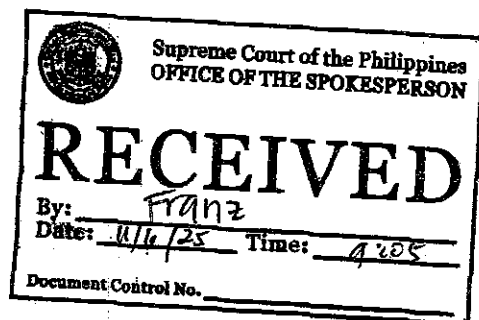




Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

COMMISSIONER OF G.R. No. 249407
CUSTOMS and
COMMISSIONER OF
INTERNAL REVENUE,
Petitioners,

- versus -

AIR PHILIPPINES
CORPORATION (APC),
Respondent.

X-----X

COMMISSIONER OF G.R. Nos. 250032 & 250047
CUSTOMS and
COMMISSIONER OF
INTERNAL REVENUE,
Petitioners,

- versus -

PHILIPPINE AIRLINES, INC.,
Respondent.

Present:
LEONEN, S.A.J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J., and
KHO, JR., JJ.

Promulgated:

APR 23 2025

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DECISION

KHO, JR., J.

Before the Court are consolidated Petitions for Review on *Certiorari*¹ filed by the Commissioner of Customs (COC) and the Commissioner of Internal Revenue (CIR; collectively, petitioners) assailing:

- (1) for the Petition in *G.R. No. 249407* — The Decision² dated May 2, 2019 and the Resolution³ dated September 16, 2019 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Nos. 1704 and 1707, which upheld the Amended Decision⁴ dated May 8, 2017 of the CTA Second Division in CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, and 7566. The CTA Division's ruling granted respondent Air Philippines Corporation's (APC) Motion for Reconsideration of its earlier Decision⁵ dated October 2, 2015, and accordingly, ordered petitioners to refund to APC the amount of PHP 235,613,134.47 representing excise taxes paid under protest for the importation of Jet A-1 aviation fuel for the period of May 2003 to December 2004; and
- (2) for the Petition in *G.R. Nos. 250032 & 250047* — The Decision⁶ dated May 10, 2019 and Resolution⁷ dated October 16, 2019 of the CTA EB in CTA EB Nos. 1752 and 1756, which affirmed the Decision⁸ dated July 17, 2017 of the CTA Third Division in CTA Case No. 8143. The CTA Third Division's ruling ordered petitioners to refund or issue a tax credit certificate in favor of Philippine Airlines, Inc. (PAL) in the amount of PHP 302,012,195.86 representing excise taxes paid for PAL's importations of Jet A-1 fuel for its domestic operations for the period of August 2008 to October 2008.⁹

¹ *Rollo* (G.R. No. 249407), pp. 11–48 and *Rollo* (G.R. No. 250032), pp. 42–70.

² *Rollo* (G.R. No. 249407), pp. 59–94. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen Ringpis-Liban, and Associate Justice Catherine T. Manahan (on leave) of the *En Banc*, Court of Tax Appeals, Quezon City.

³ *Id.* at 113–116.

⁴ *Id.* at 96–111. Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr., and Catherine T. Manahan of Second Division, Court of Tax Appeals, Quezon City.

⁵ *Id.* at 206–229. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Amelia R. Cotangco-Manalastas of Second Division, Court of Tax Appeals, Quezon City. Associate Justice Caesar R. Casanova with Dissenting Opinion.

⁶ *Rollo* (G.R. No. 250032 & 250047), pp. 81–103. Penned by Presiding Justice Roman G. Del Rosario, and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban, and Associate Justice Catherine T. Manahan (on leave) of the *En Banc*, Court of Tax Appeals, Quezon City.

⁷ *Id.* at 105–109.

⁸ *Id.* at 414–451. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino of the Third Division, Court of Tax Appeals, Quezon City.

⁹ *Id.* at 451.

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The Legal Antecedents of APC's and PAL's Refund Claims

APC was granted a franchise to establish, operate, and maintain air transport services for the domestic and international carriage of passengers, mail, goods, and property, by virtue of Republic Act No. (RA) 8339¹⁰ (APC's franchise).¹¹ Following Section 11 of RA 8339, as amended, APC is entitled to the same tax exemption privileges granted to any of its competitors, including PAL, to wit:

SEC. 11. *Tax Provisions.* — The grantee, its successors or assigns, shall pay to the Philippine Government during the life of its franchise a franchise tax of 5% of the gross revenues derived by the grantee from its transport operations.

In the event that any competing individual, partnership or corporation receives or enjoys tax privileges and other favorable terms which tend to place herein grantee at any disadvantage, then such provisions shall be deemed ipso facto part hereof and shall operate equally in favor of the grantee.

The grantee shall, however, be subject to income tax levied under Title II of the National Internal Revenue Code, as amended, and tax on its real property under existing laws on revenues earned from activities other than air transportation. (Emphasis Supplied)

Notably, Section 13 of Presidential Decree No. (PD) 1590,¹² otherwise known as the PAL's charter, grants PAL the option to pay a lower: (a) basic corporate income tax of 30% based on its net taxable income, or (b) franchise tax of 2% based on its gross revenues, in lieu of all other taxes, duties, and fees, viz.:

SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever 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 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

¹⁰ Entitled "An Act Granting Air Philippines Corporation (Air Philippines), A Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services" dated August 8, 1997.

¹¹ *Rollo* (G.R. No. 249407), pp. 59-94. p. 13.

¹² *Id.* at 62.

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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:

(1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on in the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and non-transport operations and other activities incidental thereto;

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

Based on the foregoing, it can be gleaned that PAL, and APC by virtue of Section 11 of RA 8339, as amended, are exempt from taxes on their importation of aviation gas, fuel, and oil, whether refined or in crude form if the following three conditions are met: *first*, the franchisee paid either the basic corporate income tax under Section 13(a) of PD 1590, or the franchise tax of 2% under Section 13(b) of the same law, whichever is lower; *second*, the purchase of petroleum products, is for the use in the franchisee's transport and non-transport operations, and other activities incidental thereto; and *third*, the petroleum products are not locally available in reasonable quantity, quality, or price.¹³

In this regard, the BIR affirmed that APC shall be exempt from all taxes imposed under the National Internal Revenue Code (NIRC)¹⁴ on its

¹³ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division].

¹⁴ Entitled "An Act Amending the National Internal Revenue Code, as Amended, and for other Purposes" dated December 11, 1997.

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importation of petroleum products, through BIR Ruling No. 048-2000 dated October 23, 2000. Pertinent portions of BIR Ruling No. 048-2000 read:

Pursuant to the provisions of Sec. 15 [sic] of R.A. 8339 (APC's franchise), in relation to Section 13 of P.D. No. 1590 (PAL's Franchise) and the letter-decision dated June 28, 2000 of the Secretary of Finance, pertinent portions of which are heretofore quoted, APC shall be exempt from all taxes imposed by the Tax Code on its importation and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(e) of the Tax Code of 1997, which importations shall be used for its domestic operations.

However, on January 29, 2003, the BIR issued BIR Ruling No. 001-2003 addressed to APC, PAL, Cebu Air, Inc., and Pacific Airways Corporation holding that PAL, APC, and other airlines were no longer exempt from taxes on the importation of petroleum products for their domestic operations in light of the Department of Energy's (DOE) Certification dated December 20, 2002, which stated that aviation gas, fuel and oil were locally available. The said BIR Ruling states:

In light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the [third] condition¹⁵ required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies ipso facto to other airlines. Accordingly, your importations may not be given the same treatment as before for so long as there is such available domestic supply of petroleum products.

This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.

Subsequent deficiency assessments were made by the CIR through the COC on airline companies in accordance with BIR Ruling No. 001-2003.

The Facts of G.R. No. 249407 – APC's Refund Claim

Pursuant to BIR Ruling No. 001-2003, the CIR, acting through the COC, assessed excise taxes on APC's importations of Jet A-1 fuel used for its

¹⁵ The non-availability of petroleum products locally in reasonable quantity, quality, or price. It was referred to as the "second condition" in BIR Ruling No. 001-2003's original text, but as the third condition here for consistency and in accordance with case law. (See *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division]).

domestic operations, for the period of May 2003 to December 2004. APC paid such taxes to the Collector of Customs under protest, as follows:¹⁶

Date of Importation	Date of Payment under Protest	Amount Paid
May 15, 2003	1 st Installment – May 30, 2003 2 nd Installment – June 12, 2003 3 rd Installment – June 27, 2003	PHP 29,176,500.00 PHP 14,588,250.00 PHP 14,588,250.00
October 29, 2003	November 7, 2003	PHP 11,670,600.00
December 5, 2003	1 st Installment – December 12, 2003 2 nd Installment – December 19, 2003	PHP 21,494,389.94 PHP 21,494,389.94
April 5, 2004	1 st Installment – April 16, 2004 2 nd Installment – April 30, 2004	PHP 14,790,905.56 PHP 14,790,905.56
June 13, 2004	1 st Installment – June 24, 2004 2 nd Installment – June 29, 2004	PHP 14,827,258.75 PHP 14,827,258.75
August 16, 2004	1 st Installment – August 31, 2004 2 nd Installment – September 14, 2004	PHP 14,800,180.00 PHP 14,800,180.00
August 28, 2004	September 23, 2004	PHP 17,031,376.34
December 17, 2004	January 12, 2005	PHP 16,732,689.72

APC filed formal written protests with the Collector of Customs, requesting for the refund of the excise taxes paid, on the following dates:¹⁷

Date of Importation	Date of Payment under Protest	Date of Filing of Protest with COC
May 15, 2003	1 st Installment – May 30, 2003 2 nd Installment – June 12, 2003 3 rd Installment – June 27, 2003	July 14, 2003
October 29, 2003	November 7, 2003	November 21, 2003
December 5, 2003	1 st Installment – December 12, 2003 2 nd Installment – December 19, 2003	December 29, 2003
April 5, 2004	1 st Installment – April 16, 2004 2 nd Installment – April 30, 2004	May 3, 2004
June 13, 2004	1 st Installment – June 24, 2004 2 nd Installment – June 29, 2004	July 9, 2004
August 16, 2004	1 st Installment – August 31, 2004 2 nd Installment – September 14, 2004	September 15, 2004
August 28, 2004	September 23, 2004	October 6, 2004
December 17, 2004	January 12, 2005	January 27, 2005

The COC failed to act on APC's protests. Thus, to stop the running of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC, APC filed written claims for refund with the CIR for the excise taxes it paid, on the following dates:¹⁸

Date of Importation	Date of Filing Written Claim for Refund with the CIR	Amount Paid
May 15, 2003	April 28, 2005	PHP 58,353,000.00
October 29, 2003	October 28, 2005	PHP 11,670,600.00

¹⁶ *Rollo* (G.R. No. 249407), pp. 66–67.

¹⁷ *Id.* at 67.

¹⁸ *Id.* at 67–68.

December 5, 2003	November 21, 2005	PHP 42,988,779.88
April 5, 2004	March 28, 2006	PHP 29,581,811.12
June 13, 2004	June 20, 2006	PHP 29,654,517.50
August 16, 2004	March 28, 2006	PHP 29,600,360.00
August 28, 2004	March 28, 2006	PHP 17,031,376.34
December 17, 2004	December 29, 2006	PHP 16,732,689.72

APC also filed eight separate Petitions for Review before the CTA in Division to avoid the lapse of the two-year prescriptive period for judicial claims for refund as such period is not tolled by administrative claims for refund. The petitions were filed on the following dates:¹⁹

CTA Case No.	Amount of Claim Involved	Date of Payment under Protest	Date of Expiration of 2-Year Prescriptive Period	Date of Filing of Petition for Review with the CTA
7252	PHP 58,353,000.00	1 st Installment – May 30, 2003 2 nd Installment – June 12, 2003 3 rd Installment – June 27, 2003	May 30, 2005	May 16, 2005
7362	PHP 11,670,600.00	November 7, 2003	November 7, 2005	November 7, 2005
7383	PHP 42,988,779.88	1 st Installment – December 12, 2003 2 nd Installment – December 19, 2003	December 12, 2005	December 9, 2005
7445	PHP 29,581,811.12	1 st Installment – April 16, 2004 2 nd Installment – April 30, 2004	April 16, 2006	April 17, 2006 (April 16, 2006 fell on a Sunday)
7494	PHP 29,654,517.50	1 st Installment – June 24, 2004 2 nd Installment – June 29, 2004	June 24, 2006	June 23, 2006
7517	PHP 29,600,360.00	1 st Installment – August 31, 2004 2 nd Installment – September 14, 2004	August 31, 2006	August 31, 2006
7521	PHP 17,031,376.34	September 23, 2004	September 23, 2006	September 21, 2006
7566	PHP 16,732,689.72	January 12, 2005	January 12, 2007	January 12, 2007

The CIR, in his Answer filed in CTA Case No. 7252, argued that APC failed to discharge its burden of establishing its right to a refund since, as certified to by the DOE, aviation gas, fuel and oil for use in domestic operation of domestic airline companies, are locally available in reasonable quantity, quality and price. By virtue of the DOE certification, the conditions for tax exemption, under Section 13 of PD 1590, on the importation of petroleum

¹⁹ *Id.* at 68.

