

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES,
INC.,

Petitioner,

CTA EB NO. 2811
(CTA Case No. 10311)

Present:

-versus-

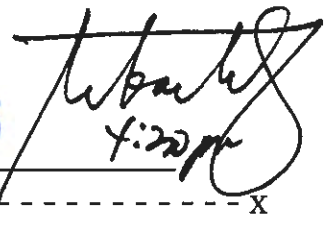
DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

JAN 24 2025



X-----X

DECISION

ANGELES, *J.*:

The case at bar assails the *Decision*¹ dated May 30, 2023² (assailed Decision) and *Resolution*³ dated October 4, 2023⁴ (assailed Resolution), both issued by the Court of Tax Appeals (CTA) Special First (1st) Division (Court in Division) in CTA Case No. 10311. In its *Petition for Review*⁵, petitioner Philippine Airlines, Inc. prays for the reversal of the denial of its claim for refund or application for tax credit certificate in the amount of PhP20,059,948.44, representing excise taxes on importations of liquor and tobacco that were paid under protest on August 3, 2019.

¹ Penned by Associate Justice Catherine T. Manahan, concurred by Presiding Justice Roman G. Del Rosario and with Concurring and Dissenting Opinion by Associate Justice Marian Ivy F. Reyes-Fajardo.

² Division (Div) Docket, Vol. IV, pp. 2825 – 2852.

³ Penned by Associate Justice Catherine T. Manahan, concurred by Presiding Justice Roman G. Del Rosario and with Concurring and Dissenting Opinion by Associate Justice Marian Ivy F. Reyes-Fajardo.

⁴ Div Docket, Vol. IV, pp. 2914 – 2922.

⁵ EB Docket, pp. 1 – 42.

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FACTS

Petitioner Philippine Airlines, Inc. (PAL) is a corporation duly organized and existing under the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Ave., CCP Complex, 1307, Pasay City.⁶

Respondent is the duly appointed Commissioner of Internal Revenue of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, and charges, including excise taxes paid on liquor and tobacco products under Sections 142 and 145 of the National Internal Revenue Code (NIRC) of 1997, as amended.⁷

On June 11, 1987, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590, otherwise known as "*An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries*".⁸ Section 13 thereof granted petitioner an exemption from the payment of all taxes, duties and other fees, and charges of any kind or nature on all importations of commissary and catering supplies, among others, and imported articles, supplies or materials for use in its transport and non-transport operations.⁹

For the period beginning August 2014 until February 2018, petitioner imported various kinds of liquor and tobacco as part of its in-flight and commissary supplies.

The Bureau of Customs (BOC) demanded in separate letters the payment of excise taxes that amounted to a total of PhP20,059,948.44 for petitioner's importation of liquor and tobacco products. The following is a summary of the demands:

<i>Date of the letter</i>	<i>Amount demanded (PhP)</i>
February 27, 2018	2,030,645.28
March 2, 2018	1,583,077.91
March 2, 2018	1,453,430.94
April 13, 2018	1,754,759.73
April 13, 2018	1,973,623.38
April 13, 2018	2,376,473.57
May 24, 2018	1,783,716.24
May 24, 2018	3,219,267.24
May 24, 2018	1,927,120.50

⁶ EB Docket, p. 2.

⁷ EB Docket, p. 52.

⁸ Div Docket, Vol. III, p. 1836.

⁹ PD No. 1590, Section 13.

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On August 3, 2018, petitioner paid under protest the taxes on its importations of liquor and tobacco products in the total amount of PhP20,059,948.44, which was documented as follows:

<i>BOC Official Receipt Number</i>	<i>Amount paid (PhP)</i>
01893415719	13,129,844.46
01893415720	6,930,103.98

On July 30, 2020, petitioner filed with the BIR a letter to request for the refund or the issuance of a tax credit certificate for the amount of PhP20,059,948.44, representing excise taxes allegedly illegally assessed, levied upon, and paid by petitioner under protest on its importation of liquor and tobacco products that constituted part of its commissary and catering supplies.

On August 3, 2020, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA).

During trial, petitioner offered the testimonies of (1) Mr. Jonathan R. Castillo Lee¹⁰, the Manager for petitioner’s Company Materials Handling Division, (2) Mr. Ruel Ryan O. Julian¹¹, the Manager for petitioner’s Tax Services Division, and (3) Ms. Cheryl V. Capinpin¹², the Manager of petitioner’s In-flight Materials Purchasing Division.

