



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 17, 2023 which reads as follows:

“G.R. Nos. 236343-45 (*Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*) and G.R. Nos. 236372-74 (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*). – Before Us are the consolidated Petitions for Review on *Certiorari*¹ emanating from the same factual backdrop in the appeal of the Decision² dated 27 February 2017 and the Resolution³ dated 11 December 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 1308, 1309, and 1311. The assailed Decision and Resolution modified the Decision⁴ dated 06 January 2015 and the Resolution⁵ dated 28 April 2015 of the CTA Second Division in CTA Case No. 8514, partially granting Philippine Airlines, Inc. (PAL)’s claim for refund or issuance of tax credit certificate for its erroneously paid excise taxes in the years 2008 and 2009.

Antecedents

On 03 February 2005, then Commissioner of Internal Revenue (CIR) Guillermo Parayno wrote then Commissioner of Customs (COC) George Jereos, calling attention to Section 6 of Republic Act No.

¹ *Rollo*, G.R. No. 236372-74, pp. 50-74; *Rollo*, G.R. No. 236343-45, pp. 55-90.

² *Rollo*, G.R. No. 236372-74, pp. 76-106; penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Catherine T. Manahan.

³ *Id.* at 108-113; penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Catherine T. Manahan.

⁴ *Id.* at 115-142; penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justices Juanito C. Castañeda, Jr., and Amelia R. Cotangco-Manalastas.

⁵ *Id.* at 144-150.

(RA) 9334⁶ and the failure of the Bureau of Customs (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

Consequently, on 04 February 2005, the COC issued a Memorandum to

⁶ 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.” APPROVED: 26 JULY 2004.

SECTION 6. Section 131 of the National Internal Revenue Code of 1997, is 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 customhouse, 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 on introduction into the Philippine customs territory.”

“Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

“Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

“The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

“(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.”

⁷ *Rollo*, G.R. No. 236372-74, p. 81.

the BOC officers and personnel directing them to “effect collection of the excise taxes due on imported alcohol and tobacco products, even if destined to DFP and Freeport Zones.” On 01 March 2005, the COC issued Customs Memorandum Order No. 13-2005 (CMO 13-2005), which provided 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 the Bureau of Internal Revenue (BIR) Regulations No. 12-2004.”⁸

Thereafter, on various dates in 2007 and 2008, PAL’s importations of assorted cigarettes, liquors and wines arrived in Manila through the Ninoy Aquino International Airport (NAIA) and South Harbor, covered by various Informal Import Declarations and Entries, Bills of Lading, and Authorities to Release Imported Goods (ATRIGs) with excise taxes paid amounting to ₱2,449,593.82.⁹ Additional importation with excise taxes amounting to ₱2,122,313.31 also arrived.¹⁰

On 09 January 2009, the BOC sent a letter to Sylveria S. Salazar (Salazar), Chief, Collections Division, NAIA Customhouse, informing the latter to collect from PAL the customs duties, Value-Added Tax (VAT), excise taxes, and Import Processing Fee due on PAL’s importation of alcohol and tobacco products in compliance with CMO 13-2005 and Revenue Regulations No. (RR) 3-2006.¹¹

Thus, on 07 July 2010, PAL paid under protest the assessments issued by the BOC in the amounts of ₱2,449,593.82 and ₱2,122,313.31. Subsequently, on the same day, PAL sent two separate letters to Salazar to formally protest the assessments and the subsequent collection of the said amounts.¹² On 12 July 2010, PAL also filed with the District Collector of Customs of NAIA two written protests for the assessments and collection of said excise taxes on the abovementioned importations.¹³

On 15 February 2011, PAL filed with the CIR two administrative claims for refund, for the amounts of ₱2,449,593.82 and ₱2,122,313.31, both representing the excise taxes paid on 07 July 2010 to the BOC for said importations.¹⁴ Claiming inaction on the CIR’s part, PAL filed a Petition for Review with the CTA on 06 July 2012.¹⁵

PAL argued that its exemption from excise tax on its importation of

⁸ Id. at 82.