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products in APC's case had not been met, thereby barring any claims for tax exemption or refund for tax payments made for the same. For his part, the COC echoed the argument of the CIR, adding that the CTA is not the proper forum for respondent to question and contest the administrative finding of the DOE.²⁰

The CIR meanwhile moved to dismiss CTA Case No. 7362, citing APC's failure to attach the Board Resolution authorizing Jonathan Andrew D. Lim, APC's corporate counsel, to sue for and on behalf of the corporation. The COC, on the other hand, essentially raised the same affirmative defenses alleged in his Answer in CTA Case No. 7252.²¹

Anent CTA Case No. 7383, the CIR argued that APC failed to exhaust administrative remedies before elevating the case to the CTA in Division, highlighting that APC did not question the DOE Certification dated December 20, 2002 before the Office of the President (OP) in violation of Rule 16, Section 1(j) of the Rules of Court. The CIR further claimed that APC failed to appeal to the Office of the Secretary of Finance BIR Ruling No. 001-2003 before assailing its validity before the CTA in violation of Section 4 of the NIRC.²²

The CIR and COC reiterated the foregoing arguments in CTA Case Nos. 7445, 7494, 7517, 7521 and 7566, except for the amount and transaction period involved in each case. During the trial, APC presented evidence in support of the cases it filed, while the CIR did not. The COC did not appear for the trial despite due notice.²³

The CTA Second Division Proceedings on APC's Refund Claim

The Petitions for review filed by APC were consolidated and the CTA Second Division tried them jointly. After presentation of evidence, APC filed a Motion to Reopen Trial and/or for Leave of Court to File a Supplemental Memorandum.²⁴ In a Resolution²⁵ dated January 21, 2015, the CTA Division denied the Motion.

Subsequently, the CTA Second Division promulgated the Decision²⁶ dated October 2, 2015 denying APC's consolidated Petitions for Review for insufficiency of evidence. In so ruling, the CTA Second Division held that

²⁰ *Id.* at 68–69.

²¹ *Id.* at 69.

²² *Id.* at 69–70.

²³ *Id.* at 70.

²⁴ *Id.* at 23.

²⁵ Referred to as Annex K in the petition but was not attached. Annex K consists of the Decision dated October 2, 2015 of the CTA in Division.

²⁶ *Rollo* (G.R. No. 249407), pp. 206–229.

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APC failed to establish all the conditions for tax exemption on importations of their aviation fuel under Section 13 of PD 1590.²⁷

Aggrieved, APC filed a Motion for Reconsideration of the Decision dated October 2, 2015 and a Motion to Reopen the Case for Presentation of Evidence on October 20, 2015.²⁸

In a Resolution dated February 16, 2016, the CTA Second Division granted APC's Motion to Reopen the Case for Presentation of Evidence and held in abeyance the resolution of the Motion for Reconsideration. Subsequently, the CTA Second Division, through a Resolution dated January 24, 2017, admitted additional evidence formally offered by APC and declared APC's Motion for Reconsideration as submitted for resolution considering the CIR's Manifestation that he would no longer present evidence and the COC's failure to present counter evidence.²⁹

Thus, in an Amended Decision³⁰ dated May 8, 2017, the CTA Second Division granted APC's Motion for Reconsideration and Petitions for Review, and accordingly, ordered petitioners to refund the aggregate amount of PHP 235,613,134.47, representing the taxes on importation of the petroleum products paid under protest by APC during the period from May 2003 to December 2004. In reconsidering its earlier ruling, the CTA Second Division held that APC had satisfactorily established the presence of all the conditions for exemption under Section 13 of PD 1590.³¹

Both petitioners moved for reconsideration, but their Motions were denied in a Resolution dated August 11, 2017. Aggrieved, petitioners separately filed Petitions for Review with the CTA EB, docketed as CTA EB Nos. 1704 and 1707. The Petitions were later consolidated.³²

The CTA *En Banc* Ruling on APC's Refund Claim

In a Decision³³ dated May 2, 2019, the CTA EB denied the Petitions for Review and accordingly, affirmed the CTA Second Division's ruling. The CTA EB held that: (a) the CTA has jurisdiction to determine the propriety of the claims for tax refund or credit in the instant case; and (b) APC is exempt from taxes on its importations of its Jet A-1 fuel. Prefatorily, the CTA EB explained that since the COC collects taxes due on importations pursuant to

²⁷ *Id.* at 70.

²⁸ *Id.*

²⁹ *Id.* at 70-71.

³⁰ *Id.* at 96-110.

³¹ *Id.* at 71.

³² *Id.*

³³ *Id.* at 59-94.

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the authority delegated to him by the CIR under Section 12(a) of the NIRC, and excise taxes are imposed under the NIRC, it thus follows that any refund thereof shall be governed by the provisions of the NIRC, as amended. In this relation, the CTA EB point out that it is Section 204(C) of the NIRC that applies to administrative claims filed with the BIR, except VAT, and Section 229, which governs actions for recovery of the tax collected erroneously or illegally. Accordingly, the inaction of the CIR in cases involving refunds of internal revenue taxes on importations is within the jurisdiction of the CTA following Section 7(a)(2) of RA 1125, as amended by RA 9282.³⁴

Moreover, citing *Gibbs v. Collector of Internal Revenue and Court of Tax Appeals*,³⁵ the CTA EB ruled that if the CIR takes its time in deciding a claim for refund, and the two-year prescriptive period is about to end, the suit or proceeding must be started with the CTA before the end of such period without awaiting the CIR's decision. A taxpayer need not wait for the decision of the CIR for purposes of judicial intervention, and there is no violation in such case of the principle of exhaustion of administrative remedies.³⁶

Further, the CTA EB held that, contrary to the COC's assertion, the assessments of excise taxes for the imported Jet A-1 fuel had not become final and immutable for failure to pay the docket fees required under Section 2308 in relation to Sections 3301 and 3303 of the Tariff and Customs Code of the Philippines (TCCP),³⁷ as this pre-requisite is applicable only to protestable and seizure cases where there is a finding of unpaid taxes due to the government. The CTA EB pointed out that the controversy involved herein are claims for refund of erroneously paid taxes, and not those contemplated by the aforementioned provisions of the TCCP. Additionally, the CTA EB pointed out that the protest contemplated in Section 2308 of the TCCP refers to goods that are still within the customs territory which first require payment of duties and taxes pending the release thereof. Here, the very fact that an importer has secured an Authority to Release Imported Goods (ATRIG) from the Bureau of Internal Revenue (BIR) confirms that the case is not covered by the protest mechanism under Section 2308 of the TCCP.³⁸

As to the CIR's contention that the CTA has no jurisdiction to determine the validity of DOE Certification dated December 20, 2002, the CTA EB held that following RA 1125, as amended by RA 9282 (CTA Law), the CTA has jurisdiction to determine the propriety of claims for tax credit and refund, including any issue necessary for the resolution of such claims, such as determining whether a DOE Certification is enough evidence for the

³⁴ *Id.* at 80-82.

³⁵ 107 Phil. 232 (1960) [Per J. Barrera].

³⁶ *Rollo* (G.R. No. 249407), pp. 82-83.

³⁷ Republic Act No. 1937, entitled "An Act to Revise and Codify the Tariff and Customs Laws of the Philippines" (June 22, 1957, codified on June 11, 1978 under PD 1464).

³⁸ *Rollo* (G.R. 249407), pp. 83-85.

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grant or non-grant of a refund. On this score, the CTA EB held that the said DOE Certification covers historical data, and the BIR Ruling No. 001-2003 was meant to address BIR Ruling No. 013-99 issued to PAL on January 29, 1999. Such certification was based on data from the years 2001 and 2002. As such, neither the DOE Certification nor BIR Ruling No. 001-2003 covers the period of May 2003 to December 2004, which is subject of APC's refund claim.³⁹

Finally, on the issue of whether aviation fuel was indeed locally available in reasonable quantity, quality or price, the CTA EB ruled in the negative. Petitioners claimed that from 2001 to 2010 there was higher supply than demand of petroleum products locally; however, this is only true if **imported petroleum** is included in the total of the local supply of petroleum products. For the purpose of determining whether petroleum products are "locally available," imported products should not be included as part of the total local supply. If the local supply were to include both local production and imports, there would never be a case when the aviation fuel available is insufficient to meet the demands of the domestic market.⁴⁰

In this regard, the CTA EB noted that, as testified in the Division proceedings by Glendalyn P. Dela Cruz (Dela Cruz), a Senior Research Specialist of the DOE, the Total Industry Petroleum Products Demand (Domestic and International Demand) will always be greater than local refinery production. Likewise, the subject importations of APC were supported by Certifications issued by the Air Transportation Office (ATO) which stated that the aviation fuel was not locally available in reasonable quantity, quality, and price. The CTA EB declared that the ATO has the power to issue such certifications following Section 35(q) of RA 9497,⁴¹ and Section 32 of RA 776.⁴² As such, the ATO Certification negates the CIR's contention that the DOE could best determine the local availability of aviation fuel.⁴³

Anent the issue on tax exemption, the CTA EB held that all the requisites for APC's tax exemption were met. The CTA EB explained that the use of the conjunctive "or" in the relevant clause of Section 13 of PD 1590, i.e., "the imported articles supplies or materials are not locally available in reasonable quantity, quality *or* price," connotes alternative, not cumulative, qualification. Thus, it was sufficient that APC was able to prove one qualification to avail of the exemption, i.e., that at the time of the subject importations, there was no locally available Jet A-1 fuel in reasonable quantity. Accordingly, the CTA EB held that APC is entitled to a refund or the issuance of a Tax Credit Certificate (TCC) in the amount of PHP

³⁹ *Id.* at 86-87.

⁴⁰ *Id.* at 88-92.

⁴¹ Entitled "An Act Creating the Civil Aviation Authority of the Philippines, Authorizing the Appropriation of Funds Therefor, and for other Purposes" dated March 04, 2008.

⁴² Entitled "The Civil Aeronautics Act of the Philippines" dated June 20, 1952.

⁴³ *Rollo* (G.R. 249407), pp. 88-92.

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235,613,134.47, representing excise taxes paid on importations for Jet A-1 fuel for the period of May 2003 to December 2004.⁴⁴

Undaunted, petitioners moved for reconsideration but were denied by the CTA EB in a Resolution⁴⁵ dated September 16, 2019. Hence, the Petition docketed as G.R. No. 249407.

The Facts of G.R. No. 250032 – PAL's Refund Claim

After the issuance of BIR Ruling No. 001-2003, the CIR, acting through the COC, assessed PAL for excise taxes on the latter's importations of Jet A-1 aviation fuel used for its domestic operations for the period covering August to October 2008.⁴⁶ For the said period, PAL made the following importations and corresponding payments under protest of the taxes assessed by the Collector of Customs of the Port of Subic, Olongapo City, and the Collector of Customs of the Port of Batangas, Batangas City, as evidenced by their Official Receipts (ORs):⁴⁷

Date of Importation	Date of Payment	Amount Paid	Official Receipt
August 8, 2008	September 1, 2008	PHP 59,315,119.86	Security Bank Corporation OR No. 100756
August 9, 2008	August 15, 2008	PHP 47,625,389.00	Equitable PCI Bank OR No. 252623C
August 23, 2008	September 18, 2008	PHP 66,154,529.00	Equitable PCI Bank OR No. 253098C
September 24, 2008	October 22, 2008	PHP 65,019,122.00	Banco de Oro Unibank, Inc. OR No. 1691366A
October 22, 2008	November 19, 2008	PHP 63,898,036.00	Equitable PCI Bank OR No. 248117C

PAL filed formal written protests for the refund of the foregoing taxes with the District Collector of Customs of the Port of Subic and the District Collector of Customs of the Port of Batangas, on the following dates:⁴⁸

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest with the COC
August 8, 2008	September 1, 2008	September 15, 2008
August 9, 2008	August 15, 2008	August 28, 2008
August 23, 2008	September 18, 2008	October 2, 2008
September 24, 2008	October 22, 2008	November 5, 2008

⁴⁴ *Id.* at 92–93.

⁴⁵ *Id.* at 113–116.

⁴⁶ *Rollo* (G.R. No. 250032), p. 418.

⁴⁷ *Id.*

⁴⁸ *Id.* at 418–419.

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October 22, 2008	November 19, 2008	December 3, 2008
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The COC failed to act on PAL's protests. Thus, to avoid the lapse of the two-year prescriptive period within which to file a refund claim under Section 204(C) of the NIRC, as amended, PAL was constrained to file a written claim for refund on November 18, 2009, for the excise taxes paid for all its importations with respondent CIR. Thereafter, to avoid the lapse of the 2-year period for judicial refund claims of erroneously collected taxes under Section 229 of the NIRC, PAL filed a Petition for Review before the CTA on August 17, 2010.⁴⁹

PAL argued, firstly, that the doctrine of exhaustion of administrative remedies is not applicable to this case, and the CTA has jurisdiction over its petition considering the imminence of the expiration of the 2-year prescriptive period.⁵⁰ According to PAL, the tax exemption under PD 1590 was a privilege granted to it as a public utility imbued with public interest, which privilege BIR Ruling No. 001-2003 arbitrarily removed without factual basis. Thus, PAL contended that said ruling is an unauthorized amendment of PD 1590 for having been issued without due process.⁵¹

Moreover, PAL alleged that the sole basis for BIR Ruling No. 001-2003, the DOE Certification dated December 20, 2002, was already declared null and void by the Regional Trial Court of Pasay City (RTC Pasay) on February 27, 2014 in Civil Case No. R-Psy-1 0-03889-CV. Even if this were not the case, PAL asserted that the said DOE Certification is contrary to the DOE's own data, which shows that there is no locally available supply of aviation fuel in reasonable quantity.⁵² Thus, since there was no locally available supply of aviation fuel in reasonable quantity, quality, and price, the requisites for PAL's tax exemption under PD 1590 were met.⁵³

Lastly, PAL argued that it is entitled to the refund or tax credit of PHP 302,012,195.86, representing excise taxes paid under protest corresponding to the importations of Jet A-1 fuel for its domestic operations for the period of August 2008 to October 2008, since it complied with the requirements for administrative claim for refund and filed the Petition for Review with the CTA within the 2-year reglementary period.⁵⁴

For his part, the CIR argued that PAL failed to prove that the PHP 302,012,195.86 it paid under protest to the COC on the five subject importations were properly documented. In this regard, the CIR highlighted

⁴⁹ *Id.* at 419.

