Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1216
(CTA Case No. 8184)

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

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 1217
(CTA Case No. 8184)

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

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1221
(CTA Case No. 8184)

Present:

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

Promulgated:

MAY 27 2016 4:25 p.m.

x---x

DECISION

CASANOVA, J.:

These are consolidated appeals, *via* Petitions for Review, filed respectively by the Commissioner of Internal Revenue [1], the Commissioner of Customs[2], and by Philippine Airlines, Inc.[3], from the Decision[4] dated March 25, 2014 and Resolution[5] dated August 26, 2014 both rendered by the Court of Tax Appeals (CTA) First Division which partially granted Philippine Airlines, Inc.'s claim for refund in the reduced amount of One Million Six Hundred Fifty Seven Thousand One Hundred Twenty One Pesos and Fifty One Centavos (₱1,657,121.51) representing its erroneously paid excise tax on October 28, 2008.

The Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to act as such, including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the BIR National Office Building, Diliman, Quezon City.[6]

The Commissioner of Customs was a respondent, alongside the CIR, in CTA Case No. 8184 entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. He may be served with judicial processes through his statutory counsel, the Office of the Solicitor General (OSG) at 134 Amorsolo Street, Legaspi Village, Makati City.[7]

Philippine Airlines, Inc. (PAL) is a domestic corporation organized and existing under the laws of the Philippines with office address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[8]

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[1] CTA *En Banc* Rollo (CTA EB No. 1216), pp. 1-34
[2] CTA *En Banc* Rollo (CTA EB No. 1217), pp. 57-83
[3] CTA *En Banc* Rollo (CTA EB No. 1221), pp. 72-97
[4] Division Docket (Vol. II), pp. 1350-1383
[5] *Ibid.*, pp. 1525-1538
[6] Parties, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1216), p. 2
[7] The Parties, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1217), p. 58
[8] The Parties, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1221), p. 72

On January 1, 2005, Republic Act No. 9334 (RA 9334), otherwise known as 'An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 228 of the National Internal Revenue Code of 1997, as Amended" took effect.[9]

On February 3, 2005, then CIR Guillermo Parayno wrote then COC George Jereos, calling attention to Section 6 of RA 9334 and the failure of the BOC to collect excise taxes '... on all importations destined for Duty Free Philippines ('DFP') and the Freeport Zones, such as the Subic Bay Freeport Zone', and requested the BOC to immediately collect the excise taxes due on the imported alcohol and tobacco products brought to the DFP and Freeport Zones.[10]

On February 4, 2005, then COC George Jereos issued a Memorandum to BOC officers and personnel directing them to "effect collection of excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones."[11]

On March 1, 2005, [*then*] COC Albert Lina issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provides for the "Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA 9334 and BIR Revenue Regulations No. 12-2004."[12]

In view thereof, [*PAL*]'s importation of assorted cigarettes, and liquors allegedly for catering and commissary supplies were subjected to excise tax and withheld from release pending payment of said taxes, duties and fees.[13]

Thus, on October 28, 2008 [*PAL*] paid under protest the following assessed excise taxes due on importation of assorted cigarettes.

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[9] Page 3, Decision, Division Docket (Vol. II), p. 1352
[10] *Ibid.*
[11] *Id.*
[12] Pages 3-4, Decision, Division Docket (Vol. II), pp. 1352-1353
[13] Page 4, Decision, Division Docket (Vol. II), p. 1353

ENTRY NO.	ATRIG NO.	ARRIVAL DATE	EXCISETAX
4923	00015168	05-09-08	₱ 403,930.00
4265	00015167	04-26-08	416,960.00
3750	00015166	04-12-08	456,050.00
2513	00011286	03-15-08	351,810.00
2493	00011288	03-14-08	859,980.00
1527	00011287	02-15-08	1,498,450.00
TOTAL			₱ 3,987,180.00[14]

Likewise, on October 28, 2008 [*PAL*] paid under protest the following assessed excise taxes due on importation of assorted liquors.

