

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE
INC.,

AIRLINES,

Petitioner,

CTA EB NO. 2656
(CTA Case No. 9990)

Present:

- versus -

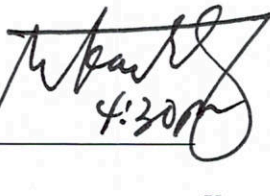
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, II.

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

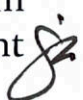
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DECISION

BACORRO-VILLENA, L:

The case at bar assails the Decision dated 21 October 2021¹ (**assailed Decision**) and Resolution dated 10 June 2022² (**assailed Resolution**) of the Court's Third Division³ in CTA Case No. 9990, entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In petitioner Philippine Airlines, Inc.'s (**petitioner's/PAL's**) instant 

¹ *Rollo*, pp. 44-66.

² *Id.*, pp. 68-72.

³ Penned by Associate Justice Maria Rowena Modesto-San Pedro, with (Ret.) Associate Justice Erlinda P. Uy concurring and Associate Justice Ma. Belen M. Ringpis-Liban, concurring in the result.

Petition for Review⁴ filed on 29 July 2022⁵, pursuant to Section 3(b)⁶, Rule 8, in relation to Section 2(a)(1)⁷, Rule 4 of the Revised Rules of the Court of Tax Appeals⁸ (**RRCTA**), it seeks the reversal of the assailed Decision and assailed Resolution. It prays instead for a judgment declaring its entitlement to a refund from or the issuance of Tax Credit Certificate (**TCC**) by the Bureau of Internal Revenue (**BIR**) in the amount of ₱1,036,677.47, representing its allegedly erroneously paid excise taxes on the importation of alcohol products for the years 2013 and 2014.⁹

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex, Pasay City.¹⁰

Respondent Commissioner of Internal Revenue (**respondent/ CIR**), on the other hand, is the head of the BIR, the government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges, including excise taxes on alcohol products under the National Internal Revenue Code (**NIRC**) of 1997, as 

⁴ *Rollo*, pp. 11-38.

⁵ The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 18 July 2022, *id.*, p. 10.

⁶ **SEC. 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.

...
⁷ **SEC. 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 Division 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[.]

...
⁸ A.M. No. 05-11-07-CTA.

⁹ Prayer, Petition for Review, *supra* at note 4.

¹⁰ Paragraph 1, Petition for Review, Division Docket, Volume I, p. 10.

amended. He or she holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

On 11 June 1987, 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"¹¹ granted petitioner a franchise to operate air transport services domestically and internationally. Section 13 thereof provides for PAL's 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 (as well as other activities incidental thereto).¹²

On 01 July 2005, Republic Act (RA) No. 9337, entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the [NIRC] of 1997, as Amended, and For Other Purposes" took effect, expressly and specifically amending petitioner PAL's franchise, and subjecting it to value-added tax (VAT). As for all other taxes, petitioner's exemption was retained.¹³

During the period of December 2013 until August 2014, petitioner imported various liquors and wines as part of its commissary and catering supplies for use in its transport operations. When they arrived at the Ninoy Aquino International Airport (NAIA), these importations were covered by various Informal Import Declarations and Entries¹⁴ (IIDEs), Airway Bills/Bills of Lading¹⁵ (AWBs/BLs) and Authority to Release Imported Goods¹⁶ (ATRIGs).

Subsequently, the Bureau of Customs (BOC), in a letter dated 03 November 2015¹⁷, ordered petitioner to pay excise taxes for its importation of alcohol products in the amount of ₱1,036,677.47. In a 

¹¹ Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., p. 257.

¹² See par. 3, id.

¹³ See par. 4, id., p. 258.

¹⁴ Exhibit "P-4" to "P-4F", BIR Records., pp. 63, 54, 45, 34, 22, 15 and 7.

¹⁵ Exhibit "P-5" to "P-5F", id., pp. 62, 53, 44, 32, 20, 14 and 6.

¹⁶ Exhibit "P-6" to "P-6F", id., pp. 61, 52, 43, 31, 19, 13 and 5.

¹⁷ Exhibit "P-7", id., p. 66.

letter dated 23 December 2016¹⁸ (**Protest Letter**), petitioner protested the assessment and collection of excise taxes on its alcohol importations. It, however, paid under protest the said amount, as evidenced by official receipt (**OR**) No. 01880549791, also dated 23 December 2016.¹⁹ In view of petitioner's payments under protest, the BIR issued the ATRIGs²⁰ and thereafter, the subject importations of alcohol products were released to it.

On 19 December 2018, petitioner filed before the office of respondent an administrative claim for refund or issuance of a TCC of the excise taxes paid under protest.²¹

A day after, or on 20 December 2018, petitioner also filed before this Court a Petition for Review pursuant to Section 204²² in relation to Section 229²³ of the NIRC of 1997, as amended. The same was raffled to the Third Division, docketed as CTA Case No. 9990.²⁴

In the said petition with the Third Division, petitioner mainly argued that its exemption from the payment of excise taxes under PD 1590 was not modified nor revoked with the passage of RA 9337. Consequently, it prayed for the refund of the excise taxes of ₱1,036,677.47 that was erroneously paid on the importation of alcohol products for the years 2013 and 2014.²⁵

On 16 January 2019, respondent filed his or her Answer²⁶ and interposed the following special and affirmative defenses: (1) PD 1590 was expressly repealed by RA 9334 thus, petitioner's exemption from excise taxes had ceased to exist; and, (2) petitioner failed to timely file its administrative claim which deprived respondent the opportunity to examine and evaluate the matter. 

¹⁸ Exhibit "P-9", id., p. 64.

¹⁹ Exhibit "P-8", id., p. 65.

²⁰ Supra at note 16.

²¹ Exhibit "P-2", Division Docket, Volume II, pp. 557-565.

²² **Sec. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*

²³ **Sec. 229.** *Recovery of Tax Erroneously or Illegally Collected.*

²⁴ Then Third Division was composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson and Associate Justice Ma. Belen M. Ringpis-Liban, as Member.

²⁵ Division Docket, Volume I, p. 21.

²⁶ Id., pp. 66-71.

On 18 January 2019, the Court issued a Notice of Pre-Trial Conference²⁷ setting the pre-trial on 02 May 2019. Accordingly, respondent filed his or her Pre-Trial Brief²⁸ on 07 February 2019, while petitioner filed its Pre-Trial Brief²⁹ on 29 April 2019.

On 02 May 2019, the Pre-Trial Conference proceeded where the Third Division granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (JSFI).³⁰ On 10 May 2019, the parties submitted their JSFI.³¹ On 13 June 2019, the Third Division issued a Pre-Trial Order,³² approving the said JSFI and setting the hearing dates.

In the trial that ensued, petitioner presented three (3) witnesses, namely: (1) Jonathan R. Castillo Lee (**Castillo Lee**), Manager for Company Materials Handling Division; (2) Cheryl V. Capinpin (**Capinpin**), Manager for In-flight Materials Purchasing Division; and, (3) Ruel Ryan O. Julian (**Julian**), Manager for Tax Services Division.

In his Judicial Affidavit³³, Castillo Lee testified that: (1) he is the Manager of petitioner's Company Materials Handling Division; (2) he is in charge of ensuring the timely release of petitioner's importation of catering and commissary supplies, among others, from different cargo warehouses; (3) his duties also include the filing of proper importation documents and coordination with various offices and government agencies for the release of the imported goods; (4) petitioner paid under protest the excise taxes of ₱1,036,677.47 as evidenced by an OR dated 23 December 2016; (5) in addition to the OR, he wrote a letter addressed to the BOC's Collection Division to formally protest the assessment and collection of excise taxes; (6) in the Protest Letter, he invoked petitioner's exemption from payment of taxes, duties, charges and fees under its charter, PD 1590, as regards the importation of commissary supplies (7) whenever petitioner imports commissary supplies used in its operations, his team gathers and prepares all the relevant importation documents (*i.e.*, IIDEs, AWBs/BLs and ATRIGs); and, (8) all the importations subject of the claim for refund or tax credit are duly

²⁷ Id., pp. 73-74.

²⁸ Id., pp. 77-80.

²⁹ Id., pp. 232-242.

³⁰ See Order dated 02 May 2019. id., pp. 248-250.

³¹ Id., pp. 256-262.

³² Id., pp. 436-443.

³³ See Judicial Affidavit of Jonathan R. Castillo Lee. Exhibit "P-34". id., pp. 88-96.

covered by the importations documents. No cross-examination was conducted.³⁴

On the witness stand, Julian likewise testified, through his Judicial Affidavit³⁵, that: (1) he is the Manager of petitioner's Tax Services Division; (2) he is in charge of ensuring that petitioner is compliant with all its tax liabilities under its charter, PD 1590 *vis-à-vis* the provisions of the NIRC of 1997, as amended; (3) under its charter, petitioner enjoys exemption from payment of excise taxes on importation of commissary and catering supplies; (4) petitioner's BIR Certificate of Registration does not include excise tax as a tax type for importation of alcohol and tobacco products in the portion "Registered Activity(ies) Tax Type"; (5) the importations subject of the present claim for refund or tax credit arrived in 2013 and 2014 and, since its BIR Certificate of Registration covered the period when the importations were made, petitioner's tax information as indicated and recorded therein should be the basis in determining if petitioner made its correct tax filings for the relevant taxable periods; and, (6) petitioner has paid the taxes due for the relevant taxable periods as can be shown by the different tax returns filed by petitioner corresponding to each tax type. No cross-examination was conducted.³⁶

Lastly, Capinpin, testified, through her Judicial Affidavit³⁷ and Supplemental Judicial Affidavit³⁸, that: (1) she is the Manager of petitioner's In-flight Materials Purchasing Division; (2) it is her duty to efficiently and effectively plan, procure, and control all foreign and local materials, supplies, equipment and services, among others, for the said division; (3) petitioner imported catering and commissary supplies such as alcohol, liquor and tobacco products because the cost of said products, when imported, is cheaper compared to those locally available and they are not available locally in reasonable quantity, quality or price; (4) upon comparison of the local prices and the importation costs for the alcohol products, importing the said products appeared to be cheaper than purchasing them locally; (5) she prepared a Table of Comparison³⁹ that shows the complete comparison of prices for the

³⁴ See Order dated 25 July 2019, *id.*, pp. 454-455.

³⁵ See Judicial Affidavit of Ruel Ryan O. Julian, Exhibit "P-35", *id.*, pp. 125-133.

³⁶ See Order dated 22 August 2019, *id.*, pp. 463.

³⁷ See Judicial Affidavit of Cheryl V. Capinpin, Exhibit "P-49", *id.*, pp. 288-299.

³⁸ See Supplemental Judicial Affidavit of Cheryl V. Capinpin, Exhibit "P-50", *id.*, Volume II, pp. 505-509.

³⁹ Exhibit "P-48", *id.*, p. 520.

alcohol products imported by petitioner for the period of December 2013 to August 2014; (6) for the local prices of alcohol products, she used the following sources: (a) Absolute Sales Corporation's (**Absolute Sales's**) Product Price Lists for 2013⁴⁰ and 2014⁴¹, (b) Future Trade International Inc.'s (**Future Trade's**) Product Price List for 2013⁴² and 2014⁴³, and, (c) BIR's Revenue Memorandum Circular (**RMC**) No. 90-2012⁴⁴; and, (7) for the importations costs, she used the actual product value as shown in the sales invoice issued by petitioner's suppliers, the product value as shown in the ATRIG and the product value as shown in the IIDE.

On cross-examination, when Capinpin was confronted with the Table of Comparison, she confirmed that there are no indicated prices under Absolute Sales 2013 and 2014, and Future Trade 2013.⁴⁵ On redirect examination, she explained that the local suppliers (Absolute Sales and Future Trade) did not have a quotation for the imported alcohol products.⁴⁶ No re-cross examination was conducted.⁴⁷

On 06 January 2020, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence⁴⁸ (FOE) consisting of Exhibits "P-3" to "P-50-a", inclusive of sub-markings. On 08 January 2020, respondent filed his or her "Comment (Re: Petitioner's Formal Offer of Evidence)".⁴⁹

In the Resolution dated 26 February 2020⁵⁰, the Third Division admitted all of petitioner's exhibits except Exhibit "P-30"⁵¹ for failure of petitioner's witnesses to identify it. Considering respondent's manifestation that the case has no report of investigation and that he or 

⁴⁰ Exhibit "P-27", id. pp. 665-667.
⁴¹ Exhibit "P-28", id., pp. 668-670.
⁴² Exhibit "P-29", id., pp. 671-676.
⁴³ Exhibit "P-30", id., pp. 677-687.
⁴⁴ Exhibit "P-31", id., pp. 688-708.
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".
⁴⁵ TSN dated 03 December 2019, pp. 16-17.
⁴⁶ Id., p. 18.
⁴⁷ See Order dated 03 December 2019, Division Docket, Volume II, pp. 524-524-a.
⁴⁸ Id., pp. 529-711, with attached exhibits.
⁴⁹ Id., pp. 713-715.
⁵⁰ Id., pp. 722-724.
⁵¹ Offered as "Future Trade International Inc., Price List for 2014 effective 15 December 2014 and certified as true copy by Ms. Analu Santos".

she has no witness to present, the Court likewise ordered the parties to file their respective memoranda in the same Resolution.

On 24 June 2020, respondent filed his or her Memorandum⁵² while petitioner filed its Memorandum via email on 19 October 2020.⁵³ Accordingly, on 28 October 2020, the Third Division considered the case submitted for decision.⁵⁴

Thereafter, the Third Division rendered the assailed Decision denying petitioner’s Petition for Review for lack of merit.⁵⁵ The pertinent portion thereof reads:

...
WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by petitioner Philippine Airlines, Inc. is hereby **DENIED** for lack of merit.

SO ORDERED.
...

Initially, the Third Division ruled that petitioner’s refund claim was barred due to the latter’s failure to exhaust the available administrative remedies. It pointed out that since petitioner’s judicial claim was filed merely a day after its administrative claim was filed, respondent was not afforded the opportunity to exercise his or her administrative powers and resolve the matter before the claim was appealed before this Court. However, assuming administrative remedies were exhausted, the petition must still be denied for petitioner’s failure to comply with requirement under Section 13(b)(2)⁵⁶ of PD 1590; 

⁵² Division Docket, Volume II, pp. 725-730.
⁵³ Id., pp. 733-746.
⁵⁴ See Resolution dated 28 October 2020, id., p. 750.
⁵⁵ Supra at note 1.
⁵⁶ **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:

...
(b) A franchise tax of two percent (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,

specifically, to establish that the imported alcohol products were not locally available in reasonable quantity, quality, or price. In so ruling, the Third Division held that the price list from one (1) local supplier cannot represent the local market prices. According to it, the Court cannot determine if the alcohol products were indeed not available locally in reasonable prices.

On 15 December 2021, petitioner filed its Motion for Reconsideration (MR)⁵⁷ contending that: (1) it did not fail to exhaust the administrative remedy; and, (2) it sufficiently established that imported alcohol products are not locally available in reasonable quantity, quality, or price. In the assailed Resolution of 10 June 2022, the Third Division remained unconvinced and denied the MR. It held:⁵⁸

...
WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 21 October 2021)** is hereby **DENIED** for lack of merit.

SO ORDERED.
...

In the assailed Resolution, the Third Division clarified that in light of the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*⁵⁹, petitioner's administrative claim and judicial claim were properly filed pursuant to Sections 204⁶⁰ and 229⁶¹ of the NIRC of 1997, as amended, despite the one (1)-day duration of filing. Nevertheless, notwithstanding the foregoing ruling, the Third Division determined that petitioner still 

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)

...
⁵⁷ Division Docket, Volume II, pp. 775-799.
⁵⁸ Supra at note 2.
⁵⁹ G.R. No. 226592, 27 July 2021.
⁶⁰ Supra at note 22.
⁶¹ Supra at note 23.

failed to prove that the subject importations are not locally available in reasonable prices.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 29 June 2022⁶², it filed a "Motion for Extension of Time to File Petition for Review"⁶³ (**Motion for Extension**) with the Court *En Banc* on 14 July 2022. On 29 July 2022 or within the extended period granted⁶⁴, petitioner filed the instant Petition for Review⁶⁵ seeking the reversal of the Third Division's assailed Decision and Resolution. After petitioner's compliance with the Resolution dated 01 September 2022⁶⁶, and without respondent's comment⁶⁷, the Court *En Banc* deemed the case submitted for decision.⁶⁸

ISSUE

The sole issue for the Court *En Banc*'s determination is —

WHETHER THE THIRD DIVISION ERRED IN RULING THAT PETITIONER PHILIPPINE AIRLINES, INC. FAILED TO ESTABLISH THAT THE SUBJECT IMPORTED ALCOHOL PRODUCTS ARE NOT LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY, OR PRICE AT THE TIME OF IMPORTATION.

In support of the above, petitioner contends that the Third Division failed to appreciate its pieces of evidence despite the fact that respondent did not refute them. Having submitted the required preponderance of evidence, petitioner insists that it has proven that the imported articles were not locally available in reasonable quantity, quality, or price. 

⁶² See Notice of Resolution dated 16 June 2022, Division Docket, Volume II, p. 816.

⁶³ *Rollo*, pp. 1-7.

⁶⁴ See Minute Resolution dated 18 July 2022, *id.*, p. 10.

⁶⁵ *Supra* at note 4.

⁶⁶ *Rollo*, pp. 74-75.

⁶⁷ See Records Verification dated 04 November 2022, *id.*, p. 86.

⁶⁸ See Resolution dated 18 January 2023, *id.*, p. 88.

Petitioner also points out that the unavailability of the prices from the local suppliers (such as Absolute Sales and Fortune Trade) only proves that the imported commissary supplies are not available in sufficient quantity or quality in the Philippine local markets.

Petitioner further posits that, in several cases⁶⁹, the Court of Tax Appeals (CTA) has already ruled that the Table of Comparison between the cost of importing and cost of locally purchasing commissary and catering supplies (with local prices reflected) were deemed sufficient to rule that the cost of importing commissary and catering supplies is lower than purchasing them locally. To bolster its stance, petitioner refers to the Minute Resolution in the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*⁷⁰ (**PAL Minute Resolution**) where the Supreme Court determined that this Court committed a severe departure from settled jurisprudence when it ruled that PAL's evidence was inadequate to comply with Section 13(b)(2)⁷¹ of PD 1590, i.e., the imported articles are not locally available in reasonable quantity, quality, or price. Hence, with the sudden deviation in the rulings, petitioner avers that the assailed Decision and assailed Resolution are contradictory to the doctrine of *stare decisis*.

Lastly, petitioner claims that the Court's imposition of stringent requirements in proving that the subject importations are not locally available in reasonable quantity, quality, or price defeats the tax exemptions granted under PD 1590.

RULING OF THE COURT

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition. 

⁶⁹ Petitioner referred the cases of *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, CTA EB No. 942 (CTA Case No. 7868), 09 December 2013; *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue & Commissioner of Customs*, CTA Case No. 7677, 24 August 2012; *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*, CTA Case No. 7943, 03 August 2012; *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, CTA EB No. 1216, 24 October 2016; *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, et al.*, CTA EB Nos. 1162 & 1167, 07 January 2016.

