REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondent.

CTA Case No. 8236

Members:

UY, Chairperson and
FABON-VICTORINO, JJ.

Promulgated:

DEC 18 2013 9:50 AM

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DECISION

UY, *J.:*

This case is a claim for refund filed by petitioner, Philippine Airlines, Inc., in the total amount of ₱7,802,145.73, allegedly representing erroneously collected specific taxes on petitioner's importations of cigarettes, liquor and wine for its catering and commissary supplies for international consumption.

THE FACTS

Petitioner Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[1]

There are two respondents in this case. Respondent

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 305

Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges under the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), the government agency in charge of the assessment and collection of customs duties and other lawful revenues from imported articles, including the excise taxes imposed on wines and cigarettes under Sections 142 and 145, respectively, of the NIRC of 1997, as amended. Respondent COC holds office at G/F OCOM Building, Bureau of Customs, Port Area, City of Manila.

On June 11, 1978, by virtue of Presidential Decree (PD) No. 1590, otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries", petitioner was granted a franchise to operate air transport services domestically and internationally. Section 13 of PD No. 1590 partly provides:

> "SEC. 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;"

On January 1, 2005, Republic Act (RA) No. 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 288 of the National Internal Revenue Code of 1997, as Amended*", took effect.[2] Section 6 of RA No. 9334 in part provides:

> "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

[2] Exhibit "B"

articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

'In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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

On February 3, 2005, then BIR Commissioner Guillermo L. Parayno, Jr. wrote then BOC Commissioner George M. Jereos, calling attention to Section 6 of RA No. 9334 and the failure of the BOC to collect excise taxes "on all importations of alcohol and tobacco products destined for Duty Free Philippines (DFP) and the freeport zones such as the Subic Bay Freeport Zone." In the said letter, the BIR also requested the BOC that the excise taxes due on the imported alcohol and tobacco products brought to DFP and the freeport zones be immediately collected.[3]

On February 4, 2005, then BOC Commissioner Jereos issued a Memorandum to BOC officers and personnel, directing them to "effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".[4]

On March 1, 2005, then COC Alberto D. 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 No. 9334 and BIR Regulation No. 12-2004".[5]

On April 4, 2005, petitioner contested the action taken by the Collector of Customs of the Manila International Container Port (MICP) in trying to collect excise taxes and customs duties on petitioner's importation of cigarettes for use in its operations, and in refusing to release them, unless these taxes and duties are first paid. In its letter, petitioner requested the immediate release of its imported two pallets of cigarettes for its commissary supplies.[6]

Petitioner's April 4, 2005 letter was endorsed to the Legal Service of the BOC, which responded to its request for release of the imported cigarettes by issuing a Memorandum on April 25, 2005 addressed to COC Alberto D. Lina.[7]

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[3] Exhibit "C"
[4] Exhibit "D"
[5] Exhibit "E"
[6] Exhibit "F"
[7] Exhibit "G"

Likewise, considering the great risk of exposing its shipment of Australian wines to spoilage, petitioner advised the COC on May 16, 2005 that it would pay, under protest, the taxes, duties and fees imposed for the said shipment.[8]

Petitioner's subsequent importations of wine, liquor, and cigarettes needed for its international flights were subjected to excise tax and also withheld release from the customs ports pending payment of taxes, duties, and fees.

On December 12, 2008, Gilda L. Cinco, Acting Chief of WAU of the BOC, submitted to Silveria Salazar, Chief of the Collection Division of NAIA Customshouse, the documents evidencing petitioner's payment of duties, taxes, and other charges pursuant to Customs Memorandum Order (CMO) No. 13-2005 and Revenue Regulations No. 3-2006.[9]

On February 25, 2009, petitioner paid under protest the total excise taxes in the amount of ₱7,802,145.73 on its importation of assorted liquor and cigarettes.[10] On the same date, petitioner wrote a letter to Mrs. Silveria Salazar to "formally protest the assessment and collection from Philippine Airlines Incorporated (PAL) the total amount of ₱7,802,145.73 as excise tax allegedly due from its importation of liquors and/or cigarettes for catering and commissary supplies".[11]

