

### THIRD DIVISION

**G.R. Nos. 245330–31 — COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Petitioners, v. PHILIPPINE AIRLINES, INC., Respondent.**

Promulgated:

April 1, 2024

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### CONCURRING OPINION

**CAGUIOA, J.:**

I concur with the *ponencia* in granting respondent Philippine Airlines, Inc. (PAL) its claim for refund of taxes paid on imported aviation fuel. I also agree with the *ponencia*'s disquisition that to qualify for tax exemption under Section 13(b)(2) of Presidential Decree No. 1590,<sup>1</sup> what only needs to be proven is that the locally available article is either insufficient in quantity, or is of subpar quality, or is severely overpriced compared to its imported variant. Any one of the foregoing qualifications is sufficient so as to entitle the claimant to exemption.<sup>2</sup>

I submit this Concurring Opinion to highlight that the Air Transportation Office (ATO), now known as the Civil Aviation Authority of the Philippines (CAAP), is the proper body to make a definitive determination as to the availability of local aviation fuel for purposes of proving entitlement to the exemption under Presidential Decree No. 1590. I submit that the charter of the ATO gives it the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel. Thus, the Court of Tax Appeals (CTA) correctly gave weight to the ATO certifications, offered by PAL as evidence, that Jet A-1 fuel was not locally available in reasonable quality, quantity, or price.

#### *Brief review of the facts*

Under Presidential Decree No. 1590, PAL is exempt from paying taxes and duties 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, 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.**” The Bureau of Internal

<sup>1</sup> An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Between The Philippines And Other Countries (1978).

<sup>2</sup> *Ponencia*, p. 10.



Revenue (BIR) initially confirmed this exemption through BIR Ruling No. 13-99<sup>3</sup> issued on January 29, 1999, but later revoked it through BIR Ruling No. 001-2003<sup>4</sup> issued on January 29, 2003 based on a certification from the Department of Energy (DOE) dated December 20, 2002 (2002 DOE Certification),<sup>5</sup> stating that aviation fuel was locally available.

BIR Ruling No. 001-2003 essentially states that pursuant to the 2002 DOE Certification, one of the conditions allowing the tax-free importation of aviation fuel, as specified under Section 13 of Presidential Decree No. 1590, i.e., that the aviation gas, fuel, and oil must not be locally available in reasonable quantity, quality, or price, is no longer present.

On various dates between April to June of 2005, PAL imported Jet A-1 fuel and paid taxes under protest. PAL then filed a judicial claim after its request for refund was not acted upon.

The CTA Division granted the refund claim, which the CTA *En Banc* (CTA EB) affirmed. As to the requisite that aviation fuel was not locally available in reasonable quantity, quality, or price during the time of importation, the CTA EB agreed with PAL that the certifications issued by the ATO dated October 1, 2004 to April 20, 2010<sup>6</sup> to that effect was in line with its general powers under its charter.

Before the Court, petitioners Commissioner of Internal Revenue (CIR) and Commissioner of Customs (petitioners) argue that the CTA EB erred in concluding that PAL was able to prove that the imported aviation fuel would be used for its transport and non-transport operations, and that it was not locally available in reasonable quantity, quality, or price.

The *ponencia* affirms PAL's entitlement to the refund claim.

The crux of the controversy in the present case is the proper interpretation of Section 13(b)(2) of Presidential Decree No. 1590 or PAL's franchise, which 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

<sup>3</sup> Re: Tax Exemption Privileges Of Philippine Airlines (1999).

<sup>4</sup> Re: Guidelines For Exemption From Taxes Granted To Airline Companies On Importation Of Aviation Gas, Fuel And Oil (2003)

<sup>5</sup> *Rollo*, p. 1653, attached as Annex "GGGGG" to the Petition.

<sup>6</sup> *Id.* at 823.



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

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

....

- (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)

Section 13(b)(2) of Presidential Decree No. 1590 provides for the conditions that must be complied with for the imported aviation gas, fuel, and oil to be exempt from taxes, namely: (1) the supplies are imported for the use of the grantee in its transport and non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality or price.

In *CIR, et al. v. PAL*,<sup>7</sup> the Court discussed the status of PAL's tax privileges as follows:

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. ...

....

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, *e.g.*, aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to

<sup>7</sup> 742 Phil. 84 (2014) [Per J. Velasco, Jr., Third Division].

a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use.<sup>8</sup> (Citations omitted)

*It would suffice for PAL to prove even just one qualification out of the three— not locally available in a) reasonable quantity, b) reasonable quality, or c) reasonable price.*

One of the qualifications for PAL to be entitled to import aviation fuel tax-free is that said fuel is not locally available in reasonable quantity, quality or price. This means that to be entitled to a refund of taxes paid on imported aviation fuel, it would suffice to prove even just one qualification out of the three—**the imported Jet A-1 fuel was not locally available in reasonable a) quantity, b) quality, or c) price**, as the qualification for exemption is in the alternative, and not cumulative.

Again, for easier reference, the provision in question reads as follows:

- (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)

While not involving aviation gas, fuel, and oil, the following cases are instructive on what constitutes sufficient evidence to establish that the imported articles are not “locally available in reasonable quantity, quality, **or** price.”

In the 2014 case of *CIR, et al. v. PAL*,<sup>9</sup> the Court rejected therein petitioners bid to foil PAL's claim for refund on the ground of non-compliance with the conditions set by Section 13(b)(2) of Presidential Decree No. 1590. To satisfactorily prove that the imported articles were not locally available at a reasonable quantity, quality or price, PAL presented the affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight-Sub-department of PAL, where he stated that importing the supplies is much cheaper for PAL than purchasing them locally as shown by the various price lists attached to his affidavit.<sup>10</sup> The Court found that PAL fully complied with the requirements of Presidential Decree No. 1590; or simply, the Court

<sup>8</sup> *Id.* at 93–94.

<sup>9</sup> *Id.*

<sup>10</sup> See *CIR v. PAL*, CTA EB Cases Nos. 942 & 944, December 9, 2013.



ruled this way even if the said supplies were locally available as to reasonable quantity or quality.

Similarly, the 2015 case of *Republic of the Philippines v. PAL*<sup>11</sup> affirmed the CTA's conclusion that PAL had satisfactorily proven the non-availability of the imported supplies in reasonable quantity, quality, or price. In particular, PAL presented the following pieces of evidence: (1) Mr. Andy Y. Li's testimony stating that importation of the articles was cheaper for PAL than if it purchased locally; (2) a tabulation of comparison of the cost of importing the articles and the cost of purchasing them locally; (3) invoices issued to PAL for its purchase of the subject articles; (4) Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of the claim for refund; and (5) letter that Duty-Free Philippines does not have wines that meet PAL's price budget and required quality, and that the average price difference of the cost of imported wines, liquors, and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by PAL.<sup>12</sup> The Court held:

As to the issue of PAL's non[-]compliance with the conditions set by Section 13 of [PD 1590] for the imported supplies to be exempt from excise tax, it must be noted that these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.<sup>13</sup> (Citations omitted)

Again, focusing only on the price—and again admitting that there were locally available supplies of wine, the Court affirmed that PAL had qualified with the conditions set by Section 13 of Presidential Decree No. 1590.

Furthermore, in the 2017 case of *CIR, et al. v. PAL*,<sup>14</sup> the Court again upheld the CTA's findings that PAL had sufficiently established that the alcohol products it imported are not locally available in reasonable price, and thus, PAL had complied with the conditions under Presidential Decree No. 1590. The pieces of evidence offered to prove that PAL made out a *prima facie* case that the cost of importing the alcohol products was indeed reasonably cheaper than purchasing them locally are the following: (1) testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing; (2) Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; (3) Philippine Wine Merchant's January 11, 2007 Price List; and (4) Monthly Philippine Dealing System rates for the year 2007-2008, 2008-2009, and 2009-2010.<sup>15</sup>

<sup>11</sup> 763 Phil. 108 (2015) [Per C.J. Sereno, First Division].

<sup>12</sup> See *PAL v. CIR*, CTA Cases Nos. 7665 & 7713, April 17, 2012.

<sup>13</sup> *Republic of the Philippines v. PAL*, *supra* note 11, at 118.

<sup>14</sup> 806 Phil. 358 (2017) [Per J. Peralta, Second Division].

<sup>15</sup> See *PAL v. CIR*, CTA EB Cases Nos. 1029, 1031 & 1032, April 30, 2014.



The foregoing cases illustrate that the Court has consistently upheld PAL's tax exemption notwithstanding that it substantiated only the non-availability of the imported article in the local market "for a reasonable price"—in the face of its availability in reasonable quantity and quality. In all these cases, the Court affirmed the CTA's findings that PAL sufficiently proved compliance with the conditions for tax exemption under Section 13 of Presidential Decree No. 1590.

In the present case, both the CTA Division and CTA EB found that PAL complied with the requisites for exemption from all taxes under Section 13 of Presidential Decree No. 1590. Concerning the requirement that the aviation fuel is not locally available in reasonable quantity, the CTA Division held:

[PAL] made a comparison between the total refinery production and the total industry petroleum products demand using the Table of Data which was prepared and provided by the DOE, and concluded that in all years from 1998 to 2010, the figures for all types of petroleum products, including jet fuel or kerosene, show that the demand far outstripped the local refinery production. It continues that in each of the years included in the Table of Data (including the year 2005), the total refinery production was never enough to meet the total demand.<sup>16</sup> (Citation omitted)

PAL also presented the Report of the court-commissioned Independent Certified Public Accountant (ICPA) showing the comparison of the cost of importation of aviation turbo jet fuel and the cost of domestic purchases of aviation turbo jet fuel using the price quotations issued by local oil companies. According to the ICPA, it would have cost PAL an additional PHP 329,955,751 and PHP 564,148,535 had it purchased from Petron Corporation and Pilipinas Shell Petroleum Corporation, respectively, the same volume of aviation turbo jet fuel or Jet A-1.<sup>17</sup> Hence, the local price is patently unreasonable compared to the price of imported fuel.

Indeed, PAL only presented evidence showing no local available supply of Jet A-1 fuel in reasonable quantity and price. Even though there was no proof in relation to "reasonable quality," the CTA Division and CTA EB were convinced that PAL is entitled to a refund or the issuance of a tax credit certificate (TCC) representing the specific taxes paid for the importation of Jet A-1 aviation fuel for its domestic flight operations from April to June 2005.

Thus, I agree with the *ponencia* that each of the qualifications or conditions—reasonable quantity, reasonable quality, **or** reasonable price—stand independently of each other. The use of "or" in the provision suggests that they are alternative criteria. Simply put, as long as PAL can establish the non-availability of Jet A-1 fuel in either reasonable quantity, reasonable quality, or reasonable price, it would already satisfy the second condition for

<sup>16</sup> *Rollo*, p. 191, CTA Division Decision dated May 3, 2016.

<sup>17</sup> *Id.* at 190–191.



tax exemption. PAL is not required to prove all the three conditions to benefit from the exemption provided under its charter.

Accordingly, since PAL was able to sufficiently prove compliance with the conditions for tax exemption under Section 13(b)(2), it is entitled to the refund or issuance of TCC for the taxes paid on importation of Jet A-1 fuel.

*ATO (now CAAP) has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel.*

Petitioners assert that the ATO is not vested with the power and duty to certify as to the local availability of Jet A-1 aviation fuel under its charter, insisting that it is only the DOE, under Republic Act No. 8479,<sup>18</sup> which is in a position to determine the local availability of Jet A-1 aviation fuel.

The *ponencia* rules that the CTA EB correctly upheld PAL's evidence showing the unavailability of Jet A-1 aviation fuel in reasonable quantity, quality, or price during the relevant period. As long as there is no indication that this finding lacks substantial evidence, it is considered binding on the Court.<sup>19</sup>

I fully agree.

As to the petitioners' argument that the ATO has no power to issue a certification, I believe this to be erroneous. I submit that the ATO is **not precluded** from issuing certifications with respect to the availability of local supply of aviation fuel and oil. Its power, as expressed in its charter, is sufficiently broad to include determining the availability of aviation fuel in the local market.

The matters on aviation fuel and oil, including the certification as to their local availability in reasonable quantity, quality, or price, is consistent with the policy of the ATO for the development and utilization of the air potential of the Philippines.<sup>20</sup> A perusal of the powers of the ATO in relation to its authority to issue the certifications, would show that such is in line with its general powers under Section 32 of Republic Act No. 776, thus:

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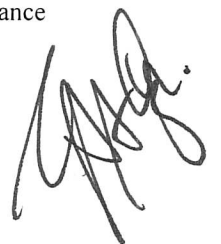
<sup>18</sup> Downstream Oil Industry Deregulation Act Of 1998 (1998).

<sup>19</sup> *Ponencia*, p. 10.

<sup>20</sup> Section 4(a) of Republic Act No. 776, otherwise known as "THE CIVIL AERONAUTICS ACT OF THE PHILIPPINES," approved on June 20, 1952, reads:

Section 4. *Declaration of policies.* — In the exercise and performance of its powers and duties under this Act, the Civil Aeronautics Board and the Civil Aeronautics Administrator shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The development and utilization of the air potential of the Philippines.



Section 32. *Powers and Duties of the Administrator.* — Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

- (1) **To carry out the purposes and policies established in this Act;** to enforce the provisions of, the rules and regulations issued in pursuance to, said Act; and **he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.** (Emphasis supplied)

The above-mentioned provision is reproduced under Republic Act No. 9497,<sup>21</sup> which reads:

Section 35. *Powers and Functions of the Director General.* — The Director General shall be the chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:

- (a) **To carry out the purposes and policies established in this Act;** to enforce the provisions of the rules and regulations issued in pursuance to said Act; and **he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.** (Emphasis supplied)

Furthermore, part of the powers and duties of the ATO (now CAAP), is to cooperate with the government on matters relating to research and technical studies on aircraft fuel and oil, *viz.:*

Republic Act No. 776:

Section 32. *Powers and Duties of the Administrator.* — Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

....

- (21) **To cooperate, assist and coordinate with any research and technical agency of the Government on matters relating to research and technical studies** on design, materials, workmanship, construction, performance, maintenance and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities **including aircraft fuel and oil:** *Provided,* That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. (Emphasis supplied)

Republic Act No. 9497:

Section 35. *Powers and Functions of the Director General.* — The Director General shall be the chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:

<sup>21</sup> Civil Aviation Authority Act Of 2008 (2008).



- ....
- (q) **To cooperate, assist and coordinate with any research and technical agency of the government on matters relating to research and technical studies** on design, materials, workmanship, construction, performance, maintenance and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities **including aircraft fuel and oil: Provided,** That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency. (Emphasis supplied)

Based on the foregoing, the ATO's authority to determine local availability of aviation fuel is well within the ambit of its general powers.

It is worth noting that the enumerated powers and duties conferred upon the ATO (now CAAP) are not exclusive. The absence of qualifying or restrictive words in its charter indicates that the powers and duties are not intended to be exhaustive. Rather, they are illustrative of the broader authority granted to the ATO (now CAAP) in fulfilling its mandate. To be sure, it is the declared policy of the State to provide safe and efficient air transport and regulatory services in the Philippines.<sup>22</sup> The operation of aircraft is inextricably linked to the availability and quality of fuel. It stands to reason that the ATO (now CAAP) must be able to determine the availability of aviation fuel in the local market to effectively manage and ensure safe and efficient air transport services. **The ATO's technical and operational expertise uniquely positions it to certify the availability of aviation fuel and oil. Its specialized knowledge equips it to evaluate and confirm the availability of supply of local aviation fuel and oil.** There is no doubt that such certification holds significant importance for the airline industry's operations.

Furthermore, the ATO's role in ensuring the safety of air transport entails ensuring that aircrafts are fueled with quality aviation fuel—a responsibility that requires the ATO to assess and report on the availability of fuel supplies. To strip the ATO (now CAAP) of the ability to certify such matters would be to ignore the practical realities of its operational responsibilities, severely limiting the ATO's ability to carry out its mandate.

Notably, in the 2020 case of *CIR v. Air Philippines Corp.*,<sup>23</sup> the Court affirmed the ruling of the CTA EB that gave weight to the ATO certifications. The CTA EB ruled that the issuance of ATO certifications, with respect to whether aviation fuel was not locally available in reasonable quantity, quality or price, was consistent with the general power of the ATO (now CAAP)

<sup>22</sup> Republic Act No. 9497 (2008), sec. 2.

<sup>23</sup> G.R. No. 243260, February 5, 2020 (Unsigned Resolution) [Perlas-Bernabe, A. Reyes, Jr., Inting and Delos Santos, JJ.; Hernando, J., on official leave; Second Division].

under its charter. Both the CTA Division and CTA EB found the absence of locally available aviation fuel in reasonable quantity, quality or price, basing such finding on the ATO certification which supported the claim of insufficient locally available aviation fuel in reasonable quantity, quality, or price. Two contradictory certifications were presented to the CTA, one from the ATO and another from the DOE. While the Court denied the petition on procedural grounds, citing it as a question of fact because the CIR was requesting a re-evaluation of the certifications to determine which carried more evidentiary weight, the Court ultimately upheld the CTA EB Decision, which gave weight to the ATO certifications.

Hence, the CTA in this case correctly gave weight to the ATO certification as mandated under Section 44, Rule 130 of the Rules of Evidence which provides:

Section. 44. *Entries in official records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

Entries in official records made by public officers or persons in the performance of duties specially enjoined by law are considered *prima facie* evidence of the facts stated therein. The ATO certification falls squarely within this category, as it is issued by a responsible authority with expertise in aviation matters. Consequently, the subject ATO certifications questioned by petitioners were properly given due consideration as *prima facie* evidence of the availability or non-availability of aviation fuel in reasonable quantity, quality, or price.

Furthermore, the refund claim subject of the present case covers the importation of Jet A-1 aviation fuel for PAL's domestic flight operations from April to June 2005. Hence, the DOE Certification dated December 20, 2002, and on which BIR Ruling No. 001-2003 is solely based, cannot be given any weight because the DOE Certification was issued in 2002. It is important to emphasize that the DOE Certification was based on information and data available as of 2002 and was not intended to account for subsequent years. The coverage of the 2002 DOE Certification does not extend beyond the years of its issuance, as it could not have taken into account circumstances and developments that occurred after 2002.

Therefore, the 2002 DOE Certification does not, as it cannot, attest to the local availability or non-availability of aviation fuel in reasonable quantity, quality or price in 2005. It cannot be given weight for the 2005 importation of Jet A-1 aviation fuel for PAL's domestic flight operations. The 2002 DOE Certification's limitations in terms of its coverage and data availability preclude its application in this case. **In contrast to the 2002 DOE Certification which predates the subject importations, the ATO**



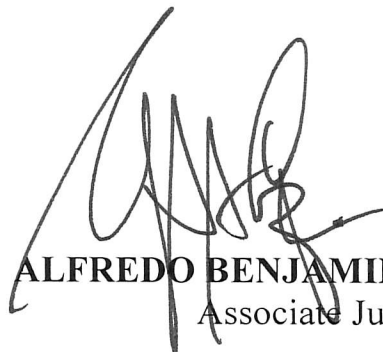
**certifications<sup>24</sup> dated October 1, 2004 to April 20, 2010<sup>25</sup> submitted by PAL state unequivocally that there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality, or price at the time of the subject importations in 2005.<sup>26</sup>**

At this point, it should be recognized that the *ponencia*'s ruling does not rest on the 2002 DOE Certification nor the ATO certifications to resolve the core issue of PAL's entitlement to the refund claim. The *ponencia*'s conclusion is grounded on the totality of evidence presented by PAL, which unequivocally showed that aviation fuel was not available at a reasonable price during the relevant period.<sup>27</sup>

In sum, I concur with the ultimate disposition that PAL is entitled to a refund. My concurrence to PAL's entitlement to a refund is twofold: the evidence presented by PAL concerning the price and quantity of aviation fuel, and the corroborative significance provided by the ATO certifications. This comprehensive consideration strengthens the position that PAL met the conditions for the claimed refund.

Thus, taking into account that the ATO (now CAAP) is not precluded from issuing certifications as to the availability or non-availability of locally sourced aviation fuel, and given the additional circumstance that the ATO certifications show that there was no locally available aviation fuel in reasonable quantity, quality, or price, it follows that both the CTA Division and CTA EB correctly gave weight to these ATO certifications.

Accordingly, I concur with the *ponencia* in holding that the Petition filed by petitioners should be **DENIED**. PAL is entitled to its claim for refund of taxes paid on imported aviation fuel, as it was able to sufficiently prove the conditions that must be complied with for the imported aviation fuel to be exempt from taxes under Section 13(b)(2) of Presidential Decree No. 1590.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>24</sup> *Rollo*, p. 823, Memorandum filed by PAL before the CTA Division.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 190, CTA Division Decision dated May 3, 2016.

<sup>27</sup> *Ponencia*, pp. 10-11.