⁷⁰ G.R. No. 231638 (Minute Resolution), 17 February 2021.

⁷¹ Supra at note 56.

THE COURT *EN BANC* HAS
JURISDICTION OVER THE PRESENT
PETITION.

The Third Division promulgated the assailed Resolution denying petitioner's MR on the assailed Decision on 10 June 2022. Petitioner received the said assailed Resolution on 29 June 2022.⁷²

Under Section 2(a)(1)⁷³, Rule 4 in relation to Section 3(b)⁷⁴, Rule 8 of the RRCTA, petitioner had fifteen (15) days from 29 June 2022 or **until 14 July 2022**, within which to file an appeal before this Court. On the said date, petitioner posted a Motion for Extension⁷⁵, requesting an additional period of 15 days from 14 July 2022 or **until 29 July 2022**, within which to file its Petition for Review. The Court *En Banc* thus granted the same in its Minute Resolution dated 18 July 2022.⁷⁶ Accordingly, on 29 July 2022, petitioner timely filed the present Petition for Review.⁷⁷ Hence, the Court *En Banc* validly acquired jurisdiction to take cognizance of this case.

We now proceed to the merits of the case.

After a thorough examination of the records of the case and petitioner's arguments, We find no cogent reason to deviate from the Third Division's actions in denying petitioner's claim for refund or the issuance of a TCC.

PETITIONER FAILED TO PROVE THAT
THE IMPORTED ALCOHOL PRODUCTS
WERE NOT LOCALLY AVAILABLE IN
REASONABLE QUANTITY, QUALITY OR
PRICE.

For emphasis, to avail of the excise tax exemption on the imported alcohol products, petitioner must have shown compliance with the conditions enumerated under Section 13(b)(2) of PD 1590: 

⁷² Supra at note 62.
⁷³ Supra at note 7.
⁷⁴ Supra at note 6.
⁷⁵ Supra at note 63.
⁷⁶ Supra at note 64.
⁷⁷ Supra at note 4.

...

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

(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[.]**⁷⁸

...

Simply stated, petitioner must fulfill the following conditions to be exempt from excise tax on its importations, 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.

As the Third Division aptly determined, petitioner complied with the *first* and *second* conditions. However, with regard to the *third* condition, *i.e.*, the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, We still find that petitioner failed to prove compliance therewith.

To prove that the imported alcohol products were not locally available in reasonable quantity, quality or price, petitioner submitted the following: (1) Judicial Affidavit⁷⁹ and Supplemental Affidavit of Capinpin⁸⁰; (2) Absolute Sales's Product Price Lists for 2013⁸¹ and 2014⁸²; (3) Future Trade's Product Price Lists for 2013⁸³ and 2014⁸⁴; (4) BIR's RMC No. 90-2012⁸⁵; and, (5) Table of Comparison prepared by petitioner.⁸⁶

The Court *En Banc*, however, finds petitioner's proffered pieces of evidence to be insufficient. As lengthily discussed in the assailed Decision, petitioner failed to prove the existence of the third condition. The Third Division stated -

...

However, a closer look at the Table of Comparison reveals that there is only one (1) supplier (*i.e.*, Future Trade International, Inc.) which supposedly establishes local prices. Pertinent portions of the Table of Comparison are reproduced below: 

⁷⁹ Supra at note 37
⁸⁰ Supra at note 38.
⁸¹ Supra at note 40.
⁸² Supra at note 41.
⁸³ Supra at note 42
⁸⁴ Supra at note 43.
⁸⁵ Supra at note 44.
⁸⁶ Supra at note 39.

X-----X

HIDE Entry	Product Imported	Price per Bottle (PHP)	Absolute Sales 2013 (PHP)	Future Trade 2013 (PHP)	Absolute Sales 2014 (PHP)	Future Trade 2014 (PHP)	RMC No. 90-2012 Price List (PHP)
9235	Volupta Rosso	75.78	*	*	*	*	*
4518	Queen Adelaide Cabernet Sauvignon	108.26	*	*	*	255.00	*
	Queen Adelaide Chardonnay	108.26	*	*	*	255.00	*
10160	Queen Adelaide Cabernet Sauvignon	107.17	*	*	*	255.00	*
	Queen Adelaide Chardonnay	107.17	*	*	*	255.00	*
9227	Queen Adelaide Cabernet Sauvignon	105.84	*	*	*	255.00	*
	Queen Adelaide Chardonnay	105.84	*	*	*	255.00	*
7040	Beringer California Chardonnay	164.13	*	*	*	*	*
5614	Stolichnaya Gold	489.88	*	*	*	*	*
	Louis Royer XO	2,355.19	*	*	*	*	*
	Patron Silver Tequila	1,036.28	*	*	*	*	*
72	Rawson Private Release Shiraz Cabernet	211.70	*	525.00	*	578.00	*
	Lindenman's Premiere Chardonnay	163.19	*	341.00	*	351.00	*

From a cursory reading of RMC No. 90-2012, it can be easily determined that it was based on a 2010 price survey of alcohol products. Considering that it is based on a 2010 price survey, no valid comparison can be made with importations in 2013 and 2014. More importantly, RMC No. 90-2012 does not contain any price quotation for any of the listed alcohol products. Neither did petitioner present any proof to establish that the absence of price quotation is due to the non-availability of the identified alcohol products in the local market.

Likewise, the Absolute Sales Corporation price list does not contain a price quotation for any of the alcohol products imported by petitioner. Petitioner also did not present any proof showing that the absence of price quotation is due to non-availability of the alcohol products in the local markets.

During cross-examination and re-direct examination of Ms. Capinpin, she confirmed that there are no price quotations for Absolute Sales Corporation and that only one (1) supplier, Future Trade International, Inc., was able to provide price quotations:



ATTY. BABARAN

Q: In the table of comparison marked as Exhibit P-48, I noticed that there is only one supplier that is mentioned here, Future Trade?

MS. CAPINPIN

A: We presented Absolute Sales and Future Trade.

ATTY. BABARAN

Q: Yes, but Absolute Sales, there is no price, only Future Trade?

MS. CAPINPIN

A: Yes, Ma'am.

ATTY. BABARAN

No further question, Your Honors.

JUSTICE UY

Re-direct?

ATTY. PIERAZ

Yes, Your Honors.

Re-Direct:

ATTY. PIERAZ

Q: Ms. Witness, why were you unable to put the price list for Future Trade 2013?

MS. CAPINPIN

A: We asked for a price list for Absolute sales but unfortunately, they did not have quotations for the mentioned items that we imported.

From the foregoing, it appears that **petitioner determined local prices for 2013 and 2014 from the price list of only one (1) supplier, that is Future Trade International, Inc. Considering that the 2014 price list of Future Trade International, Inc. was not admitted in evidence for not having been identified, the Court will only consider the 2013 price list as admitted in evidence.**

However, the **Court cannot rely on the price list of only one (1) supplier absent any corroborating evidence that such supplier adequately represents the local market prices or that said supplier is the exclusive distributor of the listed alcohol products.** Thus, the Court cannot determine if the imported alcohol products are not available locally in *reasonable price*.

Similarly, the Court cannot determine from the evidence presented whether the imported alcohol products are not available

locally in reasonable quantity. In Ms. Capinpin's testimony, she merely confirmed that there is no price available or that the supplier "did not have quotations for the mentioned items." From her testimony, the Court cannot ascertain that there is no available product locally. The testimony merely implies the non-availability of "price or quotation" and does not necessarily prove non-availability of the "product" itself in the local market. Simply put, there is no indication from the testimony, nor from evidence on record, that the imported alcohol products are not available locally in *reasonable quantity*.⁸⁷

...

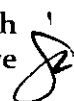
Similarly, We are not convinced that this Court is prevented from, or should absolutely remain tied to, applying previously decided cases allowing refunds based merely on the presentation of a Table of Comparison (as petitioner so insists). Every case is evaluated and decided based on the evidence presented. A divergence in the rulings of the priorly-promulgated cases is not violative of the doctrine of *stare decisis*.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*⁸⁸, the Supreme Court emphasized that CTA decisions do not constitute binding precedents:

...

There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:

. . . Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are**



⁸⁷

Citations omitted and emphasis supplied.

⁸⁸

G.R. No. 187485, 12 February 2013; Citations omitted, emphasis and italics in original text and underscoring supplied.

universal in their scope and application, and equally mandatory in character. Let it be warned that to defy our decisions is to court contempt.

The same basic doctrine was reiterated by this Court in *De Mesa v. Pepsi Cola Products Phils., Inc.*:

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

...

Lastly, petitioner's assertion that We should rely on the PAL Minute Resolution⁸⁹ is untenable. We cannot subscribe to the ruling therein since a minute resolution is also not considered a binding precedent. Citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*⁹⁰, in *San Miguel Corporation v. Commissioner of Internal Revenue*⁹¹ (**San Miguel**), the Supreme Court also clarified that a previous case ruled with a different subject matter albeit with the same parties and same issues will not be considered *res judicata* to the other cases:

...

...When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties

⁸⁹ Supra at note 70.

⁹⁰ G.R. No. 167330, 18 September 2009.

⁹¹ G.R. No. 257697, 12 April 2023; Emphasis and italics in the original text and underscoring supplied.

and issues) is involved, the minute resolution is not binding precedent. Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, CIR v. Baier-Nickel involving the same parties and the same issues, was previously disposed of by the Court through a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "(h)ad no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

...

Here, the subject alcohol products were imported in 2013 and 2014. On the other hand, the PAL Minute Resolution, as well as the cited cases therein, dealt with importations between the years 2006 and 2010. Thus, any declarations made in the said minute resolution will not affect the instant case.

Moreover, in *San Miguel*⁹², the Supreme Court reiterated that there is a substantial distinction between a minute resolution and a decision:

...

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.

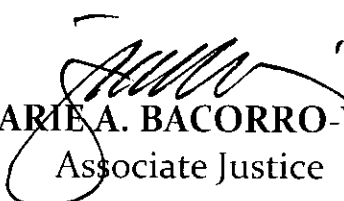
...

With the foregoing disquisitions, We could only agree with the Third Division that petitioner failed to present sufficient and convincing evidence to prove that the subject alcohol products it imported were not locally available in sufficient quantity, quality, or

price at the time of their importation. Such being the case, the Court *En Banc* finds no reason to reverse the Third Division's assailed Decision and Resolution.

WHEREFORE, in light of the foregoing, the instant Petition for Review filed by petitioner Philippine Airlines, Inc. on 29 July 2022 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 21 October 2021 and 10 June 2022, respectively, of the Third Division in CTA Case No. 9990, entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, are **AFFIRMED**.

SO ORDERED.

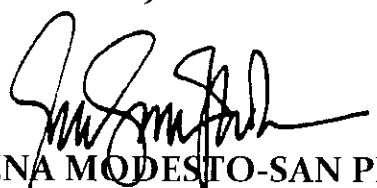

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

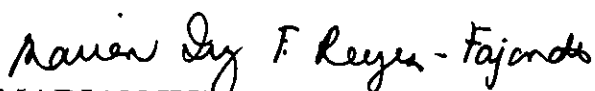
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

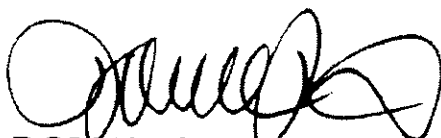

LANEE S. CUI-DAVID
Associate Justice


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


ROMAN G. DEL ROSARIO
Presiding Justice