

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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INTING, J.:

SEPARATE CONCURRING OPINION

In opposition to the claim for refund by respondent Philippine Airlines, Inc. (PAL), petitioners Commissioner of Internal Revenue and Commissioner of Auctions (collectively, petitioners) contend that PAL failed to prove that it met the conditions set forth in Section 14 of Presidential Decree (PD) No. 1590 to claim excise tax exemption of its importations of Jet A-1 aviation fuel from April to June 2005. The conditions are the following: (1) that the Jet A-1 aviation fuel was imported for the use of PAL in its transport/non-transport operations and other incidental activities; and (2) that the Jet A-1 aviation fuel was not locally available in reasonable quantity, quality, and price.

Petitioners maintain that as an exception to the general rule, the Court may review the factual findings of the Court of Tax Appeals (CTA) in the case because the assailed judgment is based on a misapprehension of facts. They argue as follows:¹

First. The information contained in the Authority to Release Imported Goods (ATRIGs) was supplied by PAL and therefore not necessarily within the personal knowledge of the Bureau of Internal Revenue (BIR) personnel who issued it.² Setting aside the ATRIGs, there is no concrete evidence to prove that PAL's Jet A-1 aviation fuel importations were actually used in its domestic flight operations as provided in the ATRIGs.

Second. The certifications from the Air Transportation Office (ATO) did not sufficiently establish that Jet A-1 aviation fuel was locally available in reasonable quantity, quality, or price because the ATO, (now the Civil Aviation Authority of the Philippines [CAAP]), is not vested with

¹ *Rollo*, p. 43.

² *Id.* at 51.

the power and duty to certify as to the local availability of Jet A-1 aviation fuel under its charter; hence, these certifications were issued *ultra vires*. More, these ATO certifications were controverted by Saturnino B. Dela Cruz (Mr. Dela Cruz), Assistant General Director I of the Flight Standards Inspectorate Service of CAAP, who categorically declared that the contents of these certifications were merely copied and pasted from other certifications issued by the ATO.³

Third. The interpretation of the Department of Energy (DOE) of “locally available supply” deserves more credence, weight and even respect by the courts.⁴ According to petitioners, the supply side of the Supply-Demand Balance for 2001-2010 in Thousand Barrels (MB) of aviation fuel was composed of inventory, local production, and importation; and this was further affirmed by the reports prepared by PAL’s own witness, namely, Ms. Glendalyn Dela Cruz (Ms. Dela Cruz).⁵ Hence, the CTA Second Division took Ms. Dela Cruz’s testimony out of context when it held that demand far outstripped local refinery production and that total refinery production was never enough to meet the total demand. More, petitioners contend that as stated by former DOE Secretary Zenaida Y. Monsada (Sec. Monsada) in her judicial affidavit, total available local supply is composed of local production, importation, and inventory.⁶

Verily, the issues raised by petitioners in the case are mixed questions of fact and law. For one, whether PAL presented sufficient evidence that it met the conditions for excise tax exemption under Section 13 of PD No. 1590 is a question of fact. For another, the correct interpretation of “*locally available supply*” is a question of law.

I concur in the *ponencia*’s denial of the petition on the following grounds:

- I. *The declaration made by PAL that the Jet A-1 aviation fuel would be used for its domestic operations, as contained in the ATRIGs, sufficiently met the first condition.*

³ *Id.* at 72.

⁴ *Id.* at 96.

⁵ *Id.* at 98.

⁶ *Id.* at 105-106.

To set the records straight, it must be pointed out that PAL's Jet A-1 aviation fuel would be exempt from excise tax so long as these were used in its operations, whether transport or non-transport. Thus, PAL need not prove that the aviation fuel it imported from April to June 2005 was used for its domestic operations for it would still qualify for excise tax exemption under Section 13 of PD No. 1590 even if it used them for its international operations.

Moreover, PAL has in its favor the disputable presumption under Rule 131, Section 3(q) of the Rules of Evidence that the ordinary course of business has been followed. Stated differently, it is presumed that PAL, an entity engaged in the air transport of passengers and cargo, used the Jet A-1 aviation fuel it imported from April to June 2005 in its transport operations.

As to the sufficiency of the ATRIGs, I concur with the *ponencia* that these sufficiently met the first condition based on the presumption of regularity of performance of official duty.

As aptly noted in the *ponencia*, the application and subsequent issuance of an ATRIG is not a mechanical process, and there are various verification and processes that had to be done prior to the issuance of an ATRIG. Nonetheless, petitioners aptly pointed out that the purpose of PAL's importation as stated in the ATRIGs were taken from PAL's own declaration that the purpose of its importations was for its domestic operations; thus, it is not within the personal knowledge of the BIR personnel who issued the ATRIGs.

It is worth noting, however, that an importer's declaration of the purpose of an importation is made under oath in his or her Application for ATRIG which had to be notarized.⁷

In view of the presumption of regularity as to the issuance of the ATRIGs by the concerned BIR personnel, it is presumed that PAL submitted all the documentary requirements for its issuance, including a notarized Application for ATRIG containing its officer's declaration under oath as to the purpose of the importations. As public documents, PAL's Applications for ATRIGs were by law entitled to presumption of truth as to the recitals contained therein.⁸ Absent any contrary proof from

⁷ See Annex "A" to Revenue Memorandum Order No. 35-2002.

⁸ *Heirs of Teves v. Court of Appeals*, 375 Phil. 96 (1999).

petitioners, the presumption will prevail.

II “Locally available” supply under Section 13 of PD No. 1590 should be construed to mean the inventory of locally produced or manufactured supply that are available for sale at the time of importation.

The word “local” is synonymous with “domestic” which the Court defined in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*⁹ as “of or relating to one’s own country” or “an article of domestic manufacture.”¹⁰ By its very definition, imported goods are excluded from the definition of locally available supply because these were sourced outside the Philippines.

Evidently, Sec. Monsada’s inclusion of imported goods in the definition of locally available supply under Section 13 of PD No. 1590 would render this provision inutile. This will result in an absurd situation wherein the arrival of PAL’s own imported aviation fuel in our shores will disqualify PAL from availing of its excise tax exemption privilege under its franchise.

Moreover, I submit that the word “available” means “*present or ready for immediate use*” and is synonymous with the words “accessible” and “obtainable.”¹¹

In determining whether PAL’s importations of Jet A-1 aviation fuel from April to June 2005 are exempt from excise tax, the scope of the Court’s inquiry is limited to what was locally available during the relevant time period, that, is from April to June 2005. In other words, the locally available supply of aviation fuel two years prior to the importations is irrelevant for purposes of determining whether PAL is entitled to its excise tax exemption privilege for its importations of Jet A-1 aviation fuel from April to June 2005.

⁹ 713 Phil. 134 (2013).

¹⁰ *Id.*

¹¹ At <https://www.merriam-webster.com/dictionary/available> (last accessed on February 25, 2024).

Thus, assuming *arguendo* that the facts stated in the DOE Certification¹² dated December 20, 2002, were true, I still submit that this would not bar PAL from availing of its excise tax privilege for the importations made from April to June 2005 because the certification was based on available data and records at that time. Human experience and common sense dictates that the quantity and price of locally available aviation gas will fluctuate over time; thus, the contents of the DOE Certification¹³ dated December 20, 2002, will not hold true in perpetuum.

Stated differently, the DOE Certification dated December 20, 2002 is not incompatible with PAL's contention that aviation gas was not locally available with reasonable quality, quantity, and price between April and June 2005.

Lastly, a careful review of the records would reveal that the DOE also erroneously included the inventory of airline companies in its definition of locally available supply of aviation fuel in the Philippines.¹⁴

I submit that locally available supply only refers to supply that may be legally obtained by PAL through purchase in the local market. Thus, the inventory and importations of other airline companies, who are themselves end-users and are not authorized to engage in the resale of aviation fuel, should be excluded from the equation as these are not available for sale to the public.


HENRI JEAN PAUL B. INTING
Associate Justice

¹² *Rollo*, p. 1552.

¹³ *Id.*

¹⁴ *Id.* at 633-634, 1663-1664.