⁵⁰ *Id.* at 433.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 434.

⁵⁴ *Id.*

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that the burden of proof is on the taxpayer to establish its right to a refund, and to establish that taxes were erroneously collected, as taxes are presumed to be collected in accordance with laws and regulations, and refund claims are strictly construed against the taxpayer.⁵⁵

The CIR further argued that PAL failed to exhaust all administrative remedies before filing its petition with the CTA.⁵⁶ The CIR pointed out that Section 3 of Revenue Memorandum Circular (RMC) No. 44-2004 provides that when a taxpayer receives an adverse ruling from the CIR, the taxpayer “may, within [30] days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative.”⁵⁷ PAL, however, slept on its right to seek review with the Secretary of Finance and allowed the 30 days to lapse.⁵⁸

Additionally, the CIR stressed that PAL should have first appealed the DOE Certification to the OP before filing its petition with the CTA, especially since it is asking the CTA to override the factual determination made by the Secretary of DOE.⁵⁹ Finally, the CIR asserted that the CIR’s interpretation of tax laws is entitled to great respect by the Courts and unless and until the Secretary of Finance reverses or modifies the ruling and regulations issued by the CIR, they shall be considered valid and with full force and effect.⁶⁰

For his part, the COC asserted that the third condition for tax exemption under Section 13 of PD 1590 is not present since there were available domestic supplies thereof in reasonable quantity, quality, and price.⁶¹ In this relation, the COC underscored that the CTA does not interfere with the sound discretion of specialized government agencies like the DOE;⁶² and in any case, the CTA is not the proper forum to question an administrative finding of the DOE that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality and price.⁶³

Further, the COC argued that there was no need for notice, hearing or publication for BIR Ruling No. 001-2003 to be valid since it merely clarified the tax exemption under PD 1590, in view of LOI No. 1483 issued by then President Ferdinand Marcos on October 11, 1985.⁶⁴ Stated differently, the COC asserted that it was LOI No. 1483 which created PAL’s tax burden, and

⁵⁵ *Id.* at 420.

⁵⁶ *Id.*

⁵⁷ *Id.* at 421.

⁵⁸ *Id.*

⁵⁹ *Id.* at 422.

⁶⁰ *Id.* at 422–423.

⁶¹ *Id.* at 424.

⁶² *Id.* at 425.

⁶³ *Id.*

⁶⁴ *Id.* at 426.

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the BIR Ruling No. 001-2003 merely reiterates the contents of such LOI.⁶⁵ In any case, the COC noted that the BIR Ruling No. 001-2003 had long become final since PAL failed to question it before the Secretary of Finance within 30 days of receipt thereof.⁶⁶

Finally, echoing the CIR, the COC asserted that it is incumbent upon the taxpayer—in this case PAL—to show that the taxes it paid were erroneously and/or illegally collected as the same are presumed to have been collected in accordance with law and therefore, not refundable.⁶⁷

The CTA Third Division's Ruling on PAL's Refund Claim

In a Decision⁶⁸ dated July 17, 2017, the CTA Third Division granted PAL's claim, and accordingly, ordered petitioners to refund or issue a tax credit certificate in favor of PAL in the amount of PHP 302,012,195.86, representing excise taxes paid for PAL's importations of Jet A-1 fuel for its domestic operations for the period of August 2008 to October 2008.⁶⁹

On the procedural issues, the CTA Third Division held that PAL's administrative and judicial claims were timely filed within the two-year period under the NIRC.⁷⁰ Furthermore, it ruled that the CTA has the jurisdiction to rule on the validity of a particular administrative rule or regulation as long as it is within its appellate jurisdiction under the CTA Law as it was necessary for the resolution of a tax controversy before the CTA.⁷¹

As to the substantive issues, the CTA Third Division held that PAL had sufficiently established the three conditions for tax exemption under Section 3 of PD 1590.

First, the CTA Third Division held that PAL was able to prove that its basic corporate income tax and VAT liabilities were paid by submitting its Annual Income Tax Return (AITR), filed on July 15, 2009, for the fiscal year (FY) ending on March 31, 2009, which shows that PAL made an overpayment of PHP 95,363,322.43. Likewise, PAL was able to submit its VAT returns for all four quarters of the said fiscal year.⁷²

Second, the CTA Third Division found that PAL was able to prove that the aviation fuel imported was actually used for transport operations by

⁶⁵ *Id.*

⁶⁶ *Id.* at 428.

⁶⁷ *Id.*

⁶⁸ *Id.* at 414–451.

⁶⁹ *Id.* at 451.

⁷⁰ *Id.* at 438.

⁷¹ *Id.* at 438–441.

⁷² *Id.* at 443–444.

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submitting the following documents: Bills of Ladings; Surveyor's Reports; Import Entry and Internal Revenue Declarations; and the ATRIG.⁷³

Finally, the CTA Third Division determined that Jet A-1 fuel is not locally available in reasonable quantity, quality, or price based on the Certifications of the Civil Aviation Authority of the Philippines (CAAP) (formerly ATO), dated September 2, 2008, August 26, 2008, October 3, 2008, and October 22, 2008, stating that the CAAP interposes no objection to the importations of Jet A-1 fuel which is not available in reasonable quantity, quality, and price, and is necessary for PAL's operations.⁷⁴

The CTA Third Division gave weight to the CAAP Certifications pursuant to Rule 130, Section 44 of the Rules of Court which states that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.⁷⁵

The CTA Third Division also ruled that importations must be excluded in determining the existence of locally available fuel; as such, for 2008, the demand for Jet A-1 fuel (8,850 Thousand Barrels or MB) exceeded the total local available supply of 6,050 MB.⁷⁶ Since the qualifications for exemption under Section 13(2) of PD 1590 is in the alternative, it is sufficient, that there was proof that there was no locally available Jet A-1 fuel in reasonable quantity.⁷⁷

In any case, the CTA Third Division found that PAL had also sufficiently proven that there was no locally available Jet A-1 fuel at a reasonable price, citing the conclusion of the Court-commissioned Independent Certified Public Accountant (ICPA) that the cost per liter of importation of aviation turbo jet fuel or Jet A-1 for the period of August to October 2008 is consistently lower than the cost of aviation turbo jet fuel or Jet A-1 if purchased locally from either Petron Corporation or Pilipinas Shell Petroleum Corporation.⁷⁸

Dissatisfied, the CIR and the COC separately moved for reconsideration, but were denied in a Resolution⁷⁹ dated November 20, 2017. Aggrieved, they appealed to the CTA EB.

⁷³ *Id.* at 444.

⁷⁴ *Id.* at 445.

⁷⁵ *Id.*

⁷⁶ *Id.* at 446-447.

⁷⁷ *Id.* at 447-448.

⁷⁸ *Id.* at 450.

⁷⁹ *Id.* at 586-588.

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The CTA *En Banc*'s Ruling on PAL's Refund Claim

In a Decision⁸⁰ dated May 10, 2019, the CTA EB upheld the CTA Third Division ruling.⁸¹ The CTA EB emphasized that it had the jurisdiction to review decisions of the CIR and the COC.⁸² Moreover, the CTA EB held that PAL committed no forum shopping since the protest before the COC and the refund claim before the CIR are two separate actions, and it is the latter which has jurisdiction over refund claims which are subject to a two-year prescriptive period under Sections 204(C) and 229 of the NIRC.⁸³

Finally, the CTA EB ruled that PAL was able to establish all the elements required for a refund under Section 13 of PD 1590 through preponderance of evidence. Thus, there is no reason to modify the CTA Third Division's Decision.⁸⁴

The COC and the CIR filed separate Motions for Reconsideration, which were denied in a Resolution⁸⁵ dated October 16, 2019. Hence, the present Petition docketed as G.R. Nos. 250032 and 250047.

The Issues Before the Court

The issues for the Court's resolution are:

- (1) Whether the CTA and the CIR had jurisdiction over APC and PAL's refund claims;
- (2) Whether APC and PAL committed forum shopping;
- (3) Whether the CTA correctly granted APC's Motion to Reopen the Case for further presentation of Evidence; and
- (4) Whether the requisites for APC and PAL's tax exemption under Section 13 of PD 1590 have been met.

The Arguments in G.R. No. 249407 (APC's Refund Claim)

Petitioners maintain that the CTA has no jurisdiction over APC's claims for refund, arguing that under Section 1708⁸⁶ of the TCCP, claims for

⁸⁰ *Id.* at 81–103.

⁸¹ *Id.* at 102.

⁸² *Id.* at 95–97.

⁸³ *Id.* at 94.

⁸⁴ *Id.* at 98–102.

⁸⁵ *Id.* at 105–109.

⁸⁶ **SECTION 1708. Claim for Refund of Duties and Taxes and Mode of Payment.** — All claims for refund of duties shall be made in writing and forwarded to the Collector to whom such duties are paid, who upon receipt of such claim, shall verify the same by the records of his Office, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct.

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refund of both duties and taxes relating to imported articles must be filed with the COC and not with the CIR. Petitioners state that this was even conceded by the CTA EB in its ruling, when it asserted that it is Section 1708 and not Section 2308⁸⁷ of the TCCP which should apply. Further, petitioners aver that under Section 131 of the NIRC, excise taxes on imported articles shall be paid by the owner or importer to customs officers.⁸⁸

Moreover, citing *Caltex (Philippines) Inc. vs. Commissioner of Internal Revenue*,⁸⁹ involving Caltex's claim for exemption from the special import tax under RA 1394⁹⁰ or the Special Import Tax Law, petitioners highlight that the Supreme Court has already settled that it is the BOC, and not the Bureau of Internal Revenue, which has jurisdiction over taxes on importations. In the absence of a decision or ruling of the BOC, petitioners claim that the CTA has no case to take cognizance of.⁹¹

Further, conceding that the BIR has jurisdiction, petitioners argue that under Section 228 of the NIRC, when the CIR or his or her duly authorized representative finds that proper taxes should be assessed, he/she shall first notify the taxpayer of the findings, and the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the CIR or his/her authorized representative shall issue an assessment against which the taxpayer may file a protest. If the CIR or his/her duly authorized representative fails to act on the protest within 180 days from submission of the required supporting documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.⁹²

In this case, petitioners point out that per the records, APC did not respond to BIR Ruling No. 001-2003. Further, although APC filed protests with the BOC, the company failed to appeal with the CTA within 30 days from the expiration of the 180-day period from submission of the supporting

If a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue.

⁸⁷ **SECTION 2308. Protest and Payment Upon Protest in Civil Matters.** — When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within 15 days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefore. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.

⁸⁸ *Rollo* (G.R. No. 249407), pp. 26–28.

⁸⁹ 121 Phil. 1390 (1965) [Per J. J.B.L., Reyes].

⁹⁰ Entitled "An Act to Impose a Special Import Tax on all goods, Articles or Products Imported or brought into the Philippines, and to Repeal Republic Acts Numbered Six Hundred and One, Eight Hundred and Fourteen, Eight Hundred and Seventy-One, Eleven Hundred and Seventy-Five, Eleven Hundred and Ninety-Seven and Thirteen Hundred and Seventy-Five" dated August 29, 1955.

⁹¹ *Rollo* (G.R. No. 249407), pp. 29–32.

⁹² *Id.* at 36–40.

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documents. Instead, APC resorted to intentional forum shopping by filing identical claims for refund with the BIR raising the same issues and arguments and praying for the same reliefs in its earlier protests and claims for refund filed with the Collector of Customs.⁹³

Petitioners further reiterate that Section 2308 of the TCCP applies in the instant case since it does not state that the imported articles must be in customs custody for the administrative mechanism to apply and that there is no separate rule governing the protest of assessed taxes or duties of imported articles that have been released from Customs' territory except Section 2308 of the TCCP. Accordingly, since Section 2308 applies and APC failed to pay the fees and to affix the stamps required therein, the COC's assessment had become final and immutable.⁹⁴

Finally, petitioners argue that the CTA erred in allowing APC to augment its evidence. The CTA's Resolution dated January 21, 2015 denying APC's Motion to Reopen Trial had become final and executory. Thus, the Motion to Reopen the Case for further presentation of evidence filed after the CTA in Division rendered its Decision dated October 2, 2015 should not have been entertained. In doing so, petitioners aver that the CTA unduly favored APC.⁹⁵

On the other hand, APC argues in favor of the CTA's jurisdiction, and asserts that the provisions of the TCCP do not apply in the instant case and that the COC was acting only pursuant to its delegated authority from the CIR, under the NIRC. In this regard, APC posits that the CTA ruling in cases involving PD 66⁹⁶ must apply by analogy to this case. APC explained that in those CTA cases, when the refund claimed is pursuant to PD 66, it is PD 66 which is applied, not the TCCP. Thus, APC conclude that the prescriptive periods and procedural requirements provided under the TCCP are also inapplicable to cases involving PD 66. Here, APC contends that since it is claiming a refund pursuant to PD 1590, it is PD 1590, and not the TCCP which should apply.⁹⁷

Moreover, APC argues that since the present controversy is a refund claim under Sections 204(C) and 229 of the NIRC, and not an appeal of a deficiency tax assessment under Sections 2308 and 3301 of the TCCP, the rules on refund under the NIRC, and not protests under the TCCP, applies.⁹⁸ Since the periods under the TCCP do not apply, APC maintains that its claim

⁹³ *Id.*

⁹⁴ *Id.* at 42-45.

