of proof to establish the factual basis of the claim for tax credit or refund lies with the claimant.[103] Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[104]

To resolve the issue of whether or not the taxes have been erroneously paid by petitioner, it must be ascertained first whether or not it is exempt under PD No. 1590 from specific tax on its importations of Jet A-1 fuel for domestic operations.

Section 13 of PAL's franchise, PD No. 1590, provides as follows:

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

[104] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

"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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**; xxx" *(Emphasis supplied)*

Based on Section 13 of PD No. 1590, for PAL to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

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

Thus, for petitioner to be exempt from the payment of the subject excise taxes, it must be able to show that it has complied, in turn, with the foregoing requisites.

First Requisite:
Basic Corporate Income Tax or
Franchise Tax must be paid

Petitioner filed its Annual Income Tax Return for fiscal year ended March 31, 2009[105] on July 15, 2009. In fact, the return shows that petitioner made an overpayment of ₱95,363,322.43.[106] This was also testified to by petitioner's witness, Ms. Evelyn L. Taghap.[107]

In order to prove that petitioner accounted for the VAT on its sales/receipts, petitioner submitted the following documents:

RETURN	EXHIBIT
Quarterly VAT Return for the 1st Quarter of FY 2009	Exhibit "O^{5}"[108]
Amended Quarterly VAT Return for the 1st Quarter of FY 2009	Exhibit "P^{5}"[109]
Amended Quarterly VAT Return for the 1st Quarter of FY 2009	Exhibit "Q^{5}"[110]
Amended Quarterly VAT Return for the 1st Quarter of FY 2009	Exhibit "R^{5}"[111]

[105] Exhibit "GGG", docket, vol. 2, pp. 928-933.
[106] Exhibit "GGG-1", docket, vol. 2, p. 928.
[107] Exhibit "T^{6}", docket, vol. 2, p. 1011.
[108] Docket, vol. 2, pp. 952-954.
[109] Docket, vol. 2, pp. 955-956.
[110] Docket, vol. 2, pp. 957-958.
[111] Docket, vol. 2, pp. 959-960.

Quarterly VAT Return for the 2nd Quarter of FY 2009	Exhibit "HHH"[112]
Amended Quarterly VAT Return for the 2nd Quarter of FY 2009	Exhibit "S5"[113]
Amended Quarterly VAT Return for the 2nd Quarter of FY 2009	Exhibit "T5"[114]
Quarterly VAT Return for the 3rd Quarter of FY 2009	Exhibit "III"[115]
Amended Quarterly VAT Return for the 3rd Quarter of FY 2009	Exhibit "U5"[116]
Amended Quarterly VAT Return for the 3rd Quarter of FY 2009	Exhibit "V5"[117]
Quarterly VAT Return for the 4th Quarter of FY 2009	Exhibit "JJJ"[118]
Amended Quarterly VAT Return for the 4th Quarter of FY 2009	Exhibit "W5"[119]

Considering that petitioner was able to prove that its basic corporate income tax and VAT liabilities were paid, the first requisite is deemed satisfied.

Second Requisite:
Imported Jet A-1 fuel must be for Use in its Transport and Non-transport Operations

As regards the second requisite, petitioner submitted Bills of Ladings[120], Surveyor's Reports[121], and Import Entry and Internal Revenue Declarations[122] to establish the fact of its importations of Jet A-1 fuel. On the other hand, in order to prove that the subject imported Jet A-1 fuel was for its transport and non-transport operations and other activities incidental thereto, petitioner submitted the corresponding Authority to Release Imported Goods (ATRIG)[123], which all state that the imported Jet A-1 fuel will be used for petitioner's daily domestic flight operations. Hence, petitioner has been able to prove that such fuel was actually used for its transport operations. Accordingly, the second requisite has been complied with by petitioner.

