REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA *EB* NO. 2559
(CTA Case Nos. 7670, 7818, 7869, 7954, 8034)

x===========================x

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA *EB* NO. 2577
(CTA Case Nos. 7670, 7818, 7869, 7954, 8034)

Members:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES, *JJ.*

Promulgated:
MAR 13 2024 2:5?

x- -x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are the *Petitions for Review* separately filed by the Commissioner of Internal Revenue ("**CIR**")[1] and the Commissioner of Customs ("**COC**")[2] under

[1] *En Banc (EB)* Docket (CTA *EB* No. 2559), pp. 7-19.
[2] *EB* Docket (CTA *EB* No. 2577), pp. 1-38.

Section 3(b), Rule 8,[3] in relation to Section 2(a)(1), Rule 4[4] of the Revised Rules of the Court of Tax Appeals[5] ("**RRCTA**"), assailing the *Decision* dated March 9, 2021 [6] ("**assailed Decision**") and *Resolution* dated October 27, 2021[7] ("**assailed Resolution**") of the Court's Third Division ("**Court in Division**") in CTA Case Nos. 7670, 7818, 7869, 7954, and 8034 entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs.*

THE PARTIES

Petitioner CIR is the Commissioner of the Bureau of Internal Revenue ("**BIR**"), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the excise tax on aviation turbo fuel imposed under Section 148(g) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner COC is the head of the Bureau of Customs ("**BOC**") delegated and authorized by petitioner CIR through an Authority to Release Imported Goods ("**ATRIG**")/BIR Form No. 1918 to assess and collect customs duties and all other charges on imported articles, including the excise tax on aviation turbo fuel imposed under Section 148(g) of the NIRC of 1997, as amended. He holds office at the Port Area, Bureau of Customs, Manila.

Respondent Philippine Airlines, Inc. ("**PAL**" or "**respondent**") is a domestic corporation duly organized and existing in accordance with the laws of the Republic of the Philippines with principal office at the 8th Floor, PNB Financial

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[3] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[4] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[5] A.M. No. 05-11-07-CTA.

[6] *EB* Docket (CTA *EB* No. 2559), pp. 27-77.

[7] *Id.*, pp. 78-82.

Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City.

THE FACTS

The following are the facts as stated in the assailed *Decision*,[8] to wit:

> On 11 June 1978, [respondent] was granted a franchise to establish, operate, and maintain air-transport services in the Philippines and between the Philippines and other countries, known as Presidential Decree ("**PD**") No. 1590.
>
> Pursuant to Section 13 (b) (2) of the said franchise, [respondent] has the benefit of paying the lower amount between its basic corporate income tax or franchise tax equivalent to two percent (2%) of its gross revenues. The payment of the same shall be in lieu of all other taxes, duties, and fees that may be imposed upon it by the State. The aforementioned provision is reproduced below, as follows:
>
> > 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 percent (2%) of the gross revenues derived by the grantees from all sources, without distinction as to transport or nontransport corporations; provided, that with respect to international air-transport service, only the gross passengers, 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

[8] Assailed Decision, pp. 27-37.

> 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;"

Subsequently, Letter of Instruction No. 1483 ("**LOI No. 1483**") was issued on 31 October 1985. The said issuance withdrew the tax-exemption privilege granted to PAL on its purchases of domestic petroleum products for its use in its domestic operations effective 1 November 1985.

On 29 January 1999, however, BIR Ruling No. 013-99 ("**1999 BIR Ruling**") was issued, clarifying that the petroleum products imported or purchased by PAL abroad for use in its domestic operations will remain free from excise tax, to wit:

> "x x x we confirm your opinion that petroleum products purchased or imported by PAL from abroad can be used by it in its domestic operations without payment of tax since the said products were not a domestic purchase. The intention of LOI No. 1483 is to impose a tax on domestic petroleum products purchased by PAL for use in its domestic operations."

The 1999 BIR Ruling was later on confirmed by then Secretary of Finance, Edgardo B. Espiritu, in his Letter, dated 8 September 1999, addressed to [respondent's] Mr. Andrew L. Huang. ...

Meanwhile, on 20 December 2002, the Department of Energy ("**DOE**") issued a Certification ("**2002 DOE Certification**") stating that aviation gas, fuel, and oil for use in the domestic operations of domestic airline companies are locally available in reasonable quantity, quality, and price.

On account of the said 2002 DOE Certification, then CIR Guillermo L. Parayno, Jr., issued BIR Ruling No. 001-03 ("**2003 BIR Ruling**") on 29 January 2003. The said ruling provided that the importation of petroleum products made by PAL, along with the other airline companies, would no longer be exempted from taxes imposed under the Tax Code, considering that aviation gas, fuel, and oil were then already locally available in reasonable quantity, quality, and price. The relevant portion of the 2003 BIR Ruling reads as follows:

> "In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies ipso facto to other airlines. Accordingly, your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.
>
> This Ruling, therefore, supersedes the above-stated rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter."

Aggrieved, [respondent], on 24 October 2003, filed a letter addressed to then DOE Secretary, Vicente Perez, asking for reconsideration of the 2002 DOE Certification. 12 It had also earlier filed, on 19 March 2003, a letter to then Commissioner Guillermo Parayno, Jr., requesting the reconsideration of the 2003 BIR Ruling.

Thereafter, Secretary Perez, in his letter, dated 2 April 2004, said that, per its records for years 2002 and 2003, it confirms that the Jet A-1 fuel are locally available in quantity. As for the reasonableness of the price, it endorsed [respondent's] letter to the Department of Finance ("**DOF**") for appropriate action. As for the BIR Ruling 2003, [respondent] had not yet received any decision from the CIR as of date.

On 24 May 2005, Republic Act ("**RA**") No. 9337 was passed which effectively abolished the franchise tax under [respondent's] charter and subjected it to corporate income tax and value-added tax ("**VAT**"). Nevertheless, the law

retained [respondent's] exemption from taxes, duties, royalties, registration, license, and other fees and charges, provided under its franchise. The pertinent portion of the said law is Section 22 of RA No. 9337 which is hereby quoted, to wit:

> "SECTION 22. Franchises of Domestic Airlines. — The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;
>
> (B) The franchisee shall be liable to the corporate income tax;
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."

Subsequently on separate dates (as indicated below), [respondent] imported Jet A-1 fuel allegedly for its use in its domestic operations. On the basis of the 2003 BIR Ruling, the CIR through the COC assessed [respondent] for excise taxes on the said importations.

In order to effect the release of the imported Jet A-1 fuel, [respondent] paid under protest the excise taxes on the said products in the aggregate amount of P1,174,628,066.60. The details of [respondent's] payments are as follows:

CTA Case No.	Date of Importation	Date of Payment under Protest	Amount Paid
7670	13 July 2005	11 August 2005	P53,076,377.00
	23 November 2005	22 December 2005	24,775,172.00
	23 November 2005	22 December 2005	28,357,995.00

	17 February 2006	8 March 2006	53,062,743.00
	23 March 2006	18 April 2006	64,851,866.00
	28 April 2006	6 June 2006	42,834,897.00
7818	3 July 2006	3 August 2006	10,492,152.00
	1 July 2006	3 August 2006	54,660,848.00
	7 July 2006	9 August 2006	58,535,245.00
	18 August 2006	11 October 2006	47,549,251.00
	2 September 2006	6 October 2006	31,339,138.00
	10 November 2006	14 December 2006	31,863,296.00
7869	18 January 2007	7 February 2007	45,880,876.00
	12 February 2007	16 March 2007	6,466,405.00
	12 February 2007	27 March 2007	34,964,402.00
	16 February 2007	22 March 2007	58,633,179.00
	14 March 2007	12 April 2007	41,595,483.00
	10 April 2007	10 May 2007	40,557,820.00
	10 April 2007	5 June 2007	137,988.00
7954	14 July 2007	30 July 2007	52,986,165.00
	5 August 2007	14 September 2007	59,258,962.00
	18 August 2007	12 September 2007	41,386,730.00
	5 October 2007	7 November 2007	53,140,393.00
	13 December 2007	9 January 2008	29,429,503.00
8034	5 February 2008	5 March 2008	58,839,935.60
	24 February 2008	26 March 2008	39,547,678.00
	8 March 2008	10 April 2008	47,740,472.00
	8 March 2008	17 April 2008	181,155.00
	24 April 2008	15 May 2008	20,724,223.00
	30 May 2008	18 June 2008	35,757,717.00

Thereafter, [respondent] filed its formal written protests with the BOC, asking for refund of the excise taxes paid, on the following dates:

CTA Case No.	**Date of Importation**	**Date of Payment under Protest**	**Date of Filing of Protest with COC**
7670	13 July 2005	11 August 2005	24 August 2005
	23 November 2005	22 December 2005	6 January 2006
	23 November 2005	22 December 2005	6 January 2006
	17 February 2006	8 March 2006	21 March 2006
	23 March 2006	18 April 2006	2 May 2006
	28 April 2006	6 June 2006	20 June 2006
7818	3 July 2006	3 August 2006	16 August 2006
	1 July 2006	3 August 2006	16 August 2006
	7 July 2006	9 August 2006	23 August 2006
	18 August 2006	11 October 2006	23 October 2006
	2 September 2006	6 October 2006	19 October 2006
	10 November 2006	14 December 2006	27 December 2006
7869	18 January 2007	7 February 2007	21 February 2007
	12 February 2007	16 March 2007	30 March 2007
	12 February 2007	27 March 2007	
	16 February 2007	22 March 2007	3 April 2007
	14 March 2007	12 April 2007	24 April 2007
	10 April 2007	10 May 2007	22 May 2007
	10 April 2007	5 June 2007	19 June 2007
7954	14 July 2007	30 July 2007	14 August 2007
	5 August 2007	14 September 2007	26 September 2007

	18 August 2007	12 September 2007	25 September 2007
	5 October 2007	7 November 2007	20 November 2007
	13 December 2007	9 January 2008	23 January 2008
8034	5 February 2008	5 March 2008	18 March 2008
	24 February 2008	26 March 2008	9 April 2008
	8 March 2008	10 April 2008	23 April 2008
	8 March 2008	17 April 2008	
	24 April 2008	15 May 2008	29 May 2008
	30 May 2008	18 June 2008	2 July 2008

Due to [petitioner] COC's inaction, and in order to toll the running of the two-year prescriptive period provided under Section 204 (C) of the Tax Code, [respondent] filed its written claims for refund with [petitioner] CIR for the aforementioned excise taxes paid, on the following dates:

CTA Case No.	**Date of Payment under Protest**	**Date of Written Claim for Refund to CIR**	**Amount Claimed**
7670	11 August 2005	9 July 2007	P53,076,377.00
	22 December 2005		24,775,172.00
	22 December 2005		28,357,995.00
	8 March 2006		53,062,743.00
	18 April 2006		64,851,866.00
	6 June 2006		42,834,897.00
7818	3 August 2006	1 July 2008	10,492,152.00
	3 August 2006		54,660,848.00
	9 August 2006		58,535,245.00
	11 October 2006		47,549,251.00
	6 October 2006		37,339,138.00
	14 December 2006		31,863,296.00
7869	7 February 2007	16 January 2008	45,880,876.00
	16 March 2007		6,466,405.00
	27 March 2007		34,964,402.00
	22 March 2007		58,633,179.00
	12 April 2007		41,595,483.00
	10 May 2007		40,557,820.00
	5 June 2007		137,988.00
7954	30 July 2007	17 April 2009	52,986,165.00
	14 September 2007		59,258,962.00
	12 September 2007		41,386,730.00
	7 November 2007		53,140,393.00
	9 January 2008		29,429,503.00
8034	5 March 2008	18 November 2009	58,839,935.60
	26 March 2008		39,547,678.00
	10 April 2008		47,740,472.00
	17 April 2008		181,155.00
	15 May 2008		20,724,223.00
	18 June 2008		35,757,717.00

Alleging inaction on the part of the CIR, [respondent] filed the instant Petitions for Review on the following dates:

CTA Case No.	Date of Payment under Protest	Date of Written Claim for Refund to CIR	Date of Filing of the Petition for Review
7670	11 August 2005	9 July 2007	10 August 2007
	22 December 2005		
	22 December 2005		
	8 March 2006		
	18 April 2006		
	6 June 2006		
7818	3 August 2006	1 July 2008	4 August 2008
	3 August 2006		
	9 August 2006		
	11 October 2006		
	6 October 2006		
	14 December 2006		
7869	7 February 2007	16 January 2008	9 February 2009
	16 March 2007		
	27 March 2007		
	22 March 2007		
	12 April 2007		
	10 May 2007		
	5 June 2007		
7654	30 July 2007	17 April 2009	30 July 2009
	14 September 2007		
	12 September 2007		
	7 November 2007		
	9 January 2008		
8034	5 March 2008	18 November 2009	5 March 2010
	26 March 2008		
	10 April 2008		
	17 April 2008		
	15 May 2008		
	18 June 2008		

[*Citations omitted.*]

We likewise quote the assailed *Decision* in its narration of the proceedings before the Court in Division.[9]

Proceedings in CTA Case No. 7670

[Petitioner] CIR filed his Answer on 18 September 2007 and his Amended Answer on 20 September 2007. Meanwhile, respondent COC filed his Answer on 6 November 2007. Thereafter, he filed an Addendum to Respondent

[9] Assailed Decision, pp. 11-20.

Commissioner of Customs' Answer dated October 31, 2007 on 19 November 2007.

Subsequently, [petitioners] CIR and COC filed their respective Pre-Trial Briefs on 7 January 2008 and 11 January 2008. [respondent] filed its Pre-Trial Brief on 11 February 2008. Pre-trial ensued on 27 March 2008, which was only attended by [respondent's] counsel. Considering the same, the Court ordered [petitioners] in default and allowed [respondent] to present evidence ex parte.

This prompted the COC to file his Motion to Lift Resolution of Default dated March 27, 2008. ... Meanwhile, the CIR filed his Manifestation and Motion praying for the same relief as the COC. ...

In the interest of substantial justice and considering [respondent] did not interpose any objection, the Court granted both Motions on 5 July 2008.

Thereafter, pre-trial ensued on 3 July 2008. The parties filed their Joint Stipulation of Facts and Issues ("**JSFI**") on 4 September 2008. The Court then issued a Resolution on 9 September 2008, approving the JSFI and ordering the termination of Pre-trial.

Proceedings in CTA Case No. 7818

For this case, [petitioners] CIR and COC filed their Answers on 9 September 2008 and 20 October 2008, respectively.

Subsequently, [petitioners] CIR and COC filed their Pre-Trial Briefs on 17 September 2008 and 13 November 2008. [respondent] filed its Pre-Trial Brief on 5 November 2008. Pre-trial commenced on 4 December 2008. Thereafter, the parties filed their JSFI on 10 February 2009. On 12 February 2009, the Court issued a Resolution approving the JSFI and ordering the termination of Pre-trial.

Proceedings in CTA Case No. 7869

[Petitioner] CIR filed his Answer on 4 March 2009, and the COC filed his on 17 April 2009.

On 30 March 2009, the CIR filed his Pre-Trial Brief while the COC filed the same on 17 April 2009. Pre-trial ensued on 23 April 2009, which was only attended by [petitioners'] counsels. Considering the same, the Court ordered the dismissal of CTA Case No. 7869.

On 7 May 2009, [respondent] filed its Motion to Admit Pre-Trial Brief and Set Case for Pre-Trial. It alleged that due to heavy work load [*sic*], its counsel was not able to file its Pre-Trial Brief on time. Hence, it prayed for the Court to admit the said pleading.

Having received the Court's order dismissing CTA Case No. 7869, [respondent] filed its Omnibus Motion (a) For Reconsideration of the Resolution dated 7 May 2009; (b) To Admit Pre-Trial Brief and Set Case for Pre-Trial Conference. On 18 August 2009, the Court issued a Resolution granting [respondent's] Motions, admitting [respondent's] Pre-Trial Brief, and ordering the recall and setting aside of its earlier order of dismissal.

Pre-trial proceeded on 10 September 2009, followed by the filing of the parties' JSFI on 20 November 2009. On 25 November 2009, the Court issued a Resolution approving the JSFI and terminating pre-trial for said case.

Proceedings in CTA Case No. 7954

[Petitioner] COC filed his Answer on 25 August 2009, while the ClR filed his on 22 September 2009.

The parties' respective Pre-Trial Briefs were filed on 5 October 2009 for [respondent] and on 6 October 2009 for the COC and the CIR. Pre-Trial commenced on 9 October 2009. Afterwards, the JSFI was filed by the parties on 22 December 2009. The Court approved the JSFI and ordered the termination of the pre-trial through a Resolution dated 5 January 2010.

Proceedings in CTA Case No. 8034

[Petitioner] COC filed his Answer on 25 March 2010. Meanwhile, the CIR filed a Motion to Admit Attached Answer on 4 June 2010, which was granted in open court on 10 June 2010.

On 28 May 2010, [respondent] filed a Motion to Clarify Answer addressed to the COC. The COC responded by filing a Manifestation and Motion on 17 June 2010, asking the Court to admit its Amended Answer. The Court admitted the said pleading through its Resolution dated 18 June 2010.

Thereafter, the COC and the CIR filed their respective Pre-Trial Briefs on 8 June 2010 and 19 July 2010. [respondent] filed its Pre-Trial Brief on 19 July 2010.

In separate Motions filed by both the COC and [respondent], the parties moved for the consolidation of the above-captioned cases. The Court granted the same through a Resolution dated 5 August 2010.

On 14 January 2011, [respondent] filed its Request for Subpoena Duces Tecum, asking the Court to issue a subpoena to respondent COC to furnish the Court the Import Entry & Internal Revenue Declarations ("**IEIRD**") of all local oil companies for the period August 2005 to June 2008 and IEIRDs of other airline companies for the same period. The Court denied the said request on the ground that the description of the documents was not definite.

This prompted [respondent] to file its Request for Subpoena Duces Tecum anew asking for the specific IEIRDs of all local oil companies (*e.g.*, Phoenix Petroleum, Pilipinas Shell Petroleum Corp., Caltex/Chevron, and Petron) and airlines (e.g., Cebu Pacific Air and Air Philippines Corp.) for the period August 2005 to June 2008. Acting on the said request, the Court directed [respondent's] counsel to secure instead certified true copies of the said documents since the same are public in nature.