On February 27, 2009, petitioner filed with the District Collector of Customs of NAIA a written protest against the assessment and collection of excise taxes in the amount of ₱7,802,145.73 in accordance with Section 2308 of the Tariff and Customs Code.[12]

On May 12, 2009, petitioner filed an administrative claim for refund dated May 11, 2009 with respondent CIR for the refund of the amount of ₱7,802,145.73, representing its alleged erroneously paid excise taxes on the subject importations of assorted liquor and cigarettes.[13]

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[8] Exhibit "H"
[9] Exhibits "U" and "XX"
[10] Exhibits "V" and "YY"
[11] Exhibits "II" and "LLL"
[12] Exhibits "JJ" and "MMM"
[13] Exhibits "KK" and "NNN"

Due to respondent's inaction, petitioner filed this instant Petition for Review on February 24, 2011.

Respondent CIR filed her Answer[14] on April 27, 2011, raising the following Special and Affirmative Defenses:

> "6. Taxes collected and remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.
>
> 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. Petitioner must proved *(sic)* that the judicial claim for refund was filed within the period prescribed by law.
>
> 9. Petitioner must have been able to comply with pertinent rules and regulations on claims for refund.
>
> 10. Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended provides:
>
> > '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, of any sum alleged to have been excessively or in any manner wrongfully 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,

[14] Docket, pp. 229-235

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.' (Emphasis and underscoring supplied)

11. Petitioner must prove by clear and convincing evidence that the requirements for a claim for refund was met:

    a. There must be a written claim for refund filed by the taxpayer with respondent
    b. The claim for refund must be a categorical demand for reimbursement
    c. The claim must be filed within a period of two (2) years from the date of payment of tax or penalty regardless of any supervening cause.

12. Petitioner must proved *(sic)* that the aggregate amount of ₱7,802,145.73 representing tax it paid under protest to the Commissioner of Custom allegedly on its importations for taxable year 2008 is properly documented.

13. Petitioner's claim that the amount of ₱7,802,145.73 is erroneously paid is devoid of merit considering that that *(sic)* petitioner is liable to pay excise tax by express provision of law.

14. Section 6 of Republic Act No. 9334 which took effect on January 1, 2005 explicitly provides:

'**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.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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

(B) *Rate and Basis of the Excise Tax on Imported Articles*. – Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.' (Emphasis and underscoring supplied)

15. 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.

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

17. 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 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)."

During trial, petitioner presented documentary and testimonial evidence. On the other hand, counsel for respondent Commissioner of Internal Revenue manifested during the hearing held on August 17, 2012[15] that there are no BIR Records in this case. The Court thus directed the parties, except for respondent COC who was declared as in default[16], to file their respective Memorandum within thirty (30) days from receipt of the Court's Resolution.

The instant case was submitted for decision on March 1, 2013 after the filing of respondent CIR's Memorandum[17] on February 21, 2013 and petitioner's Memorandum[18] on February 25, 2013.[19]

THE ISSUES

The parties submitted the following issues[20] for this Court's resolution:

"(a) Whether or not the Honorable Court has jurisdiction over the instant case.

(b) Whether the respondent CIR is a proper party in the instant case.

(c) Whether or not petitioner PAL , under its franchise, Presidential Decree 1590, is exempt from the payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption;

(d) Whether or not PAL is entitled to a refund or tax credit in the total amount of Seven Million Eight Hundred Thousand

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[15] Minutes of hearing held on August 17, 2012, Docket, Vol. III, p. 1165
[16] Resolution dated August 18, 2011 declaring, among others, respondent Commissioner of Customs as in default for failure of his counsel appear during pre-trial held on even date and to file the required Pre-trial Brief within the same period, Docket, Vol. I, p. 303
[17] Docket, Vol. III, pp. 1224-1238
[18] Docket, Vol. III, pp. 1240-1262
[19] Docket, Vo. III, p. 1266
[20] Docket, Vol. I, pp. 307-308

Two, One Hundred Forty Five and 73/100 (PHP7,802,145.73) allegedly representing excise taxes paid under protest in 2009 to the Commissioner of Customs on its importations for taxable year 2008.

(e) Whether or not the alleged administrative claim for tax refund of excise tax was filed within the period prescribed by law."

THE COURT'S RULING

The petition is partly meritorious.

The CTA has jurisdiction over the instant case

This Court's jurisdiction is provided under Section 7 of RA No. 1125[21], as amended by RA No. 9282[22], which in part states:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (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 which case the inaction shall be deemed a denial**;
>
> xxx xxx xxx

[21] An Act Creating the Court of Tax Appeals

[22] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes

> (4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs." *(Emphasis supplied)*

Furthermore, Section 11 of RA No. 1125, as amended by RA No. 9282, prescribes how the said appeal should be taken, *viz:*

> "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**.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx" *(Emphasis supplied)*

Now as to the determination of the timeliness of the filing of the claim for refund, Sections 204 and 229 of the NIRC of 1997, as amended, are instructive, 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." *(Emphasis supplied)*

"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 assed 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." *(Emphasis supplied)*

It is clear that the afore-quoted Sections 204(C) and 229 of the NIRC of 1997 govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC.[23] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax.

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[23] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co.*, December 11, 1967

However, 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.*

The present claim pertains to excise taxes in the total amount of ₱7,802,145.73 which were paid by petitioner on February 25, 2009 on its importation of cigarettes, liquor and wine, detailed as follows:

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Exhibit	Authority To Release Imported Goods (ATRIG) No.	Exhibit	Excise Taxes
NAIA	1/23/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz, Penfolds Chardonnay, Penfolds Shiraz Cabernet	164	"I"	00023439	"W"	₱88,906.01
NAIA	5/10/2008	Mild Seven Lights, Salem Menthol, Salem Lights, Mild Seven Super Lights, Winston Red King Size, Winston Lights	4935	"J"	00015834	"X"	1,263,910.00
NAIA	6/7/2008	Davidoff Classic, West Ice, West KS, West Menthol	5844	"K"	00016190	"Y"	833,920.00
NAIA	7/28/2008	Davidoff Lights	7728	"L"	00019673	"Z"	208,480.00
NAIA	8/14/2008	West Full Flavor	8467	"M"	00019675	"AA"	208,480.00
NAIA	9/1/2008	Royal Salute Whisky, Martell VSOP Cognac, Chivas Regal Whisky	9220	"N"	00023424	"BB"	651,877.63
South Harbor	9/10/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	9957	"O"	00023422	"CC"	169,999.83
NAIA	9/16/2008	Absolut Vodka	9968	"P"	00023425	"DD"	58,786.56
NAIA	9/19/2008	Absolut Vodka	10000	"Q"	00023423	"EE"	58,786.56
NAIA	9/27/2008	West Menthol	10482	"R"	00020399	"FF"	208,480.00
NAIA	10/4/2008	West Full Flavor, West Ice	10508	"S"	00020400	"GG"	416,960.00
NAIA	10/12/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz Cabernet, Penfolds Chardonnay, Penfolds Shiraz Cabernet	11052	"T"	00023421	"HH"	96,803.10
Excise Tax Paid on February 25, 2009 Per Bureau of Customs (BOC) Official Receipt No. 160715021 [Exhibit "V"]							**₱ 4,265,389.69**

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Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Exhibit	Authority to Release Imported Goods (ATRIG) No.	Exhibit	Excise Taxes
NAIA	1/25/2008	Winston Red King Size, Winston Lights, Mild Seven Lights, Mild Seven Super Lights, Salem Menthol, Salem Lights	835	"LL"	00019672	"ZZ"	₱ 1,185,730.00
NAIA	1/25/2008	West Full Flavor	845	"MM"	00019674	"AAA"	208,480.00
NAIA	1/26/2008	Gordons Gin, Johnnie Walker Black Label	846	"NN"	00019614	"BBB"	247,515.91
NAIA	1/29/2008	Camus VSOP Cognac Elegance, Camus XO Elegance, Camus XO Superieur	853	"OO"	00019622	"CCC"	220,776.19
NAIA	2/25/2008	Absolut Vodka, Remy Martin VSOP	2006	"PP"	00019621	"DDD"	203,793.41
South Harbor	6/18/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	6874	"QQ"	00019618	"EEE"	169,999.83
NAIA	7/2/2008	Absolut Vodka	6916	"RR"	00019615	"FFF"	58,786.56
South Harbor	7/3/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	6940	"SS"	00019617	"GGG"	169,999.83
NAIA	8/2/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz Cabernet, Penfolds Chardonnay, Penfolds Shiraz Cabernet	7766	"TT"	00019620	"HHH"	96,803.10
NAIA	8/2/2008	Piper Heidsieck	7776	"UU"	00019619	"III"	700,533.90
NAIA	8/6/2008	Remy Martin VSOP	7777	"VV"	00019613	"JJJ"	164,602.37
NAIA	8/9/2008	Grand Marnier Liquer	7800	"WW"	00019616	"KKK"	109,734.91
Excise Tax Paid on February 25, 2009 per BOC Official Receipt No. 160715003 [Exhibit "YY"]							**₱3,536,756.04**[24]
Total Excise Tax Payment on February 25, 2009							**₱ 7,802,145.73**

Reckoned from February 25, 2009, petitioner had until February 25, 2011 within which to file a claim for refund both in the administrative and judicial levels. Thus, petitioner's administrative claim for refund filed on May 12, 2009[25], and the subsequent appeal before this Court by way of a Petition for Review filed on February 24, 2011 fell within the two-year prescriptive period.

[24] The correct total amount is ₱3,536,756.01
[25] Exhibit "KK"

Respondent CIR is a proper party in the present case.

Section 4 of the NIRC of 1997, as amended, enumerates the matters that fall within the power of the Commissioner of Internal Revenue, to wit:

> "**SEC. 4.** ***Power of the Commissioner to Interpret Tax Laws and to 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.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

Under the foregoing legal provision, the Commissioner of Internal Revenue (CIR) has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue.

The instant Petition for Review involves a claim for refund of allegedly erroneously paid excise taxes imposed on petitioner's importations of cigarettes, liquor and wine, as provided under Title VI of the NIRC of 1997. Being an internal revenue tax, the power to collect and refund excise taxes, is vested with the CIR.

Given therefore the power to decide claims for refund of excise taxes, respondent Commissioner of Internal Revenue is a proper party in this case. As for respondent Commissioner of Customs (COC), he was the one who collected from petitioner the excise taxes as the constituted agent of the CIR, in accordance with Section 12 (a) of the NIRC of 1997, as amended. Correspondingly, both the

CIR and the COC are proper parties in this case, being real parties in interest, pursuant to Section 2, Rule 3 of the 1997 Revised Rules of Civil Procedure which provides that every action must be prosecuted and defended in the name of the real party in interest.

Petitioner is partially entitled to subject refund claim

Petitioner claims that it is exempt from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies for international consumption, as provided by its franchise, Presidential Decree No. 1590.

On the other hand, respondent CIR argues that petitioner is not entitled to a refund of the excise taxes it paid inasmuch as Section 6 of RA No. 9334 expressly repealed the exemptions granted under petitioner's franchise. Respondent CIR further contends that Section 16 of PD No. 1590 categorically states that this "franchise is granted with the understanding that it shall be subject to amendment, alteration or repeal by competent authority when the public interest so requires". Based on the said provision, respondent contends that petitioner has no vested right under the said law.

Likewise, respondent CIR stresses that RA No. 9334 expressly repealed Section 13 of PD No. 1590 since a careful reading of the third paragraph of Section 131 of the NIRC, as amended by RA No. 9334 allegedly reveals the unmistakable intent of Congress to withdraw the tax exemptions granted to petitioner under Section 6 of PD No. 1590 and to subject to excise tax its importation of cigar, cigarettes and liquor for its commissary and catering supplies.

The Court agrees with petitioner.