Third Requisite:
The imported articles must not be locally available in reasonable quantity, quality or price

[112] Docket, vol. 2, pp. 934-935.
[113] Docket, vol. 2, pp. 961-962.
[114] Docket, vol. 2, pp. 963-964.
[115] Docket, vol. 2, pp. 936-937.
[116] Docket, vol. 2, pp. 965-966.
[117] Docket, vol. 2, pp. 967-968.
[118] Docket, vol. 2, pp. 938-939.
[119] Docket, vol. 2, pp. 969-970.
[120] Exhibits "K-3", "M-2", "N-2", "O-2", and "P-2", docket, vol. 2, p. 803, BOC Records, pp. 8, 21, 33, and 46.
[121] Exhibits "K-4", "M-3", "N-3", "O-3", and "P-3", docket, vol. 2, p. 804, BOC Records, pp. 9, 24, 34, and 47.
[122] Exhibits "K-5", "M-4", "N-4", "O-4", and "P-4", docket, vol. 2, p. 805, BOC Records, pp. 10-12, 22-23, 35-36, and 48-49.
[123] Exhibits "K-6", "M-5", "N-5", "O-5", and "P-5", docket, vol. 2, p. 665, BOC Records, pp. 13, 25, 37, and 50.

To prove that the imported aviation fuel is not locally available in reasonable quantity, quality or price, petitioner presented the following Bills of Lading covering the subject importations and the supporting Certifications issued by the Civil Aviation Authority of the Philippines (CAAP):

Date of Importation	Bills of Lading Number	Date of CAAP Certifications
August 8, 2008[124]	SJSS20080732001[125]	September 2, 2008[126]
August 9, 2008[127]	HASL094DT88D001[128]	
August 23, 2008[129]	ST0808110-12[130]	August 26, 2008[131]
September 24, 2008[132]	EX0552EXTP[133]	October 3, 2008[134]
October 22, 2008[135]	ST0810087-12[136]	October 22, 2008[137]

The CAAP Certifications state that it interposes no objection to the importations of Jet A-1 fuel which is not available in reasonable quantity, quality, and price and is necessary for the operation of petitioner, to wit:

> "TO WHOM IT MAY CONCERN:
>
> This is to certify that this office interposes no objection for the importation of Jet A-1 (Aviation Fuel) under B/L No. x x x which is **not locally available (in reasonable quantity, quality and price) and is necessary/incidental for the operation of Philippine Airlines**." (*Emphasis supplied*)

The said CAAP Certifications are given weight, pursuant to Section 44 of Rule 130 of the Rules of Court, which provides:

> "SEC. 44. *Entries in official records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, *are prima facie* evidence of the facts therein stated."

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124 Exhibit "K-4", docket, vol. 2, p. 804.
125 Exhibit "K-3", docket, vol. 2, p. 803.
126 Exhibit "VV", docket, vol. 2, p. 917.
127 Exhibit "M-4", BOC Records, pp. 10-12.
128 Exhibit "M-2", BOC Records, pp. 8.
129 Exhibit "N-4", BOC Records, pp. 22-23.
130 Exhibit "N-2", BOC Records, p. 21.
131 Exhibit "UU", docket, vol. 2, p. 916.
132 Exhibit "O-4", BOC Records, pp. 35-36.
133 Exhibit "O-2", BOC Records, p. 33.
134 Exhibit "WW", docket, vol. 2, p. 918.
135 Exhibit "P-4", BOC Records, pp. 48-49.
136 Exhibit "P-2", BOC Records, p. 46.
137 Exhibit "XX", docket, vol. 2, p. 919.

Petitioner also made a comparison between total refinery production and the total industry petroleum products demand, specifically of jet fuel or kerosene, and concluded that the demand outweighed the local refinery production, on the basis of the table on Supply Demand Balance 2001-2010 in Thousand Barrels (MB) dated April14, 2011[138] from the DOE.

For the year 2008, the following data was culled from the table:

	2008		
DETAILS	**Jet Fuel**	**Kerosene**	**Kero-Jet**
Inventory (Beginning)	484	343	827
Production Local	5,566	1,030	6,596
Importation	3,278	301	3,579
Total Local Available Supply	9,328	1,674	11,002
Demand	8,850	1,265	10,115
Export	78		78
+(-) Local Available Supply vs. Demand	478	409	809

In determining Total Local Available Supply, the sum of the Inventory (Beginning), Production Local and Importation were considered. Thus, the Total Local Available Supply of all three kinds of fuels for the year 2010 exceeded the demand.

However, this Court has previously held that importations are excluded in determining locally available fuel.[139] Moreover, in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[140], the Supreme Court held that domestic petroleum products excluded imported products, as follows:

> "*First*, examining its phraseology, the word 'domestic', which means 'of or relating to one's own country' or 'an article of domestic manufacture', clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported."

Applying the foregoing to the present case, in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality or

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[138] Exhibit "A[6]", docket, vol. 2, p. 983.

[139] *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 8039, 8069, 8104, and 8113, July 1, 2016; *Air Philippines Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839, and 7851, June 10, 2016.

[140] G.R. No. 198759, July 1, 2013.

price, imported Jet A-1 fuel cannot be included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality or price.

Given the foregoing, a reproduction of the table above that does not include Importations as an addend in computing the Total Local Available Supply would yield different results, to wit:

	2008		
DETAILS	**Jet Fuel**	**Kerosene**	**Kero-Jet**
Inventory (Beginning)	484	343	827
Production Local	5,566	1,030	6,596
Importation	3,278	301	3,579
Total Local Available Supply	**6,050**	**1,373**	**7,423**
Demand	***8,850***	***1,265***	***10,115***
Export	78		78
+(-) Local Available Supply vs. Demand	478	409	809

As can be seen above, in the case of Jet A-1 fuel for the year 2008, the Demand in the amount of 8,850 MB clearly exceeds the Total Local Available Supply of 6,050 MB. As the Jet A-1 fuel petitioner imported was not locally available in reasonable quantity, this gives rise for petitioner's entitlement to the tax exemption because it is sufficient for petitioner to be able to prove even just one qualification.

In *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[141], the Court of Tax Appeals *En Banc* held that the qualifications for exemption in Section 13(2) of PD No. 1590 are **alternative and not cumulative**. The relevant portions of the decision are quoted below:

> "In recent cases decided by the Court interpreting the very same provision, the Court held that the law imposes an alternative, not cumulative qualification for the determination of whether importations under Sec. 13(2) of PD 1590 will be subject to the exemption and that it would suffice for petitioner to be able to prove even just one qualification out of the three - - not locally available in reasonable a) quantity, b) quality, or c) price.

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[141] CTA EB Nos. 1308, 1309, and 1311, February 27, 2017.

In *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, the Court ratiocinated thus:

> 'To allow petitioner's exemption from excise taxes under PD 1590, the third condition must be present, *i.e.* 'the articles materials or supplies should not be locally available in reasonable quantity, quality *or* price.'
>
> The word **'or'** signifies that a preference can be made among the presented alternatives. While initially confusing because the phrase is couched in the negative, simply put, as long as petitioner is able to prove the absence of one condition (**either** reasonable quantity, quality, **or** price), the exemption applies. Petitioner is not required to prove the absence of all three conditions.
>
> This was likewise the conclusion of the Supreme Court in the case of *Saludaga vs. Sandiganbayan* where both petitioners were charged with having violated Section 3(e) of Republic Act No. 3019, by causing undue injury to the government, and the Court construed whether or not each of the acts mentioned in the subsection constituted a different offense for which they could be charged separately. The Supreme Court held:
>
> xxx xxx xxx

To require petitioner to prove the absence of all three conditions -- locally available supply in reasonable quantity, quality and price --would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.

At this juncture, it is worth noting that petitioner is a **public utility**. A public utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, **transportation**, telephone or telegraph service. It exists for public use and public service and its services cannot be denied to anyone who is willing to pay for it. More than that, aside from being a public utility, petitioner is also a **common carrier**. Relevant provisions thereto under the Civil Code are as follows:

> 'Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of **carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public**.
>
> Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe **extraordinary diligence** in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. x x x
>
> xxx xxx xxx
>
> Art. 1755. A common carrier is bound to carry passengers safely as far as human care and foresight can provide, using the **utmost diligence of very cautious persons**, with a due regard for all the circumstances.' (Emphasis supplied)

It is evident from the above-quoted provisions that the law exacts from common carriers extraordinary diligence in its affairs, and the utmost diligence of very cautious persons when it comes to the safety of its passengers. As such, **the interpretation of the words 'reasonable quantity, quality or price' must be one that carries out the mandate of the law to common carriers and one that affords it the most advantageous conditions of operations for its success. This would include an adequate source of materials of good quality, in adequate quantities, and at the lowest possible price, especially since that price is passed on to the public, its ultimate consumers**.

In exchange for the standard of diligence that the law requires that common carriers exercise, and considering the fact that, as a public utility, its operations are imbued with public service, the law grants the airline a concession -- that it can import the materials it needs tax-free, if the materials cannot be supplied by local industry in 'reasonable quantity, quality or price.'

Keeping in mind that all three factors must be taken into consideration when evaluating the viability of a supplier of such materials, as petitioner has manifested, the absence of one factor would disqualify such a supplier. The airline can then import the materials tax-free and need not show that the local suppliers fail in all the three criteria, otherwise the concession for the higher standard and the great responsibility that the law demands of them, will be for naught. It would be akin to 'what the left hand giveth, the right hand taketh away.' (*Emphasis supplied*)"

Nonetheless, petitioner also proved the unavailability of locally supplied Jet A-1 fuel at a reasonable price. In Mr. Tiaoqui's testimony on June 11, 2012, he stated that Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) are now the only two (2) local refiners in the Philippines, as Caltex had closed down its refinery.[142] Those two corporations, therefore, are the only possible sources of locally supplied aviation fuel whose prices are to be used in benchmarking.

The Court-commissioned Independent CPA, Ms. Myra Celeste O. Dabalos, came to the conclusion that based on the comparison of the cost of importation of Jet A-1 fuel and the cost of domestic purchases of Jet A-1 fuel using the price quotations issued by Petron and Shell, the cost per liter of importation of Jet A-1 fuel for the subject period is consistently lower than the cost of Jet A-1 fuel if purchased locally from either Petron or Shell, to wit:

"2.) The cost per liter of importation of aviation turbo jet fuel or Jet A-1 per liter for the period from August to October 2008 (relating to the Petitioner's payments of Specific Taxes for the period from August to November 2008) is consistently lower than the cost of aviation turbo jet fuel or Jet A-1 if purchased locally from either Petron Corporation or Pilipinas Shell Petroleum Corporation (PSPC). Based on our comparisons, **by importing rather than purchasing locally from either Petron or PSPC, Petitioner was able to save ₱213,996,354.14 and ₱649,207,240.55, respectively on said importations.**" [143] *(Emphasis supplied)*

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[142] TSN dated June 11, 2012, pp. 108-111.
[143] Exhibit "I[6]", docket, vol. 2, p. 1039.

Based on the foregoing, petitioner was able to prove that the imported Jet A-1 fuel was not locally available in reasonable quantity and price at the time of the importations.

In sum, petitioner was able to comply with all the requisites under Section 13 of PD No. 1590 for it to be exempt from the payment of the specific taxes on its importations of Jet A-1 fuel used for its domestic operations.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Philippine Airlines, Inc. in the amount of **₱302,012,195.86**, representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period August 2008 to October 2008.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice