REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8198

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

SEP 10 2015
3:48 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's "Motion for Reconsideration" filed on June 25, 2015. Petitioner seeks reconsideration of this Court's Decision promulgated on June 2, 2015, the dispositive portion of which states:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

In the assailed Decision, the Court ruled that despite petitioner's exemption from the payment of excise taxes, petitioner failed to prove compliance with the requirements set forth by *Section 13 of Presidential Decree ("P.D.") No. 1590.*

In its Motion for Reconsideration, petitioner alleges the following:

1. that the Court erred in denying its claim for failure to prove that the imported articles are intended to be used in its transport and non-transport operations and other activities incidental thereto, and that the commissary supplies are not locally available in reasonable quantity, quality or price;

2. that the Informal Import Declaration and Entry Forms ("IIDE Forms") and Authority to Release Imported Goods ("ATRIGs") are public documents which do not require authentication, therefore it is immaterial whether or not its witness, Mr. Joseph Brian T.L. Tan ("Mr. Tan"), was involved in the preparation of the said documents;

3. that the Court defied its own pronouncement in *CTA Case No. 8415* involving the same parties, wherein the Court ruled that the submission of comparative local price is not the only determining factor to justify the exemption of the imported product, more so when such comparative local price could not be provided in view of the absence of local suppliers capable of supplying the required amount of imported articles;

4. that the fact that it was able to produce the list of prices for wine and liquor from only one merchant should not negate that the articles are not locally available in reasonable quantity, quality or price; and

5. that respondent Commissioner of Internal Revenue ("CIR") herself admitted in her Memorandum dated May 12, 2014, that importation of the commissary supplies costs less than purchasing them locally.

On August 3, 2015, respondent Commissioner of Customs ("COC") filed his "Comment (on petitioner's Motion for Reconsideration dated June 22, 2015)." He argues that the Court's reliance of *CIR and COC v. PAL*[1] is misplaced since the doctrine of *stare decisis* does not apply where there is a conflict between the precedent used and the law[2]; that *Section 131 of the National Internal Revenue Code ("NIRC")*, as amended by *Republic Act ("R.A.") Nos.*

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[1] G.R. No. 212536-37, August 27, 2014.
[2] Republic Act ("R.A.") Nos. 8424 & 9334.

8424 & 9334 already repealed or modified *Section 13 of P.D. No. 1590*, withdrawing the tax exemptions granted to petitioner under *Section 6 of P.D. No. 1590*; that assuming there was no such express repeal, the irreconcilable disparity between *Section 6 of P.D. No. 1590 and R.A. Nos. 8424 & 9334* shows the manifest intent of congress to repeal petitioner's franchise; *Section 131 of R.A. No. 8424, as amended by R.A. No. 9334* is a special provision under a general law, thus, it prevails over *Section 6 of P.D. No. 1590*, a general provision under a special law; *Section 22(D) of R.A. No. 9337* does not state that petitioner shall be exempt from payment of excise tax on its imported cigars, cigarettes and wines for its commissary supplies; that assuming *arguendo* that *R.A. Nos. 8424 &* 9334 do not repeal *P.D. No. 1590*, petitioner is still not entitled to the refund because it failed to establish that the imported commissary supplies are not locally available in reasonable quantity, quality or price; and that the condition for the grant of petitioner's tax privileges under *Section 13 of P.D. No. 1590* ceased to exist when it became a private corporation.

On even date, respondent Commissioner of Internal Revenue ("CIR") filed, by registered mail, her "Comment (to Petitioner's Motion for Reconsideration dated 22 June 2015)." She alleges that petitioner's Motion for Reconsideration is a mere rehash of its arguments in its Memorandum dated April 10, 2014, which were already considered and passed upon by the Court; that a party who moves for reconsideration has the burden to clearly demonstrate that the Court's ruling is erroneous or improper; and that petitioner failed to present sufficient evidence for its claim for refund of excise taxes.

Hence, the subject Motion is submitted for resolution.

The Court finds no compelling reason to reverse or to modify the assailed Decision.

Section 13 of P.D. No. 1590 provides the following conditions in order for petitioner to be exempt from excise tax on its importation of assorted cigarettes, alcohol and wines, to wit:

1. the corporate income tax and value-added tax liabilities for the subject period were paid;

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

There is no question that petitioner complied with the first requisite.

However, anent the second requisite, a closer perusal of the ATRIGs,[3] reveal that they explicitly state that the articles described therein *"will be used exclusively for int'l. inflight consumption."* Furthermore, they were issued under the authority of the CIR, a public officer, thus making it public in nature.

Section 23, Rule 132 of the Rules of Court provides that "public documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated."

Therefore, the stated facts in the ATRIGs, which provide that the imported articles were used exclusively for international inflight consumption, are *prima facie* evidence that they were indeed used for the declared purpose.

Thus, in the absence of any evidence to contradict the facts stated in the ATRIGs, the Court now reconsiders its position in denying petitioner's claim based on non-compliance with the second requisite of *Section 13 of P.D. No. 1590.*

With regard to the third requirement, while it is true that the submission of the comparative local price is not the only determining factor to justify the excise tax exemption of the imported product, it is incumbent upon petitioner to present other evidence that will prove that indeed the imported articles are not locally available in reasonable quantity, quality or price.

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[3] *Exhibits* "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG," and "HH;" *Records* pp. 1114-1125.

As stated in the assailed decision, *"without sufficient basis for comparison of the quality, quantity or prices of locally available liquors, wines and cigarettes as against the quality, quantity or prices of such imported goods, petitioner could not have ascertained that the said imported goods are not locally available in reasonable quantity, quality, or price."*

It is settled in a long line of cases that tax refunds, like tax exemptions, are construed strictly against the taxpayer, the claimants have the burden of proof to establish the factual basis of their claim for refund or tax credit,[4] which petitioner failed to do.

WHEREFORE, premises considered, the instant "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[4] *Hitachi Global Storage Technologies Philippines Corp. v. CIR,* G.R. No. 174212, October 20, 2010, 634 SCRA 205.