Respondent opted not to present evidence.¹³

After filing of their respective memorandums¹⁴, the Court in Division rendered the assailed *Decision* on May 30, 2023, as follows:

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

SO ORDERED.¹⁵

The Court in Division ruled that petitioner failed to present sufficient and convincing evidence to prove that the imported liquor and tobacco products were not locally available in reasonable quantity, quality, or price at the time of importation. The Court in Division found such failure as non-compliance with the conditions required under Section 13 of PD No. 1590 to merit the grant of a tax exemption.

¹⁰ Div Docket, Vol. II, pp. 740 – 749; Vol. III, pp. 1912 – 1914.

¹¹ Div Docket, Vol. II, pp. 1089 – 1099; Vol. III, pp. 1912 – 1914.

¹² Div Docket, Vol. II, pp. 1313 – 1325; Vol. III, pp. 1912 – 1914.

¹³ Div Docket, Vol. IV, p. 2771.

¹⁴ *Id.*, pp. 2772 – 2779, 2781 – 2799.

¹⁵ Div Docket, Vol. IV, p. 2848.

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Petitioner moved for reconsideration¹⁶ but it was denied in the *Resolution* dated October 4, 2023, the dispositive portion of which reads as follows:

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision dated 30 May 2023)* is **DENIED** for lack of merit.

SO ORDERED.¹⁷

In denying the motion, the Court in Division emphasized that tax refunds are in the nature of tax exemptions and are to be construed strictly against the taxpayer.

On November 22, 2023, petitioner filed the instant *Petition for Review*, praying to set aside the assailed *Decision* and *Resolution* of the Court in Division and to grant its claim for refund amounting to PhP20,059,948.44, representing excise taxes for its importation of liquor and tobacco products as part of its in-flight and commissary supplies for the period beginning August 2014 until February 2018.¹⁸

Petitioner argues that the evidence it presented sufficiently established that the subject imported liquor and tobacco products are not locally available in reasonable quantity, quality, or price. It insists that the CTA and the Supreme Court have previously ruled favorably on the grant of refund in past cases involving the same parties, similar circumstances, and similar kinds of evidence presented. It emphasized that the CTA previously ruled that a Table of Comparison between the cost of importing and cost of locally purchasing its supplies were sufficient evidence to prove its cause.

Respondent did not comment on the petition.¹⁹

ISSUE

Petitioner assigns the following error upon the Court in Division:

Whether the Court in Division erred in dismissing the *Petition for Review* on the ground that petitioner failed

¹⁶ Div Docket, Vol. IV, pp. 2877 – 2900.

¹⁷ Div Docket, Vol. IV, p. 2922.

¹⁸ EB Docket, pp. 1 – 42.

¹⁹ EB Docket, p. 94.

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to establish that its importations were not locally available in reasonable quantity, quality, or price²⁰

RULING OF THE COURT

The Petition for Review before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed *Resolution* on October 9, 2023.²¹ Petitioner, thus, had fifteen (15) days from such receipt or until October 24, 2023 to avail of the remedies provided by law.²² On October 24, 2023, petitioner timely filed the instant Petition for Review.²³

Petitioner failed to prove that the imported products were not locally available in reasonable quantity, quality, or price.

To enjoy the tax privilege under Section 13 of PD No. 1590, petitioner must show compliance with the following:

SEC. 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

²⁰ EB Docket, p. 7.

²¹ EB Docket, p. 6.

²² Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b) reads as follows:
Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

- (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.

²³ EB Docket, p. 1.

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

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

.....

(2) **All taxes**, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, **that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**

.....

(Emphasis supplied)

In summary, petitioner must prove the following conditions:

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

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The Court in Division found that petitioner successfully proved the first and second conditions. It, however, found that petitioner failed to prove compliance with the third condition.

Petitioner prays for the refund of excise taxes paid on importations consisting of (i) liquor and (ii) tobacco products. As correctly observed by the Court in Division, petitioner failed to adduce any evidence regarding the price of tobacco products in the local market.²⁴ While Ms. Capinpin testified on the importations by PAL of tobacco products, petitioner failed to present any evidence to prove that the subject tobacco products were not available in reasonable quantity, quality, or price.

Regarding its importation of alcohol products and its allegation that the imported alcohol products were not locally available in reasonable quantity, quality, or price, petitioner offered the following pieces of evidence: (1) the Judicial Affidavit of Ms. Cheryl V. Capinpin²⁵, petitioner's Manager for In-flight Materials Purchasing Division; (2) the 2014 and 2015 Price Lists of Absolute Sales Corporation²⁶; (3) 2013, 2014, 2015, 2016, 2017, and 2018 of Future Trade International Travel Retail²⁷; (4) 2014, 2015, 2016, 2017, and 2018 Price Lists of Minivan Enterprise²⁸; (5) 2016 and 2017 Price Lists of AB Heineken Phils., Inc.²⁹; and (6) BIR's Price List per Revenue Memorandum Circular (RMC) No. 90-2012.³⁰

After a review of the records of the case and petitioner's arguments, the Court En Banc finds no reason to disturb the findings of the Court in Division. The Court En Banc agrees that the evidence presented by petitioner is not sufficient to prove that the subject products are not available locally in reasonable quantity, quality, or price. The Court is not convinced that the price lists represent the local market price for the entire country.

It is a basic rule in evidence that each party must prove its affirmative allegations.³¹ In civil cases, such as the present tax refund case, the party having the burden of proof must establish its case by preponderance of evidence. Section 1, Rule 133 of the 2019 Revised

²⁴ Div Docket, Vol. IV, pp. 2847 – 2848.

²⁵ Div Docket, Vol. II, pp. 1313 – 1325; Vol. III, pp. 1912 – 1914.

²⁶ Div Docket, Vol. III, pp. 2411 – 2416.

²⁷ Div Docket, Vol. III, pp. 2417 – 2467.

²⁸ Div Docket, Vol. III, pp. 2468 – 2472.

²⁹ Div Docket, Vol. III, pp. 2473 – 2477.

³⁰ Div Docket, Vol. III, pp. 2473 – 2477.

³¹ *Commissioner of Internal Revenue v. Traders Royal Bank*, G.R. No. 167134, March 18, 2015.

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Rules on Evidence discusses the manner how preponderance of evidence is determined, to wit:

Section 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his or her case by a preponderance of evidence. **In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest,** and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis supplied)

It is the burden of petitioner to present evidence to prove its entitlement to tax refund. Petitioner highlights that it compared the price of the imported products with the price lists provided by approximately four (4) local suppliers. It insists that the quotations from such suppliers are sufficient to prove its case. The argument, however, fails to convince as this Court and the Court in Division looked into the *quality* of the evidence presented and not simply on the *quantity* of evidence.

It is a well-settled rule in tax refund cases that the taxpayer has the burden to prove by sufficient and competent evidence its entitlement to a claim for refund.³² The mere fact that respondent did not present any evidence or to refute the evidence presented by the petitioner does not *ipso facto* entitle petitioner to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for refund rests on the taxpayer.³³

³² *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.

³³ *Commissioner of Internal Revenue v. Far East Bank & Trust Company*, G.R. No. 173854, March 15, 2010.

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Ms. Capinpin revealed in her testimony the manner how the price lists were obtained. The following are relevant portions of her Judicial Affidavit, which served as her direct testimony:

8. Q: Why do you say that importing the said catering and commissary supplies are cheaper and reasonably priced than purchasing them locally?

A: I have compared the local prices and the importation costs for the alcohol products. Upon comparison of these prices, it is easily determinable that importing these products are way cheaper than purchasing them locally.

9. Q: How do you compare the local prices and importation costs?

A: I have prepared a Table of Comparison to show the complete comparison of prices for the alcohol products imported by PAL for the period August 2014 to February 2018.³⁴ (Emphasis supplied)

Her testimony was subjected to cross-examination, wherein it was revealed that there were other local suppliers of the products from whom they failed to secure price quotations. Relevant portions of which are as follows:

ATTY. BABARAN:

Q Now, aside from Minivan and AB Heineken did you make any requests from other suppliers of alcohol products?

MS. CAPINPIN:

A Yes I did, Ma'am. Unfortunately, the suppliers did not respond to the requests and did not submit the Price List that we requested.

ATTY. BABARAN:

Q May I know, Ma'am, what are these stores?

³⁴ Div Docket, Vol. II, pp. 1314-1315.

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MS. CAPINPIN:

A We particularly requested from Duty Free Philippines, from Philippine Wine Merchants, **but unfortunately we did not receive any response.**

ATTY. BABARAN:

Q Was it done through a letter and you made the request, you signed the same or any other from your staff? Any other person?

MS. CAPINPIN

A **I made a request through phone for the Philippine Wine Merchants.**

ATTY. BABARAN:

Q **So, it is only through phone, it's not a formal request?**

MS. CAPINPIN

A **Yes**

ATTY. BABARAN:

Q What about from Duty Free?

MS. CAPINPIN

A From Duty Free Philippines, we made a written request, however, they did not respond.³⁵ (Emphasis supplied)

The answers of Ms. Capinpin in her direct and cross examination necessitated clarificatory questions from the Court in Division regarding the manner the price lists were obtained. It was noteworthy that there were instances when petitioner informally requested for price quotations. Upon further inquiry, Ms. Capinpin's answers revealed that there was no effort on the part of the petitioner to make an actual purchase that would allow local suppliers to match the price of the imported products. There was also no genuine effort to inquire on the possibility of securing prices that were competitive with the price of the imported products. The following are the relevant portions of Ms. Capinpin's testimony, to wit:

³⁵ TSN, October 19, 2021, pp. 14 – 20, 25 – 29.

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JUSTICE DEL ROSARIO:

Yes.

Just a few clarificatory questions.

Ms. Capinpin, follow-up on the cross-examination conducted by the respondent. **Did I understand you correctly that the basis of the prices you mentioned in your Judicial Affidavit are all based on queries without actual purchase of the products? They are just based on queries?**

MS. CAPINPIN:

A Yes, your Honors.

.....

JUSTICE DEL ROSARIO:

Comparison from what is being sent to you, which is not under oath at that time and which is just listed, but there's actually no negotiations ever conducted between Philippine Airlines, as well as the supposed suppliers?

MS. CAPINPIN:

A **There was no negotiation at that time, your Honors, because we have seen it, the prices from the local suppliers were already very high and as compared to the imported (inaudible).**

.....

JUSTICE DEL ROSARIO:

I'm sure you are aware that the listed price is always different from the actual purchase of any commodity by a buyer, is it not?

.....

MS. CAPINPIN:

A Yes, your Honors.

JUSTICE DEL ROSARIO

So, ordinarily, even if you look into online sales when there is an actual bulk purchase the price is always

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different from what is listed. That is an ordinary practice of trade. You are aware of that?

MS. CAPINPIN

A Yes, your Honors, I am aware of that.

.....

JUSTICE DEL ROSARIO:

..... **So there has been no instance in writing wherein you already indicated in your letter to the supplier that you are willing to purchase several beverages if they are willing to pay or to sell at a price that you already have in mind, which is lower tha[n] the imported product?**

MS. CAPINPIN:

A: Your Honors, we do send e-mails to negotiate and asked them to give the best price.

JUSTICE DEL ROSARIO:

Only the best price?

MS. CAPINPIN:

A The best price.

JUSTICE DEL ROSARIO:

But you never give them a price lower tha[n] the imported cost?

MS. CAPINPIN:

A **No, your Honors. We don't mention any price to them. We just give them the liberty to propose to us the best price.**³⁶ (Emphasis supplied)

Evidence to be believed must not only proceed from the mouth of a credible witness, it must be credible in itself – such that common experience and observation of mankind can approve as probable under the circumstances.³⁷ By petitioner's own admission, it had been importing the same products over the years and had been applying for the refund of excise taxes imposed on similar products.³⁸ Considering

³⁶ TSN, October 19, 2021, pp. 14 – 20, 25 – 29.

³⁷ *Tortona, et al., v. Gregorio, et al.*, G.R. No. 202612, January 17, 2018.

³⁸ EB Docket, pp. 22 – 25.

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that petitioner has been importing the same products, the clarificatory questions of Honorable Presiding Justice Del Rosario are relevant to shed light on the manner the price lists were obtained and the efforts exerted by petitioner to determine the availability of the subject products in the local market.