ENTRY NO.	ATRIG NO.	ARRIVAL DATE	EXCISETAX
2468	00011380	03-07-08	₱ 172,440.58
2519	00011395	03-17-08	84,058.49[15]
2039	00011381	03-01-08	647,631.94
1546	00011379	02-13-08	742,990.50
TOTAL			₱ 1,657,121.51[16]

On October 31, 2008 [*PAL*] filed before the District Collector of NAIA two (2) written protest letters on the assessment and collection of taxes praying the refund of ₱3,987,180.00 and ₱1,657,121.51, respectively. Thereafter, on March 5, 2009 [*PAL*] filed before the Commissioner of Internal Revenue two (2) written protest letters on the assessment and collection of taxes praying the refund of ₱3,987,180.00 and ₱1,657,121.51, respectively. The claim for refund before the respondent CIR and COC has not been acted upon, hence, this petition.[17]

On March 25, 2014, the CTA First Division promulgated the assailed Decision[18], partially granting PAL's claim for refund. The *fallo* of said Decision reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition is hereby **PARTIALLY GRANTED**. Accordingly, respondents are **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION SIX HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED TWENTY ONE**

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[14] *Ibid.*
[15] Should be 94,058.49 (Exhibit "DD")
[16] Page 4, Decision, Division Docket (Vol. II), p. 1353
[17] Pages 4-5, Decision, Division Docket (Vol. II), p. 1353-1354
[18] *Supra* No. 4

PESOS AND 51/100 (₱1,657,121.51), representing petitioner's erroneously paid excise tax on October 28, 2008

SO ORDERED."

Thereafter, the CIR filed her Motion for Partial Reconsideration[19] on April 11, 2014, the COC filed his Motion for Reconsideration[20], through registered mail, on April 15, 2014 and PAL filed its Motion for Partial Reconsideration [of the Decision dated March 25, 2014][21] on April 16, 2014. Then, on August 26, 2014, the CTA First Division promulgated the assailed Resolution[22] which denied the parties' respective Motions for lack of merit.

Aggrieved, the parties elevated the matter to the Court *En Banc via* the instant Petitions for Review. The CIR filed her Petition for Review on September 17, 2014 and was docketed as CTA EB No. 1216, while the COC and PAL filed their Petitions for Review on October 3, 2014 and October 7, 2014, and was docketed as CTA EB No. 1217 and CTA EB No. 1221, respectively, after each requesting for an extension of time within which to file their Petitions.

On November 6, 2014, the Court *En Banc* issued a Minute Resolution[23] resolving to consolidate EB Nos. 1217 and 1221 with EB No. 1216, the case bearing the lowest docket number, pursuant to Section 1, Rule 31of the Revised Rules of Court.

In a Resolution[24] dated January 6, 2015, the Court *En Banc* ordered the parties to file their respective Comments on the Petitions for Review within ten (10) days from receipt of said Resolution. As such, the CIR filed her Comment (Re: Petition for Review)[25] on January 27, 2015 while PAL filed a Manifestation and Motion[26] on February 6, 2015, stating that it adopts, by way of Comment, the same arguments in its Comment filed on November 11, 2014. On the other hand, the COC failed a

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[19] Division Docket (Vol. II), pp. 1399-1422
[20] *Ibid.*, pp. 1458-1472
[21] *Id.*, pp. 1423-1432
[22] *Supra* No. 5
[23] CTA *En Banc* Rollo (CTA EB No. 1216), pp. 106-107
[24] *Ibid.*, pp. 118-119
[25] *Id.*, pp. 120-126
[26] *Id.*, pp. 134-137

to timely comment as per Records Verification[27] dated February 4, 2015.

Meanwhile, PAL's counsel, Baniqued & Baniqued, filed a Notice of Withdrawal of Appearance[28] on February 25, 2015, indicating its intention to withdraw, with the conformity of PAL, as its counsel. Accordingly, in a Minute Resolution[29] dated March 2, 2015, the Court *En Banc* noted the said notice.

On February 26, 2015, the Court *En Banc* issued a Resolution[30] which gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

On March 2, 2015, the COC filed his Comment (On the Petition for Review dated 07 October 2014)[31], which was noted by the Court *En Banc* in the Resolution[32] dated March 30, 2015.

Then on March 5, 2015, PAL filed a Notice and Entry of Appearance[33] for its new counsels from its Legal Affairs Department. The Court *En Banc* noted said notice in its Minute Resolution[34] dated March 9, 2015, thereby ordering that copies of all notices, affidavits, orders, resolutions and other pleadings relative to the instant consolidated cases be sent directly to PAL's counsels, Attys. Ma. Clara C. De Castro, Catherine C. Nuval and Andrea Monica V. Gonzales.

On March 18, 2015, the CIR filed a Manifestation[35] stating that she is adopting the discussion raised in her Petition for Review filed on September 17, 2014 as her Memorandum. In the same vein, on April 22, 2015, the COC filed a Manifestation and Motion (In Lieu of Memorandum)[36] likewise stating that he is adopting his Comment (On the Petition for Review dated 07 October 2014) filed on March 2, 2015,

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[27] *Id.*, p. 127
[28] *Id.*, pp. 147-150
[29] *Id.*, pp. 151-152
[30] *Id.*, pp. 142-144
[31] *Id.*, pp. 153-169
[32] *Id.*, pp. 184-186
[33] *Id.*, pp. 170-173
[34] *Id.*, pp. 174-175
[35] *Id.*, pp. 176-179
[36] *Id.*, pp. 217-227

as his Memorandum. Accordingly, the Court *En Banc* noted the CIR's Manifestation on March 23, 2015[37] and the COC's Manifestation and Motion (In Lieu of Memorandum) on April 27, 2015[38]. On the other hand, PAL filed its Memorandum[39] on April 21, 2015 in compliance with the Court *En Banc's* order.

Accordingly, on May 28, 2015, the Court *En Banc* issued a Resolution[40] which deemed the consolidated cases submitted for decision.

In their respective Petitions for Review, the issue[41] raised by the CIR is whether or not the First Division erred in partially granting PAL's claim for refund in the amount of ₱1,657,121.51 allegedly representing its erroneously paid excise tax on October 28, 2008. While, the COC raised the issue[42] of whether or not the subject alcohol and tobacco importations are exempt from excise tax. PAL, on the other hand, raised the issue[43] of whether the First Division erred in denying PAL's claim for refund of erroneously paid excise tax on its importation of commissary supplies to the extent of the amount of ₱3,987,180.00.

After careful scrutiny of the arguments and issues presented before the Court *En Banc*, *We* find that the same have already been discussed and threshed out in the assailed Decision[44] dated March 25, 2014 and Resolution[45] dated August 26, 2014. Nonetheless, at the risk of being repetitive, *We* deem it best to summarize the issues raised herein to (a) whether PAL's importation of alcohol and tobacco are exempted from excise tax; and (b) whether the court *a quo* erred in partially granting PAL's claim for refund of erroneously paid excise tax on its importation of commissary supplies.

PAL's importation of alcohol and tobacco for its commissary

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[37] Minute Resolution, *id.*, pp. 180-181
[38] *Ibid.*, p. 228
[39] CTA *En Banc* Rollo (CTA EB No. 1216), pp. 187-216
[40] *Ibid.*, pp. 230-232
[41] Issue, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1216), p. 9
[42] Issue, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1217), p. 65
[43] Statement of Issues, Petition for Review, CTA *En Banc* Rollo (CTA EB No, 1221), p. 79
[44] *Supra* No. 4
[45] *Supra* No. 5

supplies are exempted from excise tax

The issue submitted before *Us* is not novel. It has already been settled by the Supreme Court in the case of Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.[46] Nevertheless, a brief recount seems to be in order.

On June 11, 1978, PD No. 1590[47] was enacted granting PAL a franchise to establish, operate, and maintain air-transport services in the Philippines and other countries. The franchise carried with it certain tax privileges and exemptions - Section 13 thereof provides that PAL shall pay the government either basic corporate income tax or franchise tax based on revenues and/or the rate defined in the provision, whichever is lower and the taxes thus paid under either scheme shall be in lieu of all other taxes, duties and other fees, *viz*:

> "**Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or 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**

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[46] G.R. Nos. 212536-37, August 27, 2014

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

> **fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency**, now or in the future, including but not limited to the following:
>
> *x x x" (Emphasis Ours)*

Thereafter, on July 1, 2005, Republic Act (RA) No. 9337[48] took effect, Section 22 of which abolished the franchise tax provided under PAL's charter and subjected the latter to corporate income tax and VAT. Nevertheless, the same Section provides that PAL shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement, *viz*:

> "**SEC. 22.** *Franchises of Domestic Airlines.* - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other

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

> fees and charges, as may be provided by their respective franchise agreement."

In view thereof, PAL is now only left with one option – which is to pay its basic corporate income tax and VAT. The payment of basic corporate income tax shall be in lieu of all taxes, subject to certain conditions as may be provided under PAL's charter which is considered as part of its franchise.

On January 1, 2005, RA No. 9334[49] took effect. The CIR and COC claim that Section 6 thereof shows Congress' intention to withdraw the conditional tax exemption granted to PAL under PD No. 1590, it provides that:

> "**SEC. 6.** Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> > 'SEC. 131. *Payment of Excise Taxes on Imported Articles.* -
> >
> > *(A) Persons Liable.* - **Excise taxes on imported articles shall be paid by the owner or importer** to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
> >
> > *x x x*
> >
> > **The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**. This shall apply to cigars and cigarettes, distilled spirits, fermented

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[49] AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131,141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

> liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.
>
> *x x x"*

Based on the above quoted-provision, the CIR and COC argue that PAL's tax exemption under Section 13 of PD No. 1590 has clearly been revoked by Section 6 of RA No. 9334 when it subjected the importation of cigars, cigarettes, distilled spirits and wines to all applicable taxes inclusive of excise tax as shown in the phrase "the provision of any special or general law to the contrary notwithstanding."

We are not persuaded.

As correctly held by the court *a quo* in the Decision assailed:

> "We have two (2) laws: one, PD 1590, specifically exempting an entity from payment of all taxes due from importation subject to certain conditions; and two, RA 8424, a later law, imposing tax on the importation of cigars

and cigarettes, distilled spirits, fermented liquors and wines. As to which is the general law or specific law and whether the general law repealed the specific law, in the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066* although it involves a different type of tax, the Supreme Court ruled that RA 8424 did not repeal PD 1590. The pronouncements made by the Supreme Court therein are still significant and applicable in the instant case, to wit:

> 'Between Presidential Decree No. 1590, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general - the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.
>
> Neither can it be said that the NIRC of 1997 repealed or amended Presidential Decree No. 1590.
>
> *x x x*"[50]

Moreover, *We* have consistently held in a plethora of PAL cases[51] that the all-encompassing phrase "the provisions of any special or

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[50] Page 25, Decision, Division Docket (Vol. II), p. 1374

[51] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., and Commissioner of Customs vs. Philippines Airlines, Inc., CTA EB Case Nos. 928 and 929, October 21, 2013; Commissioner of Internal Revenue vs. Philippines Airlines, Inc., and Commissioner of

general law to the contrary notwithstanding," under Section 6 of RA No. 9334 cannot be considered as an express repeal of the tax exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. Notably, a cardinal rule in the interpretation of statutes is that the meaning and intention of the law-making body must be sought, first of all, in the words of the statute itself, read and considered in their natural, ordinary, commonly-accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction.[52] Hence, since laws are presumed to be passed with deliberation and with knowledge of all existing ones on the subject, it is logical to conclude that in passing a statute, it is not intended to interfere with or abrogate a former law relating to the same subject matter unless the repugnancy between the two is not only irreconcilable but also clear and convincing as a result of the language used, or unless the latter Act fully embraces the subject matter of the earlier.[53]

On a final note, going back to the Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.[54], the Supreme Court concluded that PD No. 1590 has not been revoked by the National Internal Revenue Code (NIRC) of 1997, as amended, particularly by Section 131 thereof. The Supreme Court stated that the Legislature chose not to amend or repeal PD No. 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in the said charter.[55]

Accordingly, *We* find no cogent reason to deviate from the foregoing.

Internal Revenue and Commissioner of Customs vs. Philippines Airlines, Inc., CTA EB Case Nos. 942 and 944, December 9, 2013; Commissioner of Internal Revenue vs. Philippines Airlines, Inc., and Republic of the Philippines as represented by Commissioner of Customs vs. Philippines Airlines, Inc., CTA EB Case Nos. 920 and 922, September 9, 2013

[52] South African Airways vs. Commissioner of Internal Revenue, G.R. No. 180356, February 16, 2010; *citing* Espino vs. Cleofe, No. L-33410, July 13, 1973

[53] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., and Commissioner of Customs vs. Philippines Airlines, Inc., CTA EB No. 928 and 929, October 21, 2013

[54] *Supra* No. 46

[55] *Ibid.*, citing Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009

The court *a quo* did not err in partially granting PAL's claim for refund on its importation of commissary supplies.

As discussed earlier, under Section 13(b)2 of PD No. 1590, PAL may be deemed exempted from the payment of all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of its commissary supplies upon payment of its corporate income tax, *viz*:

> "*x x x*
>
> 2. **All taxes**, including compensating taxes, duties, charges, royalties, or fees due on **all importations by the grantee** of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; **provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.**" (*Emphasis Ours*)

Stated otherwise, PAL can enjoy the tax exemption in the importation of its commissary supplies provided that:

1. Such articles or supplies or materials are imported for the use of the grantee in its transport operations and other activities incidental thereto; and

2. They are not locally available in reasonable quantity, quality or price.

In the instant case, there was no dispute as to the first requisite. With regard to the second requisite, however, PAL presented the testimony of its lone witness, Mrs. Cheryl V. Capinpin, PAL's Manager of In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department, to prove that the importation of alcoholic products and cigarettes are cheaper compared to buying them locally since there are no local dealers big enough to supply various foreign brands of cigarettes and alcohols, and if there were, the selling price of the local dealers are higher than the cost of importation.[56]

PAL also presented a Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[57] and the Philippine Wine Merchant's Price List for 2008[58]. However, the court *a quo* found that the foregoing evidence only corroborated PAL's claim for refund with regard to its imported liquors. As to the imported cigarettes, however, the court *a quo* found that there was no other evidence, other than the testimony of Mrs. Cheryl V. Capinpin, presented to corroborate that the imported cigarettes are not locally available in reasonable quantity, quality or price.

We agree with the court *a quo*.

In a long line of PAL cases[59], *We* have consistently held that the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies with local prices reflected in the Philippine Wine Merchants' Price List and/or Duty Free Philippines Retail Prices were deemed sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally. In fact, in the case of Republic of the Philippines, represented by the Commissioner of Customs vs. Philippine Airlines, Inc.[60], the Supreme Court sustained the factual findings of the CTA in declaring that the imported articles are not locally available in reasonable quantity, quality or price as it takes into account the evidence presented by PAL, namely: letter of tabulation of comparison of cost of importing the articles and cost of purchasing them locally, invoices issued by PAL for its purchase of the imported articles, and a pricelist from Duty-Free Philippines. The Supreme Court held that:

> "As to the issue of PAL's noncompliance with the conditions set by Section 13 of P.D. 1509 for the imported supplies to be exempt from excise tax, it must be noted that

[56] Exhibit "YY"
[57] Exhibit "YY-1"
[58] Exhibit "YY-2"
[59] CTA EB Case Nos. 954 & 1046, October 14, 2014; CTA EB Case Nos. 920 & 922, September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032, April 30, 2014; CTA Case No. 8236, December 18, 2013
[60] G.R. Nos. 209353-54, 211733-34, July 6, 2015

these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court."

Nonetheless, while it is true that the foregoing documents were deemed sufficient to show that the cost of importing commissary and catering supplies is lower than purchasing them locally, the same, nevertheless, pertains only to imported liquors. Stated otherwise, PAL must also present evidence to prove that the importation of cigarettes is much lower than purchasing them locally. Notably, a claimant must bear in mind that tax exemptions are construed *strictissimi juris* against the taxpayer, since a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.[61]

Having thus concluded, *We* find no cogent reason or justification to disturb the conclusions reached by the court *a quo*.

WHEREFORE, the Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
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

[61] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

ERLINDA P. UY
Associate Justice

(*I join Justice Ringpis-Liban's Dissenting Opinion*)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(*On Leave*)
CIELITO N. MINDARO-GRULLA
Associate Justice

(*On Leave*)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1216
(CTA CASE NO. 8184)

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB NO. 1217
(CTA CASE NO. 8184)

x---x

PHILIPPINES AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB NO. 1221
(CTA Case No. 8184)

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

Promulgated:

MAY 27 2016 4:25 p.m.

X---X

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect to the ponencia of my esteemed colleague, the Honorable Associate Justice Caesar A. Casanova, I cannot concur with the majority decision which denied the Petitions for Review of the Commissioner of Internal Revenue in CTA EB No. 1216 and the Commissioner of Customs in CTA EB No. 1217 and granted the Petition for Review of Philippine Airlines, Inc. in CTA EB No. 1221.

The following discussion elaborates my divergence from the majority:

Subject to the Conditions Stated in Sec. 13 of PD 1590, PAL is Exempt from Taxes on Its Importations of Cigarettes, Liquor, and Wine for Its Commissary and Catering Supplies

This Court upholds the principle of *stare decisis* which enjoins adherence by lower courts to doctrinal rules established by the Supreme Court in its final decisions.[1] It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[2] Basically, it is a bar to any attempt to relitigate the same issues[3], necessary for two simple reasons: economy and stability. This principle is entrenched in Article 8 of the Civil Code which states that "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

Given the foregoing, the questions of law that this case presents are not new. They have been previously resolved by the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[4], where it held:

> "Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, **the**

[1] *Ting vs. Ting*, G.R. No. 166562, March 31, 2009.
[2] *Id.* citing *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, August 19, 2005, 467 SCRA 433, 440.
[3] *Id.* at 438.
[4] G.R. Nos. 212536-37, August 27, 2014.

tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*

> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.[5] x x x

To be sure, **the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated.** And as aptly held by the CTA *en banc*, borrowing from the same *Commissioner of Internal Revenue case*:

> While it is true that Sec. 6 of RA9334 as previously quoted states that "the provisions of any special or general law to the contrary notwithstanding," such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x
>
> Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and other general creates a presumption

[5] *Id.,* citing G.R. No. 180066, July 7, 2009, 592 SCRA 237, 261.

> that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.[6]

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue.*[7] In that case, the Court, on the premise that the 'propriety of a tax refund is hinged on the kind of exemption which forms its basis,'[8] declared in no uncertain terms that PAL has 'sufficiently prove[d]' its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. The Court wrote in that particular case involving PAL's claim for refund of the excise taxes imposed on its purchase from Caltex (Phils.), Inc. of imported aviation fuel for domestic operations, thus:

> In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:
>
> x x x x x x x x x

Based on the above-cited provision, **PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes that are 'directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or

[6] *Id.*
[7] *Id.* at Note 47, citing G.R. No. 198759, July 1, 2013, 700 SCRA 322.
[8] *Id.* at 336.

cost thereof or by mutual agreement or other arrangement.' In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: *(a)* taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and *(b)* the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.[9]" *(Emphasis supplied)*

I therefore vote to affirm the findings of the Court in Division, to wit:

"We will no longer belabor the Supreme Court's pronouncement that 'between Presidential Decree No. 1590, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978, and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails'.[10] It is clear. The Supreme Court ruled that it can neither be said that RA 8424 repealed or amended Presidential Decree No. 1590. Similarly, RA 9334 likewise can neither be said to have repealed or amended Presidential Decree No. 1590. Both, RA 8424 and RA 9334 did not repeal or amend Presidential Decree No. 1590.

Moreover, the abovementioned case involves the interpretation of PD 1590 and RA 8424 specifically the provisions pertaining to the exemption granted to PAL and the repealing clauses therein. Hence, it is more applicable in the instant controversy than the Cagayan Case which involves the interpretation of the franchise of Cagayan Electric Power and Light Co., Inc. which is distinct and different from PAL. The Cagayan Case involves an express repeal by subjecting to income tax all corporate taxpayers not expressly exempted which is not in the instant case.

[9] *Id.* at 337-339.
[10] *Id.* at Note 52.

> Furthermore, Section 16 of PD 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires. **Section 24 of the same decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal said franchise or any portion thereof. However, the provisions under Section 31 of RA 9334 or RA 8424 do not expressly repeal the exemption granted to PAL.**" *(Emphasis supplied; citations of laws omitted)*

Even prior to the Supreme Court's pronouncement in the *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[11] case, this Court has consistently adopted a similar position that RA 9334 did not amend or repeal the exemption granted to PAL under its franchise in a number of cases.[12] With the Supreme Court's imprimatur on this Court's interpretation of how the exemption provisions of PD 1590 operate in view of RA 9334, I do not find any reason for divergence.

It is also apropos at this point, to emphasize the legal principle that once the courts interpret or construe a law in a case, the same constitutes **a part of the law as of the date the statute is enacted.**[13] It is only when a prior ruling of the Supreme Court is overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith, in accordance therewith under the familiar rule of *lex prospicit, non respicit.*[14]

PAL Failed to Present Evidence of Compliance with the Requirements for Exemption from Payment of Taxes on Its Imported Cigarettes and Alcohol

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[11] *Id.* at Note 51.
[12] CTA EB No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 and 7746, August 24, 2012); CTA EB Nos. 942 and 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 and 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Nos. 920 and 922, September 9, 2013 (CTA Case Nos. 7665 and 7713, April 17, 2012); CTA Case No. 8153, January 17, 2013; CTA Case No. 7935, December 20, 2012; CTA Case No. 8361, March 26, 2014.
[13] *Id.* at Note 48.
[14] *Id.*

As regards whether or not PAL is entitled to its claim for refund in the total amount of ₱5,644,301.51 excise taxes it paid under protest, I believe that PAL failed to present evidence of compliance with the requirements for exemption from payment of taxes on its imported cigarettes and alcohol.

In order for PAL's cigarette and alcohol importations to be tax-free, it is necessary to determine whether or not PAL has complied with Section 13 of PD 1590. The said section provides as follows:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the **grantee shall pay** to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax**:
>
> (a) The **basic corporate income tax** based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A **franchise tax** of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The **tax paid by the grantee** under either of the above alternatives **shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> xxx xxx xxx
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; ***provided***, that such articles or

> supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price." *(Emphasis supplied)*

The above-quoted provision provides that payment of basic corporate income tax or franchise tax, in lieu of all other taxes, exempts PAL from the payment of excise tax on its importation of cigarettes, liquor and wine for as long as three requisites are complied with, namely:

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

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

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

I agree with the Court in Division as to their finding that the first and second requisites have been complied with.

To establish compliance with the first requisite, PAL submitted in evidence its original Annual Income Tax Return[15] for fiscal year 2008. Likewise, PAL proved that it is a VAT-registered entity[16] and paid its VAT for the fiscal year ended March 31, 2009, as evidenced by its Certificate of Registration dated December 18, 2007, Certificate of Registration dated August 4, 2004, Payment Form No. 0605[17], and quarterly VAT Return.[18]

As for the second requisite, PAL established compliance therewith by presenting ATRIGs issued by the CIR and addressed to the COC which provided that "the shipment to be released at the Port of Manila consisting of the described articles, will be used exclusively for international in-flight consumption."

It is with regard to the third condition which requires that the imported liquors, wines and cigarettes must not be locally available in

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[15] Exhibit "SS", *Id.* at Note 8, pp. 469-474.
[16] Exhibits "TT" & "UU", *id.*
[17] Exhibit "VV", *id.*, p. 461.
[18] Exhibit "VV-1", *id.*, pp. 462-468.

reasonable quantity, quality, or price that merits a different conclusion, in my opinion.

As regards PAL's cigarette importations, I agree with the Court in Division's findings, to wit:

> "[E]vidence reveal *(sic)* that local prices with regard to PAL's imported cigarettes is not available.[19] Other than testimony of Mrs. Cheryl V. Capinpin, that there are no local suppliers or dealers big enough to supply various foreign brands of cigarettes or the selling prices, no other evidence was presented to support a conclusion that the imported cigarettes are not locally available in reasonable quantity, quality or price."

A perusal of the records of the case confirms this. During the hearing held on March 5, 2012, Witness Capinpin, on cross-examination, testified as follows:

"SOL. SARDILLO

Q In your answer to question number 9, you specifically stated that there are no local suppliers that can supply the quantity of various foreign brands of cigarettes, which is why PAL resorted to importing these foreign brands. Is that a fair statement of your answer in paragraph 9?

WITNESS CAPINPIN

A Yes, ma'am.

SOL. SARDILLO

Q So if we pursue this in its logical conclusion, the only way that someone in the country would be able to smoke these brands of tobacco products, would be either they import these brands as well or if they brought these brands from PAL or any other entity that imported the same?

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[19] *Id.*

WITNESS CAPINPIN

A Yes, ma'am.

SOL. SARDILLO

Q But **are you aware that apart from PAL, there are actually a lot of local suppliers from which a person can buy the foreign brands** that you just mentioned?

WITNESS CAPINPIN

A **Yes, ma'am**. There is one I know, the Duty Free Philippines who sells those brands.

SOL. SARDILLO

Q So therefore, you weren't accurate when you said that there are no local suppliers? Right now, you told me that in fact there is local supplier, Duty Free Philippines?

WITNESS CAPINPIN

A There are no local distributors or manufacturers who can supply the quantity and if whenever they are, it would be much higher than the importation cost that we get.

SOL. SARDILLO

Q So let us take an example. For instance West Menthol, how many cases of West Menthol did PAL import in 2008?

WITNESS CAPINPIN

A Sixteen (16) cases, ma'am.

SOL. SARDILLO

Q And are you saying that Duty Free Philippines is not in a position to supply PAL with sixteen (16) cases of West Menthol?

WITNESS CAPINPIN

A What I am saying is that if there are dealers also who can supply PAL, it would be more expensive than the cost of importation that we get.

SOL. SARDILLO

Q So what dealers are you referring to aside from Duty Free Philippines?

WITNESS CAPINPIN

A **As I said if there are, one of those would be Duty Free Philippines**.

Q That is actually an opinion.

JUSTICE CASTANEDA

By way of clarification.

Q If you bought from Duty Free Philippines, would it be of higher price?

WITNESS CAPINPIN

A Yes, your Honor.

JUSTICE CASTANEDA

Q By how much?

WITNESS CAPINPIN

A If we bought from Duty Free Philippines, it would be of *(sic)* 60-80 percent higher.

JUSTICE CASTANEDA

Q So that is if you bought from Duty Free Philippines?

WITNESS CAPINPIN

A Yes, your Honor.

JUSTICE CASTANEDA

Proceed.

SOL. SARDILLO

Q Ms. Capinpin, can you at least **provide us with proof that indeed had you purchase *(sic)* those brands of cigarettes from Duty Free Philippines, it would be more expensive for PAL?** Can you provide us that piece of document?

WITNESS CAPINPIN

A The least that I can give is a price notation from Duty Free Philippines**, which they do *(sic)* not give us when we requested.**

SOL. SARDILLO

Q So what was your basis for telling this Honorable Court that the price of those foreign brands of cigarettes would be more expensive than the amount listed in your matrix?

WITNESS CAPINPIN

A That is why we presented the unit cost per trade and for unit cost for informal declaration entry to show the cost of importation.

Q That is a different point. All I am asking you is, a while ago, you were asked which will be higher, the selling price of Duty Free Philippines or the price of suppliers from which you imported those foreign brands. And I remember you telling this Honorable Court that it would be much more expensive for how much?

A More than 50%.

SOL. SARDILLO

Q More than 50% if you bought those brands of cigarettes from Duty Free Philippines. All I am asking Ms. Witness is proof that had you purchase *(sic)* those brands of cigarettes in Duty Free Philippines in 2008, indeed it would have been more expensive by 50% more. **Can you please provide us with such proof?**

WITNESS CAPINPIN

A **Right now ma'am, we cannot give you that proof** because as what I have said and also in my Judicial Affidavit that we have filed, we asked for a price notation from Duty Free Philippines.

Q And what is your proof in knowing that we can probably use as basis in knowing that you are telling us the truth right now?

A **In the absence of that document that you are asking from other dealers**, that is why we presented as proof the comparison of the cost of importing and the cost as per ATRIG." *(Emphasis supplied)*

It is evident from the foregoing that, *one*, there is an admission from PAL's witness that that there are other local suppliers of foreign cigarette brands and, *two,* there is an **unsupported statement** that there are no local distributors or manufacturers who can supply PAL's requirements since no evidence has even been presented to show that requests for quotations were sought out from various local suppliers and the responses thereto, if any. In the absence of proof, the Court cannot determine whether or not the imported cigarettes were locally available in reasonable quantity, quality, or price at the time of importation. I vote to uphold the finding of the Court in Division on this matter.

Upon closer scrutiny, it is my opinion that PAL's claim for exemption as regards its alcohol importations must likewise be denied.

In her Judicial Affidavit, Witness Capinpin testified as follows:

> "20. Q. Showing to you this document labeled "Philippine Wine Merchant, 2008 Price List" with signature appearing at the botton *(sic)* of the page on top of the name Ronald Lim Joseph Philippine Wine Merchants, attached to your Judicial Affidavit and marked as Annex "B" of this affidavit, how is this related to the 2008 Price List of Philippine Wine Merchants which you mentioned as your source of the local prices of Philippine Wine Merchants for the year 2008 appearing in your table of comparison?
>
> 20. A. That is the price list for the year 2008 of Philippine Wine Merchant which I have mentioned.
>
> 21. Q. Do you have other sources of local prices of the products involved?
>
> 21. A. **We have no other sources of said local prices** because the other local wine merchants or dealers refused to give us their list of prices despite our persistent requests. We even tried getting the quotation of Duty Free Philippines, but they also refused to give us any."

As admitted by PAL's own witness, it relied solely on the the price list for the year 2008 of a single supplier -- Philippine Wine Merchant -- to make its determination that there was no locally available alcohol in reasonable quantity, quality, or price at the time of importation. Similar to its cigarette importations, its assertions that local wine merchants or dealers refused to give them a list of prices despite their "persistent requests" remain self-serving and uncorroborated sans any evidence that diligent efforts were made to obtain the same.

This is largely insufficient to establish the unavailability in the local market of PAL's alcohol imports. PAL's efforts in ascertaining availability of local supply cannot even be established and falls short of substantially complying with what the law requires. All in all, PAL failed to justify its importations of cigarettes and alcohol in order to be entitled to the tax exemption and the refund being claimed.

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.[20] As the law does not look with favor on tax exemptions, those who seek to be entitled to the privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[21]

I VOTE TO GRANT the Petitions for Review of the Commissioner of Internal Revenue in CTA EB No. 1216 and the Commissioner of Customs in CTA EB No. 1217 and **DENY** the Petition for Review of Philippine Airlines, Inc. in CTA EB No. 1221.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[20] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.
[21] *Sealand Service v. Court of Appeals*, 357 SCRA 444.