⁹ Id.

¹⁰ Id. at 82-83.

¹¹ Id. at 83.

¹² Id.

¹³ Id.

¹⁴ Id. at 84.

¹⁵ Id.

commissary supplies for use in its international flights under Sec 13 of its franchise, Presidential Decree No. (PD) 1590,¹⁶ still subsists despite Sec. 131 of the Tax Code, as amended by Sec. 6 of RA 9334.¹⁷

On the other hand, the CIR and the COC claimed that PAL's entire claim for refund is unwarranted; Sec 6 of RA 9334 which amended Sec 131 of the Tax Code expressly withdrew the conditional tax exemptions granted to PAL under its franchise; the exemption granted to PAL is not absolute as it is subject to the condition that the commissary supplies are not locally available

¹⁶ Entitled. "AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES." Approved: 11 June 1978.

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: cdt

- (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 to 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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; cd
- (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 cdt
- 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.

¹⁷ *Rollo*, G.R. No. 236372-74, p. 84.

in reasonable quantity, quality and price; and laws granting tax exemptions are strictly construed and, therefore, PAL has the burden of proving that its right to a tax refund indubitably exists.¹⁸

Ruling of the CTA Division

On 06 January 2015, the CTA Second Division partially granted PAL's petition for review, *viz.*:

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **P3,432,412.84** representing excise taxes erroneously collected from petitioner on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

SO ORDERED.¹⁹

The CTA Second Division found that PAL complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies, specifically imported liquors used for its inflight consumption. However, due to the denial of the admission of the Quarterly VAT Returns for the first, second and third quarters of Fiscal Year (FY) 2008 for PAL's failure to present the original copies of said documents for comparison, it did not fully satisfy the requirement that it should pay its corporate income tax and VAT liabilities for the subject period of its importation. The amount of ₱348,400.32 was then deducted from PAL's claim as it pertained to excise taxes paid on importations made during the first, second and third quarters of FY 2008. Similarly, the amount of ₱791,093.97 corresponding to excise taxes was deducted because the local prices of the liquors and wines were not available for comparison.²⁰

Both parties moved for reconsideration, to no avail. Thus, they appealed to the CTA *En Banc*.

Ruling of the CTA *En Banc*

On 27 February 2017, the CTA *En Banc* partially granted PAL's petition for review, to wit:

WHEREFORE, the Petition for Review of Philippine Airlines, Inc. in CTA EB No. 1309 is **PARTIALLY GRANTED** and the Petitions for Review of the Commissioner of Internal Revenue in CTA EB. No. 1308 and

¹⁸ Id.

¹⁹ Id. at 141.

²⁰ Id. at 86, 130-139.

the Commissioner of Customs and the Commissioner of Internal Revenue in CTA EB No. 1311 are **DENIED**.

Accordingly, the assailed Decision dated January 6, 2015 and the Resolution dated April 28, 2015 of the Court's Second Division in CTA Case No. 8514 are **MODIFIED** to the extent that the petition of Philippine Airlines, Inc. is **PARTIALLY GRANTED** in the reduced amount of **P3,983,223.10** representing excise taxes erroneously collected from it on its importations of cigarettes, liquors and wines for its international flight consumption in the years 2008 and 2009.

SO ORDERED.²¹

The CTA *En Banc* ruled that subject to the conditions stated in Section 13 of PD 1590, PAL is exempt from taxes on its importations of cigarettes, liquor, and wine for its commissary and catering supplies.²² It reiterated that PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes. The CTA *En Banc* underlined that RA 9334 did not amend or repeal the exemption granted to PAL under its franchise.²³

As to the amount of refund, the CTA *En Banc* agreed with the CTA Division that PAL indeed paid its corporate income tax for the years 2008 to 2010 as evidenced by its Annual Income Tax Returns for FYs ending 31 March 2008, 31 March 2009, and 31 March 2010. It also affirmed the CTA Division's denial of the admission of the Quarterly VAT Returns for the first, second and third quarters of FY 2008 for PAL's failure to present the original copies of the said documents for comparison.²⁴

However, the CTA *En Banc* held that the amount of ₱550,810.26 should likewise be refunded to PAL since it was established by positive testimony that there are no local suppliers selling Volupta Blanco and Volupta Rosso, and hence, no reasonable quantity thereof are available locally.²⁵ The CTA *En Banc* underscored that the law imposes alternative, not cumulative qualification for the determination of whether importations under Section 13(2) of PD 1590 will be subject to the exemption and that it would suffice for PAL to be able to prove even just one qualification out of the three – not locally available in reasonable: (1) quantity, (2) quality, or (c) price.²⁶

The CTA *En Banc* denied both parties' Motion for Reconsideration in its Resolution dated 11 December 2017.²⁷ Hence, these Petitions for Review on *Certiorari* filed by both PAL on one hand, and CIR and COC, on the other.

²¹ Id. at 105.

²² Id. at 90.

²³ Id. at 92-94.

²⁴ Id. at 97.

²⁵ Id. at 99-100.

²⁶ Id. at 101.

²⁷ Id. at 108-113.

Issues

Aggrieved, the following issues are raised by the parties for this Court's consideration: (1) whether or not Section 131 of the Tax Code revoked PAL's tax privilege under Section 13 of PD 1590 with respect to its alcohol and tobacco importations,²⁸ and (2) whether or not the CTA *En Banc* erred in only partially granting PAL's Petition for Review as PAL sufficiently established that it is fully entitled to a refund of the remaining amount of ₱588,684.03.²⁹ Essentially, the issue is whether or not PAL is entitled to refund of erroneously paid excise taxes.

Ruling of the Court

PAL insists that it has presented sufficient evidence that it is entitled to the remaining amounts of ₱240,283.71 and ₱348,400.32, for a total refund of ₱588,684.03. As regards the amount of ₱240,283.71, the records of the case show that PAL sufficiently established during trial that its imported wines, liquors and cigarettes were not available in reasonable quantity, quality or price.³⁰ The Judicial Affidavit of Cheryl V. Capinpin (Capinpin), the Manager of the In-Flight Materials Purchasing Division, categorically stated that the imported goods, specifically the Carlsberg Beer in Can, the Absolut Vodka, and the Gordon's Gin, were not locally available in reasonable quantity, quality or price.³¹ As to the amount of ₱348,400.32, PAL is of the position that the print-outs of the Quarterly VAT Returns for the first, second and third quarters of FY 2008, which were duly identified in open court and incorporated in the records of the case, suffice to prove its exemption.³²

On the other hand, the CIR maintains that under the present excise tax regime, all alcohol and tobacco importations are subject to excise tax sans exemption. Thus, PAL's alcohol and tobacco importations are excise taxable.³³ Even granting that PAL is entitled to the tax privilege, the CIR insists that PAL failed to prove that it met the conditions under Section 13 of PD 1590. This, since Capinpin's testimony and Comparative Table are self-serving.³⁴

We ultimately rule in favor of PAL. The findings of this Court shall be discussed *in seriatim*.

²⁸ Id. at p. 58.

²⁹ *Rollo*, G.R. No. 236343-45, p. 64.

³⁰ *Rollo*, G.R. No. 236372-74, p. 59-62.

³¹ Id.

³² Id. at 66-68.

³³ *Rollo*, G.R. No. 236343-45, pp. 64-70.

³⁴ Id. at 76-83.

The tax privilege of PAL provided in Section 13 of PD 1590 has not been revoked by Section 131 of the Tax Code

The issue of whether or not Sections 6 and 10 of RA 9334 repealed Section 13 of PD 1590 is not novel.

In *CIR v. PAL*,³⁵ the Court has already passed upon the very same issues raised by the same petitioners. The only differences are the taxable period involved and the amount of refundable tax.

We have held in that case and in the subsequent case involving the same parties, *CIR v. PAL*,³⁶ that it is a basic principle in 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 the earlier statute. A reading of the pertinent provisions of PD 1590 and RA 9334 shows that there was no express repeal of the grant of exemption.

The Court has exhaustively discussed all issues similar to those in the present case in this wise:

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 very same rights and privileges under the terms and conditions stated in said charter. . . .

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 aforementioned 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 RA 9334 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

³⁵ *Republic v. Philippine Airlines, Inc.*, 763 Phil. 108, 115-116 (2015) citing *Commissioner of Internal Revenue v. Phil. Airlines, Inc.*, 742 Phil. 108 (2014).

³⁶ See *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 806 Phil. 358 (2017).

identify PD 1590 as one of the acts intended to be repealed. .
. . (Emphasis supplied)

Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.³⁷

In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase “in lieu of all other taxes” includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.³⁸

Upon the amendment of the 1997 Tax Code, Section 22 of RA 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and VAT. **PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement.** Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.³⁹

PAL's compliance with the conditions set by Section 13 (b) (2) of PD 1590

As regards PAL's alleged non-compliance with the conditions set by Section 13 (b) (2) of PD 1590 for its imported liquors, wines, and cigarettes to be exempt from excise tax, We reiterate that these are factual determinations that are best left to the CTA and cannot be reviewed by this Court under Rule

³⁷ Supra at note 35.

³⁸ Id.

³⁹ Supra at note 36.

45 of the Rules of Court. This Court is not a trier of facts; it is not its function to review, examine and evaluate or weigh the probative value of the evidence presented. Further, this Court has consistently held that the findings of fact of the Court of Tax Appeals, as a highly specialized court, are accorded respect and are deemed final and conclusive.⁴⁰ Thus, absent strong reasons for this Court to delve into facts, only questions of law are open for determination. This rule, however, admits of exceptions.⁴¹ The findings of fact of the appellate courts will not be reviewed nor disturbed on appeal to this court when the inference made is manifestly mistaken,⁴² as in this case.

Section 13 (b) (2) of PD 1590 provides for the conditions that must be complied with for the imported commissary and catering supplies to be exempt from excise tax, namely: (1) the supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality or price.⁴³

Here, there is no question that the imported liquors, wines, and cigarettes were “inflight materials” used in PAL’s transport/flight operations. Moreover, the Judicial Affidavit of Capinpin categorically stated that the imported goods, specifically the Carlsberg Beer in Can, the Absolut Vodka, and the Gordon’s Gin, were not locally available in reasonable quantity, quality or price.⁴⁴ She testified that PAL imported the same because importation of said products is cheaper than buying them locally.⁴⁵ We also note that the Tables of Comparison and supporting price lists submitted by PAL corroborated Capinpin’s testimony that the imported items were not locally available in reasonable quantity, quality or price.⁴⁶ Thus, in line with prevailing jurisprudence, We agree with PAL that the CTA erred in ruling that PAL has inadequately shown its compliance with Section 13 (b) (2) of PD 1590 as regards the amount of ₱240,283.71.⁴⁷

We also agree with PAL as to their entitlement to the refund of the amount of ₱348,400.32.⁴⁸

Section 4, Rule 130 of the Revised Rules of Court provides that if the data stored in a computer or similar device, any printout or other output readable by sight or other means, is shown to reflect the data accurately, the same is an original. Section 20 of Rule 132 of the Rules of Court, on the other

⁴⁰ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*, 823 Phil. 1043 (2018).

⁴¹ *Id.*

⁴² *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

⁴³ *Supra* at note 36.

⁴⁴ *Rollo*, G.R. No. 236372-74, p. 59-63, 169.

⁴⁵ *Id.*

⁴⁶ *Rollo*, G.R. No. 236372-74, p. 59-63, 169; *Rollo*, G.R. No. 236343-45, pp. 426-486.

⁴⁷ *Rollo*, G.R. No. 236372-74, p. 99.

⁴⁸ *Id.* at 97.

hand, provides that a private document's due execution and authenticity must be proved by any of the following means: (1) by anyone who saw the document executed or written; (2) by evidence of the genuineness of the signature or handwriting of the maker; or (3) by any other evidence showing its due execution and authenticity.

Further, as defined, "electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically; and it includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document.⁴⁹

In this regard, Section 1, Rule 4 of the Rules on Electronic Evidence provides that an electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately. An electronic evidence is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by the Rules on Electronic Evidence.⁵⁰

Section 2, Rule 5 of the same Rules states that for any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means: (1) by evidence that it had been digitally signed by the person purported to have signed the same; (2) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or (3) by other evidence showing its integrity and reliability to the satisfaction of the judge. Moreover, all matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.⁵¹

Applying the above in the instant case, We agree with PAL that the printouts of the VAT Quarterly Returns representing VAT payments made through the Electronic Filing and Payment System (eFPS) in the BIR website are considered original documents.⁵² The authenticity of the same were

⁴⁹ *RCBC Bankard Services Corp. v. Oracion, Jr.*, G.R. No. 223274, 19 June 2019 citing the Rules on Electronic Evidence, Rule 2, Section 1.

⁵⁰ Rules on Electronic Evidence, Rule 3, Section 2.

⁵¹ Rules on Electronic Evidence, Rule 9, Section 1.

⁵² *Rollo*, G.R. No. 236372-74, p. 204-206.

proven by the Judicial Affidavit dated 29 November 2012 and testimony of Ma. Evelyn L. Taghap, then Manager of PAL's Tax Service Division, who was cross-examined by the CIR.⁵³ Corollary to this, while deemed not formally offered due to the CTA's refusal to admit the same,⁵⁴ the VAT Quarterly Returns should have been considered since they were identified by testimony duly recorded, and the same have been incorporated in the records of the case.⁵⁵

Even assuming that the printouts were authenticated only by the Certification issued by the BIR recognizing that PAL paid VAT during said periods and which was presented belatedly and attached only to the Motion for Partial Reconsideration dated 28 January 2105,⁵⁶ the CTA erred in refusing to admit and consider the same. This Court has consistently pronounced that the law creating the CTA specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.⁵⁷

Given the foregoing, the CTA erroneously disregarded PAL's claim for refund as regards the above amounts. Accordingly, PAL is entitled to the refund of erroneously paid excise taxes in the total amount of ₱4,571,907.13, consisting of ₱3,983,223.10 as allowed by the CTA *En Banc*, and ₱588,684.03 as adjudged refundable by this Court.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* of the Commissioner of Internal Revenue and Commissioner of Customs in G.R. Nos. 236343-45 is **DENIED**, while the Petition for Review on *Certiorari* of Philippine Airlines, Inc. in G.R. Nos. 236372-74 is **GRANTED**. The Decision dated 27 February 2017 and Resolution dated 11 December 2017 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1308, 1309, and 1311 are **PARTLY MODIFIED** in that the Commissioner of Internal Revenue is **ORDERED** to refund, or in the alternative, issue a Tax Credit Certificate to Philippine Airlines, Inc., in the amount of ₱4,571,907.13.

⁵³ *Id.* at 201-202, 222-224.

⁵⁴ *Id.* at 98-99.

⁵⁵ See *Heirs of Saves v. Heirs of Saves*, 646 Phil. 536 (2010).

⁵⁶ *Rollo*, G.R. No. 236372-74, p. 98.

⁵⁷ See *Filinvest Development Corp. v. Commissioner of Internal Revenue*, 556 Phil. 439 (2007) citing *BPI Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719 (2000).

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court *LCB*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

243-A

FEB 13 2023

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