The observations of the Court in Division regarding the testimony of petitioner's witness must be accorded respect since it had first-hand account on the manner she testified in court and her demeanor during trial. As aptly observed by Honorable Presiding Justice Del Rosario, the lack of genuine effort to secure competitive pricing from local suppliers reveals that the practice of petitioner to request quotations from local suppliers were merely pro-forma. Honorable Presiding Justice Del Rosario made the following observation:

JUSTICE DEL ROSARIO:

..... The point is, I'm asking you there is already a specific price because [you have] already made all these transactions in the past. **So, if it is just a pro-forma practice that you get the list but certainly you already know that the price is only going to be used for the purpose of the request but there is already in your mind a pre-determination to purchase from abroad.**

That's why the Court would like to ascertain whether you are doing the right thing because there are certain government interests here, there are tax impositions. So, in fairness to you and in fairness to the government, that's why the question is like that.

.....

JUSTICE DEL ROSARIO:

..... Anyway, more or less the Court understands now why you have been making the importations. **Only, you are making the importations because you get hold of a price list from sources. From sources wherein in the past you have already determined that the prices are always higher. And, since in the past the prices are always higher[,] you never dared to write them in writing to lower the price so that you will be able to purchase locally.**³⁹ (Emphasis supplied)

³⁹ TSN, October 19, 2021, pp. 14 – 20, 25 – 29.



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From the testimony of petitioner's witness, it is observed that there is lack of diligent effort on the part of petitioner to study the availability of local products and the reasonableness of their prices from other local suppliers. The witness' testimony and other pieces of evidence presented by petitioner does not convince the Court that the imported products were not locally available in reasonable quantity, quality, or price at the time of importation. It is doubtful that petitioner's Table of Comparison and its presented price lists represent the local market prices for the subject products. It cannot be concluded that the comparison made by petitioner is sufficient to entitle it to a tax refund.

Moreover, not all prices of the imported products were compared with the prices offered by local suppliers. A perusal of the Table of Comparison reveals that it had eighty (80) entries of imported alcohol but only forty five (45) entries were compared with the prices from local suppliers.⁴⁰ Petitioner failed to explain why it failed to do so. This further supports the finding that petitioner failed to exert diligent effort to study the availability of local products and the reasonableness of prices from local suppliers.

Petitioner cites previous similar cases wherein the Court ruled favorably upon petitioner after it presented pricelists from one or two suppliers. The Supreme Court has previously held that CTA Decisions do not constitute precedents and do not bind this Court nor the public.⁴¹ Every case is evaluated and decided based on the evidence presented.

It has been consistently held that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is construed *strictissimi juris* against the taxpayer. Similarly, pieces of evidence presented entitling a taxpayer to an exemption is also strictly scrutinized and duly proven. In *Paseo Realty & Development Corporation v. Court of Appeals, et al.*, the Supreme Court ruled:

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for their support of the government. And since taxes are what we pay for civilized society, or are the lifeblood of the nation, **the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed**

⁴⁰ Div Docket, Vol. III, pp. 2409 – 2410.

⁴¹ *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018.

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strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.⁴² (Emphasis supplied)


All told, petitioner has not presented any argument that convinces this Court to reverse or modify the findings of the Court in Division that denied petitioner's claim for refund. For having failed to present sufficient and convincing evidence to prove that the imported subject products were not locally available in reasonable quantity, quality, or price at the time of importation, petitioner failed to fulfill all conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590. Consequently, the Court finds no erroneous or illegal excise taxes to be refunded in favor of petitioner.


WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The *Decision dated May 30, 2023* and *Resolution dated October 4, 2023* in CTA Case No. 10311 are **AFFIRMED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


(With due respect, please see Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

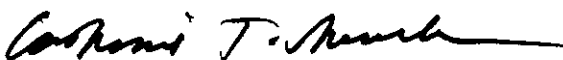
⁴² *Paseo Realty & Development Corporation v. Court of Appeals*, G.R. No. 119286, October 13, 2004.

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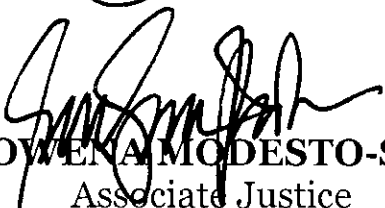
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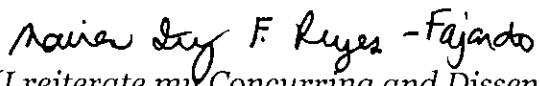
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CATHERINE T. MANAHAN
Associate Justice


(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


(I reiterate my Concurring and Dissenting
Opinion in the challenged Decision)
MARIAN IVY F. REYES-FAJARDO
Associate Justice


(With due respect, I join Associate Justice Ma. Belen M. Ringpis-Liban's
Concurring and Dissenting Opinion)
LANEE S. CUI-DAVID
Associate Justice