On 21 January 2011, the parties filed their JSFI for CTA Case No. 8034. On 18 February 2011, the Court issued the Pre-Trial Order which marked the end of Pre-Trial for CTA Case No. 8034.

Thereafter, on separate dates, [respondent] filed several requests for the issuance of Subpoena Ad Testificandum addressed to the following:

1. Ms. Glendalyn P. Dela Cruz ("Ms. Dela Cruz"), Senior Science Research Specialist, Oil Industry Competition and Monitoring Division of the DOE.

2. Atty. Eleazar C. Cesista, Director III of the Revenue Operations Group of the DOF. [respondent] intends to let Atty. Cesista identify certain documents and testify on matters regarding the issuance of the 1st indorsement by the DOF; and the latter's reliance on the certifications issued by the Air Transportation Office ("ATO") or Civil Aviation Authority of the Philippines ("CAAP"), among others.

The Court granted [respondent's] request and issued a subpoena to Ms. Dela Cruz on 11 March 2011.

Meanwhile, during Trial, [respondent] presented the following witnesses:

1. Mr. Elvis A. Yao ("Mr. Yao"), Senior Assistant Vice President-Fuel Management Department of [respondent].

Mr. Yao's testimony focused on proving that (a) [respondent] imported Jet A-1 fuel during the relevant periods in question; (b) [respondent] paid excise taxes due on the said importation; (c) [respondent] filed Protest Letters to BOC and BIR; (d) the 2002 DOE Certification was issued in violation of its rights to due process; (d) the 2003 BIR Ruling is invalid; (e) the Jet-1 fuel is not locally available in reasonable quantity, quality, or price; (f) the CIR is a proper party-in-interest in this case; (g) [respondent] was able to submit all the required documents in support of its administrative claim for refund; (h) it is entitled to the relief prayed for; (i) the 2003 BIR Ruling does not apply to year 2003 and subsequent years; and (j) subsequent government certifications show that there is no locally available Jet A-1 fuel in reasonable quantity, quality, and price. He also identified documents relevant to [respondent's] importation of the Jet A-1 fuel.

2. Ms. Evelyn L. Taghap ("Ms. Taghap"), Manager-Tax Services and Compliance Division of [respondent].

Ms. Taghap testified that [respondent] paid both income tax and VAT for the years 2005-2008. She also confirmed that [respondent] is a VAT registered taxpayer.

3. Ms. Dela Cruz — Senior Science Research Specialist, Oil Industry Competition and Monitoring Division of the DOE.

Ms. Dela Cruz expounded on the DOE Report she prepared showing the volume or quantity of importation, exportation, and local refinery production of various petroleum products, including the Jet A-1 fuel, and the demand for each product for the year 2001-2010.

4. Ms. Myra Celeste O. Dabalos ("Ms. Dabalos") — Independent Certified Public Accountant appointed by the Court on 19 March 2012.

Ms. Dabalos discussed her findings in relation to the propriety of the amount of refund being claimed by [respondent]. She also reported that it is cheaper for [respondent] to import Jet A-1 Fuel than to purchase it locally from Petron and Shell.

5. Mr. Mario V. Tiaoqui ("Mr. Tiaoqui") — former Secretary of the DOE who was presented as an expert witness.

Mr. Tiaoqui testified that local supply and local domestic refinery production had been considered by the DOE and by oil companies as one and the same and that importation or any imported product was different from locally available supply or one that had been processed and produced in the country by local refineries. He opined that the phrase "not locally available" under Section 13 of PD No. 1590 would mean that which was not refined or processed in the Philippines.

6. Mr. Roberto R. Razal ("Mr. Razal") — Supervising Fuel Technical Specialist-Fuel Management Department of [respondent].

Mr. Razal testified on the fact that [respondent's] imported Jet A-1 fuel was solely used in its domestic operations. He also identified documents in relation to PAL's consumption of said fuel.

7. Atty. Arminda Acyatan-Guerrero — ("Atty. Acyatan-Guerrero") ICPA appointed by the Court on 15 August 2016.

Atty. Acyatan-Guerrero testified on the verification procedures she performed in determining whether [respondent] indeed consumed the relevant Jet A-1 fuel in this case. Based on her audit, she was able to verify that (a) there was indeed an importation of Jet A-1 fuel made by [respondent]; (b) [respondent] maintains records of its imported Jet A-1 fuel on the basis of "first-in, first out" ("FIFO") method; and (c) [respondent] was able to fully consume the imported Jet A-1 fuel in this case in the aggregate total of 320,062,141 liters.

On 1 April 2013, the Court issued a Resolution ordering [petitioners] to elevate their respective case records pertinent to the instant Petitions. [Petitioner] CIR manifested that he has no case records to elevate, claiming that the issues herein involves the collections of the BOC. Meanwhile, [petitioner] BOC transmitted his records on 11 June 2013 and 8 April 2015.

On 3 April 2014, [respondent] filed its Manifestation and Request for Admission. [respondent] explained that it instituted a separate action in the Regional Trial Court of Pasay City-Branch 114 ("RTC"), assailing the validity of the 2002 DOE Certification and that on 27 February 2014, the RTC rendered a Decision declaring the same null and void. The RTC found that the DOE has no legal authority to issue such certification since it is the CAAP or the ATO or its predecessor agencies which are legally authorized to issue the same.

On the basis of the foregoing, [respondent] requested the Court to admit the RTC Decision. The Court granted [respondent's] Manifestation and Request for Admission through a Resolution dated 23 June 2014.

Thereafter, [respondent] filed its Formal Offer of Evidence ("FOE") on 13 March 2015. On 24 August 2015, the Court issued a Resolution admitting [respondent's] offered exhibits except for the following:

... ...

Aggrieved, [respondent] filed its Omnibus Motion (A) For Partial Reconsideration of the Court's Resolution dated 24 August 2015 and (B) For Reopening of Trial for the Recall of Witness and Presentation of Additional Evidence on 14 September 2015. The Court, through a Resolution dated 5 February 2016, granted [respondent's] request to reopen trial and to recall its witness. However, the Court deferred its resolution on [respondent's] Motion asking reconsideration to admit its denied exhibits.

Thereafter, [respondent] filed its Supplemental FOE on 20 October 2016. On 21 March 2017, the Court issued a Resolution admitting the pieces of evidence offered by [respondent] in its Supplemental FOE [with certain exceptions.]

On 19 April 2017, [respondent] filed its Omnibus Motion (A) For Partial Reconsideration of the Resolution dated 21 March 2017; and (B) For Recall of Witness and Identification of Exhibits. ...

On 19 April 2018, the Court directed the ICPA to submit the aforementioned documentary exhibits but deemed it proper not to call her again to testify since the exhibits had already been previously identified. [respondent] filed the missing documentary exhibits on 15 May 2018.

In light of the additional documents submitted by [respondent], it filed its Manifestation and Motion to Admit Attached 2nd Supplemental Formal Offer of Evidence on 17 September 2018.

On 7 March 2019, the Court issued a Resolution admitting the 2nd Supplemental FOE. It also resolved [respondent's] Motions for Reconsideration on the Court's Resolutions dated 24 August 2015 and 21 March 2017 reconsidering the admission of [respondent's] exhibits [with certain exceptions.]

> In the same Resolution, the Court set the initial presentation of [petitioners'] witnesses, marking the close of [respondent's] presentation of evidence. In response, [petitioners] manifested that they will not present any evidence or witness in the instant cases. Hence, the Court ordered the parties to submit their respective Memoranda.
>
> [Petitioners'] CIR and COC filed their respective Memoranda on 8 October 2019 and 20 September 2020. [respondent] filed its Memorandum on 7 November 2019. Thereafter, the Court issued a Resolution on 7 February 2020, submitting the consolidated cases for decision. Hence, this Decision. [*Citations omitted; brackets ours.*]

On March 9, 2021, the Court in Division promulgated the assailed *Decision* with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant Petitions for Review are **GRANTED**. Accordingly, [co-petitioners] Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] Philippine Airlines, Inc. in the amount of P1,174,628,066.60, representing excise taxes paid for [respondent's] importations of Jet A-1 fuel for its domestic operations for the period 13 July 2005 to 30 May 2008.
>
> **SO ORDERED**.

Aggrieved, the CIR filed a *Motion for Reconsideration* posted on March 26, 2021,[10] and the COC filed a *Motion for Reconsideration (of the Decision dated March 9, 2021)* posted on June 4, 2021.[11]

After being ordered to comment, [12] PAL filed its *Comment/Opposition (On the COC's Motion for Reconsideration dated 4 June 2021),*[13] which the Court in Division received on July 19, 2021.

On October 27, 2021, the Court in Division promulgated the assailed *Resolution.*[14] The decretal portion reads:

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[10] Division Docket (CTA Case No. 7670) – Vol. V, pp. 2813-2824
[11] *Id.*, p. 2829-2841.
[12] *Id.*, p. 2846.
[13] *Id.*, p. 2847-2863.
[14] *Supra* at note 7.

WHEREFORE, premises considered, the Motions for Reconsideration filed by the COC and the CIR are **DENIED** for lack of merit.

SO ORDERED.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On January 4, 2022, the CIR filed his *Motion for Extension of Time to File Petition for Review*,[15] which was granted in a *Minute Resolution* dated January 10, 2022.[16]

On February 2, 2022, the CIR posted his *Petition for Review*,[17] docketed as CTA *EB* No. 2559. On March 14, 2022, the Court received the *Petition for Review* filed by the COC,[18] docketed as CTA *EB* No. 2577. Both petitions were consolidated in a *Minute Resolution* dated March 24, 2022.[19]

On May 2, 2022, the Court promulgated a *Minute Resolution* directing (1) PAL to file a comment to the *Petition for Review* filed by the CIR and (2) the COC to provide proof of filing of the *Motion* requesting for an additional 15 days from February 26, 2022, or until March 13, 2022.[20] On May 20, 2022, PAL filed its *Comment/Opposition (on the CIR's Petition for Review dated 31 January 2022)*.[21]

In relation to the May 2, 2022 *Resolution*, on May 23, 2022, the COC filed his *Compliance* dated May 20, 2022, with an attached copy of *Motion for Extension of Time to File Petition for Review* dated February 22, 2022.[22]

On June 27, 2022, the Court directed the COC for the last time to provide the registry receipt and the affidavit of the person who mailed the *Motion for Time to File Petition for Review* as proof of filing.[23] In response, the COC posted his *Motion for Time to Comply* on July 13, 2022,[24] which was deemed granted

[15] *EB* Docket (CTA *EB* No. 2559), pp. 1-3.
[16] *Id.*, p. 6.
[17] *Supra* at note 1.
[18] *Supra* at note 2.
[19] *EB* Docket (CTA *EB* No. 2559), p. 84.
[20] *Id.*, pp. 86-88.
[21] *Id.*, pp. 89-107.
[22] *Id.*, pp. 108-113.
[23] *Id.*, pp. 178-180.
[24] *Id.*, pp. 181-182.

in a *Resolution* dated October 4, 2022.[25] The COC posted its *Compliance* on October 19, 2022.[26]

After being ordered to comment on the COC's *Petition for Review* in a *Resolution* dated January 12, 2023,[27] PAL filed its *Comment/Opposition on COC's Petition for Review* on January 20, 2023.[28]

Thus, on March 14, 2023, this Court issued a *Resolution* submitting the consolidated *Petitions for Review* for decision.[29]

Hence, this *Decision.*

THE ISSUES

The CIR assigned the following errors in his *Petition for Review* before the Court *En Banc*:

I.

THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT ITS IMPORTATIONS OF JET A-1 AVIATION FUEL ARE USED FOR ITS TRANSPORT AND NON-TRANSPORT OPERATIONS.

II.

THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE THAT THE IMPORTED ARTICLES WERE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE BASED SOLELY ON THE AIR TRANSPORTATION OFFICE (ATO) CERTIFICATIONS ISSUED TO RESPONDENT.

Separately, the COC raised the following issues in his *Petition for Review*:

Procedural and Jurisdictional

A

Is excise tax on imported articles under Section 131(a) of the National Internal Revenue Code ("NIRC") a "customs law" under the BOC's jurisdiction?

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[25] *Id.*, pp. 196-198.
[26] *Id.*, pp. 185-186.
[27] *Id.*, pp. 211-213.
[28] *Id.*, pp. 214-231.
[29] *Id.*, pp. 234-236.

B

What is the protest and appeal procedures of a customs law, e.g., excise tax on imported articles?

C

Did PAL deviate from the protest and appeal procedures?

D

Who has control or supervision over the Collectors in case of their failure to act on the protests?

E

By filing claims for refund with the CIR while its protests with the Collectors were pending, did PAL commit forum shopping?

F

Considering there is no decision or inaction by either the CIR or the COC, did PAL improperly invoke the Honorable Court's appellate jurisdiction?

G

Can PAL assail the validity of BIR Ruling No. 001-2003 via the Petitions for Review?

Substantive

H

Did PAL prove aviation fuel was locally unavailable in reasonable price, quantity, or quality during the subject importation dates?

The CIR's *Petition for Review* CTA *EB* No. 2559

CIR's Arguments

The CIR contends that a tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer.[30]

The CIR further contends that the ATRIGs and the ATO certifications are insufficient to prove that the imported Jet A-1 aviation fuel "was used for [respondent's] transport and non-transport operations."[31]

[30] Petition for Review, CTA *EB* No. 2559, p. 3.
[31] *Id.*, pp. 3 and 8.

The CIR likewise questions the ruling of the Court in Division, stating that the Court in Division ruled that respondent's imported Jet A-1 fuel was not locally available in reasonable quality, quantity, and price, and that imported Jet A-1 fuel should not be included in the computation of whether there is locally available Jet A-1 fuel in reasonable quality, quantity, and price. According to the CIR, there is no qualification in the words "locally available" to make the term refer only to locally refined fuel as ruled by the Court in Division.

The CIR also argues that reliance on the certifications issued by the ATO is improper. It is the CIR's position that the DOE is officially tasked to determine whether the total supply is enough for total demand. The CIR points out to the Energy Planning and Monitoring Bureau, a special bureau within the DOE that monitors energy resources' supply and demand. According to the CIR, the CAAP "has nothing to do with monitoring fuel supply and demand." The testimony of Ms. Glendalyn P. Dela Cruz, Senior Science Research Specialist of the DOE, likewise supports BIR's protestation that aviation fuel was locally available in sufficient quantity, quality, and price. The CIR thus argues that PAL was not able to prove that the imported Jet A-1 fuel was not locally available in reasonable quality, quantity, and price.

PAL's Arguments

In its *Comment*, PAL argues that it has sufficiently proven that it used its imported Jet A-1 aviation fuel for its domestic flight operations. PAL states that it did not solely rely on the ATRIG, but it likewise presented as its witness Mr. Roberto R. Razal, its Supervising Fuel Technical Specialist, and Ms. Arminda T. Acyatan-Guerrero, the court-commissioned independent Certified Public Accountant ("**ICPA**").

Further, PAL argues that it has sufficiently proven that Jet A-1 aviation fuel was not locally available in reasonable quantity, quality, and price. PAL asserts that the CAAP has the authority to issue certifications concerning the local availability of fuel when it comes to civil aviation matters and that the certifications from said agency prove that Jet A-1 aviation fuel was not locally available in a reasonable quantity, quality, and price.

The COC's *Petition for Review* CTA *EB* No. 2577

COC's Arguments

The COC contends that excise tax on imported articles under Section 131(a) of the NIRC of 1997, as amended, is a customs law under the BOC's jurisdiction. According to the COC, customs law includes all laws and regulations the BOC enforces and does cover not only taxes imposed by the Tariffs and Customs Code of the Philippines ("TCCP")[32] but also all taxes imposed by the NIRC and special laws that are entrusted to the BOC, including Section 131(a) of the NIRC of 1997, as amended.[33] Thus, according to the COC, the protest and appeal are governed by Sections 2308 to 2313 and 2402 of the TCCP.[34] The COC further contends that an excise tax on imported articles is not removed from the definition of customs laws simply because it is an internal revenue tax imposed by the NIRC, citing *Leuterio v. COC* (*Leuterio* case)[35] According to the COC, the case of *Caltex (Phils.), Inc. v. CIR* (*Caltex* case)[36] is applicable, as the special import tax discussed therein is "the precursor to the tax involved in this case." [37]

Preceding from the above premise, the COC then argues that PAL deviated from the protest and appeal procedures established under Sections 2308 to 2313 and 2402 of the TCCP, as it filed claims for refund involving the same taxes with the BIR while the protests were pending before the Collector of Customs.[38] According to the COC, the proper procedure was for PAL to await the Collector's decision, which, if adverse, can be elevated to the COC for review.[39] The COC further alleges that PAL committed forum shopping when it filed claims for a refund while the protests were pending.[40]

The COC argues that the Court in Division did not have appellate jurisdiction as there was no decision or inaction by either the CIR or the COC. The COC argues that the CIR did not decide on PAL's claims as he had no authority to entertain

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[32] Now the Customs Modernization and Tariff Act ("**CMTA**").
[33] Petition for Review, CTA *EB* No. 2577, pars. 21-23.
[34] *Id.*, par. 24.
[35] G.R. No. L-9810, April 27, 1957, 101 PHIL 223-228.
[36] G.R. No. L-20462, June 30, 1965, 121 PHIL 1390-1396.
[37] Petition for Review, CTA *EB* No. 2577, par. 29.
[38] *Id.*, par. 33.
[39] *Id.*, par. 35.
[40] *Id.*, pars. 40-41.

PAL's claims for a refund involving a customs law. Conversely, the COC could not be "guilty of inaction" because PAL did not elevate any matter before him.[41]

As to the validity of BIR Ruling No. 001-2003, the COC argues that PAL cannot assail the validity of such ruling via the *Petitions for Review* it filed before the Court in Division. According to the COC, PAL should have requested the Secretary of Finance (**"SOF"**) to review the said ruling in accordance with Section 4 of the NIRC of 1997, as amended and as implemented by Department Order ("**DO**") No. 7-02.[42] The COC further cites *Egis Projects S.A. v. Secretary of Finance*[43] as support for its argument that ruling on the validity of BIR Rulings is outside the appellate jurisdiction of the Court.

Echoing the CIR's arguments, the COC also argues that the CAAP Certifications have no probative value as it is not the CAAP's function to determine the local availability of aviation fuel. According to the COC, such a function belongs to the DOE.[44] While PAL presented a DOE Table, the COC argues that it is imprecise as it merges domestic and international demand data without providing specific data on domestic demand only. The COC emphasizes that the issue before the Court is the local availability of aviation fuel only for domestic use. The DOE Table does not likewise indicate the specific dates of production and importation.[45] Even considering the DOE Table, the COC argues that the table shows the supply of aviation fuel in the Philippines was "constantly higher" than the demand, except in 2005.[46]

The COC, similar to the CIR, likewise faults the Court in Division in its exclusion of fuel imported by local oil companies in computing total local available supply as the term used in Section 13 of PD No. 1590 is "'locally available,' plain and simple, without any distinction as to the source of the goods in question."[47] The COC likewise questions the applicability of *Philippine Airlines, Inc. v. CIR*.[48] According to the COC, the case only dealt with the scope of Letter of Instruction ("**LOI**") No. 1483, which withdrew PAL's tax exemption on purchases of

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[41] *Id.*, pars. 43-44.
[42] *Id.*, pars. 46-48.
[43] CTA *EB* Case No. 1023 (CTA Case No. 8413), September 16, 2014.
[44] Petition for Review, CTA *EB* No. 2577, par. 55.
[45] *Id.*, pars. 56-58.
[46] *Id.*, par. 59.
[47] *Id.*, par. 63.
[48] G.R. No. 198759, July 1, 2013, 713 PHIL 134-160.

"domestic petroleum products" for its domestic operations.[49] Thus, the COC maintains that all aviation fuel, whether locally produced or imported, forms part of the Philippines' supply, which must be considered in determining local availability.[50]

The COC argues that PAL failed to prove that aviation fuel was not available at reasonable prices as it only presented price quotations from Petron and Shell without presenting any representatives of the said oil companies. Accordingly, the COC argues that these price quotations are hearsay.[51] The COC further contends that, even if these price quotations will be considered, the fact that the imported prices are lower than the price quotations does not render the local prices unreasonable.[52] The COC states that in the Comparative Tables presented by PAL, there were multiple periods wherein Shell and Petron's prices were even cheaper than PAL's importations.[53]

PAL's Arguments

In its *Comment*, PAL argues that it correctly invoked the CIR's jurisdiction, considering that the case's subject matter is an excise tax on aviation fuel, a national internal revenue tax. Accordingly, PAL suggests that the Court in Division validly obtained jurisdiction considering the inaction of the CIR. PAL also argues that it did not commit forum shopping as it resorted to only one judicial remedy: filing the *Petitions for Review* before the Court in Division.

As to whether PAL has sufficiently proven that the aviation fuel was not locally available in a reasonable quantity, quality, and price, PAL effectively reiterates its *Comment* against the *Petition for Review* filed by the CIR.

THE COURT *EN BANC*'s RULING

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the instant *Petitions for Review*.

[49] Petition for Review, CTA *EB* No. 2577, par. 64.
[50] *Id.*, par. 67.
[51] *Id.*, pars. 70-71.
[52] *Id.*, pars. 72-76.
[53] *Id.*, par. 77.

The Court En Banc has jurisdiction over the present Petitions.

On October 27, 2021, the Court in Division promulgated the assailed *Resolution* denying both petitioners' *Motions for Reconsideration.* [54] The CIR received the *Resolution* on December 20, 2021, while the COC received its copy on February 11, 2022.

As provided under Section 3(b), Rule 8[55] of RRCTA, the CIR had until January 4, 2022, to file his *Petition for Review* before the Court *En Banc.* On the other hand, the COC had until February 26, 2022, to do the same.

On January 4, 2022, within the reglementary period, the CIR filed a *Motion for Extension of Time to File Petition for Review,* [56] which the Court *En Banc* granted in a *Minute Resolution* dated January 10, 2022, giving him until January 19, 2022, to file his *Petition for Review.*[57]

On January 12, 2022, the Supreme Court issued Memorandum Order No. 10-2022.[58] The said Memorandum Order provides:

> Per Administrative Circular No. 01-2022, the filing periods of any and all pleadings and other court submissions that will fall due this month are **EXTENDED until February 1, 2022.** [*Emphasis and underscoring supplied.*]

On February 2, 2022, considering the issuance of the above-quoted Memorandum Order No. 10-2022, the CIR timely posted his *Petition for Review.*[59]

On February 22, 2022, the COC filed a *Motion for Time to File Petition for Review,*[60] which the Court *En Banc* deemed

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[54] *Supra* at note 7.
[55] Section 3. Who May Appeal: Period to File Petition. –
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[56] *Supra* at note 15.
[57] *Supra* at note 16.
[58] Re: Rising Cases of Covid 19 Infection / Physical Closure of Courts in Select Areas.
[59] February 1, 2022 was declared as a special non-working holiday pursuant to Proclamation 1236. The next working day is February 2, 2022.
[60] *Supra* at note 22.

granted in a *Resolution* dated October 4, 2022.[61] Accordingly, the COC was given until March 13, 2022 to file his *Petition for Review.*

On March 14, 2022,[62] the COC timely posted his *Petition for Review.*[63]

Having settled that the *Petitions for Review* of the COC and the CIR were timely filed, the Court *En Banc* rules that it has jurisdiction to take cognizance of both *Petitions* pursuant to Section 2(a)(1), Rule 4[64] of RRCTA.

We shall discuss first the ***procedural and jurisdictional issues*** raised in the COC's *Petition for Review* in CTA *EB* No. 2577.

The Court in Division did not err in holding that PAL's refund claims are governed by the NIRC of 1997, as amended.

The COC contends that excise tax on imported articles under Section 131(a) of the NIRC of 1997, as amended, is a "customs law" under the BOC's jurisdiction. According to the COC, customs laws include all laws and regulations the BOC enforces and do not only cover taxes imposed by the TCCP but also all taxes imposed by the NIRC and special laws that are entrusted to the BOC, including Section 131(a) of the NIRC of 1997, as amended.[65] Thus, according to the COC, the protest and appeal are governed by Sections 2308 to 2313 and 2402 of the TCCP.[66]

The Court disagrees.

Section 131(A) of the NIRC of 1997, as amended, provides the manner of payment of excise tax on imported goods, *viz.*:

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[61] *Supra* at note 25.
[62] March 13, 2022 fell on a Sunday; the next working day is March 14, 2022.
[63] *Supra* at note 2.
[64] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
[65] Petition for Review, CTA *EB* No. 2577, pars. 21-23.
[66] *Id.*, par. 24.

> 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 Custom Officers**, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, 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. [*Emphasis and underscoring supplied*]

The authority provided under Section 131(A) of the NIRC of 1997, as amended, for the Customs Officers to collect excise taxes does not automatically signify that excise taxes on imported articles are governed by customs law. We note that the collection of excise taxes by custom officers is pursuant to the general authorization granted by law to the COC and his subordinates **as agents of the CIR** concerning the collection of national internal revenue taxes on *imported goods*, to wit:

> SEC. 12. Agents and Deputies for Collection of National Internal Revenue Taxes. - The following are hereby constituted agents of the Commissioner:
>
> a) **The Commissioner of Customs and his subordinates with respect to the collection of *national internal revenue taxes* on imported goods**; ... .Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code. [*Emphasis and underscoring supplied*]

In relation thereto, Section 21 of the NIRC of 1997, as amended, enumerates the taxes, fees, and charges included under the term "national internal revenue taxes," *viz.*:

> The following taxes, fees, and charges are **deemed to be national internal revenue taxes**:

> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> **(e) Excise taxes;**
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. [*Emphasis and underscoring supplied*]

As such, the individual or agency collecting the tax is not determinative of whether or not a tax is a national internal revenue tax. Excise taxes, such as the excise taxes on aviation fuel, which PAL has paid under Section 148 of the NIRC of 1997, as amended, are undoubtedly in the nature of national internal revenue taxes, thus falling under the primary jurisdiction of the BIR.[67]

In *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*,[68] the Supreme Court, although ruling on the issue of forum shopping, still unequivocally pronounced:

> ... Here, **although the BIR and the BOC are separate government agencies,** in this particular instance**, their functions overlap with respect to the assessment and collection of excise taxes for imported articles**.
>
> Undoubtedly, **excise taxes are in the nature of internal revenue taxes, thus falling under the primary jurisdiction of the BIR.** However, by the express mandate of Section 12 (a) of the Tax Code, the COC and his subordinates, including the Collector, are agents of the Commissioner "with respect to the collection of national internal revenue taxes on imported goods."
>
> The subject matter of CTA Case No. 8535 solely relates to the imposition of excise taxes on PSPC's alkylate importations. Thus, **any attempt on the part of the Collector or the BOC to collect the same must necessarily proceed from their deputization as agents of the BIR**. **This agency relation was, in fact, confirmed by the Collector** during his testimony in one of the suspension hearings, to wit:
>
> Q: Do you confirm Mr. Witness that the authority of the Collector to collect excise tax proceeds from the ATRIGs issued by the BIR?

[67] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[68] G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

A: Yes, Sir.

Q: And it is actually the BIR that makes the computation in determining in its ATRIGs the excise tax liability for articles which is deemed excisable?

A: Yes, sir. [*Emphasis and underscoring supplied*]

The COC cites *Leuterio v. COC*,[69] which cited the Revised Administrative Code, in stating that the law considers all laws and regulations subject to enforcement by the Bureau of Customs as customs law.

The Revised Administrative Code or Act No. 2711 was enacted on March 10, 1917. Chapter 39 of the Revised Administrative Code pertains to the BOC, while Chapter 40 pertains to the BIR. Section 1419 of the Revised Administrative Code provides that "customs law" includes not only the provisions of the Customs Law and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the BOC or otherwise within its jurisdiction.

Reliance on the 1957 *Leuterio* case, which interpreted the Revised Administrative Code, holds no water as the Revised Administrative Code is no longer the law governing the BOC and the BIR.

Jurisprudence is replete with cases where claims for refund or tax credit of excise taxes on importation of Jet A-1 fuel[70] and aviation fuel[71] were filed with the CIR and not with the COC. While it may be argued that these cases did not involve issues relating to the jurisdiction of the CIR, the fact that the SC found no infirmity in the procedure for claiming a refund with the CIR and not with the COC speaks of the nature of excise taxes on the importation Jet A-1 fuel as being under the jurisdiction of the CIR, whose decision or inaction on the claim is under the appellate jurisdiction of the CTA.[72]

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[69] G.R. No. L-9810. April 27. 1957. 101 PHIL 223-228.
[70] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*. G.R. No. 211303. June 15. 2021; *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 211779 (Notice). November 3. 2020.
[71] *Commissioner of Internal Revenue v. Air Philippines Corp.*. G.R. No. 243260 (Notice). February 5. 2020; *Chevron Phils.. Inc. v. Commissioner of Internal Revenue*. G.R. No. 210836 (Resolution). September 1. 2015; *Commissioner of Internal Revenue v. Phil. Airlines, Inc.*., G.R. Nos. 212536-37. August 27. 2014; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*., G.R. No. 188497 (Resolution). February 19. 2014; *Phil. Airlines. Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 198759. July 1. 2013.
[72] Section 7 of RA No. 1125. as amended by RA No. 9282.

It is axiomatic that the power to decide refunds of internal revenue taxes, *i.e.*, excise taxes, is vested in the CIR, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.[73] Accordingly, the Court in Division did not err in holding that respondent's refund claims fall within the jurisdiction of the CIR under the NIRC of 1997, as amended.

PAL did not violate the rule against forum shopping.

Records reveal that PAL filed written protests with the BOC, asking for a refund of the excise taxes paid. The COC did not act on the protest and failed to render a decision. Thus, when the two (2)-year prescriptive period under Section 204 (C) of the Tax Code was about to end, PAL filed its written claims for refund with the CIR for the excise taxes paid. The CIR did not act on PAL's refund or tax credit claims; hence, it filed the Petitions for Review before the Court in Division on various dates.

Given the foregoing, We affirm the Court in Division's finding that PAL did not violate the rule against forum shopping. We find it fit to quote the Court in Division's disquisition on the matter,[74] to wit:

> Likewise, the Court finds that the act of petitioner in filing its refund claims with both BOC and BIR does not constitute forum shopping. Normally, the concept of forum shopping is only applicable to cases filed before the courts or in a court and in an administrative agency, except when the rules of the said administrative agency provide otherwise. The case of *Land Car, Inc. v. Bachelor Express, Inc., et al.*, illustrates this point, to wit:
>
> > "Forum shopping refers to the act of availing oneself of several judicial remedies in different courts, either simultaneously or successively, substantially founded on the same transaction and identical material facts and circumstances, raising basically like issues either pending in, or already resolved by, some other court. The principle applies not only with respect to suits filed before courts but also in connection with a litigation commenced in court while an administrative proceeding is pending in order to

[73] Section 4, NIRC of 1997, as amended.
[74] Assailed Decision, pp. 25-26.

> defeat administrative processes in anticipation of an unfavorable administrative ruling and possibly a favorable court ruling. Forum shopping is said to exist where the elements of litis pendentia are present or where a final judgment in one case would amount to res judicata in the other; or where, in the two or more cases pending, there is identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought."
>
> Hence, absent any allegation of a clear rule which prohibits the filing of refund claims with both the BOC and BIR, the Court cannot subscribe to the allegation of respondent BOC.
>
> Moreover, even assuming that the rule on forum shopping applies to this case, **the Supreme Court has consistently allowed the relaxation of the said rule on account of special circumstances and in the interest of substantial justice.** [*Emphasis supplied; Citations omitted*]

Indeed, PAL could not be faulted for complying with the mandated requisites under the law - filing the *administrative claim* for refund with the CIR and, subsequently, the *judicial claim* with the CTA - to avoid the lapse of the prescriptive period under the NIRC.

PAL did not err in filing an administrative claim for refund with the CIR before filing its judicial claim with the CTA.

Having ruled that PAL's refund claims are governed by the NIRC of 1997, as amended, the Court *En Banc* reiterates that PAL did not err when, after the COC failed to act on its protest, it filed an *administrative claim* for refund with the CIR before filing a *judicial claim* with the CTA.

The refund or recovery of internal revenue taxes erroneously or illegally collected is governed by Sections 204 (C) and 229 of the NIRC of 1997, as amended, to wit:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —
>
> ... ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are

> returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within **two (2) years after the payment of the tax or penalty:** *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ... ...
>
> **SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of **two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." [*Emphasis and underscoring supplied*]

Section 204(C) of the NIRC, as amended, applies to *administrative claims* for refund, while Section 229 thereof pertains to *judicial claims* for refund.

The claimant must first file an *administrative claim* with the CIR before filing a *judicial claim* with the courts of law. Both claims must be filed within a 2-year reglementary period, and the claimant can file the latter without waiting for the resolution of the former to prevent the forfeiture of its claim through prescription. The *timeliness* of filing the claim is *mandatory and jurisdictional*, and the Court cannot take cognizance of a judicial claim for a refund filed either prematurely or out of time. It is worth stressing that as for the judicial claim, tax law even explicitly provides that it be filed

within two years from payment of the tax "*regardless of any supervening cause that may arise after payment.*"

Accordingly, PAL properly invoked the CTA's jurisdiction over its claim for refund or tax credit, pursuant to Section 7(A)(2) of RA No. 1125, as amended by RA No. 9282,[75] and Section 3(a)(2), Rule 4 of the RRCTA,[76] which provide for the jurisdiction of the CTA in cases when there is an "**inaction**" on the part of the CIR over claims for refunds, as in the instant case.

Petitioner timely filed its administrative and judicial claims; hence, the Court in Division had jurisdiction over the original Petitions for Review.

As to the *timeliness* of the filing of PAL's *claims*, We affirm and quote below the Court in Division's finding that petitioner timely filed its *administrative* and *judicial claims* within the two years prescribed under Sections 204 and 229 of the NIRC of 1997, as amended, *viz.*:[77]

> In this case, petitioner paid the subject taxes, filed its claim for refund with the CIR, and subsequently its judicial claim with this Court on the following dates:

CTA Case No.	Date of Payment under Protest	Date of Written Claim for Refund to CIR	Date of Filing of the Petition for Review
7670	11 August 2005	9 July 2007	10 August 2007
	22 December 2005		
	22 December 2005		
	8 March 2006		
	18 April 2006		
	6 June 2006		

[75] An Act Creating the Court of Tax Appeals. June 16. 1954.
SEC. 7. Jurisdiction. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal. as herein provided: ...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments. refunds of internal revenue taxes. fees or other charges. penalties in relation thereto. or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. where the National Internal Revenue Code provides a specific period for action. in which case the inaction shall be deemed a denial: ... [*Emphasis and underscoring supplied*]

[76] SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following: ...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments. refunds of internal revenue taxes. fees or other charges. penalties in relation thereto. or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. where the National Internal Revenue Code or other applicable law provides a specific period for action: ... . [*Emphasis and underscoring supplied*]

[77] Assailed Decision. pp. 30-31.

7818	3 August 2006	1 July 2008	4 August 2008[78]
	3 August 2006		
	9 August 2006		
	11 October 2006		
	6 October 2006		
	14 December 2006		
7869	7 February 2007	16 January 2008	9 February 2009[79]
	16 March 2007		
	27 March 2007		
	22 March 2007		
	12 April 2007		
	10 May 2007		
	5 June 2007		
7654	30 July 2007	17 April 2009	30 July 2009
	14 September 2007		
	12 September 2007		
	7 November 2007		
	9 January 2008		
8034	5 March 2008	18 November 2009	5 March 2010
	26 March 2008		
	10 April 2008		
	17 April 2008		
	15 May 2008		
	18 June 2008		

> As can be gleaned from the foregoing, **petitioner was able to *timely file its administrative and judicial claim* within the two-year period prescribed under Sections 204 and 229 of the Tax Code.** Therefore, the Court has jurisdiction to take cognizance of the instant Petitions for Review. [*Emphasis and underscoring supplied*]

As all the *Petitions for Review* were filed before the Court in Division within the 2-year prescriptive period, We likewise rule that the Court in Division had jurisdiction to take cognizance of petitioner's judicial claims.

We shall now proceed to discuss jointly the lone ***substantive issue*** raised by the COC in CTA *EB* No. 2577, *viz.*:

> Did PAL prove aviation fuel was locally unavailable in reasonable price, quantity, or quality during the subject importation dates?

and the ***assigned errors*** pointed out by the CIR in CTA *EB* No. 2559, as follows:

[78] August 3, 2008 fell on a Sunday; the next working day is August 4, 2008.
[79] February 7, 2009 fell on a Saturday; the next working day is February 9, 2009.

> The Third Division of the Honorable Court erred in ruling that respondent was able to prove that its importations of Jet A-1 aviation fuel are used for its transport and non-transport operations.
>
> II.
>
> The Third Division of the Honorable Court erred in ruling that respondent was able to prove that the imported articles were not locally available in reasonable quantity, quality or price based solely on the Air Transportation Office (ATO) Certifications issued to respondent.

The Court in Division committed no error in holding that PAL was able to prove that its importations of Jet A-1 fuel were used in its operations.

The CIR contends that the ATRIGs and the ATO certifications are insufficient to prove that the imported Jet A-1 aviation fuel "was used for [respondent's] transport and non-transport operations."[80] On the other hand, PAL argues that it has sufficiently proven that it used its imported Jet A-1 aviation fuel for its domestic flight operations.

We rule in favor of PAL.

As aptly explained by the Court in Division in the assailed Decision, PAL was able to prove that its importations of Jet A-1 fuel were used in its operations, *viz.*:[81]

> Aside from proving the fact of importation, **the ATRIG, corroborated by other documentary and testimonial evidence, may be considered as proof that the imported Jet A-1 fuel was, indeed, used in petitioner's transport operations and other activities incidental thereto.** This is in line with the ruling in *Commissioner of Customs v. Air Philippines Corporation.*
>
> In the said case, the Court *En Banc* ruled that **the entries in the ATRIG are *prima facie* evidence of the facts stated therein considering that it is a public document and the tedious processes the importer and the BIR undergoes before the latter issues the said document.** ...

[80] Petition for Review (CTA *EB* No. 2559), pp. 3 and 8.
[81] Assailed Decision, pp. 40-43.

Moreover, in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs*, the Court of Tax Appeals considered ATRIGs as public documents since they were issued and certified by no less than the Commissioner of Internal Revenue himself. Thus, **the entries in ATRIGs are *prima facie* evidence of the facts stated therein, pursuant to Section 19 (a), Rule 132 of the Rules of Court**. ...

Here, aside from the ATRIG, [respondent] presented the testimonies of its Supervising Fuel Technical Specialist-Fuel Management, Mr. Rizal, and ICPA Atty. Acyatan Guerrero.

In his testimony, Mr. Rizal described in detail the movement of the subject Jet A-1 fuel after its release from the BOC until the same were loaded in [respondent's] aircrafts, to wit:

> [5]Q: What happened to the Jet A-1 aviation fuel purchased and imported by PAL?
>
> A: PAL consumed all the fuel that it imported for its domestic flight operations.
>
> [6]Q: What do you exactly mean by the term "consumed"?
>
> A: PAL loaded the imported fuel into its aircrafts.
>
> [7]Q: Can you please explain briefly to this Honorable Court the procedure in loading the fuel imported by PAL into its aircrafts?
>
> A: The process starts even before the imported fuel arrives at the port of discharge (primary depot). Before arrival of the ship carrying the imported fuel, a PAL representative submits a letter-application for a permit to discharge to the Bureau of Customs ("BOC"). The BOC, through the concerned District Collector of Customs, places his conforme to the letter by signing the same which, in turn, will serve as the approved permit to discharge.
>
> PAL also submits a letter to the Department of Energy informing the latter of the incoming importation of fuel. PAL then pays the wharfage fees to the Philippine Ports Authority on the shipment.
>
> xxx xxx xxx

[11]Q: Once cleared from customs custody, what happens to the imported fuel?

A: To facilitate the withdrawal of the imported fuel from the primary depot, a PAL representative prepares a Stock Transfer Ticket with a Jet A-1 Release Certificate authorizing the transfer of the fuel from the primary depot to the secondary/airport depots such as the Joint Oil Companies Aviation Fuel and Storage Plant ("JOCASP") and the PAL-owned depot.

[12]Q: What happens upon arrival of the imported fuel at the secondary/airport depots?

A: The imported fuel will be subjected to field testing by JOCASP/PAL personnel. Once passed, the fuel will be stored in the tanks and ready for withdrawal, to be uplifted to PAL's aircrafts. A PAL personnel then prepares a Stock Status Report indicating the amount of fuel that arrived as well as the amount of fuel withdrawn and uplifted to PAL's aircrafts. The Stock Status Report is accomplished every day.

[13]Q: What preparations are necessary before the imported fuel is actually loaded into the aircrafts?

A: A PAL personnel determines the actual fuel load requirement of the flight. Thereafter, a fuel issue slip is prepared to include details such as the flight number, aircraft registry, destination, timings and meter readings. Total volume issued to aircraft is determined right after completion of refueling. Hence, an issue slip is accompanied every time fuel is loaded into an aircraft.

xxx xxx xxx

[15]Q: What happens after the fuel is loaded into the aircrafts of PAL?

A: The fuel loaded or carried onto PAL's aircrafts will be used by PAL for its flight operations.

xxx xxx xxx

> [18]Q: What document, if any, proves that all importations of Jet A-1 aviation fuel during the period of August 2005 to October 2008 were accounted for and used for PAL's flight operations?
>
> A: I reviewed Stock Status Reports which reflect the details relating to the movement of the imported fuel from the primary depot to JOCASP/PAL owned airport depots. The Stock Transfer Report is a daily record of the amount of imported fuel that arrived at the JOCASP/PAL owned airport depots, the amount of imported fuel that is withdrawn and loaded into PAL aircrafts.
>
> xxx xxx xxx
>
> [22]Q: What is the basis of the data appearing on the Jet A-1 Stock Status Reports?
>
> A: The data reflected in the Stock Status Reports are gathered from the Stock Transfer Tickets, Jet A-1 Release Certificates, and Fuel Issue Slips prepared and issued by PAL personnel.
>
> [23]Q: Can you briefly explain the purpose of these documents you have just mentioned?
>
> A: A Stock Transfer Ticket serves as proof that the imported fuel has been transferred from the primary depot to the secondary/airport depots. The Stock Transfer Ticket is accompanied by a Jet A-1 Release Certificate which, in turn, certifies that the fuel has undergone quality testing, meets industry standards, and is fit for consumption.
>
> Lastly, a Fuel Issue Slip serves as proof that the fuel, as cleared for consumption, was in fact loaded in PAL's aircrafts."

In addition to the testimony of Mr. Rizal, [respondent] also presented its Stock Status Reports, Stock Transfer Tickets, Jet A-1 Release Certificates, and Fuel Issue Slips for the relevant periods in question to prove that the imported Jet A-1 fuel was fully consumed by [respondent] in its domestic operations.

The said documents were all verified by the ICPA, Atty. Acyatan-Guerrero, who confirmed via her report and judicial

> affidavit that [respondent] indeed consumed all its imported Jet A-1 fuel in its domestic airline operations. In this light, the Court finds [respondent] to have established its compliance with the second requisite under Section 13 of PD No. 1590.

Taking together the ATRIGs, the Stock Status Reports, the Stock Transfer Tickets, the Jet A-1 Release Certificates, the ICPA Report, and the uncontroverted testimonies of PAL's witnesses, among others, the Court *En Banc* is equally convinced that PAL sufficiently proved that its importations of Jet A-1 fuel were used in its transport and non-transport operations.

Thus, the Court *En Banc* finds no merit in the CIR's assertion that PAL failed to satisfy the above requisite.

The Court in Division committed no error in holding that PAL was able to prove that the Jet A-1 fuel is not locally available in reasonable quantity.

Both petitioners, CIR and COC, claim that the imported Jet A-1 fuel was not locally available in a reasonable quantity, quality, or price during the time of its importation.

The CIR questions the ruling of the Court in Division that the imported Jet A-1 fuel should not be included in the computation of whether there is locally available Jet A-1 fuel in reasonable quality, quantity, and price. According to the CIR, there is no qualification in the words "locally available" to make the term refer only to locally refined as ruled by the Court in Division.

The COC, similar to the CIR, likewise faults the Court in Division in its exclusion of fuel imported by local oil companies in computing total local available supply as the term used in Section 13 of PD No. 1590 is "'locally available,' plain and simple, without any distinction as to the source of the goods in question."[82]

The Court finds the above arguments unmeritorious.

[82] *Id.*, par. 63.

The issue is not novel and has been the subject of discussion by this Court numerous times. In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[83] We discussed:

> As this Court has held in *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*, in determining local availability of Jet A-1 fuel, the term 'locally available' cannot include imported Jet A-1 fuel. In that case, We held:
>
> > In *PAL v. CIR*, the Supreme Court held that domestic petroleum products excluded imported products, as follows:
> >
> > First, examining its phraseology, the word 'domestic,' which means 'of or relating to one's own country' or 'an article of domestic manufacture,' clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported.
> >
> > Applying the foregoing to the present case, in the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, or price.'
>
> To appreciate the import of the conclusions of the Supreme Court in the *PAL vs. CIR* case (*PAL* Case) further, We quote:
>
> > "Based on Section 13 of PAL's franchise, PAL's tax exemption privileges on all taxes on aviation gas, fuel and oil may be classified into three (3) kinds, namely: (a) all taxes due on PAL's local purchase of aviation gas, fuel and oil; (b) all taxes directly due from or imposable upon the purchaser or the seller, producer, manufacturer,

[83] C.T.A. EB Case No. 2256 (C.T.A. Case No. 8220). June 9. 2021.

or importer of aviation gas, fuel and oil but are billed or passed on to PAL; and (c), all taxes due on all importations by PAL of aviation gas, fuel, and oil.

Viewed within the context of excise taxes, it may be observed that the first kind of tax privilege would be irrelevant to PAL since it is not liable for excise taxes on locally manufactured/produced goods for domestic sale or other disposition; based on Section 130 of the NIRC, it is the manufacturer or producer, i.e., the local refinery, which is regarded as the statutory taxpayer of the excise taxes due on the same. On the contrary, when the economic burden of the applicable excise taxes is passed on to PAL, it may assert two (2) tax exemptions under the second kind of tax privilege namely, PAL's exemptions on (a) passed on excise tax costs due from the seller, manufacturer/producer in case of locally manufactured/produced goods for domestic sale (first tax exemption under the second kind of tax privilege); and (b) passed on excise tax costs due from the importer in case of imported aviation gas, fuel and oil (second tax exemption under the second kind of tax privilege). The second kind of tax privilege should, in turn, be distinguished from the third kind of tax privilege which applies when PAL itself acts as the importer of the foregoing petroleum products. In the latter instance, PAL is not merely regarded as the party to whom the economic burden of the excise taxes is shifted to but rather, it stands as the statutory taxpayer directly liable to the government for the same.

In view of the foregoing, the Court observes that the phrase 'purchase of domestic petroleum products for use in its domestic operations' — which characterizes the tax privilege LOI 1483 withdrew — refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods, may it be (a) PAL's tax exemption on excise tax costs which are merely passed on to it by the importer when it buys imported goods from the latter (the second tax exemption under the second kind of tax privilege); or (b) PAL's tax exemption on its direct excise tax liability when it imports the

> goods itself (the third kind of tax privilege). Both textual and contextual analyses lead to this conclusion:
>
> First, examining its phraseology, the word 'domestic,' which means 'of or relating to one's own country' or 'an article of domestic manufacture,' clearly pertains to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition as opposed to things imported. In other words, by sheer divergence of meaning, the term 'domestic petroleum products' could not refer to goods which are imported.
>
> Second, examining its context, certain 'whereas clauses' in LOI 1483 disclose that the said law was intended to lift the tax privilege discussed in Department of Finance (DOF) Ruling dated November 17, 1969 (Subject DOF Ruling) which, based on a reading of the same, clarified that PAL's franchise included tax exemptions on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales (and not only to those imported). In other words, LOI 1483 was meant to divest PAL from the tax privilege which was tackled in the Subject DOF Ruling, namely, its tax exemption on aviation gas, fuel and oil which are manufactured or produced in the Philippines for domestic sales. Consequently, if LOI 1483 was intended to withdraw the foregoing tax exemption, then the term 'purchase of domestic petroleum products for use in its domestic operations' as used in LOI 1483 could only refer to 'goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition,' and not to 'things imported.' In this respect, it cannot be gainsaid that PAL's tax exemption privileges concerning imported goods remain beyond the scope of LOI 1483 and thus, continue to subsist.'
>
> As evident from the above discourse, what qualifies as domestic petroleum products, which in this case is aviation fuel, cannot include those that are imported. It is necessarily excluded from the term."

We further affirm the Court in Division in its application of *Philippine Airlines, Inc. v. CIR.*[84] *First*, the case discusses the

[84] G.R. No. 198759. July 1. 2013. 713 PHIL 134-160.

charter of PAL, precisely the respondent in this case. *Second*, as a matter of consistency and stability in judicial decisions, this Court adheres to its prior pronouncement in the absence of any showing of any error that would warrant a reversal of our earlier ruling. *Third*, the conclusion that the term "locally available" necessarily excludes imported fuel is reasonable, considering that the necessity to import arises precisely due to the inadequacy of the fuel produced in the Philippines. As PAL sensibly argued in its *Comment*, "if its importations (meant to address its fuel needs) were to be added to the "locally available supply" then there would never be a situation where "locally available supply" would be insufficient to meet its demand. Including PAL's importation would contribute to a condition that prevents it from using a tax exemption privilege provided under PD No. 1590."[85] *Finally*, as PAL has already discharged its burden of proof that the Jet A-1 fuel is not available in reasonable quantity in the Philippines, We note that the CIR and the COC were remiss in rebutting or controverting PAL by their failure to introduce evidence that would prove otherwise.

Hence, the Court in Division did not err in ruling that Jet A-1 fuel was unavailable in reasonable quantity in the Philippines from 2005 to 2008.

The CIR and the COC also argue that reliance on the ATO (now CAAP) certifications is improper. It is the petitioners' position that the DOE is officially tasked to determine whether the total supply is enough for total demand.

Again, the issue is not novel. This Court has repeatedly upheld the sufficiency of ATO certifications in proving that imported Jet A-1 fuel was not locally available in a reasonable quantity, quality, and price. In *Commissioner of Internal Revenue v. Air Philippines Corp.*[86] and *Commissioner of Customs v. Air Philippines Corp.*,[87] we ruled:

> As to the sufficiency of ATO Certificates in proving that the imported Jet A-1 aviation fuel was not locally available in reasonable quantity, quality or price, the case of *Commissioner of Customs v. Air Philippines Corporations*, which involves same facts and issues but with different taxable year, is controlling:

[85] Comment, par. 35; *EB* Docket (CTA *EB* No. 2559), p. 101.
[86] CTA *EB* Case No. 2064 (CTA Case Nos. 7872, 7883, 7922, 7929, and 7952), July 29, 2020.
[87] CTA *EB* Case Nos. 1704 & 1707 (C.T.A. Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566), May 2, 2019.

Significantly, respondent's subject importations of Jet A-1 fuel were supported by Certifications issued by the Air Transportation Office (ATO) to the effect that the imported Jet A-1 aviation fuel were not locally available in reasonable quantity, quality and price and it was necessary/incidental for the business operation of respondent. These ATO Certifications are given weight, pursuant to Section 44, Rule 130 of the Rules of Court ...

The ATO Certifications were issued by the Air Transportation Office or ATO, which was replaced by the Civil Aviation Authority of the Philippines (CAAP) under Republic Act (RA) No. 9497. It had the competence to issue certifications pertaining to the availability of supply of aviation fuel. ATO's authority to issue certifications was in line with its general powers under Section 32 of its charter, RA No. 776, which reads as follows:

> 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 pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.
>
> xxx xxx xxx
>
> (21) To cooperate, assist and coordinate with any 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. (Boldfacing supplied)

> The foregoing mandate negates the CIR's contention that only the DOE could best determine the local availability in reasonable quantity, quality and price of the subject Jet A-1 aviation fuel."
>
> **Considering the mandated functions of the ATO, it certainly had the means of knowing the facts stated in the subject ATO Certifications**. Such being the case, the ATO Certifications must be given weight under the Section 44, Rule 130 of the Rules of Court.
>
> **With the said ATO Certifications, respondent has shown compliance with the third requisite in granting tax exemption, i.e., that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price**. [*Emphasis and underscoring supplied.*]

From the foregoing, We find no merit in petitioners' contention that the ATO Certifications could not be given weight by this Court.

At this juncture, it must be pointed out that the use of conjunctive "or" in the third requisite — the imported articles, supplies or materials are not locally available in a reasonable quantity, quality or price — connotes alternative, not a cumulative qualification for the determination of whether there is locally available Jet A-1 fuel. Thus, it was sufficient that respondent was able to prove one (1) qualification to avail of the exemption, *i.e.*, that at the time of the subject importations, there was no locally available Jet A-1 fuel in reasonable quantity.[88]

Accordingly, We rule that PAL has sufficiently proved its entitlement to a refund or issuance of a tax credit certificate of the excise taxes it paid on its importations of Jet A-1 fuel for its domestic operations from July 13, 2005 to May 30, 2008. We see no compelling reason to modify, much more reverse, the assailed Decision and Resolution of the Court in Division.

It behooves the government to refund what it erroneously collected. To borrow from *BPI Family Savings Bank, Inc. v. Court of Appeals,*[89] if the state expects taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against

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[88] *Commissioner of Customs v. Air Philippines Corp.*, CTA *EB* Case Nos. 1704 & 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566), May 2, 2019.
[89] G.R. No. 122480, April 12, 2000.

the same standard in refunding erroneous exactions and payment of such taxes.

WHEREFORE, in light of the foregoing, the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA EB No. 2559 and the *Petition for Review* filed by the Commissioner of Customs in CTA *EB* No. 2577 are **DENIED** for lack of merit.

Accordingly, the assailed *Decision* dated March 9, 2021, and the Resolution dated October 27, 2021, of the Court's Third Division in CTA Case Nos. 7670, 7818, 7869, 7954, and 8034 are **AFFIRMED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice