

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA EB NO. 2639
(CTA Case No. 9913)

Present:

Del Rosario, *P.J.*,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, and
Ferrer-Flores, *JJ.*

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUN 22 2023

JA 11:53 a.m.

X-----X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review¹ filed by Philippine Airlines, Inc. on July 4, 2022. It seeks the reversal of the Decision dated July 29, 2021² (Assailed Decision) as well as the Resolution dated May 26, 2022³ (Assailed Resolution) of the First Division (Court in Division)⁴ of this Court in CTA Case No. 9913.

¹ Court *En Banc's* Docket, pp. 10-38.

² *Id.*, pp. 45-67.

³ *Id.*, pp. 72-78.

⁴ Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Catherine T. Manahan (*ponente*) and Associate Justice Marian Ivy F. Reyes-Fajardo.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Assailed Resolution:

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 29 July 2021) is **DENIED** for lack of merit.

SO ORDERED.

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:⁵

“Petitioner Philippine Airlines, Inc. is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR), with address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City, and TIN 000-597-645-00000.

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes imposed on wines and cigarettes under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590, otherwise known as *‘An Act Granting a New Franchise to Philippine Airlines, Inc. to*

⁵ Court *En Banc's* Docket, pp. 45-49 (Citations omitted).

Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.

From October 2012 to March 2013, petitioner imported various liquors and wines, as parts of its in-flight and commissary supplies.

Thereafter, the Bureau of Customs (BOC) in separate letters dated April 17, 2013 and June 25, 2013, ordered the collection of excise taxes from petitioner in the amounts of ₱2,139,699.09 and ₱2,352,544.34 for its importation of alcohol and tobacco products.

On August 26, 2016, petitioner paid under protest excise taxes on its cigarette and alcohol importations in the total amount of ₱4,492,243.43, as follows:

<i>BOC Official Receipt Number</i>	<i>Amount Paid</i>
01877319994	₱2,139,699.09
01877320019	₱2,352,544.34

Petitioner filed an administrative claim for refund before the office of respondent on August 23, 2018.

Petitioner filed a *Petition for Review* on August 28, 2018. This case was originally raffled to this Court's Second Division.

Pursuant to the Court's Order dated September 24, 2018, this case was transferred to this Court's First Division.

On September 26, 2018, respondent filed his *Answer* interposing his defenses.

The Pre-Trial Conference of the case was subsequently scheduled and held on January 24, 2019. Prior thereto, the *Respondent's Pre-Trial Brief* was filed on October 24, 2018, while petitioner's *Pre-Trial Brief* was submitted on January 18, 2019.

On February 26, 2019, the parties submitted to this Court their *Joint Stipulation of Facts and Issues* (JSFI). In the Resolution dated March 7, 2019, the Court approved the said JSFI, and deemed the Pre-Trial terminated. The Pre-Trial Order was issued on May 8, 2019, wherein the Court, *inter alia*, noted respondent counsel's manifestation that she will no longer present any witness.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Cheryl V. Capinpin, the Manager for petitioner's In-flight Materials Purchasing Division; (2) Ms. Ruel Ryan O. Julian, Manager for petitioner's Tax Services Division; (3) Mr. Jonathan R. Castillo Lee, Manager for petitioner's Company Materials Handling Division; and (4) Ms. Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA).

The ICPA submitted her *Report* on June 27, 2019.

On August 7, 2019, petitioner filed its *Formal Offer of Evidence*. Respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 8, 2019.

In the Resolution dated September 19, 2019, the Court admitted petitioner's exhibits, *except* for Exhibit 'P-7.1', for failure of the formally offered and identified exhibit to correspond with the duly marked exhibit; and Exhibit 'P-9', for failure to present the original for comparison.

Petitioner then filed an *Omnibus Motion (I. For Partial Reconsideration of the Resolution dated 19 September 2019; and II. Motion for Commissioner's Hearing)* on October 22, 2019. On even date, respondent filed his *Memorandum*.

On November 6, 2019, petitioner filed a *Manifestation (With Motion to Suspend Filing of Memorandum)*, praying that this Court suspend the filing of the parties' respective memoranda until the *Omnibus Motion* is resolved. In the Resolution dated November 14, 2019, the Court noted and granted petitioner's *Manifestation (With Motion to Suspend Filing of Memorandum)*, and deferred the filing of the parties' respective memoranda until further orders from this Court.

Respondent failed to file his comment on petitioner's *Omnibus Motion*.

In the Resolution dated January 23, 2020, the Court granted petitioner's *Motion for Commissioner's Hearing* and set the case for Commissioner's Hearing on March 3, 2020; and held in abeyance the resolution of petitioner's *Motion for Partial Reconsideration of the Resolution dated 19 September 2019*.

Subsequently, the Court, in the Resolution dated June 23, 2020, granted petitioner's *Motion for Partial Reconsideration of the*

Resolution dated 19 September 2019, and admitted petitioner's Exhibits 'P-7.1' and 'P-9'.

On September 10, 2020, petitioner electronically filed its *Memorandum*.

This case was submitted for decision on September 28, 2020."

On July 29, 2021, the Court in Division rendered the Assailed Decision denying the Petition for Review for lack of merit.

Aggrieved, petitioner filed a Motion for Reconsideration (Re: Decision promulgated on 29 July 2021) on November 8, 2021 which the Court in Division denied in the Assailed Resolution.

On July 4, 2022, petitioner filed the present Petition for Review within the extended period granted by the Court *En Banc*.⁶

In a Resolution dated July 29, 2022, this Court required respondent to file his Comment to the Petition for Review.⁷

On August 30, 2022, this Court's Judicial Records Division submitted a Records Verification Report stating that as of even date, respondent has yet to file his Comment to the Petition for Review.⁸

In a Resolution dated September 13, 2022, this Court submitted the present case for decision.⁹

THE ISSUE

Petitioner filed the present Petition for Review on the sole assigned error claiming that the Court in Division erred in dismissing the Petition for Review as the evidence presented sufficiently established that the subject importations were not locally available in reasonable quantity, quality, or price.¹⁰

⁶ Minute Resolution dated June 23, 2022, Court *En Banc's* Docket, p. 9.

⁷ Court *En Banc's* Docket, pp. 80-82.

⁸ *Id.*, p. 92.

⁹ *Id.*, pp. 94-95.

¹⁰ *Id.*, p. 16.

THE COURT *EN BANC'S* RULING

The Petition for Review is partially meritorious.

In its Petition for Review, petitioner submits that the evidence it presented sufficiently established that the subject imported liquors, wines, and tobacco products are not locally available in reasonable quantity, quality, or price. Petitioner also contends that the Court in Division's imposition of stringent requirement in proving that petitioner's importation of liquors, wines, and cigarettes are not locally available in reasonable quantity, quality, or price defeats the purpose of the tax exemption granted to petitioner under Presidential Decree (PD) No. 1590.

It may be recalled that in the Assailed Decision, the Court in Division found that petitioner timely filed both of its administrative and judicial claims for refund. Considering that the payment of subject excise taxes was made on August 26, 2016, petitioner had until August 26, 2018 within which to file both claims. Accordingly, the filing of the administrative claim on August 23, 2018 and of the judicial claim on August 28, 2018 (the next working day after August 26, 2018 which fell on a Sunday) were timely made.

The Court in Division likewise ruled that the tax privilege of petitioner under Section 13 of PD No. 1590 has not been revoked by Section 131 of the National Internal Revenue Code of 1997, as amended by Section 6 of Republic Act (RA) No. 9334. The enjoyment of such tax privilege is, however, subject to certain conditions. With regard to the exemption from payment of excise tax on its importation of tobacco and alcohol products, petitioner must comply with the following conditions, to wit:

1. Payment of the corporate income tax;
2. The articles, materials, or supplies are imported for the use of the franchisee in its transport or non-transport operations and other incidental activities; and
3. The imported articles, materials or supplies are not locally available in reasonable quantity, quality, or price.

The Court in Division found that, based on the evidence presented, the petitioner was able to fulfill the 1st and 2nd conditions. With respect to the 3rd condition, however, the Court in Division ruled that petitioner fell short of proving compliance therewith.

As noted by the Court in Division in the Assailed Decision, petitioner presented the following pieces of evidence to prove that the imported alcohol

products were not locally available in reasonable quantity, quality, or price: (1) Judicial Affidavit of Ms. Cheryl V. Capinpin, petitioner's Manager for In-flight Materials Purchasing Division; (2) Absolute Sales Corporation Price List for 2013; (3) Future Trade International Price List Effective February 1, 2013; (4) BIR Revenue Memorandum Circular No. 90-2012; (5) Report of the Court-commissioned ICPA; and (6) Judicial Affidavit of the Court-commissioned ICPA.¹¹

The Court in Division found the foregoing pieces of evidence insufficient. It held as follows:¹²

“The Court, however, cannot simply rely on the product price lists from two (2) dealers, and the testimonies merely based thereon. It is hard to be convinced that the price lists from the said dealers represent the market price locally or for the entire country.

With the lack of corroborating evidence to prove that the price lists of Absolute Sales Corporation and Future Trade International represent the local market prices for the subject alcohol products in 2013 vis-à-vis the totality of local suppliers who are engaged in selling similar products in the same year, this Court cannot conclude that petitioner's comparison of the prices of its imported alcohol products with that of the said dealers is deemed sufficient. Likewise, considering that RMC No. 90-2012 was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made to the prices of petitioner's imported alcohol products for 2013 with that of the said price survey. Simply put, with the evidence presented by petitioner, the Court cannot determine, with certainty, whether the cost of importing alcohol is lower than purchasing them locally.” (*Emphasis supplied*)

The Court *En Banc* disagrees.

The present case is not the first time this Court is confronted with the question of sufficiency of evidence for purposes of establishing that petitioner's imported articles are not locally available in reasonable quantity, quality, or price. Enumerated below are the cases, albeit covering different taxable periods, wherein this Court ruled that petitioner was able to sufficiently establish that its imported articles are not locally available in reasonable quantity, quality, or price on the basis of local prices reflected in the price lists submitted by **two (2) suppliers** or, in some cases, even from only **one (1) supplier**, to wit:

¹¹ *Id.*, p. 61.

¹² *Id.*, pp. 65-66.

Case Number	Evidence Presented	Ruling
<p>CTA Case Nos. 7677, 7685 & 7746 (Dated April 25, 2013) as affirmed in CTA EB Nos. 954 & 1046 (Dated October 14, 2014)</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Sub-department; 2. Philippine Wine Merchants' Price List for 2005 and 2006; 3. Monthly Philippine Dealing Systems rates for the year 2005-2006. 	<p>The claim for refund was partially granted as the petitioner was able to discharge such burden of proof as regards the portions that were duly substantiated.</p>
<p>CTA Case Nos. 7665 & 7713 (Dated April 17, 2012) as affirmed in CTA EB Nos. 920 & 922 (Dated September 9, 2013).</p>	<ol style="list-style-type: none"> 1. Testimony of Mr. Andy Li, PAL's Vice-President for Corporate Logistics and Services Department; 2. Letter addressed to Atty. Oscar C. Ventanilla, Jr. containing a tabulation of comparison of the cost of importing the subject articles and the cost of purchasing them locally, invoices issued to PAL for its purchase of the subject articles; 3. Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of this claim for refund. 	<p>The claim for refund was granted because petitioner was able to discharge the burden of proof to allow refund of erroneously paid excise tax on its importations of commissary and catering supplies for July 2005 to February 2006.</p>
<p>CTA Case No. 8153 (Dated January 17, 2013) as affirmed in CTA EB Nos. 1029, 1031 & 1032 (Dated April 30, 2014)</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials and Purchasing Sub-department; 2. Philippine Wine Merchants' Price List dated January 11, 2007; 3. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 4. Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010. 	<p>The claim for refund was partially granted as the evidence presented corresponding to the excise tax payments on wines and liquors fully complied with the conditions imposed by PD 1590 as amended.</p> <p>The claim for refund on the excise taxes on cigarettes was denied for failure to present a price list of local suppliers.</p>

Case Number	Evidence Presented	Ruling
<p>CTA Case No. 8236 (Dated December 18, 2013) as affirmed in CTA EB No. 1162 & 1167 (Dated January 7, 2016)</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager of In-flight Materials Purchasing Division; 2. Philippine Wine Merchants' Price List for 2008; 3. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 4. Monthly Philippine Dealing System (PDS) Rates for fiscal years 2008, 2009 and 2010; 5. Letters of Ms. Marianne C. Raymundo, PAL's Vice-President for Financial Services with the subject "Booking Rates" for the months of January, July, September, and October 2008. 	<p>The claim for refund was partially granted insofar as the erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.</p>
<p>CTA No. 8184 (Dated March 25, 2014 affirmed in CTA EB No. 1216, 1217 & 1221 (Dated May 27, 2016)</p>	<ol style="list-style-type: none"> 1. Affidavit of Ms. Cheryl Capinpin, PAL's Manager of In-flight Materials Purchasing Division; 2. Philippine Wine Merchants' Price List for 2008; 3. Table of Comparison of prices of commissary articles as those imported by PAL and locally available articles. 	<p>The claim for refund was partially granted because the petitioner has complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies, specifically the imported liquors used for its inflight consumption.</p>
<p>CTA EB No. 1347 (CTA Case No. 8340) August 30, 2017</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Ms. Cheryl V. Capinpin, PAL's In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department Manager; 2. Philippine Wine Merchants' (PWM) Price List for the years 2007, 2008 and 2009; 3. Future Trade International Price List dated April 8, 2009; 4. Table of Comparison between 	<p>The Court <i>En Banc</i> reversed the Court in Division's ruling. It partially granted the Petition for review and remanded the case to the Court in Division as the petitioner has sufficiently established that the alcohol products it imported were not available in reasonable quantity, quality, or price in the local market.</p>

Case Number	Evidence Presented	Ruling
	<p>Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;</p> <p>5. Sales invoices issued by foreign suppliers;</p> <p>6. Letter of Ms. Marianne C. Raymundo, petitioner's Vice President for Financial Services with the subject "Booking Rates-August 2007";</p> <p>7. Monthly Philippine Dealing System (PDS) rates for the years 2000 to 2010.</p>	
<p>CTA EB No. 1363 (CTA Case No. 8198) February 13, 2018</p>	<p>1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager for In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department;</p> <p>2. Philippine Wine Merchant Price List;</p> <p>3. Sales invoices issued to petitioner for its purchase of the subject articles;</p> <p>4. Monthly Philippine Dealing System Rates (2007 to 2010);</p> <p>5. 2008 Booking Rates for the Month of May;</p> <p>6. Letters of Ms. Marianne C. Raymundo, petitioner's Vice President — Financial Services re: Booking Rates for the months of January, March, and April 2008;</p> <p>7. Table of Comparison.</p>	<p>The Court <i>En Banc</i> reversed the Court in Division's ruling. It partially granted the Petition for Review and remanded the case to the Court in Division as the petitioner has sufficiently established that the liquors it imported were not available in reasonable quantity, quality, or price in the local market.</p> <p>The Court <i>En Banc</i> denied the claim insofar as the imported cigarettes are concerned as the Court did not give credence to the witness' uncorroborated testimony.</p>
<p>CTA EB No. 1648 (CTA Case No. 8708 & 8770) October 18, 2018</p>	<p>1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager for In-flight and Commissary Materials Purchasing Division, Corporate Logistics and Services Department;</p> <p>2. Philippine Wine Merchants</p>	<p>The Court partially granted the claim for refund and allowed the refund of erroneously paid excise tax on PAL's importation in the years 2006, 2008 to 2012 of assorted liquor, wine and cigarettes</p>

Case Number	Evidence Presented	Ruling
	<p>(“PWM”) Price Lists for the years 2006, 2008, 2009, 2010, 2011, and 2012;</p> <p>3. Future Trade International (“FTI”) Price Lists dated April 8, 2009, October 1, 2010 and for the years 2006 to 2013;</p> <p>4. 2010 BIR Price Survey;</p> <p>5. Report of the Court-commissioned Independent Certified Public Accountant (“ICPA”).</p>	<p>constituting its commissary and catering supplies for international flight consumption.</p>
<p>CTA EB No. 1484 (CTA Case No. 8362) April 10, 2018</p>	<p>1. Judicial Affidavit of Ms. Cheryl Capinpin (petitioner’s Manager for In-flight Materials Purchasing Division);</p> <p>2. Philippine Wine Merchants (PWM) Price List for the years 2007, 2008, and 2009;</p> <p>3. Future Trade International Travel Retail Price List as of Feb 2009;</p> <p>4. Affidavit of Gilbert M. Galeo who testified to the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty-Free Philippines;</p> <p>5. Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies;</p> <p>6. Monthly Philippine Dealing System (PDS) rates for the years 2007 to 2010.</p>	<p>The Court <i>En Banc</i> is convinced that petitioner has sufficiently established that the alcohol and tobacco products it imported were not available in either reasonable quantity or price in the local market.</p> <p>The Court <i>En Banc</i> remanded the case to the Court in Division for a complete determination of petitioner’s refund claim.</p>

In congruence with the rulings in the foregoing cases, the Court *En Banc* finds that the pieces of evidence presented by petitioner, particularly the price lists obtained from **two (2) local suppliers**, are sufficient for the Court in Division to evaluate the prices of the subject alcohol products imported by

petitioner vis-à-vis their prices in the local market and to determine whether there is compliance with 3rd condition required by PD No. 1590, as amended.

With respect to the importation of tobacco products, the Court *En Banc* agrees with the Court in Division in finding that the testimony of petitioner's witness, Ms. Cheryl V. Capinpin, standing alone and without any corroborating evidence through which the Court can verify the truth of such statements, is not sufficient for purposes of establishing that the imported tobacco products are not locally available in reasonable quantity, quality, or price.

The required number of votes for the reversal of the assailed Decision and Resolution were not obtained.

During the deliberation of the present Petition for Review, the members of the Court *En Banc* were equally divided in their votes. The *ponente*, together with Associate Justice Maria Rowena Modesto-San Pedro, Associate Justice Marian Ivy F. Reyes-Fajardo, and Associate Justice Lane S. Cui-David voted to partially grant the Petition for Review and to remand the case to the Court in Division for the determination of the amount of refundable, substantiated excise taxes paid on petitioner's importation of alcohol products, or a total of **four (4) votes**.

On the other hand, Presiding Justice Roman G. Del Rosario, Associate Justice Catherine T. Manahan, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Corazon G. Ferrer-Flores voted to deny the Petition for Review, or a total of **four (4) votes**.

Section 2 of Republic Act (RA) No. 1125, as amended, and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), respectively provide as follows:

Sec. 2, RA 1125 as amended

SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.

Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division: *Provided*, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Division of the Court to sit temporarily therein.

The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.

Sec. 3, Rule 2, RRCTA


SEC. 3. *Court en banc, quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (*Emphasis and underscoring supplied*)**

Considering that the required affirmative votes of **five (5) members** of the CTA *En Banc* were not obtained to reverse the assailed Decision and Resolution, the dismissal of the present Petition for Review is in order.

WHEREFORE, the present Petition for Review is **DISMISSED** pursuant to Section 2 of Republic Act No. 1125, as amended, in relation to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals.

The assailed Decision dated July 29, 2021 and Resolution dated May 26, 2022 of the First Division of this Court in CTA Case No. 9913 shall stand **AFFIRMED**.

SO ORDERED.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

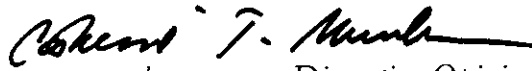
WE CONCUR:



I join Associate Justice Catherine T. Manahan's Dissenting Opinion

ROMAN G. DEL ROSARIO

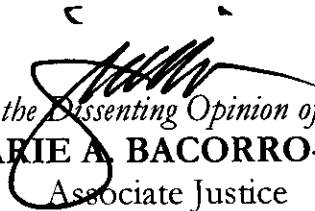
Presiding Justice



With due respect, please see my Dissenting Opinion

CATHERINE T. MANAHAN

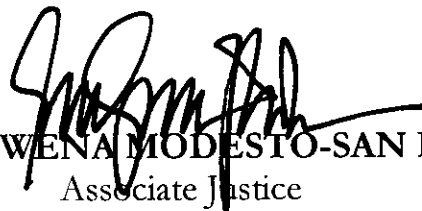
Associate Justice



With due respect, I join the Dissenting Opinion of AJ Catherine Manahan

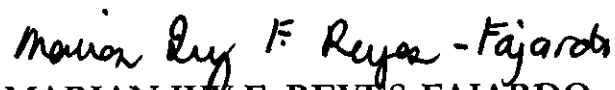
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



With due respect, I join J. Manahan's Dissenting Opinion only insofar as the price lists do not cover the period of importation

CORAZON G. FERRER-FLORES

Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PHILIPPINE AIRLINES, INC.,

Petitioner,

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(CTA Case No. 9913)

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Cui-David, and
Ferrer-Flores, JJ.

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUN 22 2023

[Signature] 11:53 a.m.

x- - - - -

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DISSENTING OPINION

MANAHAN, J.:

With due respect, I dissent to the decision remanding the case for the determination of the amount of refundable, substantiated excise taxes paid on petitioner's importation of alcohol products.

I maintain that petitioner failed to present sufficient and convincing evidence to prove that the imported alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation.

There are three (3) conditions for petitioner to be exempt from excise tax on its importation of alcohol products, as follows:

1. Payment of the corporate income tax; *em*

2. The said supplies are imported for the use of the franchisee in its transport and non-transport operations and other incidental activities; and
3. The said supplies are not locally available in reasonable quantity, quality, or price.

Petitioner submitted the following with respect to the third condition:

1. Judicial Affidavit of Ms. Cheryl V. Capinpin, its Manager for In-Flight Materials Purchasing Division;
2. Absolute Sales Corporation Price List for 2013;
3. Future Trade International Price List Effective February 1, 2013;
4. BIR Revenue Memorandum Circular No. 90-2012;
5. Report of the Court-commissioned Independent Certified Public Accountant (ICPA); and
6. Judicial Affidavit of the ICPA.¹

I reiterate that it is hard to be convinced that the price lists of Absolute Sales Corporation and Future Trade International represent the market price of the said products locally or for the entire country.

With the lack of corroborating evidence to prove that the price lists provided by these two companies represent the local market prices for the subject alcohol products in 2012-2013 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same period, I cannot conclude that said products are indeed not available locally in reasonable quantity, quality, or price, which would justify an importation by petitioner.

I am not unaware of the various CTA cases which have ruled that pricelists from two (2) suppliers, or even one (1) supplier, are sufficient to establish that the imported articles are not locally available in reasonable quantity, quality, or price. However, in the case of *San Roque Power Corporation v. Commissioner of Internal Revenue*,² the Supreme Court held that CTA Decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to the Supreme Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant.

¹ EB Docket, Division Resolution dated May 26, 2022, p. 75.

² G.R. No. 203249, July 23, 2018. *am*

Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.³

Despite the various CTA rulings, I believe that the probative value given to the pricelists provided by petitioner should be revisited. My reservation on relying on the said pricelist as being representative of the local price of the said products stems from the following testimonies:

During the cross-examination of Ms. Capinpin, she testified that her observation that the imported products are not available locally in reasonable quantity, quality or price, is merely based on the price lists from Absolute Sales Corporation and Future Trade International, *viz*:

“ATTY. CAYETANO

Q Ms. Witness, in Question No. 11 of your Judicial Affidavit, you answered that you compared the prices in relation to the Absolute Sales Corporation price list, Future Trade International retail price list and RMC No. 90-2012. Is Absolute Sales Corporation and Future Trade International the only one who sell these products in the Philippines?

MS. CAPINPIN

A They are not the only one who sell these products but those are the suppliers who responded to our request for price list.

ATTY. CAYETANO

Q So, you were not able to get price list from other suppliers although they do exist?

MS. CAPINPIN

A Yes, they did not respond to our request.

ATTY. CAYETANO

Q In Question No. 7, you mentioned that the products are not available locally in reasonable quantity, quality or price? Is this correct?

MS. CAPINPIN

³ Article 8, Civil Code of the Philippines. *am*

A Yes.

ATTY. CAYETANO

Q But this observation is based on the price list that were given to you when you requested that?

MS. CAPINPIN

A Yes.”

In like manner, during the cross and re-direct examinations of Ms. Constantino, the Court-commissioned ICPA, she testified that her finding that importation is cheaper than purchasing liquor locally is based on the two (2) price lists provided by petitioner, and RMC No. 90-2012, *viz*:

“CROSS EXAMINATION BY ATTY. BABARAN:

xxx xxx xxx

ATTY. BABARAN:

Q. So, as far as you know, the petitioner requested for the price list only from these two (2) companies?

MS. CONSTANTINO

A. Yes.

ATTY. BABARAN:

Q. No other company or any other price list survey was given to you?

MS. CONSTANTINO

None.

ATTY. BABARAN:

Q. And, you did not make also any survey?

MS. CONSTANTINO

A. Not.

xxx xxx xxx

RE-DIRECT EXAMINATION BY ATTY. SEGUNDO:

xxx xxx xxx *om*

JUSTICE VICTORINO:
Just a clarification.

Your conclusion that importation is cheaper than purchasing the liquor locally. This conclusion was based on the two (2) quotations provided to you by petitioner from two (2) companies?

MS. CONSTANTINO:

A. Yes, your Honors, and the BIR.

JUSTICE VICTORINO:

And that you also consider its BIR Revenue Memorandum Circular 90-2012?

MS. CONSTANTINO:

Yes, your Honors.

JUSTICE VICTORINO:

Yes.

And, with these documents, you already concluded that it's cheaper to import rather than to buy those liquors locally?

MS. CONSTANTINO:

A. We tried searching in the internet for the prices, but then, we could not really find. So, there was an effort made on our part, unfortunately, we could not really find sources that could provide us with additional information as to the prices.

JUSTICE VICTORINO:

Did you consider your conclusion enough for the Court to sustain the relief being prayed for by petitioner?

MS. CONSTANTINO:

A. My conclusion was based only on the documents that we've examined, that some of the products were not available.

JUSTICE VICTORINO:

That would be all. *am*

JUSTICE DEL ROSARIO:

Just a follow-up question on that.

There were two (2) price quotations you were able to get, one, from the Absolute Sales, the other one from Future Trade International. Did you verify the nature of the business of these two (2) supposed corporations?

MS. CONSTANTINO:

A. No, your Honors.

JUSTICE DEL ROSARIO:

Would you know if these two (2) corporations are the exclusive distributors of the alcohol products involving this case?

MS. CONSTANTINO:

A. No, I'm not certain, your Honors.

JUSTICE DEL ROSARIO:

You have no information as to whether there is any dealer that exclusively sells the alcohol products in the country?

MS. CONSTANTINO:

A. We tried looking in the internet for a dealer but we could not really find one.

JUSTICE DEL ROSARIO:

So, it is uncertain whether there is an exclusive distributor or seller of the alcohol products that are involved in this present case?

MS. CONSTANTINO:

A. Yes, your Honors, we only based it on the internet."⁴

In addition, the said pricelists are effective for 2013, or in the case of the Future Trade International Pricelist, effective February 1, 2013. However, the instant case involves importations for the period October 2012 to March 2013. Further, RMC No. 90-2012 was based on the 2010 BIR price


⁴ EB Docket, Division Decision dated July 29, 2021, pp. 61-65. *CM*

survey of alcohol products. Thus, there can be no valid comparison between the prices of petitioner's imported alcohol products for October 2012 to March 2013 and the pricelists limited to 2013 and the 2010 BIR price survey.

Clearly, it was not established that the pricelists were from entities whose prices could be seen as representative of the local prices of said alcohol products. Neither was there any evidence showing the alleged local prices and availability of the said products for the period October 2012 to December 2012.

Based on the foregoing, petitioner failed to show that the subject imported alcohol products were not locally available in reasonable quantity, quality or price for the periods involved.

I vote to deny the Petition for Review, docketed as CTA EB No. 2639 and affirm the Decision and Resolution, dated July 29, 2021 and May 26, 2022, respectively, in CTA Case No. 9913.


CATHERINE T. MANAHAN
Associate Justice