(With due respect, I join Associate Justice Ma. Belen M. Ringpis-Liban
in her Concurring and Dissenting Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

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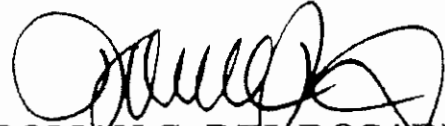
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CERTIFICATION

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 case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC.,
Petitioner,

CTA EB NO. 2811
(CTA Case No. 10311)

Present:

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

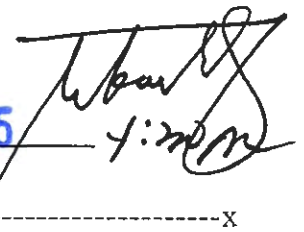
- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JAN 24 2025



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CONCURRING AND DISSENTING OPINION

RINGPIS-LIBAN, JL:

I concur with the *ponencia* of Associate Justice Henry S. Angeles insofar as it ruled that petitioner failed to prove that the *tobacco products* it imported were not locally available in reasonable quantity, quality, or price at the time of importation in order for the same to enjoy the tax exemption privileges under Presidential Decree (PD) No. 1590, as amended. However, I dissent insofar as the imported *alcohol products* are concerned for the reasons stated below.

The present case is not the first time this Court is confronted with the question of sufficiency of evidence for purposes of establishing that petitioner's imported articles are not locally available in reasonable quantity, quality, or price. Enumerated below are the cases, albeit covering different taxable periods, wherein this Court ruled that petitioner was able to sufficiently

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establish that its imported articles are not locally available in reasonable quantity, quality, or price on the basis of local prices reflected in the price lists submitted by **two (2) suppliers** or, in some cases, even from only **one (1) supplier**, to wit:

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

Case Number	Evidence Presented	Ruling
	and Catering Supplies; 4. Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010.	list of local suppliers.
CTA Case No. 8236 (Dated December 18, 2013) as affirmed in CTA EB No. 1162 & 1167 (Dated January 7, 2016)	1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager of In-flight Materials Purchasing Division; 2. Philippine Wine Merchants' Price List for 2008; 3. Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 4. Monthly Philippine Dealing System (PDS) Rates for fiscal years 2008, 2009 and 2010; 5. Letters of Ms. Marianne C. Raymundo, PAL's Vice-President for Financial Services with the subject "Booking Rates" for the months of January, July, September, and October 2008.	The claim for refund was partially granted insofar as the erroneously paid excise tax on its importation of wines and liquor for its catering and commissary supplies for international consumption.
CTA No. 8184 (Dated March 25, 2014 affirmed in CTA EB No. 1216, 1217 & 1221 (Dated May 27, 2016)	1. Affidavit of Ms. Cheryl Capinpin, PAL's Manager of In-flight Materials Purchasing Division; 2. Philippine Wine Merchants' Price List for 2008; 3. Table of Comparison of prices of commissary articles as those imported by PAL and locally available articles.	The claim for refund was partially granted because the petitioner has complied with the requirements prescribed under its franchise for exemption from payment of excise taxes on its importation of commissary and catering supplies, specifically the imported liquors used for its inflight consumption.
CTA EB No. 1347 (CTA Case No. 8340) August 30, 2017	1. Judicial Affidavit of Ms. Cheryl V. Capinpin, PAL's In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department Manager; 2. Philippine Wine Merchants' (PWM) Price List for the years 2007, 2008 and 2009;	The Court <i>En Banc</i> reversed the Court in Division's ruling. It partially granted the Petition for review and remanded the case to the Court in Division as the petitioner has sufficiently established that the alcohol products it imported were

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Case Number	Evidence Presented	Ruling
	<ol style="list-style-type: none"> 3. Future Trade International Price List dated April 8, 2009; 4. Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 5. Sales invoices issued by foreign suppliers; 6. Letter of Ms. Marianne C. Raymundo, petitioner's Vice President for Financial Services with the subject "Booking Rates-August 2007"; 7. Monthly Philippine Dealing System (PDS) rates for the years 2000 to 2010. 	<p>not available in reasonable quantity, quality, or price in the local market.</p>
<p>CTA EB No. 1363 (CTA Case No. 8198) February 13, 2018</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager for In-flight Materials Purchasing Division, Catering & In-flight Materials Purchasing Sub-Department; 2. Philippine Wine Merchant Price List; 3. Sales invoices issued to petitioner for its purchase of the subject articles; 4. Monthly Philippine Dealing System Rates (2007 to 2010); 5. 2008 Booking Rates for the Month of May; 6. Letters of Ms. Marianne C. Raymundo, petitioner's Vice President — Financial Services re: Booking Rates for the months of January, March, and April 2008; 7. Table of Comparison. 	<p>The Court <i>En Banc</i> reversed the Court in Division's ruling. It partially granted the Petition for Review and remanded the case to the Court in Division as the petitioner has sufficiently established that the liquors it imported were not available in reasonable quantity, quality, or price in the local market.</p> <p>The Court <i>En Banc</i> denied the claim insofar as the imported cigarettes are concerned as the Court did not give credence to the witness' uncorroborated testimony.</p>
<p>CTA EB No. 1648 (CTA Case No.</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Ms. Cheryl Capinpin, PAL's Manager for 	<p>The Court partially granted the claim for refund and</p>

Case Number	Evidence Presented	Ruling
<p>8708 & 8770) October 18, 2018</p>	<p>In-flight and Commissary Materials Purchasing Division, Corporate Logistics and Services Department;</p> <ol style="list-style-type: none"> 2. Philippine Wine Merchants (“PWM”) Price Lists for the years 2006, 2008, 2009, 2010, 2011, and 2012; 3. Future Trade International (“FTI”) Price Lists dated April 8, 2009, October 1, 2010 and for the years 2006 to 2013; 4. 2010 BIR Price Survey; 5. Report of the Court-commissioned Independent Certified Public Accountant (“ICPA”). 	<p>allowed the refund of erroneously paid excise tax on PAL’s importation in the years 2006, 2008 to 2012 of assorted liquor, wine and cigarettes constituting its commissary and catering supplies for international flight consumption.</p>
<p>CTA EB No. 1484 (CTA Case No. 8362) April 10, 2018</p>	<ol style="list-style-type: none"> 1. Judicial Affidavit of Ms. Cheryl Capinpin (petitioner’s Manager for In-flight Materials Purchasing Division); 2. Philippine Wine Merchants (PWM) Price List for the years 2007, 2008, and 2009; 3. Future Trade International Travel Retail Price List as of Feb 2009; 4. Affidavit of Gilbert M. Galeo who testified to the canvassed list of 2009 retail prices of imported wines and cigarettes taken from the rack of Duty-Free Philippines; 5. Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; 6. Monthly Philippine Dealing System (PDS) rates for the years 2007 to 2010. 	<p>The Court <i>En Banc</i> is convinced that petitioner has sufficiently established that the alcohol and tobacco products it imported were not available in either reasonable quantity or price in the local market.</p> <p>The Court <i>En Banc</i> remanded the case to the Court in Division for a complete determination of petitioner’s refund claim.</p>

In congruence with the rulings in the foregoing cases, I believe that the pieces of evidence presented by petitioner, particularly the price lists obtained from **four (4) local suppliers** namely: (1) Absolute Sales Corporation; (2) Future Trade International Travel Retail; (3) Minivan Enterprise; and (4) AB Heineken Phils., Inc. together with the judicial affidavit of its witness and the BIR's Price List per Revenue Memorandum Circular No. 90-2012, are sufficient for the Court in Division to evaluate the prices of the subject alcohol products imported by petitioner vis-à-vis their prices in the local market and to determine whether there is compliance with 3rd condition required by PD No. 1590, as amended.

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

All told, I vote to **PARTIALLY GRANT** the *Petition for Review* and to **REMAND** the case to the Court in Division for the determination of refundable amount with respect to the imported *alcohol products* of the petitioner.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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COURT OF TAX APPEALS
Quezon City

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Present:

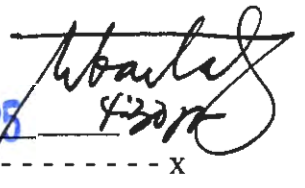
- versus -

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

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JAN 24 2025



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CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Henry S. Angeles, in denying petitioner Philippine Airlines, Inc.'s (**petitioner's/PAL's**) claim for refund of excise taxes paid on imported tobacco and alcohol products. I also agree with the *ponencia's* disquisition that the submitted price lists should not be accorded evidentiary weight since it was established during the hearing that petitioner, in conducting its price survey, merely engaged in a *pro-forma* inquiry without any genuine intent to actually study the availability of local products in terms of quantity and/or quality and/or the reasonableness of their prices from other local suppliers. Consequently, this renders the price lists insufficient to satisfy the crucial requirement of showing that the locally available articles are either inadequate in quantity, or is of subpar quality, or is severely overpriced compared to its imported variant.

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I submit this Concurring Opinion to further bolster the conclusion reached in the *ponencia*.

Section 13(2) of Presidential Decree No. 1590 reads:

...

SEC. 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:

...


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

...

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

...

The foregoing provision requires the concurrence of three (3) requisites before petitioner's importations may be considered tax-exempt, to wit –

1. Petitioner paid its corporate income tax covering the period when the subject importations were made;
2. The articles, supplies, or materials are imported for petitioner's use in its transport and non-transport operations and other activities incidental thereto; and
3. The imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.¹ 

¹ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, 01 April 2024.

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As to the 3rd condition, the Supreme Court in *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*², ruled that such qualification for exemption is in the alternative, and not cumulative. Simply stated, petitioner only needs to prove that the locally available article is **either** insufficient in quantity, **or** is of subpar quality, **or** is severely overpriced compared to its imported variant.

Here, petitioner focuses on the price of the locally available tobacco and alcohol products and asseverates that the same are overpriced compared to their imported variants by submitting: (1) the Judicial Affidavit of Ms. Cheryl V. Capinpin³, petitioner's Manager for In-flight Materials Purchasing Division; (2) the 2014 and 2015 Price Lists of Absolute Sales Corporation⁴; (3) 2013, 2014, 2015, 2016, 2017, and 2018 of Future Trade International Travel Retail⁵; (4) 2014, 2015, 2016, 2017, and 2018 Price Lists of Minivan Enterprise⁶; (5) 2016 and 2017 Price Lists of AB Heineken Phils., Inc.⁷; and (6) BIR's Price List per Revenue Memorandum Circular (RMC) No. 90-2012.⁸

I find petitioner's pieces of evidence insufficient to prove that the locally available tobacco and alcohol products are overpriced compared to their imported variants.

Firstly, considering that RMC No. 90-2012⁹ was based on the 2010 BIR price survey of alcohol products, no valid comparison can be made between the prices of petitioner's wines and liquors that were imported from August 2014 to February 2018 and that of the said price survey that was done in 2010. Common sense dictates that the quantity, quality or price of locally available alcohol or tobacco products will fluctuate over time; thus, the contents of the RMC No. 90-2012 pursuant to the price survey conducted in 2010 (which predates the subject importations) should not be given weight.

Secondly, a meticulous examination of petitioner's Table of Comparison [for] Alcohol¹⁰ reveals that, although petitioner submitted price lists from four (4) merchants (Absolute Sales Corporation, Future Trade International Travel Retail, Minivan Enterprise and AB Heineken Phils., Inc.) not all of these merchants provided their respective retail prices for each alcohol product. In fact, on a per-product basis, only two (2) alcohol products

² Id.

³ Division Docket, Volume II, pp. 1313-1325; Volume III, pp. 1912-1914.

⁴ Id., Volume III, pp. 2411-2416.

⁵ Id., pp. 2417-2467.

⁶ Id., pp. 2468-2472.

⁷ Id., pp. 2473-2477.

⁸ Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351. "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes".

⁹ Id.

¹⁰ Exhibit "P-12", Division Docket, Volume III, p. 2409.

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– Beringer California Chardonnay and Rawson Private Release Shiraz Cabernet, appear in the price list sourced from two (2) suppliers – Minivan Enterprise and Future Trade International Travel Retail. The remaining alcohol products are supported either by pricing data derived **solely** from a **single supplier**, or **exclusively** from RMC No. 90-2012 or from a combination of both sources.

Lastly, petitioner submitted no corroborating evidence to prove that the price lists from Absolute Sales Corporation, Future Trade International and Minivan Enterprise and AB Heineken Phils., Inc. represent the local market prices for the subject alcohol products from August 2014 to February 2018 *vis-à-vis* the totality of local suppliers who are engaged in selling similar products in the same period.

En totale, petitioner failed to sufficiently establish that the cost of importing the said tobacco and alcohol products is lower than purchasing them locally.

All told, I vote to **DENY** the Petition for Review for lack of merit.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice