

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE AIRLINES, INC., CTA CASE NOS. 8032 & 8075
Petitioner,

Members:

- versus -

BAUTISTA, Chairperson
FABON-VICTORINO, and
RINGPIS-LIBAN, II.

COMMISSIONER OF
INTERNAL REVENUE and
COMMISSIONER OF
CUSTOMS,

Promulgated:

Respondents.

JAN 05 2015
Case 8032 & 8075

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DECISION

BAUTISTA, I.:

Before the Court is the consolidated Petitions for Review filed by Philippine Airlines, Inc. (hereafter "petitioner") praying for the refund of the aggregate amount of Php22,214,356.06¹ representing specific tax on importations of cigarettes, wines, and liquors for the period of February to May 2008.

THE PARTIES²

Petitioner Philippine Airlines Inc. is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with principal office at the 8th Floor, PNB Financial Center, Macapagal Avenue, CCP Complex, Pasay City 1300, where it may be served with summons.

¹ Records, CTA Case No. 8023, p. 23 and CTA Case No. 8075, p. 19.

² *Id.*, pp. 1, 1069, and 1070.

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("BIR"), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise taxes imposed on wines, liquors and cigarettes by Sections 142 and 145, respectively of the 1997 National Internal Revenue Code, as amended ("NIRC"), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons.

Respondent Commissioner of Customs is the Commissioner of the Bureau of Customs ("BOC"), which is the government agency in charge of the assessment and collection of customs duties and all other lawful revenues from imported articles, including the excise taxes imposed on wines, liquors and cigarettes by Sections 142 and 145, respectively of the 1997 NIRC, as delegated and authorized by the respondent CIR through an Authority to Release Imported Goods (ATRIG) (BIR Form No. 1918) duly issued by the latter and addressed to the former, in accordance with Section 12 (a) of the 1997 NIRC.

FACTS OF THE CASE

On June 11, 1978, by virtue of 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 and maintain air transport services domestically and internationally.³

Pursuant to Section 13⁴ of PD No. 1590, petitioner is entitled to tax exemption from all other taxes after payment of either (a) the basic

³ Records, Consolidated Joint Stipulation of Facts and Issues ("CJFI"), paragraph 3, p. 1070.

⁴ 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:

corporate income tax; or (b) a franchise tax of two percent of gross revenues.⁵

On January 1, 2005, 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.⁶ Section 6 of the said law provides:

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

'SEC. 13. 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 customs house, 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.

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;

⁵ *Records*, CJSFI, paragraph 4, p. 1070.

⁶ *Id.*, paragraph 5, p. 1071.

'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 CIR Guillermo Parayno wrote to then Commissioner of Customs ("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."⁷

On February 4, 2005, then COC George Jereos issued a Memorandum to the 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."⁸

On March 1, 2005, COC Alberto 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 Revenue Regulations No. 12-2004."⁹

Consequently, petitioner's importation of cigarettes, wines and liquors were subjected to excise tax and withheld from release pending payment of said taxes.¹⁰

Petitioner, on various dates, paid under protest the assessed specific taxes and filed its administrative and judicial claims for refund of its excise tax on importations of cigarettes, wines and liquors for the period of February to May 2008, as follows:

CTA Case No.	Amount	Date of Payment	Date of Filing of Admin. Claim	Date of Filing of Judicial Claim
8032	Php2,293,035.65	February 21, 2008	March 5, 2009 ¹¹	February 22, 2010
	4,670,596.10	March 06, 2008	March 5, 2009 ¹²	
	4,996,793.33	March 11, 2008	March 5, 2009 ¹³	
	2,279,825.42	April 01, 2008	March 5, 2009 ¹⁴	
8075	Php4,910,127.24	April 18, 2008	March 5, 2009 ¹⁵	April 14, 2010
	3,063,978.32	May 19, 2008	March 5, 2009 ¹⁶	

⁷ *Id.*, paragraph 6, pp. 1071-1072.

⁸ *Id.*, paragraph 7, p. 1072.

⁹ *Id.* at paragraph 8.

¹⁰ *Id.*, paragraph 9, p. 1072.

¹¹ Exhibit "M."

¹² Exhibit "R."

¹³ Exhibit "W."

¹⁴ Exhibit "BB."

¹⁵ Exhibit "GG."

¹⁶ Exhibit "BBB."

CTA Case No. 8032

In respondent CIR's Supplemental Answer,¹⁷ the following special affirmative defenses are interposed:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of Php14,240,250.50 being claimed by petitioner as alleged specific taxes paid on 21 February 2008, 6 March 2008, 11 March 2008 and 1 April 2008 was not properly documented.

6. Petitioner must prove that the amount sought to be refunded are erroneously paid taxes within the purview of Sections 204 and 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).

7. 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/credit.

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211).

While in respondent COC's Answer,¹⁸ the following Special and Affirmative Defenses are alleged:

"16. Respondent COC repleads, reproduces and incorporates, by way of reference, all of the foregoing averments. ✓

**Petitioner is not
exempt from excise
tax either under its**

¹⁷Records, pp. 973-975.

¹⁸ *Id.*, pp. 1018-1036.

**franchise (PD1590) or
under Republic Act
No. 9334**

17. Petitioner contends that pursuant to Presidential Decree 1590, the law granting its airline franchise, it is tax and duty-exempt from payment of excise taxes on its importations of cigarettes and wines allegedly for international flight consumption. It avers that it was erroneously collected with the excise tax in the aggregate amount of amount of Fourteen Million Two Hundred Forty Thousand Two Hundred Fifty and 50/100 (Php14,240,250.50) and therefore claims for its refund.

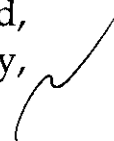
18. Section 13 of Presidential Decree No. 1590 fully reads:

‘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:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees 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 cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

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;**

3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

4. All taxes on interest, fees, and other charges on foreign loans obtained and other

obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

(a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and

(b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total


quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise or income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources.

19. Nowhere in PD 1590 does it clearly state that petitioner is exempt from excise tax on its wine and cigarettes importations. For it is required that exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.

20. In the absence of words clearly exempting from payment of excise tax on all its importations, petitioner should be held liable thereof. Well-settled is the rule that tax statutes must be strictly construed against the taxpayer who is claiming for the exemption because the law does not look with favor on tax exemptions and that he who seeks to be, must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

21. Settled too is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. 

22. The nature of an excise tax is that it is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Thus, petitioner cannot claim exemption from excise tax on all its importations when PD 1590 specifically grants it exemption only in relation to its franchise, subject to the terms and conditions prescribed therein.

23. Moreover, Section 8 of PD 1590 specifically provides that petitioner shall be "subject to the laws of the Philippines now existing or hereafter enacted."

24. Therefore, assuming arguendo that petitioner is exempt from excise tax under PD 1590 as it claims itself to be, still, there is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority. To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.

25. Thus, the latest expression of the taxing authority with regard to excise taxes is found under Section 6 of Republic Act No. 9334 entitled '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' which became effective in 2005 and provides:

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

'Section 131. Payment of Excise Taxes On Imported Articles. -

(A) Persons Liable.

xxx

xxx

xxx

'The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits 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: Provided, however, That this shall not apply to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': xxx.'" (Emphasis supplied)

26. Clearly from the above-mentioned provision, it can be gleaned that excise taxes are imposed on **all importations** of cigar and cigarettes, distilled spirits, fermented liquors and wines, **notwithstanding the contrary provisions of any special or general law**, such as PD 1590 which granted the franchise of petitioner. Hence, by the explicit language of Section 131 (A) of RA 9334 which authorizes the government to impose excise tax on imported articles, including the subject importations of petitioner, is clear.

27. Even Section 24 of PD 1590 clearly states that petitioner's franchise may be modified, amended or repealed expressly by a special law or decree that shall specifically modify, amend,

or repeal any section or provision thereof. Therefore, there is no need for the legislature to enumerate in RA9334 and give a long list of all laws or franchises that will be affected by the imposition of excise tax.

28. No less than our Constitution clearly provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires.** With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power; they are also **subject to alteration by the power to tax, which like police power cannot be contracted away.**

29. Besides, PD 1590 was issued way back in 1978 when petitioner was still the 'national flag carrier' following the reacquisition by the Government of the ownership, control and management thereof (1st Whereas Clause, PD 1590). Thus, petitioner's tax exemptions under PD 1590 were based on the overriding consideration, i.e., government ownership. Such condition though existing at the time when petitioner's franchise was granted, no longer holds true to date.

30. It should be recalled too that in December 1986, then President Corazon C. Aquino, who was exercising executive and legislative powers, issued Executive Order (EO) No. 93 (entitled "Withdrawing All Tax and Duty Incentives, subject to certain exceptions, Expanding The Powers of the Fiscal Incentives Review Board and for other purposes") which **withdrew all tax and duty exemptions** granted to government and private entities effective March 10, 1987 with certain exceptions. Section 1 of the said EO reads:

'Sec. 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted " to government and private entities are hereby withdrawn, except:

a) those covered by the non-impairment clause of the Constitution;



b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;

c) those enjoyed-by enterprises registered with:

(i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;

(ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;

(iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;

d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;

e) those conferred under the four basic codes namely:

(i) the Tariff and Customs Code, as amended;

(ii) the National Internal Revenue Code, as amended;



(iii) the Local Tax Code,
as amended;

(iv) the Real Property Tax
Code, as amended;

f) those approved by the President
upon the recommendation of the
Fiscal Incentives Review Board.
(*emphasis supplied*)

31. The wholesale withdrawal of tax incentives granted to all government and private entities under EO 93 is in order for the government to re-examine existing tax exemptions and restore through the 'review mechanism' of the Fiscal Incentives Review Board only those that are consistent with declared economic policy. Thus wise, the chief revenue source of the government will not be greatly, if not unnecessarily, eroded since tax exemptions that were granted on piecemeal basis, and which have lost relevance to existing programs, are eliminated. Accordingly, whatever tax exemption or privilege granted in favor of petitioner under PD 1590 was considered withdrawn by virtue of EO 93.

32. Under the present circumstances or 20 years after the grant of its franchise, petitioner as a private entity, and like all the other entities, is subject to excise tax on its importations, in the absence of a clear provision exemption it from the coverage of RA 9334.

33. It must be underscored that the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government has been repeatedly observed. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it.

34. In sum, the Php14,240,250.50 taxes were rightfully collected by respondent COC from petitioner on the importation of alcohol and cigarettes in accordance with law. ✓

35. Consistent with the provisions of RA 9334, respondent CIR imposed taxes on petitioner's importation, and respondent COC collected those taxes upon the former's advice.


36. The BOC, being a mere collection agency, does not have the power and jurisdiction to adjudicate any issue arising from the rulings, rules and regulations promulgated by the BIR in the exercise of its quasi-judicial functions, being of equal ranks, unless otherwise duly delegated as an incident to the collection.

37. Under the premises, petitioner should have availed of administrative remedies before lodging the present case to this Honorable Court. Taxes paid and collected are presumed to have been paid in accordance with law, therefore, not refundable.

Petitioner is not entitled to tax refund for excise tax payments on the subject importations.

38. In an action for refund, the burden of proof is on the taxpayer to establish its right for refund, and failure to sustain the burden is fatal to its claim for refund. This, it is incumbent upon petitioner to show that the alleged excise taxes in the total amount of Php14,240,250.50 were erroneously collected by respondent COC.

39. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases.



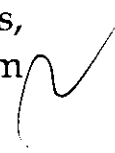
40. Assuming *arguendo* that the subject importations were used by petitioner as its commissary and catering supplies, the Letter of Instructions No. 684 issued in April 4, 1978 (Annex CC to its Petition) however mandates that the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil for its use shall be allowed informal entry free of duty and released subject to the presentation within fifteen (15) days from the date of release of a statement under oath stating that: (a) the articles or supplies are not locally available in reasonable quantity, quality, and price; and (b) that such articles or supplies are necessary or incidental to its operation and business activities.

41. The same LOI 684 provides that petitioner's imported consumable item for its catering and food services shall be transferred directly and immediately to the Bureau of Customs' bonded warehouse by submitting a requisition slip and after proper accounting of the said released articles and supplies by presentation of proof of actual use in its airline operations. Likewise, such withdrawals of the articles and supplies shall be approved by respondent Commissioner of Customs.

42. Again, petitioner has not shown that it had complied with the requirements of LOI 684. A perusal of the instant petition shows that petitioner did not submit, within fifteen (15) days from the date of release of its articles and supplies from the accredited customs warehouse, a statement under oath or an affidavit required by LOI 684.

43. It has been ruled that the grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities.

44. Based on the foregoing, for failing to show compliance with the above-mentioned requirements, petitioner cannot still claim any exemptions from



payment of excise taxes for the subject importation of its alcohol and cigarettes.

45. In any case, tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor.

46. Petitioner failed to clearly show that it is exempted from payment of excise tax on the subject wine and cigarette importations, thus, respondent COC validly implemented Republic Act No. 9334 and its regulation which has the force and effect of law.

47. Moreover, petitioner's reliance on the DOJ Opinion No. 44, dated 17 June 1996 is misplaced, as it is not binding on respondent COC for it is merely advisory in nature. The said DOJ Opinion was issued upon a definite fact and issue, i.e., whether PAL is exempted from payment of filing fees relative to its application for an increase of its authorized capital stock from Php5 Billion and Php10 Billion. Thus, it is not controlling particularly on the issue of whether PAL is exempt from payment of excise tax on the subject wine and cigarette importations.

48. Likewise, BIR Ruling dated 13 April 1994 is not conclusive against respondent COC for the reason that the BIR merely ruled on PAL's exemption from documentary stamp tax on bank notes/documents on certain loans.

49. Jurisprudence has it that when an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law; and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means.

50. Verily, petitioner has not shown its right to exemption from excise tax on the subject importations.

Thus, its claim for refund should be denied and the instant petition should be dismissed."

CTA Case No. 8075

In respondent CIR's Answer,¹⁹ she raised the same defenses in her Supplementary Answer²⁰ filed on April 22, 2010 in CTA Case No. 8032, except the amount and dates found in paragraph five (5), which states as follows:

"5. The amount of Php14,240,250.50 being claimed by petitioner as alleged specific taxes paid on 21 February 2008, 6 March 2008, 11 March 2008 and 1 April 2008 was not properly documented."

On the other hand, respondent COC raised the following Special and Affirmative Defenses,²¹ to wit:

6. Respondent repleads, reproduces, and incorporates by way of reference all the foregoing averments.

7. Petitioner argues that Presidential Decree No. 1590, the law granting its airline franchise, exempts it from excise taxes on its importations of cigarettes and wines for international flight consumption; consequently, the act of respondents of collecting excise taxes from its subject importations based on Republic Act No. 9334 is erroneous, thereby entitling them to a refund of all excise taxes paid in the total amount of Php7,974,105.56.

8. Petitioner's argument lacks merit.

9. By passing Republic Act No. 9334 (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, Congress made clear its intention to increase the tax base and thereby eliminate tax exemption privileges being enjoyed by several entities, including petitioner.

¹⁹ Records, CTA Case No. 8075, pp. 223-225.

²⁰ Records, CTA Case No. 8032, pp. 973-975.

²¹ Records, CTA Case No. 8075, pp. 244-253.

9.1. Where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect (Mecano vs. Commission on Audit, 216 SCRA 500 [1992]). The pertinent provision of RA 9334 holds:

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.

xxx

xxx

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.

Sec. 10. Repealing Clause. - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

9.2. Being clear and manifest, the intention of Congress in passing RA 9334 must be given effect.


9.3. As mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority. To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it (*Republic vs. Caguioa*, 536 SCRA 193 [2007]).

9.4. Moreover, no less than our Constitution clearly provides that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires (Sec. 11, Article XII of the 1987 Constitution). Franchises are subject to alterations through a reasonable exercise of police power; they are also subject to alteration by the power to tax, which like police power, cannot be contracted away (*City Government of San Pablo, Laguna vs. Reyes*, 305 SCRA 353 [1999]).

9.5. RA 9334 is clearly an amendment of petitioner's franchise caused by Congress in the exercise of the government's power to tax. Well-settled is the principle that tax exemptions may be withdrawn at the pleasure of the taxing authority (*Mactan Cebu International Airport Authority vs. Marcos, et al.*, 261 SCRA 667 [1996]).

9.6. The Supreme Court in *Manila Electric Company vs. Province of Laguna, et. Al.*, 306 SCRA 750 [1999]), explained that tax exemptions contained in franchises do not partake the nature of a contract. A franchise is but a grant that is subject to amendment, alteration or repeal by Congress when the common good so requires, thus:

While the Court has, not too
infrequently, referred to tax



exemptions contained in special franchises as being in the nature of contracts and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires.

9.7. All told, petitioner is liable for excise taxes on its importation of cigarette, wine and liquor, by virtue of the clear legislative intent expressed by Congress in RA 9334, which amounts to an amended of petitioner's franchise. Hence, ✓

respondent CIR properly prescribed the collection of the subject excise taxes and respondent COC rightfully collected them.

10. Consistently, Section 8 of PD 1590 specifically provides that petitioner shall be 'subject to the laws of the Philippines now existing or hereafter enacted.'

11. It must be underscored that the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government. Taxes being the lifeblood of the government, should be collected without unnecessary hindrance, and every precaution must be taken not to unduly suppress it (Republic vs. Caguioa, *supra*).

12. Petitioner's allegation that RA 9334 subjects to tax previously tax-free and duty-free importations of cigarettes and wine of 'freeports and duty-free shops only,' results from an erroneous interpretation of the law's provisions.

12.1. Section 6 of RA 9334 specifically states that '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.' The phrase 'even if' meant to clarify that the enumerated items intended for freeports and duty-free shops are no longer exempted from being levied applicable taxes. It does not in any way indicate that only goods brought to freeports and duty-free shops shall be levied taxes, as what petitioner asserts. The intention of the law is too clear to be mistaken.

13. So, too does petitioner's reference to Letter of Instruction No. 684 (LOI 684) not avail. Petitioner contends that by virtue of this enactment, its importation of commissary and catering supplies were allowed informal entry free of duty.

13.1. LOI 684, issued in April 4, 1978, clearly mandates that the importation of petitioner's aircraft, engines, equipment, machinery, spare parts, commissary and catering supplies, ✓


aviation gas, fuel and oil for its use shall be allowed informal entry free of duty and released immediately subject to the presentation within fifteen (15) days from the date of release, of a statement under oath stating that: (a) such articles or supplies are not locally available in reasonable quantity, quality and price; and (b) that such articles are necessary for or incidental to the operation of petitioner and its other business activities.

13.2. LOI 684 further provides that petitioner's imported consumable item for its catering and food services shall be transferred directly and immediately to the Bureau of Customs' bonded warehouse, and may be withdrawn by petitioner by accomplishing a requisition slip. The consumable items so withdrawn shall be properly accounted for by presentation of proof of actual use in the airline's operations.

13.3. Unfortunately, petitioner has not shown that it has complied with all the requirements of LOI 684 for it to enjoy the tax exemption privileges provided by the same law, specifically for its subject importations of liquor, cigarette and wine. Nevertheless, LOI 684 yields to the clear legislative intent of RA 9334 which removes petitioner's tax exemption from the subject importations.

14. Petitioner cited BIR Ruling dated April 13, 1994 to support its argument that the phrase "in lieu of all taxes" in Section 13 of its franchise had the effect of exempting it from payment of all taxes other than those imposed in the same law.

14.1. However, this BIR ruling is not conclusive upon respondent COC because the BIR merely ruled therein on petitioner's exemption from payment of documentary stamp tax on bank notes/documents on certain loans, and not on matters that have a direct implication on this case.



15. Petitioner also cites Opinion No. 44 of the Department of Justice dated June 17, 1996, which allegedly construed the meaning of “in lieu of all taxes.”

15.1. However, petitioner’s reliance on this opinion is misplaced. The opinion was issued upon a definite fact and issue, i.e., whether petitioner is exempted from payment of filing fees relative to its application for an increase of its authorized capital stock from P5 Billion to P10 Billion. Thus, it is not controlling particularly on the issue of whether petitioner is exempt from payment of excise taxes on its importations of liquor, cigarette and wine.

16. When an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law, and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means (*La Bugal-B’laan Tribal Association, Inc. vs. Ramos*, 421 SCRA 148 [2004]).

17. Finally, tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor (*Asiatic Petroleum Co., vs. Llanes*, 49 Phil. 466 [1926], *Reagan vs. Commissioner*, 30 SCRA 968 [1969]) and failure to sustain the burden is fatal to the claim for refund. Tax refunds cannot be permitted to exist upon “vague implications” (*Commissioner of Internal Revenue vs. Procter and Gamble*, 204 SCRA 377 [1991]).”

A pre-trial conference was set.²² On July 15, 2010, respondent COC filed his pre-trial brief.²³

On August 2, 2010, petitioner filed a “Motion for Consolidation,²⁴” praying that CTA Case No. 8032, pending before the First Division be consolidated with CTA Case No. 8075, pending before the Second

²² Records, CTA Case No. 8032, p.1039.

²³ *Id.*, pp. 1042-1052.

²⁴ Records, CTA Case No. 8075, pp. 287-289.

Division. The latter Court issued a Resolution²⁵ granting the “Motion for Consolidation,²⁶” which was confirmed by the former Court in a Resolution²⁷ dated November 3, 2010.

On November 24, 2010, the parties submitted their “Consolidated Joint Stipulation of Facts and Issues,”²⁸ after the Court’s Resolution dated September 17, 2010.²⁹

Petitioner presented its “Petitioner’s Documents For Marking as Exhibits³⁰” and “Supplemental Formal Offer of Exhibits.³¹” On the other hand, the right of respondents to present evidence has been deemed waived.³²

Pursuant to CTA Administrative Circular No. 01-2013, dated March 26, 2013, and Order dated April 3, 2013, the consolidated cases, docketed as CTA Case Nos. 8032 and 8075, were transferred to the Third Division.

On January 14, 2014,³³ the Court resolved to submit the case for decision, taking into consideration the “Memorandum” filed by petitioner on January 2, 2014,³⁴ and the “Memorandum,”³⁵ filed by respondent COC on January 6, 2014, without any Memorandum filed by respondent CIR.

Hence, this Decision.

THE ISSUES

As stipulated by the parties in the Consolidated Joint Stipulation of Facts and Issues (“CJSFI”) dated November 8, 2010, the issues³⁶ for the Court’s consideration are:

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, pp. 301-302.

²⁸ *Id.*, pp. 1069-1076.

²⁹ *Id.*, p. 1065.

³⁰ *Id.*, pp. 1087-1098, 1103-1113, 1659-1669, 1677-1687.

³¹ *Id.*, pp. 3022-3053.

³² *Id.*, p. 3287.

³³ *Id.*, p. 3390.

³⁴ *Id.*, pp. 3311-3341.

³⁵ *Id.*, pp. 3349-3385.

³⁶ *Id.*, pp. 1076.


A. WHETHER OR NOT PETITIONER PAL, UNDER ITS FRANCHISE, PD NO. 1590, WHICH TOOK EFFECT ON JUNE 11, 1978, 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 AND IF SO, WHETHER THE REQUIREMENTS FOR ITS SUPPOSED EXEMPTION UNDER SEC. 13 OF PD 1590 HAVE BEEN COMPLIED WITH;

B. WHETHER OR NOT REPUBLIC ACT ("RA") NO. 9334, WHICH TOOK EFFECT ON JANUARY 1, 2005, AMENDED, MODIFIED, OR REPEALED PAL'S EXEMPTION UNDER ITS FRANCHISE, PD NO. 1590, FROM THE PAYMENT OF SPECIFIC TAXES ON ALL ITS IMPORTATIONS OF CIGARETTES, LIQUOR, AND WINE FOR ITS CATERING AND COMMISSARY SUPPLIES FOR INTERNATIONAL CONSUMPTION, SO THAT SINCE JANUARY 1, 2005, PETITIONER'S IMPORTATIONS OF CIGARETTES, LIQUOR AND WINE FOR ITS CATERING AND COMMISSARY SUPPLIES ARE SUBJECT TO THE IMPOSITION OF EXCISE TAXES;

C. WHETHER OR NOT PETITIONER'S SUBJECT IMPORTATIONS WERE ACTUALLY USED FOR ITS INTERNATIONAL FLIGHT CONSUMPTION AND WHETHER PETITIONER HAVE SHOWN COMPLIANCE WITH THE REQUIREMENTS UNDER LOI NO. 684, ISSUED ON APRIL 4, 1978;

D. WHETHER OR NOT THE AMOUNT OF EXCISE TAXES CLAIMED BY PAL WAS PROPERLY DOCUMENTED; and

E. WHETHER OR NOT PAL IS ENTITLED TO A REFUND OF THE TOTAL AMOUNT OF SPECIFIC TAXES OF PHP14,240,250.50 PAID UNDER PROTEST TO THE RESPONDENT



COMMISSIONER OF INTERNAL REVENUE THROUGH RESPONDENT COMMISSIONER OF CUSTOMS, ON FEBRUARY 21, 2008, MARCH 06, 2008, MARCH 11, 2008, AND APRIL 01, 2008, CLAIMED UNDER CTA CASE NO. 8032, AND PHP7,974,105.56 PAID UNDER PROTEST TO THE RESPONDENT COMMISSIONER OF INTERNAL REVENUE THROUGH RESPONDENT COMMISSIONER OF CUSTOMS, ON APRIL 18, 2008 AND MAY 19, 2008, CLAIMED UNDER CTA CASE NO. 8075.

RULING OF THE COURT

The aforesaid issues boil down to the principal issue of whether or not petitioner is entitled to a refund of the aggregate amount of Php22,214,356.06³⁷ representing excise taxes paid under protest on its importation of cigarettes, liquors and wines for its catering and commissary supplies for use in its international flights for the period of February to May 2008.

Petitioner's Arguments:

Petitioner alleges that under its franchise, Presidential Decree ("PD") 1590, it is exempt from the payment of all taxes on all its importation of, among others, commissary and catering supplies or articles, for its use in its transport and non-transport operations; that the passing of Republic Act (RA) No. 9334 did not repeal its exemption from excise taxes on the said importation and neither did RA No. 9337; that it complied with the conditions set forth in Section 13 of its franchise to be entitled to refund; and that it filed its administrative and judicial claims on time.

Respondent's Counter-arguments:

Respondent COC avers that with the advent of RA 9334, it repealed the tax exemption privileges given to petitioner as its franchise is subject to amendment, alteration or repeal. Furthermore, it alleges that petitioner's franchise can be withdrawn by Congress by the passing

³⁷ Records, CTA Case No. 8023, p., 23 and CTA Case No. 8075, p. 19.

before the release of such articles from the customs house 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

xxx

xxx

SEC. 10. Repealing Clause. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly."

In construing the aforesaid law, in a number of cases³⁹ involving the same parties and issues but of different taxable years, this Court has consistently ruled that RA No. 9334 did not amend or repeal the exemption granted to petitioner under its franchise, PD No. 1590, to wit⁴⁰:

"While it is true that Section 6 of RA No. 9334 states the all-encompassing phrase, 'The provision of any special or general law to the contrary notwithstanding', such phrase cannot be considered as an express repeal of the exemptions granted under petitioner's franchise because it fails to identify or designate the acts that are intended to be repealed. As 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. It is a cardinal rule in statutory construction that implied

³⁹ CTA EB Case No. 954, January 29, 2014 (CTA Case Nos. 7677, 7685 & 7746), August 24, 2012; CTA EB Case Nos. 942 & 944, December 9, 2013 (CTA Case No. 7868, June 22, 2012); CTA EB Nos. 928 & 929, October 21, 2013 (CTA Case No. 7843, May 18, 2012); CTA EB Case Nos. 920 & 922, September 9, 2013 (CTA Case Nos. 7665 & 7713, April 17, 2012; CTA Case No. 8153, January 17, 2013, and CTA Case No. 7935, December 20, 2012.

⁴⁰ *Philippine Airlines, Inc., (PAI) vs. Commissioner of Internal Revenue and Commissioner of Customs*, April 17, 2012 (CTA Case no. 7665 and 7713).

repeals are disfavored and will not be declared unless the intent of the legislators is manifest.

Equally noteworthy is the fact that Presidential Decree 1590 (sic) is a special law, which governs the franchise of petitioner. Between the provisions under P.D. 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. 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 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." (*Emphasis Supplied*).

Furthermore, a similar statutory construction has been made by the Supreme Court in the case of *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*,⁴¹ when it ruled that PD 1590 has not been revoked by the enactment of RA 9334, to wit:

"It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.

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

⁴¹ G.R. Nos. 212536-37, August 27, 2014.

very same rights and privileges under the terms
and conditions stated in said charter.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 afore-quoted 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. Xxx” (Emphasis Supplied).

Clearly, from the foregoing, it is settled that petitioner’s franchise under PD 1590 has not been repealed by the passing of RA 9334. Therefore, it follows that the exemption enjoyed by petitioner from the payment of excise tax on its importation of commissary supplies as prescribed in Section 13 of PD 1590 is in effect.

Now the Court shall proceed to determine whether petitioner timely filed its administrative and judicial claim.

Sections 204 and 229 of the NIRC of 1997, as amended, provide that claims for refund or recovery of erroneously or illegally collected taxes shall be made within two (2) years from the date of payment of the tax or penalty.

A perusal of the records reveals that indeed petitioner timely filed both its administrative and judicial claims for refund, to wit:

Amount	Date of Payment	Last Day of 2 Years to File	Date of Filing of Admin. Claim	Date of Filing of Judicial Claim
Php2,293,035.65	February 21, 2008	February	March 5, 2009 ⁴²	

⁴² Exhibit “M.”

		21, 2010		CTA Case No. 8032 February 22, 2010 February 21, 2010 was a Sunday ⁴³
4,670,596.10	March 06, 2008	March 6, 2010	March 5, 2009 ⁴⁴	
4,996,793.33	March 11, 2008	March 11, 2010	March 5, 2009 ⁴⁵	
2,279,825.42	April 01, 2008	April 01, 2010	March 5, 2009 ⁴⁶	CTA Case No. 8075 April 14, 2010
Php4,910,127.24	April 18, 2008	April 18, 2010	March 5, 2009 ⁴⁷	
3,063,978.32	May 19, 2008	May 19, 2010	March 5, 2009 ⁴⁸	

Having settled the timeliness of the administrative and judicial claim, the Court shall now determine whether petitioner complied with the conditions set forth in Section 13 of PD 1590 to be entitled to refund of its payment of excise tax made on its importation of cigarettes, liquor and wines for its catering and commissary supplies for use in its international flights.

In Section 13 of PD 1590, it provides the following:

“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.

⁴³ Section 1 of Rule 21 of the Rules of Court states that when the last day on which a pleading is due falls on a Sunday the original period is extended to the next working day. Therefore, since February 21, 2010 is a Sunday, the next working day is February 22, 2010.

⁴⁴ Exhibit “R.”

⁴⁵ Exhibit “W.”

⁴⁶ Exhibit “BB.”

⁴⁷ Exhibit “GG.”

⁴⁸ Exhibit “BBB.”

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:


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

Consequently, in order to be exempted from paying all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, petitioner must prove that:

1. it paid its corporate income tax and VAT liabilities for the subject period of importation;
2. the articles, supplies or materials are imported for the use of the petitioner 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.⁴⁹

Anent the first requisite, petitioner submitted the following documents to prove that it has paid its corporate income tax and VAT liabilities for the subject period of importation:

⁴⁹ *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, March 26, 2014 (CTA Case No. 8361).



<u>Documents</u>	<u>Exhibit</u>
Amended Annual Income Tax Return - 2008	DDDD
Annual Income Tax Return - 2009	EEEE
Certificate of Registration dated December 18, 2007	FFFF
Certificate of Registration dated August 4, 2004	GGGG
Payment Form - Annual Registration Fee for 2009	HHHH
Payment Form - Annual Registration Fee for 2010	IIII
Quarterly VAT Return - Fourth Quarter of 2008	LLLL
Quarterly VAT Return - Fourth Quarter of 2009	MMMM

From the foregoing, petitioner indeed was able to comply with the first requisite.

Anent the second requisite, petitioner presented proof that the imported goods are commissary and catering supplies through the testimonies of its witness, Joseph Brian T.L. Tan. The pertinent portions of his Judicial Affidavit⁵⁰ read:

“xxx

ATTY. OSCAR C. VENTANILLA, JR.

1. Q. *Mr. Tan, do you know the petitioner in this case, Philippine Airlines, Inc. or PAL?*

JOSEPH BRIAN T.L. TAN

1.A. *Yes, sir.*

2.Q. *Why do you know PAL?*

2.A. *Because I am the Manager – Aircraft Materials Purchasing Division of PAL.*

3.Q. *Since when have you been such Manager?*

3.A. *Since May 2008.*

4.Q. *Prior to becoming such Manager, what positions have you held at PAL, if any?*

4.A. *I was Corporate Auditor and Manager – Company Materials Handling Division.*

⁵⁰ Exhibit “BBBB.”

5.Q. *Can you mention some of your more important functions as Manager – Company Materials Handling Division?*

5.A. *My more important functions include ensuring the timely release of PAL importations of catering and commissary supplies from the different cargo warehouses, as well as, the filing of proper documentation for such importations.*

xxx

34.Q. *Showing to you a copy of Informal Import Declaration and Entry No. 11268, and Air Waybill no. 079-2896 8656, dated 14 Oct 2006, already marked by Atty. Dural as Exhibits "L-4" and "L-4-2", respectively, how are these related to the informal entry and air waybill which you just mentioned as appearing in the table?*

34.A. *They are copies of the informal entry and air waybill mentioned in the fourth row of entries in the table?*

35.Q. *And what is the imported product involved as shown by the informal entry and air waybill*

35.A. *Looking at the front page of the informal entry, under the column labelled "Description of Articles", there is written "INFLIGHT MATERIALS WINSTON RED KING SIZE" and under the column labelled "No. of Packages", there is written "3". Looking at the Air Waybill, under the column labelled "Nature and Quantity of Goods", there is written "CIGARETTES 3 CNTS WINSTON BOX, 23 CNTS WINSTONBOX, PACKED INTO 3 PALLETS", and under the column labelled "No. of Pieces", there is written "3".*

xxx

38.Q. *Showing to you a copy of Informal Import Declaration and Entry No. 11292, and Air Waybill no. 029 2964 5781, dated 14 Oct 06, already marked by Atty. Dural as Exhibits "L-5" and "L-5-2", respectively, how are these related to the informal entry and air waybill which you just mentioned as appearing in the table?*

38.A. *They are copies of the informal entry and air waybill mentioned in the fifth row of entries in the table?*



39.Q. *And what is the imported product involved as shown by the informal entry and air waybill?*

39.A. *Looking at the front page of the informal entry, under the column labelled "Description of Articles", there is written "INFLIGHT MATERIALS CAMUS XO SUPERIEUR 50CL (5 CS FOC)" and under the column labelled "No. of Packages", there is written "COMAT // COMAT // COMAT CAMUS XO COGNAC", and under the column labelled "No. of Pieces", there is written "15".*

xxx

42.Q. *Showing to you a copy of Informal Import Declaration and Entry No. 11361, and Air Waybill no. 079-2869 8715, dated 21 Oct 2006, already marked by Atty. Dural as Exhibits "L-6" and "L-6-2", respectively, how are these related to the informal entry and air waybill which you just mentioned as appearing in the table?*

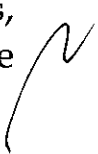
42.A. *They are copies of the informal entry and air waybill mentioned in the sixth row of entries in the table?*

43.Q. *And what is the imported product involved as shown by the informal entry and air waybill?*

43.A. *Looking at the front page of the informal entry, under the column labelled "Description of Articles", there is written "INFLIGHT MATERIALS PIPER HEIDSIECK" and under the column labelled "No. of Packages," there is written "2". Looking at the Air Waybill, under the column labelled "Nature and Quantity of Goods", there is written "60 CTNS PIPER HEIDSIECK BRUT NV 12*0.75L PACKED INTO 2 PALLETS", and under the column labelled "No. of Pieces", there is written "2". (Emphasis Supplied).*

xxx"

However, the Court notes that Joseph Brian T.L. Tan was not the one who prepared the said "informal entries" of the imported articles as Tan's function involves ensuring the timely release of petitioner's importations of catering and commissary supplies from its warehouses, and the proper filing of documentation in relation thereto, being the



Manager of Aircraft Materials Purchasing Division of PAL. Therefore, Tan has no personal knowledge of whether the imported articles were indeed "INFLIGHT MATERIALS."

In Section 36, Rule 130 of the Rules of Court, it provides that:

"Section 36. Testimony generally confined to personal knowledge; hearsay evidence excluded. A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." (Emphasis Supplied)

Consequently, Joseph Brian T.L. Tan lacks personal knowledge as to whether the imported goods represented by the informal entries were in fact catering and commissary supplies.

Thus, without the personal knowledge of Tan that the goods were catering and commissary supplies, his testimonies are considered hearsay and thus, deserve no consideration by this Court.

Ergo, petitioner failed to prove the second requisite for Section 13 PD 1590 to apply.

Anent the third requisite, petitioner presented the testimonies of Cheryl V. Capinpin. The relevant portions of her Judicial Affidavit⁵¹ state:

"xxx

9.Q. *As Supervisor of the In-Flight Materials Purchasing Division and the importations of the catering and commissary supplies mentioned by Mr. Tan, would you know why PAL imported said supplies instead of just buying them from the local sellers of similar products?*

9.A. *PAL imported said alcohol products because the importation of the said products is cheaper than buying said products locally, and, in the case of cigarettes, there are no local suppliers or dealers big enough to supply the various foreign*

⁵¹ Exhibit "KKKK."

brands of cigarettes PAL is importing, and if ever there are said local dealers, their selling prices would definitely be higher than PAL's cost of importing the cigarettes.

10.Q. *Why do you say the importing said catering and commissary supplies is cheaper for PAL than if it purchased the same locally?*

10.A. *Because, as shown in the attached Annex "A" labelled "Table of Comparison between cost of importing and cost of locally purchasing commissary and catering supplies", PAL's cost of importing them is definitely much lower than the cost of buying them locally.*

11.Q. *Looking at Annex "A" of your affidavit, where does it say that the cost of importing the various commissary and catering supplies involved in this case is much lower than the cost of buying them locally?*

11.A. *The cost of importing the commissary supplies involved and listed under the column "Product Imported", are specified under the columns labelled "Units Cost Per Sales Invoice", "Unit Cost Per ATRIG", short for "Authority to Release Imported Goods", and "Unit Cost per Informal Import Declaration Entry No.", while the cost of locally buying the same supplies are specified under the columns labelled "Philippine Wine Merchants 2005 Price List", "Philippine Wine Merchants 2006 Price List", and "Philippine Wine Merchants 2007 Price List". As can readily be seen, the costs of importing the supplies involved are very much cheaper than the costs of locally buying the same supplies.*

xxx

19.Q. *Showing to you these three (3) documents, attached to your affidavit as Annexes "B", "C", and "D", labelled "Philippine Wine Merchant, 2005 Price List", "Philippine Wine Merchant, 2006 Price List", and "Philippine Wine Merchant, 2007 Price List", respectively, with a signature appearing at the bottom of the page of each of them, on top of the name Ronald Lim Joseph Philippine Wine Merchants, how are they related to the local unit costs per bottle quoted by the local wine merchant, Philippine Wine Merchant, for the years 2005, 2006 and 2007, of the alcoholic products sold by them, which you mentioned?*

19.A. *Those are the price list for the years 2005, 2006 and 2007 quoted by Philippine Wine Merchant which I mentioned.*

20.Q. *Do you have other sources of local prices of the products involved?*

20.A. *We have no other sources of said local prices because the other 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.*

21.Q. *How about the local costs of the imported cigarettes involved?*

21.A. *I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the same brand of imported cigarettes who could regularly supply PAL with the quantity it regularly needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.*

22.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?*

22.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 turn add the same to its selling price to PAL.*

On the other hand, because of its franchise, P.D. No 1590 PAL does not have to pay any excise tax and customs duties on the imported products involved.

A careful scrutiny of the testimony of witness Cheryl V. Capinpin shows that petitioner compared the prices of its imported wines or liquors with only one supplier – Philippine Wine Merchant. Petitioner failed to compare the price of its imported cigarettes as against its price in the local market.

Based thereto, petitioner could not have determined the availability of the imported wines or liquors in reasonable quantity, quality or price in the local market based solely on the price list provided by one supplier, i.e., Philippine Wine Merchant. With respect to its imported cigarettes, it was evident that petitioner also failed to make comparison in contrast to its local prices.

Hence, 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.

Thus, from the foregoing, petitioner failed to comply with all the conditions set forth in Section 13 of PD No. 1590. Consequently, petitioner's claim for refund of specific taxes amounting to a total of Php22,214,356.06 on its various importations of cigarettes, wines and liquors from February to May 2008 cannot be given credence.


WHEREFORE, in view of the foregoing, petitioner's claim for refund in the amount of Php22,214,356.06 representing its importations of cigarette, wines, and liquors from February to May 2008 is hereby **DENIED**.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


ATTESTATION

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


LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ROMAN G. DEL ROSARIO
Presiding Justice