⁹⁵ *Id.* at 46-47.

⁹⁶ Entitled "Creating the Export Processing Zone Authority and Revising Republic Act No. 5490" dated November 20, 1972.

⁹⁷ *Rollo* (G.R. No. 249407), pp. 396-397.

⁹⁸ *Id.* at 398-401.

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for refund was filed on time, and well within the two-year prescriptive period under the NIRC.⁹⁹

Anent the procedural issues, APC argues that forum shopping necessitates the filing of multiple judicial remedies. Here, it filed only one judicial remedy. Moreover, APC highlights that neither the elements of *litis pendentia* nor *res judicata* are present in this case. Finally, APC insists that the CTA correctly allowed it to adduce additional evidence since the same is allowed even after promulgation, provided the same is done before finality of a judgment. Admission of additional evidence is addressed to the sound discretion of the court, which the CTA properly allowed in this case in the interest of justice.¹⁰⁰

The Arguments in G.R. Nos. 250032 & 250047 (PAL's Refund Claim)

Echoing their arguments in their petition against APC, petitioners insist that neither the BIR nor the CTA has jurisdiction over PAL's refund claim. Excise tax on imported articles is a "customs law" which, under Section 131 (a) of the NIRC and the TCCP, is under the COC or BOC's jurisdiction, not the CIR/BIR's.¹⁰¹ Petitioners argue that PAL acknowledged the COC's jurisdiction when it availed of the protest mechanism under the TCCP. Having done so, PAL is barred from filing another action involving the same assessment and collection, as the TCCP mandates that a protest is an "exclusive remedy."¹⁰²

In this regard, petitioners claim that the correct procedure would have been for PAL to await the Collector of Customs' decision, which, if adverse it could elevate to the COC for review. If the COC upheld the Collector of Customs' decision, it is only then that PAL can appeal to the CTA.¹⁰³ Since the COC had not yet made its decision, the CTA had no appellate jurisdiction rendering the proceedings before the CTA in this case void.¹⁰⁴

Petitioners additionally assert that PAL's filing of a claim for refund with the CIR, while its protest with the BOC was still pending, is forum shopping since it created the possibility of the Collector of Customs and the CIR promulgating conflicting decisions. Under the "Twin Dismissal Rule" in relation to forum shopping, both PAL's protest with the BOC/Collector of Customs and its refund claim before the CIR and CTA must be dismissed.¹⁰⁵

⁹⁹ *Id.* at 394–404.

¹⁰⁰ *Id.* at 405–410.

¹⁰¹ *Rollo* (G.R. No. 250032), pp. 52–57.

¹⁰² *Id.* at 57.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 59.

¹⁰⁵ *Id.* at 58–59.

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Further, petitioners contend that the CTA cannot review BIR Ruling No. 001-2003 as the same has become final for PAL's failure to appeal the same before the CIR within 30 days from receipt thereof, in accordance with Section 3 of RMC No. 44-2001. Thus, the CTA Third Division should have dismissed PAL's petition for lack of jurisdiction.¹⁰⁶

Even assuming the CTA has jurisdiction to hear PAL's Petition for Review, petitioners argue that PAL failed to show it is entitled to the refund sought.¹⁰⁷

First, there is no proof that PAL's imported aviation fuel was actually used in its domestic operations as the evidence presented by PAL shows only that the fuel was *intended* for its domestic operations, not that it was *actually used* for the said purpose.¹⁰⁸ The testimony of PAL's senior officials is also unreliable since it is biased in favor of PAL and their testimonies were not formally offered to prove how the fuel was used.¹⁰⁹

Second, aviation fuel was locally available in reasonable quantity and quality as certified by the DOE. Petitioners aver that the DOE, and not CAAP, is in the best position to determine the domestic availability of fuel, and thus, its Certification that there was enough aviation fuel in the country for domestic airlines must be given great respect.¹¹⁰ Moreover, imported fuel must be included in the term "locally available" because Section 13 of PD 1590 does not distinguish between the source of the goods.¹¹¹

Finally, aviation fuel was locally available at a reasonable price. Petitioners assert that the alleged aviation fuel prices of Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) were not sufficiently proven. And assuming said prices of the local supply of fuels are higher than the prices of imports, this does not necessarily mean the price of the local supply is unreasonable.¹¹²

For its part, PAL maintains that petitioners' arguments have no merit.¹¹³ PAL argues that the CTA has jurisdiction over the case since it involves the refund of excise tax, which is an internal revenue tax.¹¹⁴ PAL asserts that the COC is a mere collecting agent in which has no jurisdiction over refund claims of national internal revenue taxes.¹¹⁵ PAL, citing *Nestle Philippines, Inc. v.*

¹⁰⁶ *Id.* at 60.

¹⁰⁷ *Id.* at 61.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 61-62.

¹¹⁰ *Id.* at 62, 66-67.

¹¹¹ *Id.* at 63-66.

¹¹² *Id.* at 68-69.

¹¹³ *Id.* at 807.

¹¹⁴ *Id.* at 808-810.

¹¹⁵ *Id.* at 810.

Court of Appeals,¹¹⁶ posits that the failure of the COC to act on a written protest should not prejudice the rights of the party adversely affected by such inaction,¹¹⁷ and cannot preclude the pursuit of a separate refund claim.¹¹⁸

Additionally, PAL asserts that the CTA also has jurisdiction to declare BIR Ruling No. 001-2003 invalid since the same was issued by the CIR in implementation of the provisions of the NIRC over which the CTA has jurisdiction. At any rate, even if the BIR Rulings should be appealed to the Secretary of Finance, the doctrine of exhaustion of administrative remedies is not without exception, such as when there is an urgent need for judicial intervention, as in this case.¹¹⁹

Further, PAL insists that ATRIGs do not simply prove that the imported aviation fuel is merely intended to be used locally. PAL argues that the CIR conducts verifications and other processes before issuing an ATRIG and makes determinations on the reliability of an importer's representations. When issued, ATRIGs state that the aviation fuel "*will be used exclusively for domestic flight operation*," or "*will be used exclusively for daily domestic flight operation*."¹²⁰ Following Section 3(m) of Rule 131 of the Rules of Court, PAL argues that there is a disputable presumption that the CIR and BIR have regularly performed their official duties in relation to the ATRIGs presented by PAL. Thus, as petitioners failed to present proof controverting the contents of the ATRIGs, the CTA correctly gave credence to the same.¹²¹

Anent proof of lack of locally available aviation fuel at a reasonable quantity, PAL argues that DOE's Certification has no probative value.¹²² According to the DOE's own Supply Demand Balance dated April 14, 2011 the demand for petroleum products from 1998 to the first quarter of 2010 far exceeded what local refineries were able to produce within this period. This inadequacy is more than sufficient to justify PAL's tax exemption.¹²³

Finally, PAL avers that petitioners' interpretation of "locally available supply" cannot be adhered to as this would result in airline companies' inability to avail of the tax exemption under Section 13 of PD 1590 by reason of insufficient quantity of locally available airline fuel.¹²⁴ In this respect, PAL highlights the CTA's factual findings, based on the evidence presented and the Independent Certified Public Accountant report, that there was no locally available aviation fuel in reasonable quantity or price.¹²⁵

¹¹⁶ 413 Phil. 106 (2001) [Per J. De Leon, Jr., Second Division].

¹¹⁷ *Rollo* (G.R. No. 250032 & 250047), p. 811.

¹¹⁸ *Id.* at 812.

¹¹⁹ *Id.* at 813-814.

¹²⁰ *Id.* at 815.

¹²¹ *Id.* at 816.

¹²² *Id.* at 817.

¹²³ *Id.*

¹²⁴ *Id.* at 818.

¹²⁵ *Id.* at 819.

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The Court's Ruling

The Petitions are without merit.

The CIR/BIR has jurisdiction over claims for refund of excise taxes on imported goods; thus, the instant claims fall within the jurisdiction of the CTA as defined under Section 7 of RA 9282.

Petitioners herein assail the CTA's jurisdiction, claiming, *firstly*, that the BIR has no power to decide on claims for refund of excise taxes on importation; and *secondly*, that, since the COC has yet to decide on APC's and PAL's protests, there is no decision to be appealed.

To bolster their argument that the BIR is bereft of authority to decide on claims of refund for excise taxes on importation, petitioners cite *Caltex Philippines* where the Court held that it is the BOC that implements RA 1394; hence, it is the BOC, and not the BIR, that has jurisdiction imposed under said law. As petitioners posit, since RA 1394 is a law administered by the BOC, then it is also the BOC who is charged with the collection and refund of such special import taxes.

Petitioners' reliance on *Caltex Philippines* is misplaced.

Caltex Philippines specifically involved "special import taxes" or taxes on "all goods, articles or products imported or brought into the Philippines, irrespective of source," during the particular calendar years enumerated in the law (i.e., 1956–1965).¹²⁶ In contrast, what is involved in this case are excise taxes or taxes on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to *things imported as well as services* performed in the Philippines," and is not limited to a specific period.¹²⁷ The scope of excise taxes is, thus, broader than that of special import taxes which was intended to apply narrowly to goods imported on specific calendar years.

Special import taxes and excise taxes are likewise governed by different laws, and thus implemented by different agencies. The governing law for special import taxes was RA 1394, implemented by the COC, while the governing law for excise taxes on importations, as they currently exist, is the

¹²⁶ Republic Act No. 1394 (1955), sec. 1.

¹²⁷ Republic Act No. 8424 (1997), sec. 129, The National Internal Revenue Code of 1997.

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NIRC, implemented by the CIR.¹²⁸ Section 21 of the NIRC expressly includes excise taxes in its enumeration of national internal revenue taxes which are governed exclusively by the NIRC, to wit:

Section 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes:

- (a) Income tax;
- (b) Estate and donor's taxes;
- (c) Value-added tax;
- (d) Other percentage taxes;
- (e) *Excise taxes*;
- (f) Documentary stamp taxes; and
- (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (Emphasis supplied)¹²⁹

Additionally, it is Section 131¹³⁰ (Payment of Excise Taxes on Imported Articles) of the NIRC which provides for the rules on the imposition of excise taxes on importation.

¹²⁸ See *Chevron Philippines, Inc., v. Commissioner of Internal Revenue*, 768 Phil. 37 (2015) [Per C. J. Bersamin, *En Banc*]; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, 686 Phil. 944 (2012) [Per J. Villarama, Jr., First Division].

¹²⁹ Republic Act No. 11976 (2024), sec. 21 of the NIRC (otherwise known as the "Ease of Paying Taxes Act," Dated: January 5, 2024) reiterates this enumeration verbatim.

¹³⁰ Section 131 of the NIRC Reads:

Section 131. Payment of Excise Taxes on Importer Articles. —

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entitles, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon: Provided, however, That this shall not apply to cigars and cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, crated under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That if such articles directly imported by a government-owned and operated duty-free shop like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That is such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein

Given the foregoing, special import taxes and excise taxes are separate and distinct taxes. Although there are similarities between the two types of taxes, these similarities do not result in equivalence. Hence, the rules applicable to special import taxes, such as those provided in *Caltex Philippines*, will not apply to excise taxes.

Even assuming the two taxes are equivalent, *Caltex Philippines* was decided in 1965, a full three decades prior to the effectivity of the NIRC. Clearly, the Court did not and could not have taken into account the provisions of the NIRC in deciding that case where it declared that it is the BOC which has jurisdiction over claims for refund of the special import taxes. In other words, at the time that *Caltex Philippines* was decided, the powers of the COC had not been limited in the way that it would be under the NIRC. Unlike *Caltex Philippines*, however, the present controversies occurred during the effectivity of the NIRC.

Under the NIRC, on the matter of national internal revenue taxes, the COC and his subordinates are mere collecting agents of the CIR. Section 12 of the NIRC explicitly confines the powers of the COC and his subordinates to the **collection** of national internal revenue taxes on imported goods, viz.:

Section 12. Agents and Deputies for Collection of National Internal Revenue Taxes. — *The following are hereby constituted agents of the Commissioner:*

- (a) *The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;*

.... (Emphasis and italics supplied)

Similarly, Section 131 of the NIRC requires only the **payment** of excise taxes on imported articles to the customs officers prior to the release of such articles from the customshouse, viz.:

Section 131. Payment of Excise Taxes on Imported Articles. —

and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles. - Unless otherwise specified imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.

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(A) Persons Liable. — Excise taxes on imported articles *shall be paid* by the owner or importer *to the Customs Officers*, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. . . . (Emphasis and italics supplied)

It is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others.¹³¹ The Court cannot engraft upon a law something that has been omitted, to do otherwise would be to transcend into the area of judicial legislation forbidden by the tripartite division of powers among the three departments of government.¹³² Since the foregoing provisions of the NIRC clearly limit the powers of the COC to *collecting payments* of national internal revenue taxes on importation, the Court cannot extend the COC's powers by implication as to include matters of refunds.

Moreover, it is also basic in statutory construction that clauses, phrases, sections, and provisions of a law should be read as a whole, never as disjointed or truncated parts, for a law is enacted as a single entity and not by installment of paragraphs here and subsections there.¹³³ Thus, in determining the scope of the powers of the COC, Section 12 and Section 131 of the NIRC must be read with Section 4 of the NIRC, which expressly confers the administration and interpretation of its provisions *exclusively* to the CIR, including the power to decide claims for refund, to wit:

Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - *The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner*, subject to review by the Secretary of Finance.

The power to decide disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue *is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals*. (Emphasis supplied)

Section 204 of the NIRC, likewise states that it is the *CIR* who can credit or refund erroneously paid taxes:

Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —The **Commissioner may**—

....

¹³¹ *Centeno v. Hon. Villalon-Pornillos*, 306 Phil. 218 (1994) [Per J. Regalado, Second Division].

¹³² *National Transmission Corporation v. Commission on Audit*, 904 Phil. 2, 1078 (2021) [Per J. M. Lopez, *En Banc*].

¹³³ *Samar II Electric Cooperative, Inc. v. Quijano*, 550 Phil. 523, 532–533 (2007) [Per J. Austria-Martinez, Third Division].

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C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority**, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

Nowhere in the NIRC is the COC conferred the power to decide on refund claims of national internal revenue taxes, regardless of whether they are imposed on importations. To reiterate, excise taxes are among the internal revenue taxes governed by the NIRC, as expressly provided in Section 21 thereof. This includes excise taxes on importations, as is also expressly provided for in Section 131 of the NIRC. Thus, the NIRC's characterization of the COC's powers vis-à-vis excise taxes (and all internal revenue taxes) is controlling.

Certainly, the Court recognizes that under Section 1708 of the TCCP, it would initially appear that the COC is vested with the authority to decide claims for refund of taxes on importation, as an incident to its power to decide on the refund of customs duties, viz:

SEC. 1708. Claim for Refund of Duties and Taxes and Mode of Payment. — All claims for refund of *duties* shall be made in writing and forwarded to the Collector to whom such duties are paid, who upon receipt of such claim, shall *verify the same* by the records of his Office, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall *cause the same to be paid if found correct*.

If [as] a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue. (Emphasis and italics supplied)

Nonetheless, a more circumspect reading of Section 1708 reveals that the COC's authority and jurisdiction under the TCCP is limited to deciding claims for refund of *duties* under the first paragraph thereof. With regard to taxes, paragraph (par.) 2 of Section 1708 provides only that the COC may cause *taxes* to be paid, refunded, or credited to the importer-taxpayer, subject to the following requirements: (a) the refund of customs duties would necessarily result in the refund of internal revenue taxes; and (b) the refund of said internal revenue taxes must be done with advice to the CIR. The second

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condition acknowledges the primacy of the CIR on matters relating to national internal revenue taxes.

Given the foregoing, the only type of refund claim which may be filed with the BOC under Section 1708 of the TCCP is a claim for the refund of *duties*. However, if the decision of the COC on such refund claim necessarily results in the need to refund not just customs duties but also internal revenue taxes, the COC may cause the payment, refund or credit of both duties and taxes with advice to the CIR. To stress however, the error in the computation of taxes *must* have been found in the course of the proceedings of a refund claim for duties, otherwise, the COC cannot cause the refund or credit of taxes.

The COC's ability to cause the refund of national internal revenue taxes under the TCCP is narrowly limited to the circumstance provided in Section 1708, par. 2 of the said law. In other words, *the general rule is that the COC does not have the power to cause the refund or credit of internal revenue taxes, and par. 2 of Section 1708 of the TCCP provides for the exception.*

In any case, even assuming Section 1708 of the TCCP did confer on the COC the authority to decide tax refund claims, it bears reiterating that *it is the NIRC and not the TCCP which is the governing law for national internal revenue taxes*. Therefore, the NIRC's delineation of the CIR and COC's jurisdiction and authority over administrative proceedings for deficiency assessments or refunds of national internal revenue taxes, shall prevail over the TCCP's. As discussed, the COC's power under the NIRC is limited to collection.

Notably, the CTA Law also does not include claims for refund of taxes on importations among those COC decisions appealable to the CTA, in contrast with decisions of the CIR on the refund of internal revenue taxes which are appealable to the CTA, to wit:

SEC. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

.....

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation

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thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

Also significant is the reiteration of the principal-agent relationship between the CIR and the COC with respect to national internal revenue taxes under RA 10863¹³⁴ or the Customs Modernization and Tariff Act (CMTA), which replaced the TCCP, viz.:

SECTION 913. Claims for Refund. — All claims and application for refund of duties and taxes shall be made in writing and filed with the Bureau within 12 months from the date of payment of duties and taxes.

If, as a result of the refund of duties, a corresponding refund of internal revenue taxes on the same importation becomes due, the Bureau shall cause the refund of internal revenue taxes in favor of the importer *after issuance of a certification from the Commissioner of Internal Revenue*, when applicable.

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Notwithstanding the provisions in the preceding paragraphs, the filing of claims for refund of national internal revenue taxes shall be governed by the provisions provided under the NIRC of 1997, as amended.
(Emphases and italics supplied)

The foregoing provision of the CMTA clarifies the legislative intent under the NIRC tax regime to lodge with the CIR exclusive jurisdiction over claims for refund of national internal revenue taxes, with the COC acting as mere agent under specified circumstances by facilitating the refund after the CIR's certification. In fact, Section 913 of the CMTA is clear that in so far as refund procedures for national internal revenue taxes are concerned, it is the NIRC, and not customs laws, which shall govern. Notably, the COC also acknowledged the exclusive jurisdiction of the CIR over claims for refund in the BOC's "Guidelines on Refund and Tax Credit,"¹³⁵ Section 3.6 of which states:

3.6. If the claim is for refund of purely internal revenue taxes only, such as Value Added Tax (VAT), Excise Tax, etc., the application *must be filed by the claimant with the BIR*. In case the claimant erroneously filed an application for refund of purely internal revenue taxes with the Bureau, the ODC shall immediately inform the claimant to submit the application to the BIR and decline the processing of the said erroneously filed application on account of improper venue. (Emphasis and Italics Supplied)

Thus, in the tax regime under the NIRC under both the TCCP and the CMTA, the CIR has exclusive jurisdiction to decide claims for refund of internal revenue taxes, including internal revenue taxes on importations.

¹³⁴ Entitled "An Act Modernizing the Customs and Tariff Administration" dated May 30, 2016.

¹³⁵ Customs Memorandum Order (CMO) No. 25-2020, dated September 24, 2020.

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Accordingly, since the BIR has jurisdiction over the claims for refund, so too does the CTA. When a claim for refund of excise taxes on importation is filed with the BIR and the CIR fails to act on the claim, the CTA has jurisdiction pursuant to Section 7(a)(2) of RA 9282, to wit:

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

....

2. *Inaction by the Commissioner of Internal Revenue in cases involving* disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis and italics supplied)

This conclusion holds true regardless of the involvement of a DOE Certification or BIR Ruling, as the interpretation of such issuances is necessary to determine the issue of whether APC and PAL are entitled to a tax refund. In several instances, this Court has ruled that the CTA may take cognizance of matters or questions incidental to, or growing out of, the main action. Such authority is in aid of its jurisdiction over the principal matter.¹³⁶ In this relation, the Court has explained:

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess

¹³⁶ *City of Manila v. Grecia-Cuerdo*, 726 Phil. 9, 26–27 (2014) [Per J. Peralta, *En Banc*]; *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, 883 Phil. 15, 32–33 (2020) [Per J. Leonen, Third Division]; *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, 898 Phil. 2, 252–253 (2021) [Per J. Perlas-Bernabe, Second Division].

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them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.¹³⁷

The Court emphasized that “the grant of appellate jurisdiction to the Court of Tax Appeals includes the power necessary to exercise it effectively,”¹³⁸ and the CTA has the “power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates.”¹³⁹ Thus, the CTA can rule “not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.”¹⁴⁰ This rule applies equally to BIR Rulings which form the basis of a deficiency assessment, as in this case.

However, as DOE issuances, unlike BIR issuances, are not appealable to the CTA under the CTA Law, the CTA cannot rule on the *validity* of DOE issuances. Nevertheless, the CTA can still rule on the *probative value* of the information within DOE Certifications, when it is necessary to do so in the exercise of its jurisdiction. Thus, since in this case, determining the probative value of the DOE Certification dated December 20, 2002 is necessary to determine whether the elements for APC and PAL’s tax exemption under their charters has been met, it is within the CTA’s jurisdiction to rule on this matter.

The TCCP does not apply to protests of internal revenue taxes. Thus, neither APC nor PAL committed forum-shopping.

Section 602(a) of the TCCP limits the BOC’s authority to assess as follows: “assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws.” In other words, under the TCCP, the BOC’s power to assess is limited to customs duties and other dues, fees, charges, and fines imposed under the TCCP.

However, pursuant to its delegated authority to collect under Section 12 of the NIRC, the BOC may assess or calculate the amount of internal revenue taxes to be paid *before* the imported goods are cleared or released

¹³⁷ *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, 883 Phil. 15, 32–33 (2020) [Per J. Leonen, Third Division], citing *City of Manila v. Grecia-Cuerdo*, 726 Phil. 9, 26–27 (2014) [Per J. Peralta, *En Banc*].

¹³⁸ *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, 883 Phil. 15, 33–34 (2020) [Per J. Leonen, Third Division].

¹³⁹ *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, 883 Phil. 15, 33 (2020) [Per J. Leonen, Third Division], citing *City of Manila v. Grecia-Cuerdo*, 726 Phil. 9, 27–28 (2014) [Per CJ Peralta, *En Banc*].

¹⁴⁰ *The Philippine American Life and General Insurance Company v. The Secretary of Finance*, 747 Phil. 811, 831 (2014) [Per J. Velasco, Third Division].

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from customs custody. This is expressly provided for in Section 131 of the NIRC which states that excise taxes on imported articles “shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and *before the release of such articles from the customs house.*” This pre-clearance power to assess facilitates the COC’s duties as the CIR’s collecting agent. Once the goods have been cleared and have been removed from customs custody, the COC’s role as collecting agent ends, and any post-clearance audit to be conducted by the BOC must be limited to customs duties and should not include assessments of internal revenue taxes.

Thus, under the TCCP, in relation to Section 131 of the NIRC, *post-clearance audits of national internal revenue taxes are within the exclusive jurisdiction of the BIR.* Parenthetically, it bears mentioning that not all excise taxes on importation are paid through or collected by the BOC, as in fact, excise taxes paid through the purchase of internal revenue stamps from the BIR are directly paid through or collected by the latter.¹⁴¹ In the instant case, the determination of tax liability was conducted *before* clearance of the imported goods. Thus, the BOC properly issued the assessment.

While the COC has the power to perform a pre-clearance assessment of the taxes due on an importation, pursuant to its power to collect, the COC does not have the jurisdiction to decide a protest questioning their pre-clearance assessment of taxes. To stress, the authority delegated to the COC under Section 12 of the NIRC covers only *collection*. To decide on a protest on import taxes after an importation has been cleared would be to perform a post-clearance audit, which, as discussed, is not within the COC’s power under the TCCP as amended by the NIRC. The power to decide disputed assessments of taxes is vested exclusively with the CIR, subject to the exclusive appellate jurisdiction of the CTA.¹⁴² In other words, under the NIRC, protests on assessments of internal revenue taxes are expressly within the BIR’s exclusive jurisdiction.

On this score, it bears clarifying the NIRC amended the Section 2308 of the TCCP, which stated:

SECTION 2308. Protest and Payment Upon Protest in Civil Matters. — When *a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined*, except the fixing of fines in seizure cases, *the party adversely affected may protest such ruling or decision* by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within 15 days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefore. No protest shall

¹⁴¹ See Bureau of Internal Revenue Regulation No. 18-2021 dated September 10, 2021.

¹⁴² National Internal Revenue Code of 1997, secs. 4 and 228.

be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301. (Emphasis and Italics Supplied)

While Section 2308 of the TCCP included assessment of taxes in the definition of “protestable” cases, the same must be read together with the provisions of the NIRC—a subsequent law governing national internal revenue taxes. Section 291 of the NIRC states that “[a]ll laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.” Thus, with the enactment of the NIRC, Sections 4 and 228¹⁴³ thereof modified the TCCP such that a decision/ruling on internal revenue tax liability must be deemed to have been removed from the definition of what is “protestable” under Section 2308 of the TCCP. All told, *in the tax regime under the TCCP and the NIRC, protests of internal revenue taxes are within the exclusive jurisdiction of the CIR.*

The foregoing, however, shall be without prejudice to the provisions of the CMTA, which now allow the BOC to decide on protests of national internal revenue tax assessments which were made: (a) prior to the clearance of imported goods¹⁴⁴; and (b) pursuant to the conduct of a post clearance audit of records under Title X of the CMTA.¹⁴⁵ Nevertheless, it is clear that during the period after the effectivity of the NIRC in 1998, but before the effectivity of the CMTA in 2016, the venue for protests of assessments of *all* internal revenue taxes was exclusively with the BIR.

Accordingly, the Court disagrees with the COC’s position that it is included among the “authorized representatives” under Section 228 of the NIRC to conduct assessments and decide on protests thereon. To reiterate, clauses, phrases, sections, and provisions of a law should be read as a whole. Thus, Section 228 must be read in conjunction with Section 13¹⁴⁶ and Section

¹⁴³ Section 228. *Protesting of Assessment.* — When the *Commissioner or his duly authorized representative* finds that *proper taxes should be assessed*, he shall first notify the taxpayer of his findings

.....
Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the *Commissioner or his duly authorized representative* shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or from the lapse of 180-day period; otherwise, the decision shall become final, executory and demandable.

¹⁴⁴ Republic Act. No. 10863 (2016), sec. 425 in relation to sec. 430 and sec. 1106 of the CMTA.

¹⁴⁵ Republic Act. No. 10863 (2016), sec. 1132 in relation to sec. 1000 and sec. 1106 of the CMTA.

¹⁴⁶ Section 13. *Authority of a Revenue Offices.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue

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4 of the NIRC which vests the authority on the BIR Revenue Regional Directors and Revenue Officers, pursuant to a Letter of Authority to conduct assessments and administer the processes in relation thereto and thereafter, to the CIR to decide on the disputed assessments. Nowhere in the NIRC is there any indication that the authority to decide on disputed assessments of internal revenue taxes has been delegated to the COC.¹⁴⁷

Thus, applying the foregoing rule in this case, since the subject importations were made after the effectivity of the NIRC, but before the effectivity of the CMTA, the authority to decide the disputed assessment is wholly vested in the CIR.

In this connection, while it is true that both APC and PAL first filed a written protest before the COC before proceeding with filing its administrative claims for refund before the CIR and eventual judicial claims for refund before the CTA, it cannot be reasonably concluded that APC and PAL committed forum shopping. It bears stressing that there is forum shopping when the following elements are established: (a) identity of the parties or at least such parties who represent the same interests in both actions; (b) identity of the rights asserted and the relief prayed for, such relief being founded on the same circumstances; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, *amount to res judicata* in the action under consideration, said requisites likewise constitutive of the elements of *litis pendentia*.¹⁴⁸ Anent the third element, it is settled that *res judicata* exists only when “the decision [has] been rendered *by a court having jurisdiction over the subject matter*.”¹⁴⁹ Further, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings and not to the exercise of administrative powers or to legislative, executive or ministerial determination.¹⁵⁰

Here, even if APC and PAL: (a) filed their written protests before the COC before they filed their administrative claims for refund before the CIR and their judicial claims for refund before the CTA; and (b) the subject matter of the written protests and the administrative and judicial claims for refund involve the same excise taxes paid, the fact remains that the COC does not

Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

¹⁴⁷ This is further supported by Revenue Regulations No. (RR) 12-99, as amended. Under RR 12-99, it is the BIR Revenue Officer who reinvestigates pursuant to a protest and he/she is also the one who prepares a report on the protest. Under the same regulation, it is the CIR's denial of a protest which initiates the 30 day period for appeal to the CTA under Section 228.

¹⁴⁸ *London v. Baguio Country Club Corp.*, 439 Phil. 487, 491 (2002) [Per J. Vitug, First Division]; *Heirs of Mampo v. Morada*, 888 Phil. 583, 598 (2020) [Per J. Caguioa, First Division]

¹⁴⁹ *Lee v. Lui Man Chong*, 759 Phil. 531, 538 (2015) [Per J. Mendoza, Second Division]; *Philippine National Bank v. Daradar*, 905 Phil. 622, 636 (2021) [J. Hernando, Third Division].

¹⁵⁰ *A.G. Development Corp. v. Court of Appeals*, 346 Phil. 136 (1997) [Per J. Romero, Third Division].

have jurisdiction to rule on the same for reasons thoroughly discussed above. Hence, the third element of forum shopping is absent in both APC's and PAL's cases.

APC and PAL filed their claims for refund within the period prescribed by the NIRC.

Petitioners argue that since APC and PAL failed to file a protest within the proper period under Section 228 of the NIRC, it is barred from filing a claim for refund as the assessment became final, executory, and demandable.

The Court disagrees.

The periods for filing a claim for refund is governed by Section 229 of the NIRC, not Section 228 thereof. Section 228¹⁵¹ concerns deficiency tax assessments and the protest or appeal thereof. There is no mention of the remedy of refund in Section 228. It is Section 229 which provides the rules for the refund of erroneously or illegally collected taxes, to wit:

Section 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been *erroneously or illegally assessed or collected*, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of *any sum alleged to have been excessively or in any manner wrongfully collected*, until a *claim for refund or credit has been duly filed with the Commissioner*; but *such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.*

In any case, *no such suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty* regardless of any supervening cause that may arise after payment: Provided, however, That *the Commissioner may, even without a written claim*

¹⁵¹ Section 228. *Protesting of Assessment.* — When the *Commissioner or his duly authorized representative* finds that *proper taxes should be assessed*, he shall first notify the taxpayer of his findings

.....
Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the *Commissioner or his duly authorized representative* shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or from the lapse of 180-day period; otherwise, the decision shall become final, executory and demandable.

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therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis and italics supplied)

Under Section 229, a taxpayer who has paid taxes by virtue of an erroneous or illegal assessment, may still file a claim for refund with the CIR whether or not they have paid under protest; provided, however, that such claim is filed within two years from the date of payment of such tax. Section 229 does not require a prior protest of the erroneous assessment. Hence, the remedy of protest and refund are distinct, and a taxpayer may, instead of filing a written protest, opt to pay the tax and then to seek a refund thereof within the two-year prescriptive period. As long as such claim for refund is filed with the CIR within two years from payment, as in APC's and PAL's case, it is valid under the NIRC.

The CTA Second Division erred in granting APC's Motion to Reopen the Case for further presentation of Evidence. Nevertheless, the CTA 2nd Division correctly granted APC's Motion for Reconsideration of its October 2, 2015 Decision.

Petitioners argue that the finality of the CTA Second Division's Resolution¹⁵² dated January 21, 2015, dismissing APC's Motion for Reconsideration with Motion to Reopen Trial and/or for Leave of Court to File Supplemental Memorandum (filed before the promulgation of the Decision¹⁵³ dated October 2, 2015 of the CTA in Division), should have prevented the CTA from taking cognizance of the Motion to Reopen Case for further presentation of Evidence.

Senior Associate Justice Marvic M.V.F. Leonen raised during the deliberations of this case that APC's Motion to Reopen the Case for further presentation of Evidence is in the nature of a motion for new trial under Rule 15, Section 5 of the Revised Rules of the Court of Tax Appeals. Under the said rule, such motion may only be granted on the ground of newly discovered evidence or fraud, accident, mistake or excusable negligence. In this case, APC failed to establish either of these grounds as it filed its motion on the basis of *additional* and not *newly discovered* evidence. Thus, the CTA Division should have denied the motion to reopen the case.

¹⁵² Referred to as Annex K in the petition in G.R. No. 249407, but was not attached. Annex K consists of the Decision dated October 2, 2015 of the CTA in Division.

¹⁵³ *Rollo* (G.R. No. 249407), pp. 206-229.

Nevertheless, the CTA Second Division correctly granted APC's motion for reconsideration of its October 2, 2015 Decision. Even disregarding the additional evidence appended to APC's motion to reopen the case, the evidence formally offered by APC during the proceedings before the CTA Second Division prior to the re-opening of the case—which includes APC's ATRIGs for the period subject of its refund claim and Dela Cruz's testimony¹⁵⁴—are sufficient to establish the elements of tax exemption under Section 13 of PD 1590, as will be discussed hereunder.

All the elements for tax exemption under Section 13 of PD 1590 have been met. Thus, APC and PAL are exempt from excise tax on the importation of the Jet A-1 aviation fuel for the relevant periods covered.

To recall, three conditions must be met in order to be qualified for the tax exemption on importations under Section 13(2) of PD 1590, namely: *first*, the franchisee paid either the basic corporate income tax under Section 13(a), or the franchise tax of 2% under Section 13(b), whichever is lower; *second*, the purchase or importation of aviation gas, fuel, and oil, whether refined or in crude form, is for the exclusive use in the franchisee's transport and non-transport operations, and other activities incidental thereto; and *third*, the petroleum products are not locally available in reasonable quantity, quality, or price.¹⁵⁵

It bears pointing out that the existence of the elements of tax exemption under Section 13(2) of PD 1590 is indubitably a question of fact. As a rule, it is not the Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. This rule finds greater significance with respect to the findings of specialized courts, such as the CTA, the conclusions of which are not lightly set aside because of the very nature of its functions which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.¹⁵⁶ Thus, the uniform finding of the CTA Second Division and the CTA EB on the existence of all the elements in the case of APC, and the uniform factual findings of the CTA Third Division and CTA EB on the existence of all the elements in PAL's case, should be controlling.

¹⁵⁴ *Id.* at 225–228.

¹⁵⁵ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division].

¹⁵⁶ *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, 762 Phil. 450, 459 (2015) [Per J. Mendoza, Second Division]; *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

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In any event, the CTA did not err in finding all the elements for refund present in both APC and PAL's cases.

The first element, i.e., the payment of basic corporate income tax or franchise tax, is not disputed in both APC and PAL's case.

As to the second element—i.e., the purchase or importation of aviation gas, fuel, and oil, whether refined or in crude form, is for the exclusive use in the franchisee's transport and non-transport operations, and other activities incidental thereto—petitioners insist that airline companies must present proof of *actual use* of the imported aviation fuel in domestic flight.

The Court cannot subscribe to petitioners' assertion, since the express wording of Section 13(2) of PD 1590 requires only that the *importation* of the fuel be for the purpose of exclusive use in PAL's transport and non-transport operations, and other activities incidental thereto, viz.:

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

In other words, it is enough that the *intended use* of the imported fuel is PAL's transport and non-transport operations, and other activities incidental thereto. In fact, there is no requirement under Section 13(2) that the activities be related to domestic flight operations. Thus, the ATRIGs and other import documents submitted by PAL, showing PAL's intended use of the Jet A-1 fuel it imported, is sufficient to establish the second element for tax exemption under Section 13(2) of PD 1590. Verily, the Court has held that an ATRIG is *prima facie* proof of the facts stated therein, including the intended use of the imported items.¹⁵⁷ Since, as earlier discussed, Section 13 of PD 1590 also applies to APC, and further considering that APC had also presented the relevant ATRIGs for the period covering its refund claim, APC has also successfully established the second element for tax exemption under Section 13(2) of PD 1590.

Anent the third element, i.e., that the petroleum products are not locally available in reasonable quantity, quality, or price, the Court agrees that APC and PAL only need to prove that the supplies are not locally available either

¹⁵⁷ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division].

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(a) in reasonable quantity, (b) in reasonable quality, **or** (c) in reasonable prices. **Proof of the existence of any one of the three is sufficient to fulfill this element for tax exemption.** The use of the disjunctive word “*or*” signals disassociation or independence;¹⁵⁸ each enumeration can, thus, stand alone. As the CTA aptly ruled, the conditions are in the alternative, not cumulative.¹⁵⁹

In this regard, in asserting that there was enough local supply of Jet A-1 fuel for the years 2001 to 2010, petitioners relied heavily on the DOE’s Certification on the availability of local supply. The Certification, however, included both locally produced and imported fuel in its count for the total local supply of aviation fuel. Petitioners insist that this inclusion of imported fuel is correct.

The Court disagrees.

Domestic petroleum products cannot possibly refer to goods which are imported.¹⁶⁰ The maxim “*ut res magis quam per eat*” requires “not merely that a statute should be given effect as a whole but that effect should be given to each of its express provisions. Under this rule, that construction is favored which will render every word operative rather than one which makes some words idle and nugatory.”¹⁶¹

Here, if the term “locally available supply” were to be interpreted to include imports, then there could never be a situation in which a taxpayer may be exempted under Section 13 of PD 1590 on the basis of insufficient quantity of the local supply of the petroleum product, rendering nugatory part of the said provision. Thus, the proper interpretation, which renders the whole of Section 13 operative, is that “locally available supply” of petroleum products *excludes* imported fuel products.

Since the DOE Certification *includes imports* in its total of locally available supply of petroleum products, the DOE’s conclusions in the said Certification cannot be the basis for a pronouncement that there is a reasonable quantity of locally available aviation fuel. Regardless of whether such issuance is valid, the conclusions therein have no probative value in this case.

Additionally, APC and PAL were able to present certifications issued by the ATO—now known as CAAP—which categorically state that the fuel

¹⁵⁸ *Microsoft Corp. v. Manansala*, 772 Phil. 14, 22 (2015) [Per CJ Bersamin, First Division].

¹⁵⁹ *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division].

¹⁶⁰ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, 713 Phil. 134, 155 (2013) [Per J. Perlas-Bernabe, Second Division].

¹⁶¹ *Gonzales v. GJH Land, Inc.*, 772 Phil. 483, 544 (2015) [Per J. Perlas-Bernabe, *En Banc*].

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was not locally available in reasonable price, quantity, or quality. As it is the ATO/CAAP's duty to assist in the research of aviation fuel, it is well positioned to determine the local availability thereof and the reasonableness of their standing prices. Indeed, this Court has held that ATO/CAAP Certifications are sufficient to prove that aviation fuel is not available in reasonable price, quantity, or quality.¹⁶² To further support its position, APC likewise presented as witness a senior research specialist of the DOE who testified that the local supply of aviation fuel does not meet the demand thereof—which testimony both the CTA Second Division and the CTA EB gave credence. Verily, the Court finds no cogent reason to rule otherwise.

As to what constitutes “reasonable price,” while the Court agrees with petitioners that “cheaper” and “reasonable” are distinct concepts, and that local petroleum need not be cheaper to be deemed reasonably priced, a cheaper price may, nonetheless, be one of the factors considered to determine whether there is sufficient reasonably priced aviation fuel among the local stock. Regardless, however, the certifications from the ATO presented by APC also stated that the aviation fuel was not locally available in reasonable price. Thus, all the conditions necessary for tax exemption on importations under Section 13 of PD 1590 have been met, and the assessment issued by the CIR through the COC on APC is devoid of factual or legal basis.

With respect to PAL, while the Court agrees that it failed to present evidence of the local price of petroleum since there is no clear explanation as how the ICPA, on which the CTA relied, arrived at the figures in their report, it bears stressing that it is sufficient that there was no locally available supply in reasonable quantity in order to establish the presence of the third element for tax exemption under Section 13 of PD 1590. To emphasize, the grounds under the third elements—lack of local supply in reasonable quantity, quality, or price—are in the alternative, and only one of them needs to be established to fulfill the third element for tax exemption under Section 13 of PD 1590. Thus, as the CTA found, all the conditions necessary for tax exemption on importations under Section 13 of PD 1590 in PAL's have likewise been met.

In view of the foregoing discussions, APC and PAL have proven their entitlement to the refund or issuance of tax credit certificate in the amount of PHP 235,613,134.57 and PHP 302,012,195.86, respectively, representing taxes on importation paid under protest.

ACCORDINGLY, the Petitions are **DENIED**. The Decision dated May 2, 2019, and Resolution dated September 16, 2019 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1704 and 1707, and the Decision dated

¹⁶² *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, G.R. Nos. 245330-31, April 1, 2024 [Per J. Dimaampao, Third Division].

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May 10, 2019, and Resolution dated October 16, 2019 of the Court of Tax Appeals En Banc in CTA EB Nos. 1752 and 1756, are hereby **AFFIRMED**.

Petitioner Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate to respondent Air Philippines Corporation amounting to PHP 235,613,134.57, representing the taxes on importation it paid under protest during the period from May 2003 to December 2004. Petitioner Commissioner of Internal Revenue is further **ORDERED** to refund or issue a tax credit certificate to respondent Philippine Airlines Inc. amounting to PHP 302,012,195.86, representing excise taxes it paid for importations of Jet A-1 fuel for its domestic operations for the period of August to October 2008.

Finally, petitioner Commissioner of Customs is hereby **ENJOINED** from ruling on the protests or refund claims of Air Philippines Corporation and Philippine Airlines Inc. for the periods covered in this case for lack of jurisdiction.

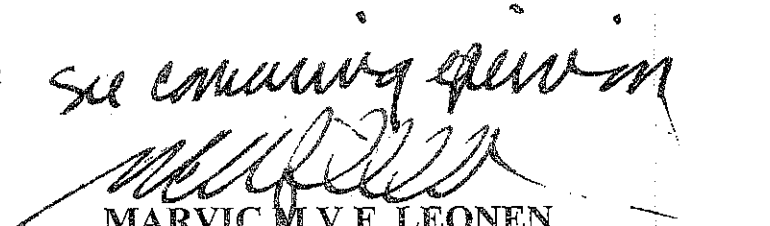
SO ORDERED.



ANTONIO T. KHO, JR.

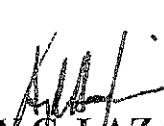
Associate Justice

WE CONCUR:



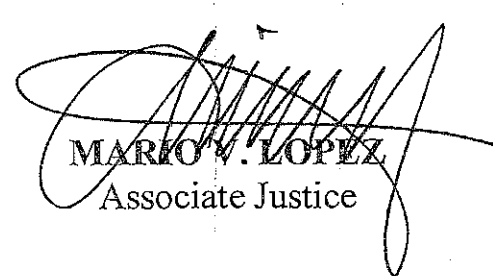
MARVIC M.V.F. LEONEN

Senior Associate Justice
Division Chairperson



AMY C. LAZARO-JAVIER

Associate Justice



MARIO V. LOPEZ

Associate Justice



JHOSEP V. LOPEZ

Associate Justice

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ATTESTATION

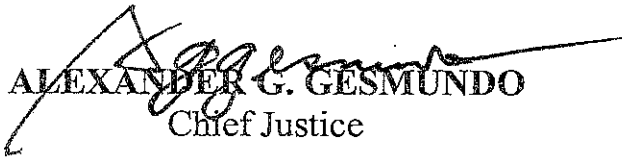
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice



SECOND DIVISION

G.R. No. 249407 – THE COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE, Petitioners, v. AIR PHILIPPINES CORPORATION (APC), Respondent.

G.R. Nos. 250032 & 250047 – THE COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE, Petitioners, v. PHILIPPINE AIRLINES INC., Respondent.

Promulgated:

APR 23 2025

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CONCURRING OPINION

LEONEN, S.A.J.:

I concur with the *ponencia* that the Commissioner of Customs must be enjoined from ruling on the pending claims of refund for the periods covered in this case. However, I clarify my position regarding the jurisdiction of petitioners Commissioner of Customs and Commissioner of Internal Revenue, as well as on the jurisdiction of the Court of Tax Appeals, over the claims filed by respondents Air Philippines Corporation (Air Philippines) and Philippine Airlines Inc. (PAL).

The Petitions for Review on *Certiorari* filed under Rule 45 of the Rules of Court in this case involve the claims of respondents Air Philippines and PAL for refund of taxes they had previously paid for the importation of Jet A-1 fuel for their domestic operations for various periods.¹

According to the *ponencia*, either the Commissioner of Internal Revenue or Bureau of Internal Revenue has jurisdiction over the claims for refund of excise taxes on imported goods. Therefore, the Court of Tax Appeals has jurisdiction over this case pursuant to Section 7 of Republic Act No. 9282. I agree.

As the *ponencia* noted, special import taxes and excise taxes are governed by different laws and are implemented by different agencies.² While

¹ See *ponencia*, p. 2. In G.R. No. 249407, the Commissioner of Internal Revenue assessed excise taxes on Air Philippines' importation of Jet A-1 fuel for its domestic operations for the period of May 2003 to December 2004. Meanwhile, in G.R. No. 250032 & 250047, the Commissioner of Internal Revenue assessed excise taxes on Philippine Airlines' importation of Jet A-1 fuel for its domestic operations for the period of August 2008 to October 2008.

² *Id.* at 23–24. See also TAX CODE, Title I, secs. 2, 4.

the law on special import taxes is implemented by the Commissioner of Customs, the law on excise taxes on importation is implemented by the Commissioner of Internal Revenue.³

What is involved in this case are excise taxes assessed pursuant to Section 148 of the National Internal Revenue Code (Tax Code),⁴ as opposed to customs duties assessed pursuant to the Tariff and Customs Code of the Philippines (TCCP). It is undisputed by the parties that the tax assessments were under Section 148 of the Tax Code.⁵

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*,⁶ this Court stated that “applications for refunds of internal revenue taxes lie within the primary jurisdiction of the Commissioner of Internal Revenue.”⁷ This is consistent with Sections 2 and 4 of the Tax Code, which respectively provide: (a) the power and duties of the Bureau of Internal Revenue as comprehending the assessment and collection of all national internal revenue taxes; and (b) the Commissioner of Internal Revenue’s original and exclusive power to interpret the provisions of the Tax Code and other tax laws, as well as their power to decide refunds of internal revenue taxes. The pertinent provisions are replicated as follows:

Section 2. Powers and duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and *its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes*, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - *The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner*, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals. (Emphasis supplied)

Section 602 of the TCCP provides that the general duties, power and jurisdiction of the Bureau of Customs include “assessment and collection of

³ Ponencia, p. 23–24.

⁴ See rollo (G.R. No. 249407), p. 17.

⁵ *Id.* at 117.

⁶ 908 Phil. 681 (2021) [Per J. Leonen, *En Banc*].

⁷ *Id.* at 692.

the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing *under the tariff and customs laws*,”⁸ as well as “[t]he enforcement of the *tariff and custom laws and all other laws, rules and regulations relating to the tariff and customs administration*.”⁹

Based on the foregoing provisions, filing of written claims for refund must be done with the Bureau of Internal Revenue, not the Bureau of Customs, pursuant to Section 204(C) in relation to Section 229 of the Tax Code.

The Bureau of Customs cannot validly acquire jurisdiction over these claims and therefore cannot act on these written claims for refund. Any action upon these claims will be a nullity and would not produce the effect of *res judicata*. Likewise, the parties cannot be held liable for forum shopping for instituting claims for refund simultaneously with both administrative agencies.¹⁰ Air Philippines and PAL’s formal written protests with the Bureau of Customs¹¹ are superfluous.

Under Section 204(C) in relation to Section 229 of the Tax Code, in case taxes have been erroneously or illegally received, a taxpayer may, within two years from payment of the any national internal revenue: (1) file a written claim for refund with the Commissioner of Internal Revenue; and (2) institute a suit or proceeding in any court for the recovery of said erroneously and illegally assessed or collected tax.

Notably, this two-year period to file an administrative claim for refund under Section 229 of the Tax Code is merely prescriptive and not jurisdictional as the Commissioner of Internal Revenue may waive the period or the filing of written claim within said period in exceptional circumstances.¹² Meanwhile, the same two-year period within which to file a judicial claim

⁸ *Ponencia*, p. 31.

⁹ See TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, sec. 602(d).

¹⁰ See *Heirs of Mampo v. Morada*, 888 Phil. 583, 590 (2020) [Per J. Caguioa, First Division].

¹¹ *Ponencia*, pp. 6, 12.

¹² See National Internal Revenue Code, sec. 229, which reads:

Section 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

See also 2 ATTY. EUFROCINA M. SACDALAN-CASASOLA, NATIONAL INTERNAL REVENUE CODE 1275–1276 (2013), citing *Re: Request of Atty. Zialcita*, 268 Phil. 637 (1990) [Per J. Gutierrez, Jr., *En Banc*]; *Cebu Portland Cement Co. v. CIR*, 134 Phil. 735 (1968) [Per J. Angeles, *En Banc*]; *Filinvest Development Corporation v. CIR*, 556 Phil. 439 (2007) [Per J. Nachura, Third Division]; *Atlas Consolidated v. CIR*, 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].

before the Court of Tax Appeals is mandatory and jurisdictional.¹³ In *Carrier*, this Court countenanced the filing of a judicial claim without awaiting the Commissioner of Internal Revenue's action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period.¹⁴

It must be emphasized, however, that when a tax is paid in installments, the prescriptive period of two years provided in Sections 204(C) and 229 of the Tax Code should be counted from the date of the final payment,¹⁵ and not based on the date when the first installment was paid. This rule proceeds from the theory that in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid.¹⁶

Both Air Philippines and PAL have timely filed their written claims for refund with the Commissioner of Internal Revenue, as well as their judicial claims for refund with the Court of Tax Appeals. The relevant periods are summarized below:

Date of Importation	Date of Payment under Protest	Last Day of Two-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
G.R. No. 249407 – Air Philippines' Refund Claim¹⁷				
May 15, 2003	1 st Installment – May 30, 2003 2 nd Installment – June 12, 2003 3 rd Installment – June 27, 2003	June 27, 2005 (Monday)	April 28, 2005	May 16, 2005
October 29, 2003	November 7, 2003	November 7, 2005 (Monday)	October 28, 2005	November 7, 2005
December 5, 2003	1 st Installment – December 12, 2003 2 nd Installment – December 19, 2003	December 19, 2005 (Monday)	November 21, 2005	December 9, 2005
April 5, 2004	1 st Installment – April 16, 2004 2 nd Installment – April 30, 2004	May 1, 2006 (Sunday)	March 28, 2006	April 17, 2006
June 13, 2004	1 st Installment – June 24, 2004 2 nd Installment – June 29, 2004	June 13, 2006 (Tuesday)	June 20, 2006	June 23, 2006
August 16, 2004	1 st Installment – August 31, 2004 2 nd Installment – September 14, 2004	September 14, 2006 (Thursday)	March 28, 2006	August 31, 2006

¹³ *Commissioner of Internal Revenue v. Carrier Air Conditioning*, 908 Phil. 681, 689 (2021) [Per J. Leonen, *En Banc*].

¹⁴ *Id.* at 685.

¹⁵ *See Commissioner of Internal Revenue v. TMX Sales, Inc.*, 282 Phil 199, 208 (1992) [Per J. Gutierrez, Jr., *En Banc*].

¹⁶ *See Collector of Internal Revenue v. Prieto*, 112 Phil 907-922 (1961) [Per J. Dizon, *En Banc*].

¹⁷ *See Ponencia*, pp. 6–7.

Date of Importation	Date of Payment under Protest	Last Day of Two-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
August 28, 2004	September 23, 2004	September 23, 2006 (Saturday)	March 28, 2006	September 21, 2006
December 17, 2004	January 12, 2005	January 12, 2007 (Friday)	December 29, 2006	January 12, 2007
G.R. No. 250032-Philippine Airlines' Refund Claim¹⁸				
August 8, 2008	September 1, 2008	September 1, 2010 (Wednesday)	November 18, 2009	August 17, 2010
August 9, 2008	August 15, 2008	August 15, 2010 (Sunday)		
August 23, 2008	September 18, 2008	September 18, 2010 (Saturday)		
September 24, 2008	October 22, 2008	October 22, 2010 (Friday)		
October 22, 2008	November 19, 2008	November 19, 2010 (Friday)		

Under Section 7(a) of Republic Act No. 9282, the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal any of the following cases:

1. *Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*
2. *Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.] (Emphasis supplied)*

In *Carrier*, this Court stated that the Court of Tax Appeals may acknowledge applications for refunds on an appellate basis.

Thus, applications for refunds of internal revenue taxes lie within the primary jurisdiction of the Commissioner of Internal Revenue, and the Court of Tax Appeals may take cognizance of these claims only on an appellate basis. Specifically, under Section 7 [of Republic Act No. 1125, as amended by Republic Act No. 9282], the Court of Tax Appeals can review by appeal *decisions*, or "*inactions deemed denial*," of the Commissioner of Internal Revenue in applications for refund of internal revenue taxes.

It is on these bases that I agree that the present claims fall within the appellate jurisdiction of the Court of Tax Appeals. This is insofar as they

¹⁸ See *id.* at 12-13.

relate purely to tax refund and other matters within the original and exclusive jurisdiction of the Commissioner of Internal Revenue.

It must be noted that the power to interpret the provisions of the Tax Code and other laws administered by the Bureau of Internal Revenue under Section 4 of the Tax Code is wielded through the promulgation of administrative issuances, which include rulings of the Bureau of Internal Revenue (BIR Rulings).¹⁹ In this case, BIR Ruling No. 001-2003 is the basis for the assessments made against Air Philippines and PAL.

To illustrate, the BIR Rulings are the official position of the Bureau of Internal Revenue regarding queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws, the primary purpose of which is simply to determine whether a certain transaction is taxable based on the circumstances provided by the taxpayer.²⁰ In *Commissioner of Internal Revenue v. Co*,²¹ this Court noted that a ruling merely operates to “confirm” the existence of the conditions for exemption provided under the law, such that if all legal requirements for exemption are complied with, the transaction is considered exempt.²²

Admittedly, the validity of BIR Ruling No. 001-2003 clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended. However, it must be emphasized that Section 4 of Republic Act No. 8424 expressly requires that the validity of BIR Ruling No. 001-2003 must be raised before the Secretary of Finance.

As explained in *Banco de Oro v. Republic of the Philippines*:²³

[W]ith respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, *the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No., as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.* (Emphasis supplied, citations omitted)

¹⁹ *Steel Corporation of the Philippines v. Bureau of Customs*, 825 Phil 809 (2018) [Per J. Peralta, Second Division], citing *Banco de Oro v. Republic of the Philippines*, 793 Phil. 97 (2016) [Per J. Leonen, *En Banc*].

²⁰ *Commissioner of Internal Revenue v. Co*, 871 Phil. 862, 880 (2020) [Per J. Caguioa, First Division].

²¹ 871 Phil. 862 (2020) [Per J. Caguioa, First Division].

²² *Id.* at 880.

²³ 825 Phil 809, 825 (2018) [Per J. Peralta, Second Division].

Incidentally, the Secretary of Finance laid down the procedure and requirements for filing an appeal from the Commissioner of Internal Revenue to its office in DOF Department Order No. 007-02.

BIR Revenue Memorandum Circular No. 44-2001 dated October 11, 2001 provides:

Section 3. Rulings Adverse to the Taxpayer. A Taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath and must:

....

These are mandatory requirements and failure to comply with any of the stated substantive requirements shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review.

Pursuant to DOF Department Order No. 007-02 and BIR Revenue Memorandum Circular No. 44-2001, a taxpayer is granted 30 days from receipt of the adverse ruling of the Commissioner of Internal Revenue to file with the Office of the Secretary of Finance a request for review in writing and under oath.²⁴

In *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*,²⁵ this Court explained the remedy available to a taxpayer aggrieved by an adverse decision of the Secretary of Finance:

[The] rulings of the Secretary of Finance in its exercise of its power of review under Section 4 of the [Tax Code], as amended, are appealable to the [Court of Tax Appeals]. The Court explained that while there is no law which explicitly provides where rulings of the Secretary of Finance under the adverted to [the Tax Code] provision are appealable, Section 7 (a) of RA No. 1125, the law creating the [Court of Tax Appeals], is nonetheless sufficient, albeit impliedly, to include appeals from the Secretary's review under Section 4 of the [Tax Code], as amended.²⁶ (Citations omitted)

Furthermore, this Court stated that a petition filed before an appellate court seeking the nullification of an administrative issuance may be dismissed due to lack of cause of action owing to the parties' failure to exhaust administrative remedies.

²⁴ See also *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*, G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division].

²⁵ 835 Phil. 297 (2018) [Per J. Caguioa, *En Banc*].

²⁶ *Id.* at 316-317.

It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.²⁷ (Citations omitted)

Here, the records do not show that Air Philippines and PAL questioned BIR Ruling No. 001-2003 before the Secretary of Finance within 30 days from receipt of the ruling. While there are exceptions to the doctrine of exhaustion of administrative remedies and Air Philippines and PAL may seek judicial intervention questioning BIR Ruling No. 001-2003 directly before the Court of Tax Appeals, they may only do so under exceptional circumstances, which do not appear to exist in the present case. Moreover, BIR Ruling No. 001-2003 is final and executory for failure of the proper party to file a request for review with the Secretary of Finance. As things stand, the BIR Ruling No. 001-2003 shall be presumed valid considering that it has not been shown to have been overturned or modified by the Secretary of Finance.

Similarly, the records do not show that petitioners properly contested the validity of the December 20, 2002 DOE Certification before the Office of the President nor did they seek any reconsideration of the findings. While PAL challenged the validity of the December 20, 2002 DOE Certification in a separate proceeding before the Regional Trial Court,²⁸ absent any final and executory decision nullifying this certification, this issuance must likewise be presumed valid, and accordingly, its contents must be considered *prima facie* evidence of the facts stated.²⁹

While *prima facie* evidence is sufficient to establish a given fact or group of facts constituting a claim or defense and will remain sufficient if not rebutted or contradicted, such evidence may be contradicted by other evidence.³⁰

This Court is not a trier of facts and the scope of this Court's judicial review of decisions of the Court of Tax Appeals through a petition for review on *certiorari* is generally confined only to errors of law. Questions of fact are

²⁷ *Id.* at 315.

²⁸ *See rollo* (G.R. No. 250032 and 250047), p. 497.

²⁹ *See* RULES OF COURT, Rule 132, sec. 23 which reads:

Section 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

³⁰ *Wa-acon v. People*, 539 Phil 485, 496 (2006) [Per J. Velasco, Jr., Third Division]. (Citation omitted)

not entertained.³¹ This Court's judicial review does not extend to a reevaluation of the sufficiency of the evidence upon which a lower court has based its determination.³² Consequently, the review of appeals filed before this court is not a matter of right, but of sound judicial discretion.³³

While this general rule is not absolute, the Petitions in G.R. Nos. 250032 and 250047 do not fall under any of the exceptions.³⁴ In these cases, petitioners assail the appreciation of evidence by the Court of Tax Appeals, which is a question of fact. As such, this Court is duty-bound to respect the consistent prior findings of the Court of Tax Appeals which have previously weighed the parties' claims and personally perused the evidence.³⁵ To emphasize, when supported by substantial evidence, the findings of fact of the appellate courts are conclusive and binding on the parties and are not reviewable by this Court.³⁶ Petitioners' rehashed arguments in G.R. Nos. 250032 and 250047 have already been decided consistently against them by the Court of Tax Appeals Division and the Court of Tax Appeals *En Banc*. Thus, I agree that the petitions in G.R. Nos. 250032 and 250047 must be denied and that petitioner Commissioner of Internal Revenue must be ordered to refund or issue a tax credit certificate in favor of PAL.

Additionally, I agree that the Petition in G.R. No. 249407 must be denied because the evidence presented during the proceedings before the Second Division of the Court of Tax Appeals were sufficient to establish that aviation fuel is not locally available in reasonable quantity, quality and price for the period covered by Air Philippines' refund claim.

Petitioners in G.R. No. 249407 raise Air Philippines' alleged failure to comply with the conditions set by Section 13 of Presidential Decree No. 1590³⁷ for its imported Jet A-1 fuel to be exempt from excise tax. In

³¹ *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014) [Per J. Leonen, Second Division].

³² *Id.* at 416.

³³ RULES OF COURT, Rule 45, sec. 6.

³⁴ In *Pascual v. Burgos*, this Court has held that it will review the factual findings of the Court of Appeals in any of the following instances: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is a grave abuse of discretion in the appreciation of facts; (5) when the Appellate Court, in making its findings, went beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record. 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

³⁵ *Ebuenga v. Southfield Agencies, Inc.*, 828 Phil. 122, 129 (2018) [Per J. Leonen, Third Division].

³⁶ *De Guzman v. Court of Appeals*, 442 Phil. 534, 545 (2002) [Per J. Austria-Martinez, Second Division].

³⁷ Presidential Decree No. 1590, sec. 13 reads:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

Commissioner of Internal Revenue v. Philippine Airlines, Inc.,³⁸ this Court stated that the conditions under Section 13 of Presidential Decree No. 1590 are: first, such supplies are imported for the use of the franchisee in its operations and other incidental activities; and second, they are not locally available in reasonable quantity, quality and price.³⁹

This issue surrounding Air Philippines's supposed compliance or noncompliance with the conditions set by Section 13 of Presidential Decree No. 1590 are factual determinations that are best left to the Court of Tax Appeals.⁴⁰ It is settled that "this Court is bound by the findings of fact of the [Court of Tax Appeals]. Only errors of law, and not rulings on the weight of evidence, are reviewable by this Court. Findings of fact of the [Court of Tax Appeals] are not to be disturbed unless clearly shown to be unsupported by substantial evidence."⁴¹

It must be noted that in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,⁴² this Court has already stated that an Authority to Release

(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 nontransport 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:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
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;
3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;
4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;
5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and
6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

- (a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
- (b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.

³⁸ 806 Phil 358 (2017) [Per J. Peralta, Second Division].

³⁹ *Id.* at 372.

⁴⁰ *Id.*

⁴¹ *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 499 (2006) [Per J. Chico-Nazario, First Division]. (Citation omitted)

⁴² G.R. Nos. 245330-31, April 4, 2024 [Per J. Dimaampao, Third Division].

Imported Goods and the Certification issued by the Air Transportation Office constitute *prima facie* evidence of the facts stated therein:

With regard to the requisite that the imported articles or goods must be used in PAL's transport and non-transport operations, the CTA *En Banc* held that the Authority to Release Imported Goods (ATRIGs) submitted by PAL constituted sufficient proof thereof. ATRIGs were issued by the CIR and/or his duly authorized representatives, upon verification and processing of the importation documents submitted by taxpayers and may be regarded as entries in official records which constitute *prima facie* evidence of the facts therein stated. Thus, the contents in the subject ATRIGs — to the effect that the Jet A-1 aviation fuel “will be used exclusively for domestic flight operation” or “will be used exclusively for daily domestic flight operation” — must be given weight. The ATRIGs were also further supported by the testimony of the witnesses presented by PAL. As to the other requisite that aviation fuel was not legally available in reasonable quantity, quality, or price during the time of importation, the CTA *En Banc* agreed with PAL that the Certification issued by the Air Transportation Office (ATO) to that effect was in line with its general powers under its charter. Likewise, the Certification also stood as *prima facie* evidence of the facts stated therein. The CTA *En Banc* rejected the [Commissioner of Internal Revenue] and the [Commissioner of Customs] argument that only the DOE was in a position to determine the local availability of Jet A-1 aviation fuel.⁴³

In this case, in support of its claim for tax exemption, Air Philippines submitted (a) its Authority to Release Imported Goods to show that the imported Jet A-1 aviation fuel is for its operations and other incidental activities;⁴⁴ and (b) the Certification issued by the Air Transportation Office, as well as a witness testimony, to show that at the time of the subject importations, there was no locally available Jet A-1 fuel in reasonable quantity.⁴⁵

In this regard, as noted by the *ponencia*,

...[T]he [Court of Tax Appeals En Banc] held that the said [Department of Energy] Certification covers historical data, and the BIR Ruling No. 001-2003 was meant to address BIR Ruling No. 013-99 issued to PAL on January 29, 1999. Such certification was based on data from the years 2001 and 2002. As such, neither the DOE Certification nor BIR Ruling No. 001-2003 covers the period of May 2003 to December 2004, which is subject of [Air Philippines'] refund claim.

... on the issue of whether aviation fuel was indeed locally available in reasonable quantity, quality or price, the [Court of Tax Appeals En Banc] ruled in the negative...

... the [Court of Tax Appeals En Banc] noted that, as testified in the Division proceedings by Glendalyn P. Dela Cruz (Dela Cruz), a Senior

⁴³ *Id.*

⁴⁴ *Ponencia*, p. 38.

⁴⁵ *Id.* at 40.

Research Specialist of the DOE, the Total Industry Petroleum Products Demand (Domestic and International Demand) will always be greater than local refinery production. Likewise, the subject importations of [Air Philippines] were supported by Certifications issued by the Air Transportation Office (ATO) which stated that the aviation fuel was not locally available in reasonable quantity, quality, and price. The [Court of Tax Appeals En Banc] declared that the ATO has the power to issue such certifications following Section 35(q) RA 9497, and Section 32 of RA 776. As such, the ATO Certification negates the [Commissioner of Internal Revenue's] contention that the [Department of Energy] could best determine the local availability of aviation fuel.

Anent the issue on tax exemption, the [Court of Tax Appeals En Banc] held that all the requisites for [Air Philippines'] tax exemption were met. The [Court of Tax Appeals En Banc] explained that the use of the conjunctive "or" in the relevant clause of Section 13 of PD 1590, i.e., "the imported articles supplies or materials are not locally available in reasonable quantity, quality or price," connotes alternative, not cumulative, qualification. Thus, it was sufficient that [Air Philippines] was able to prove one qualification to avail of the exemption, i.e., that at the time of the subject importations, there was no locally available Jet A-1 fuel in reasonable quantity. Accordingly, the [Court of Tax Appeals En Banc] held that [Air Philippines] is entitled to a refund or the issuance of a Tax Credit Certificate (TCC) in the amount of PHP235,613,134.47, representing excise taxes paid on importations for Jet A-1 fuel for the period of May 2003 to December 2004.⁴⁶

Thus, there is no reason for this Court to disturb the findings of the tax court.

ACCORDINGLY, I vote to **DENY** the petitions.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴⁶ *Id.* at 11-12.