This Court has consistently ruled in a number of cases[26], involving the same parties and issues, that under its franchise specified in PD No. 1590, petitioner is exempt from payment of specific taxes on all its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

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[26] CTA Case Nos. 7665 and 7713 dated April 17, 2012; CTA Case No. 7843 dated May 18, 2012; CTA Case Nos. 7677, 7685, and 7746 dated August 24, 2012; CTA Case No. 8153 dated January 17, 2013

Section 13 of PD No. 1590 provides as follows:

"SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The **basic corporate income tax** based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A **franchise tax of two per cent (2%)** of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx xxx xxx

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; **provided, that such articles or supplies or materials are imported for the use of the grantee in its**

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

Two points are evident from this provision. First, as consideration for the franchise, PAL is liable to pay either (a) its basic corporate income tax based on its net taxable income, as computed under the National Internal Revenue Code of 1997; or (b) a franchise tax of two percent (2%) based on its gross revenues, whichever is lower. Second, the tax paid is "in lieu of all other taxes" imposed by all government entities in the country.[27]

The tax paid under Section 13 of PD No. 1590 shall be in lieu of, among others, taxes, duties, charges, royalties, or fees due on all importations of "commissary and catering supplies" provided that the following are present:

> 1. such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and
>
> 2. they are not locally available in reasonable quantity, quality, or price.

On July 1, 2005, Congress passed RA No. 9337, Section 22 of which abolished the franchise tax provided under petitioner's charter and subjected petitioner to corporate income tax and VAT. Nevertheless, the same Section provides that petitioner shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by its franchise.

Section 22 of RA No. 9337, in part, reads:

> "SECTION 22. *Franchises of Domestic Airlines.* - **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.**, R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of

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[27] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006

Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

(A) **The franchise tax is abolished;**

(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) **The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement**." *(Emphasis supplied)*

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

Respondent's contention that Section 13 of PD No. 1590 had already been expressly repealed by RA No. 9334, mandating the collection of excise taxes on the importation of cigar and cigarettes, distilled spirits, fermented liquors and wines in the Philippines, is bereft of merit.

Section 6 of RA No. 9334 provides:

"SECTION 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

'SEC. 131. *Payment of Excise Taxes on Imported Articles.* -

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further*, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further*, That such articles directly imported by a government-owned and

> operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

The above-quoted provision expressly mentioned RA Nos. 7227, 7922, and 7903, while there is no express mention of PD No. 1590. Thus, Section 6 of RA No. 9334 cannot be considered as an express repeal of the exemptions granted under petitioner's franchise. Had Congress intended to repeal petitioner's franchise, it could have easily included PD No. 1590 in the enumeration of those liable for such excise tax not only under RA No. 9334, but also under the later law, which is RA No. 9337. That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.[28]

It is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[29] Thus, all doubts must be exerted in order to harmonize and give effect to all laws on the subject [30]

Notably, Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.D. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails.

Considering respondent's failure to prove that the exemption granted to petitioner under P.D. No. 1590 was already repealed by RA No. 9334, the Court shall proceed to determine whether petitioner is entitled to its refund claim on the basis of the exemption granted under its franchise.

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[28] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009
[29] *Tan v. Pereña*, G.R. No. 149743, February 18, 2005
[30] Agpalo, Statutory Construction, 2003 Edition, p. 405

Going back to the requirements mentioned under Section 13 of PD 1590, petitioner must prove the following conditions, in order to be exempted from taxes, duties, charges, royalties, or fees on the importation of its commissary and catering supplies, to wit:

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

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

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

Petitioner presented in evidence its Annual Income Tax Returns for fiscal years ending March 31, 2008[31] and March 31, 2009[32], showing that it paid its corporate income tax for the same years. Likewise, it was established that petitioner is a VAT-registered entity and paid its VAT liabilities for the subject period as evidenced by its Certificate of Registration[33] and Quarterly VAT Returns[34] for the first quarter of fiscal year 2008 to the third quarter of fiscal year 2009.

As shown in the various "Authority to Release Imported Goods" (BIR Form No. 1918)[35] issued by the CIR to the Commissioner of Customs, the subject imported articles are intended exclusively for petitioner's international inflight consumption. Also, in the "Informal Import Declaration and Entry"[36] (IIDE) documents submitted by petitioner, the imported articles were described as "In Flight Materials".

In order to support its claim that the subject imported articles were not locally available in reasonable quantity, quality or price, petitioner presented the Judicial Affidavit[37] of Ms. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division,

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[31] Exhibit "TTT"
[32] Exhibit "UUU"
[33] Exhibit "VVV"
[34] Exhibits "WWW-1" to "WWW-4" and "XXX-1" to "XXX-4"
[35] Exhibits "W" to "HH" and "ZZ" to "KKK"
[36] Exhibits "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", and "WW"
[37] Exhibits "ZZZ" to "ZZZ-1"

Catering and In-flight Materials Purchasing Sub-Department; the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies[38]; the Philippine Wine Merchants' Price List for 2008[39]; the Monthly Philippine Dealing System (PDS) Rates for fiscal years 2008, 2009 and 2010[40]; and the letters of Ms. Marianne C. Raymundo, petitioner's Vice-President for Financial Services with the subject "Booking Rates" for the months of January[41], July[42], September[43], and October[44] 2008.

A perusal of the Philippine Wine Merchants' Price List for 2008 showed that the local prices of the following wine products imported by petitioner were not included in the said price list:

Product Imported	IIDE No.	Exhibit
Gordons Gin	846	"NN"
Grand Marnier	7800	"WW"

Thus, only the importation cost of the following wines and liquor products as listed in the "Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies" submitted by petitioner, can be compared with the local prices reflected in the Philippine Wine Merchants' Price List for 2008:

Exhibit	Product Imported	Unit Cost per Salles Invoice (price per bottle in US$)	IIDE No.	Unit Cost per IIDE (per bottle in US$)	Phil. Wine Merchants 2008 Pricelist (price per bottle converted to US$) [*Exhibits "ZZZ-3" and "ZZZ-5"*]
"I" to "I-2"	Lindemans Premier Selection Shiraz	3.22	164	3.91	6.58
	Lindemans Premier Selection Chardonnay	3.22			
	Penfolds Private Release Chardonnay	5.03			
	Penfolds Private Release Shiraz Cabernet	5.03			
"NO" to "N-2"	Chivas Regal	12.50	9220	15.21	23.27
	Royal Salute	51.00			135.41

[38] Exhibit "ZZZ-2"
[39] Exhibit "ZZZ-3"
[40] Exhibit "ZZZ-5"
[41] Exhibit "ZZZ-4"
[42] Exhibit "ZZZ-8"
[43] Exhibit "ZZZ-6"
[44] Exhibit "ZZZ-7"

	Martell VSOP	16.00			34.28
"O" to "O-2"	Vin De Table Blanc PAL Vin De Table Rouge PAL	2.14	9957	2.03	7.48
"P" to "P-2"	Absolut Vodka	4.38	9968	5.79	9.52
"Q" to "Q-2"	Absolut Vodka	4.38	10000	5.79	9.52
"T" to "T-2"	Lindemans Premier Selection Chardonnay	3.91	11052	3.86	6.12
	LIndemans Premier Selection Shiraz	3.91			
	Penfolds Private Release Chardonnay	5.80			
	Penfolds Private Release Shiraz Cabernet	5.80			
"NN" to "NN-2"	Johnnie Walker Black Label	9.83	846	8.89	24.69
"OO" to "OO-2-a"	Camus VSOP Cgonac Elegance	13.67	853	20.35	44.31
	Camus Cognac XO Elegance	50.00			103.38
	Camus XO Superieur	35.00			103.38
"PP" to "PP-2-a"	Absolut Vodka	4.38	2006	14.10	11.12
	Remy Martin VSOP	15.88			36.71
"QQ" to "QQ-2"	Vin De Table Blanc PAL Vin De Table Rouge PAL	2.14	6874	2.28	7.87
"RR" to "RR-2"	Absolute Vodka	4.38	6916	5.81	10.18
"SS" to "SS-2"	Vin De Table Blanc PAL Vin De Table Rouge PAL	2.18	6940	2.28	8.00
"TT" to "TT-2"	Lindeman's Chardonnay	3.70	7766	5.00	5.83
	Lindemans Shiraz	3.70			
	Penfolds Chardonnay	4.80			
	Penfolds Shiraz	4.80			
"UU" to "UU-2"	Piper Heidsieck Brut	15.62	7776	17.74	55.39
"VV" to "VV-2"	Remy Martin VSOP Cognac	15.88	7777	17.96	32.38

Clearly, from the foregoing table, the cost of importing the above-enumerated wines and liquor is lower than purchasing them locally.

Anent the imported cigarettes, this Court notes that petitioner failed to submit the local price list of the imported cigarettes. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division, Catering and In-flight Materials Purchasing Sub-Department, stated the following in her Judicial Affidavit[45]:

"22. Q. How about the local costs of the imported cigarettes involved?

22. A. I did not put a column regarding the local

[45] Exhibit "ZZZ", p. 4, docket, p. 574

costs of the imported cigarettes involved because there are no local suppliers of the said cigarettes who could regularly supply PAL with the quantity and brand of the cigarettes it needs for its commissary supplies for sale in its international flights. Furthermore, if there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.

23. Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

23. A. Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers, thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL."

The Court cannot just rely on the foregoing statements. Petitioner should have presented a certification from local dealers of cigarettes that they cannot supply petitioner enough cigarettes for its catering and in-flight use and that if they had such products, a list of the corresponding selling prices. In the absence thereof, the Court cannot determine whether the cost of importing cigarettes is likewise lower than purchasing them locally.

In sum, the Court finds that petitioner has sufficiently proven its exemption from the payment of excise taxes for its importation of wines and liquor in the amount of ₱3,131,639.31, broken down as follows:

Port of Entry	Arrival Date	Description of Articles	Informal Import Declaration and Entry (IIDE) No.	Exhibit	Authority to Release Imported Goods (ATRIG) No.	Exhibit	Excise Taxes
NAIA	1/23/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz, Penfolds Chardonnay, Penfolds Shiraz Cabernet	164	"I"	00023439	"W"	₱ 88,906.01
NAIA	9/1/2008	Royal Salute Whisky, Martell VSOP Cognac, Chivas Regal Whisky	9220	"N"	00023424	"BB"	651,877.63
South Harbor	9/10/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	9957	"O"	00023422	"CC"	169,999.83
NAIA	9/16/2008	Absolut Vodka	9968	"P"	00023425	"DD"	58,786.56
NAIA	9/19/2008	Absolut Vodka	1000	"Q"	00023423	"EE"	58,786.56
NAIA	10/12/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz Cabernet, Penfolds Chardonnay, Penfolds Shiraz Cabernet	11052	"T"	00023421	"HH"	96,803.10
NAIA	1/26/2008	Johnnie Walker Black Label	846	"NN"	00019614	"BBB"	221,184.43
NAIA	1/29/2008	Camus VSOP Cognac Elegance, Camus XO Elegance, Camus XO Superieur	853	"OO"	00019622	"CCC"	220,776.19
NAIA	2/25/2008	Absolut Vodka, Remy Martin VSOP	2006	"PP"	00019621	"DDD"	203,793.41
South Harbor	6/18/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	6874	"QQ"	00019618	"EEE"	169,999.83
NAIA	7/2/2008	Absolut Vodka	6916	"RR"	00019615	"FFF"	58,786.56
South Harbor	7/3/2008	Vin De Table Blanc PAL, Vin De Table Rouge PAL	6940	"SS"	00019617	"GGG"	169,999.83
NAIA	8/2/2008	Lindemans Premier Chardonnay, Lindemans Premier Shiraz Cabernet, Penfolds Chardonnay, Penfolds Shiraz Cabernet	7766	"TT"	00019620	"HHH"	96,803.10
NAIA	8/2/2008	Piper Heidsieck	7776	"UU"	00019619	"III"	700,533.90
NAIA	8/6/2008	Remy Martin VSOP	7777	"VV"	00019613	"JJJ"	164,602.37
						Total	**₱3,131,639.31**

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **Three Million One Hundred Thirty One Thousand Six Hundred Thirty Nine Pesos and Thirty One Centavos (₱3,131,639.31)**, representing petitioner's erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

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.

ERLINDA P. UY
Associate Justice

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's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice